FEDERAL REGISTER

VOLUME 9 NUMBER 146

Washington, Saturday, July 22, 1944

Regulations

TITLE 7—AGRICULTURE

Chapter VII—War Food Administration (Agricultural Adjustment)

PART 728—WHEAT

NATIONAL, STATE, COUNTY AND FARM ACREAGE ALLOTMENTS FOR THE 1945 CROP OF WHEAT, AND WHEAT MARKETING QUOTAS FOR THE 1945–46 MARKETING YEAR

Whereas, the Agricultural Adjustment Act of 1938, as amended, provides for the proclamation of certain data concerning the supply and consumption requirements requisite to the establishment of a national acreage allotment and marketing quotas for wheat, and

Whereas, said Act further provides that the powers therein granted shall not be used to discourage the production of sufficient supplies of foods and fibers to maintain normal domestic consumption, taking into consideration current trends in consumption and exports and the quantities of substitutes available at fair prices, and

Whereas, said Act further provides that quotas shall be terminated if it is determined that such action is necessary in order to effectuate the declared policy of the Act or to meet a national emergency, and

Whereas, an investigation has been made which reveals that it is necessary, in order to meet the present national emergency and to effectuate the declared policy of the Act, to dispense with marketing quotas for wheat for the marketing year beginning July 1, 1945, and with national, State, county and farm acreage allotments for wheat for the 1945 crop:

Now, therefore, pursuant to the foregoing authority and in accordance with Executive Order 9322, as amended by Executive Order 9334, it is hereby determined and proclaimed that:

This issue is in two parts, the second of which consists of the War Department Procurement Regulations as amended by Change 36, June 7, 1944, and Change 37, June 29, 1944. Because of its unusual size Part II will be distributed during the week of July 23.

§ 728.601 *1945 acreage allotments for wheat.* In order to encourage the production of a sufficient supply of food to maintain normal domestic consumption, taking into consideration current trends in consumption and exports and the quantities of substitutes available at fair prices and otherwise to effectuate the declared policy of the Act, no national, State, county, or farm acreage allotments for wheat for the 1945 crop will be established under provisions of Title III of the Agricultural Adjustment Act of 1938, as amended.

§ 728.605 *National marketing quota for wheat for the 1945–46 marketing year.* In order to meet the present national emergency and to effectuate the declared policy of the Act, wheat marketing quotas will not be in effect for the marketing year beginning July 1, 1945.

(52 Stat. 39, 43, 45, 53, 54, 64, 203, 775; 53 Stat. 1125; 7 U.S.C. 1940 ed. 1301(b), 1301(c), 1304, 1332, 1333, 1334, 1335, 1371; and E.O. 9322, March 26, 1943, as amended by E.O. 9334, April 19, 1943)

Issued at Washington, D. C., this 14th day of July 1944.

ASHLEY SELLERS,
Assistant War Food Administrator.

[F. R. Doc. 44-10359; Filed, July 20, 1944; 8:20 p. m.]

CONTENTS

REGULATIONS AND NOTICES

	Page
CIVIL AERONAUTICS BOARD:	
Domestic air carriers, uniform system of accounts	8285
International air carriers:	
Form of reports for financial and operating statistics	8285
Uniform system of accounts	8285
CUSTOMS BUREAU:	
Financial and accounting procedure; authority to incur expenses	8289
Fort Yukon Airfield, Alaska; redesignation as airport of entry	8289
Imported merchandise; invoices covering screenings or scalpings of grains or seeds	8288
FEDERAL COMMUNICATIONS COMMISSION:	
Commercial Cable Co., et al., investigation	8350
Wire-telegraph employees, classification of	8347
FEDERAL DEPOSIT INSURANCE CORPORATION:	
Assessments, payment by banks whose insured status has terminated	8284
FEDERAL POWER COMMISSION:	
Hearings, etc.:	
Kansas Power and Light Co.	8351
Minnesota Power & Light Co. (2 documents)	8350, 8351
Northern Natural Gas Co.	8350
FEDERAL TRADE COMMISSION:	
Cease and desist orders:	
American Assn. of Law Book Publishers, et al.	8285
Detroit Soda Products Co., et al.	8287
Prime Mfg. Co.	8287
FISH AND WILDLIFE SERVICE:	
Medicine Lake National Wildlife Refuge, Mont., fishing in	8349
GENERAL LAND OFFICE:	
Public sales, miscellaneous amendments	8347
INTERSTATE COMMERCE COMMISSION:	
Reconsignment permits:	
Oranges, Minneapolis, Minn.	8351

(Continued on next page)

FEDERAL REGISTER

Published daily, except Sundays, Mondays, and days following legal holidays, by the Division of the Federal Register, The National Archives, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U.S.C., ch. 8B), under regulations prescribed by the Administrative Committee, approved by the President. Distribution is made only by the Superintendent of Documents, Government Printing Office, Washington, D. C.

The regulatory material appearing herein is keyed to the Code of Federal Regulations, which is published, under 50 titles, pursuant to section 11 of the Federal Register Act, as amended June 19, 1937.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $1.50 per month or $15.00 per year, payable in advance. The charge for individual copies (minimum 15¢) varies in proportion to the size of the issue. Remit check or money order, made payable to the Superintendent of Documents, directly to the Government Printing Office, Washington, D. C.

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NOTICE

The Cumulative Supplement to the Code of Federal Regulations, covering the period from June 2, 1938, through June 1, 1943, may be obtained from the Superintendent of Documents, Government Printing Office, at $3.00 per unit. The following are now available:

Book 1: Titles 1–3 (Presidential documents) with tables and index.
Book 2: Titles 4–9, with index.
Book 3: Titles 10–17, with index.
Book 4: Titles 18–25, with index.
Book 5, Part 1: Title 26, Parts 2–178.
Book 5, Part 2: Title 26, completed; Title 27.

CONTENTS—Continued

INTERSTATE COMMERCE COMMISSION—Continued.
Reconsignment permits—Con. Page
Peaches, Chicago, Ill. 8351
Potatoes, Kansas City, Mo.-Kans. 8351
Reicing of potatoes, Denison, Tex. 8352
JUSTICE DEPARTMENT:
Assistant Attorney General in charge of War Division, delegation of authority 8350
OFFICE OF PRICE ADMINISTRATION:
Adjustments, etc:
Bartley, Lee, and Sons Machine Co. 8352
Hammary Mfg. Co. 8353
Montz, Armand 8352
National Aluminum Mfg. Co. 8353
Gasoline rationing (RO 5C, Am. 137) 8339

CONTENTS—Continued

OFFICE OF PRICE ADMINISTRATION—Continued. Page
Grains (FPR 2) 8304
Oats (FPR 2, Supp. 2) 8311
Sales by retailers (FPR 2, Supp. 1) 8309
Legume and grass seeds (RMPR 471) 8340
Meats:
Beef, kosher; veal, lamb and mutton cuts (MPR 394, Am. 6) 8323
Pork cuts and sausage products (MPR 336, Am. 15) 8334
Printing and printed paper commodities (MPR 225, incl. Am. 1–13) 8297
Regional and district office orders:
Community ceiling prices, list of orders filed 8361
Fluid milk:
Colorado 8355
Paxton, Ill. 8359
Taylorville, Ill. 8361
Wilson, Ark. 8358
Fruits and vegetables, fresh, in designated counties in Pennsylvania 8354
Ice in Idaho Falls, Idaho 8354
Solid fuels:
Asheville, N. C. 8357
Cleveland, Ohio, area 8356
Denver region (2 documents) 8359, 8360
Goldsboro, N. C. 8358
Twin Cities, Minn., area 8355
Resins, natural (MPR 297, Corr. to Am. 1) 8304
Shoes (RO 17, Am. 68; 69) (2 documents) 8339, 8340
PUBLIC CONTRACTS DIVISION:
Procedure for stipulation of conditions in government purchase contracts, statutory exemptions 8346
SECURITIES AND EXCHANGE COMMISSION:
New Orleans Public Service Inc. and Electric Power & Light Corp., application granted, etc. 8362
SOLID FUELS ADMINISTRATION FOR WAR:
Bituminous coal and western coke, deliveries of 8289
TREASURY DEPARTMENT:
Standard contract procedure; coal, escalation provision 8346
WAR DEPARTMENT:
Procurement and disposal of supplies and equipment; revision of chapter 8363
Sheepscot River, Maine, area; danger zone regulations 8346
WAR FOOD ADMINISTRATION:
Wheat, 1945 acreage allotments and 1945–1946 marketing quota 8283
WAR PRODUCTION BOARD:
Controlled materials plan (CMP Reg. 5, Am. 1; CMP Reg. 5A, Am. 1) (2 documents) 8293
Farm machinery; cut-away discs (L–257, Dir. 1) 8293
Gauges, indicating dial pressure (L–272, Dir. 1 to Sch. IV) 8293
Iridium (M–49) 8294
Lawn mowers (L–67) 8295
Oils for protective coatings (M–332) 8295

CONTENTS—Continued

WAR PRODUCTION BOARD—Con. Page
Pulp and paper; moisture vapor-proof barriers (M–380) 8293
Scheduled products, changes in forms (M–293, Dir. 2) 8293
Service equipment, Post Exchange and Ships Service Department orders (L–91, Int. 2) 8290
Service establishments, restoration of, released by Army and Navy (P–150) 8296
Suspension orders:
Dubin & Co., Inc. 8292
Unity Service Co. 8292

TITLE 12—BANKS AND BANKING

Chapter III—Federal Deposit Insurance Corporation

PART 302—ASSESSMENTS

PAYMENT BY BANKS WHOSE INSURED STATUS HAS TERMINATED

Resolutions adopted June 15, 1944 repealed former paragraphs (a), (d) and (e) of § 302.3; amended former paragraphs (c) and (f) of said section, and redesignated them as paragraphs (a) and (b), respectively; and redesignated paragraph (b) of said section as (c). The section, as amended, reads as follows:

§ 302.3 *Payment of assessments by banks whose insured status has terminated*—(a) *Assumed deposits of terminating bank become deposits of assuming bank.* The deposit liabilities of one bank, if assumed by a second insured bank, will, except to the extent that depositors of the first bank by affirmative action signify their express intention to hold the first bank liable as a debtor, be presumed for assessment purpose to cease being deposit liabilities of the first bank on the date the assumption becomes effective provided the requisite notice of assumption be given to the depositors. The assumed deposits, for assessment purposes, are deposit liabilities of the assuming bank from the date of assumption, whether or not the requisite notice of assumption has been given to the depositors.

(b) *Payment of assessments by assuming bank on assumed deposits of terminating bank.* Where the deposit liabilities of an insured bank are assumed by another insured bank and the assuming bank agrees to file the certified statement which the terminating bank is required to file, the filing of such certified statement and the payment of the assessment thereon by the assuming bank shall be deemed the acts of the terminating bank: *Provided,* The requisite notice of assumption be given to the depositors of the terminating bank and: *Provided, further,* That such certified statement shall be filed separately from that required to be filed by the assuming bank.

(c) *Resumption of insured status before insurance of deposits ceases.* If a bank whose insured status has been terminated under paragraphs (1) or (2) of subsection (i), of section 12B of the Federal Reserve Act, as amended (12 U.S.C. 264 (i) (1) and (2)), makes application to the Corporation, before the insurance of its deposits shall have ceased, to be

permitted to continue or to resume its status as an insured bank and if the directors grant the application, the bank will be deemed for assessment purposes, to continue as an insured bank and must thereafter furnish certified statements and pay assessments as though its insured status had not been terminated.

(12 U.S.C. 264 (h), (i) and (j))

[SEAL] FEDERAL DEPOSIT INSURANCE CORPORATION,
E. F. DOWNEY,
Secretary.

[F. R. Doc. 44-10858; Filed, July 20, 1944; 3:13 p. m.]

TITLE 14—CIVIL AVIATION

Chapter I—Civil Aeronautics Board

[Orders, Serial No. 2989]

PART 202—ACCOUNTS, RECORDS AND REPORTS

FORM OF REPORTS FOR FINANCIAL AND OPERATING STATISTICS OF INTERNATIONAL AIR CARRIERS

Adopted by the Civil Aeronautics Board at its offices in Washington, D. C., on the 12th day of July, 1944.

The Board, acting pursuant to the Civil Aeronautics Act of 1938, as amended, particularly sections 205 (a) and 407 (a) thereof, and finding its action necessary to carry out the provisions of said act and to exercise its powers and perform its duties thereunder;

It is ordered, That the form of Report of Financial and Operating Statistics for International Air Carriers, (CAB Form 2380) be and the same is amended, as set forth in Amendment No. 1, attached hereto.[1]

By the Civil Aeronautics Board.

[SEAL] FRED A. TOOMBS,
Secretary.

[F. R. Doc. 44-10874; Filed, July 21, 1944; 10:22 a. m.]

[Orders, Serial No. 2990]

PART 202—ACCOUNTS, RECORDS AND REPORTS

UNIFORM SYSTEM OF ACCOUNTS FOR DOMESTIC AIR CARRIERS

Adopted by the Civil Aeronautics Board at its offices in Washington, D. C., on the 12th day of July, 1944.

The Board, acting pursuant to the Civil Aeronautics Act of 1938, as amended particularly sections 205 (a) and 407 (a) thereof, and finding its action necessary to carry out the provisions of said act and to exercise its powers and perform its duties thereunder;

It is ordered, That the Uniform System of Accounts for Domestic Air Carriers (CAB Form 2780 Manual), as amended, be and the same is further amended as set forth in Amendment No. 7 attached hereto.[1]

By the Civil Aeronautics Board.

[SEAL] FRED A. TOOMBS,
Secretary.

[F. R. Doc. 44-10875; Filed, July 21, 1944; 10:22 a. m.]

[Orders, Serial No. 2991]

PART 202—ACCOUNTS, RECORDS AND REPORTS

UNIFORM SYSTEM OF ACCOUNTS FOR INTERNATIONAL AIR CARRIERS

Adopted by the Civil Aeronautics Board at its offices in Washington, D. C., on the 12th day of July, 1944.

The Board, acting pursuant to the Civil Aeronautics Act of 1938, as amended, particularly sections 205 (a) and 407 (a) thereof, and finding its action necessary to carry out the provisions of said act and to exercise its powers and perform its duties thereunder;

It is ordered, That the Uniform System of Accounts of International Air Carriers, (CAB Form 2380 Manual), as amended, be and the same is further amended as set forth in Amendment No. 3 attached hereto.[1]

By the Civil Aeronautics Board.

[SEAL] FRED A. TOOMBS,
Secretary.

[F. R. Doc. 44-10876; Filed, July 21, 1944; 10:22 a. m.]

TITLE 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket No. 4526]

PART 3—DIGEST OF CEASE AND DESIST ORDERS

AMERICAN ASSOCIATION OF LAW BOOK PUBLISHERS, ET AL.

§ 3.7 *Aiding, assisting and abetting unfair or unlawful act or practice:* § 3.27 (d) *Combining or conspiring—To enhance, maintain or unify prices.* In connection with offer, etc., in commerce, of law books and related legal publications, and on the part of respondent American Association of Law Book Publishers, and some 27 corporations, (constituting the entire membership of said Association, except for certain periods in the case of some), and on the part of their respective officers, etc., entering into, continuing, cooperating in, or carrying out, or directing, instigating or cooperating in, any planned common course of action, mutual agreement, understanding, combination, or conspiracy between and among any two or more of said respondents or between any one or more of said respondents and others not parties hereto to (1) establish, fix, or maintain discounts, terms, or conditions of sale for law books and related legal publications or adhere to or promise to adhere to the discounts, terms, or conditions of sale so fixed; (2) maintain or adhere to the selling price, terms, and conditions of sale of law books and related publications fixed and established by the respondent who publishes such books; (3) hold or participate in any meeting, discussion, or exchange of information among themselves or under the auspices of the respondent American Association of Law Book Publishers or any other medium or agency concerning proposed or future discounts, terms, or conditions of sale or concerning bids and price quotations in advance of the submission of such bids or price quotations to purchasing officials of the Federal Government or to awarding authorities of other governmental units or subdivisions or to any buyer of law books and related legal publications; (4) arrive at the amount of any bid or the discount, terms, or conditions of sale to be submitted to purchasing officials of the Federal Government, to awarding authorities of other governmental units or subdivisions, or to any buyer of law books and related legal publications through agreement, understanding, or collusion with other bidders; (5) establish, fix, or maintain the rates of allowances to be made, used, and applied on books and other publications received in trade, or fix and maintain the prices, terms, or conditions of sale governing the resale of such law books and related legal publications taken in trade; (6) jointly or cooperatively induce or promote adherence to, or attempt to, induce or promote adherence to, agreements, and understandings relative to the sale and distribution of law books and related legal publications by interchange of correspondence, by personal contact with one another individually or in groups, or by policing the bids or sales transactions of respondent members through the respondent Association or otherwise; (7) employ or utilize any of the actual practices specifically prohibited herein as a means or instrumentality of otherwise restricting, restraining, or eliminating competition in the sale and distribution of law books and related legal publications; and (8) employ or utilize American Association of Law Book Publishers or any other medium or central agency as an instrument, vehicle, or aid in performing or doing any of the acts and practices prohibited by this order; prohibited, subject to the proviso that nothing herein contained shall be construed as prohibiting a parent corporation from directing the prices or terms at which any of its subsidiary corporations shall sell any law book or related legal publication published by the parent corporation or by any of its subsidiaries when such prices or terms have been arrived at by the parent corporation acting separately and independently of any competitor of the parent corporation or of any of its subsidiary corporations; and to the further proviso that nothing in the order is to be construed as prohibiting any of said corporate respondents from entering into such contracts or agreements relating to the maintenance of resale prices as are not prohibited by the provisions of an Act entitled, "An Act to protect trade and commerce

[1] On file with the Division of the Federal Register.

lies," approved July 2, 1890 (the Sherman Act) as amended. (Sec. 5, 38 Stat. 719, as amended by sec. 3, 52 Stat. 112; 15 U.S.C., sec. 45b) [Modified cease and desist order, American Association of Law Book Publishers, et al., Docket 4526, June 26, 1944]

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 26th day of June, A. D. 1944.

In the Matter of American Association of Law Book Publishers, an Unincorporated Association, and Its Officers, James R. Spillane, President, Clifford W. Mueller, Vice President, Richard Reiner, Treasurer, R. Walter White, Secretary; and The American Law Book Company, a Corporation; The W. H. Anderson Company, a Corporation; Baker, Voorhis and Company, a Corporation; Bancroft-Whitney Company, a Corporation; Matthew Bender and Company, Inc., a Corporation; Bender-Moss Company, a Corporation; George T. Bisel, an Individual Trading as George T. Bisel Company, Clark Boardman Company, Ltd., a Corporation; Bobbs-Merrill Company, a Corporation; John Byrne and Company, a Corporation; Dennis and Company, Inc., a Corporation; The Harrison Company, a Corporation; The Lawyers Co-operative Publishing Company, a Corporation; Little, Brown and Company, a Corporation; The Michie Company, a Corporation; National Law Book Company, a Corporation; Public Utilities Reports, Inc., a Corporation; The Frank Shepard Company, a Corporation; Burdette Smith Company, a Corporation; Soney and Sage Company, a Corporation; Thomas Law Book Company, a Corporation; Edward Thompson Company, a Corporation; Vernon Law Book Company, a Corporation; Washington Law Book Company, a Corporation; West Publishing Company, a Corporation; Williamson Law Book Company, a Corporation; Callaghan & Company, a Corporation; Falon Law Book Company, a Corporation

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission; the answers of the respondents; a stipulation as to the facts and a supplemental stipulation as to the facts entered into between W. T. Kelley, Chief Counsel for the Federal Trade Commission, and the following corporate respondents: The W. H. Anderson Company, Baker, Voorhis and Company, Bancroft-Whitney Company, Matthew Bender and Company, Inc., Bender-Moss Company, Clark Boardman Company, Ltd., Bobbs-Merrill Company, John Byrne and Company, Dennis and Company, Inc., The Harrison Company, The Lawyers Co-Operative Publishing Company, Little, Brown and Company, The Michie Company, National Law Book Company, Public Utilities Reports, Inc., Soney and Sage Company, Thomas Law Book Company, Williamson Law Book Company, and Fallon Law Book Company, which stipulations provide, among other things, that the Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of further testimony, argument, filing of briefs, or other intervening procedure; and also upon testimony and other evidence taken in support of the allegations of said complaint and in opposition thereto as to the respondents American Association of Law Book Publishers, an unincorporated association, and its officers James R. Spillane, president, Clifford W. Mueller, Vice President, Richard Reiner, Treasurer, and R. Walter White, secretary, and The American Law Book Company, George T. Bisel, an individual trading as George T. Bisel Company, The Frank Shepard Company, Burdette Smith Company, Edward Thompson Company, Vernon Law Book Company, Washington Law Book Company, West Publishing Company, and Callaghan & Company, before a trial examiner of the Commission, theretofore duly designated by it; report of the trial examiner upon the evidence and exceptions filed thereto; briefs in support of the complaint and in opposition thereto; and oral argument of counsel; and the Commission having made and entered its findings as to the facts, conclusion, and order to cease and desist April 27, 1944, thereafter, upon request by counsel for certain of the respondent, the Commission reconsidered the order to cease and desist heretofore entered and being of the opinion that modified order to cease and desist should be issued in said cause and having duly considered the record and being now fully advised in the premises issues this its modified order to cease and desist:

It is ordered, That the respondents American Association of Law Book Publishers, an unincorporated association; The American Law Book Company, a corporation; The W. H. Anderson Company, a corporation; Baker, Voorhis and Company, a corporation; Bancroft-Whitney Company, a corporation; Matthew Bender and Company, Inc., a corporation; Bender-Moss Company, a corporation; Clark Boardman Company, Ltd., a corporation; Bobbs-Merrill Company, a corporation; John Byrne and Company, a corporation; Dennis and Company, Inc., a corporation; The Harrison Company, a corporation; The Lawyers Co-Operative Publishing Company, a corporation; Little, Brown and Company, a corporation; The Michie Company, a corporation; National Law Book Company, a corporation; Public Utilities Reports, Inc., a corporation; The Frank Shepard Company, a corporation; Burdette Smith Company, a corporation; Soney and Sage Company, a corporation; Thomas Law Book Company, a corporation; Edward Thompson Company, a corporation; Vernon Law Book Company, a corporation; Washington Law Book Company, a corporation; West Publishing Company, a corporation; Williamson Law Book Company, a corporation; Callaghan & Company, a corporation; and Fallon Law Book Company, a corporation, and their respective officers, agents, representatives, and employees, in connection with the offering for sale, sale, and distribution of law books and related legal publications in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out, or directing, instigating, or cooperating in, any planned common course of action, mutual agreement, understanding, combination, or conspiracy between and among any two or more of said respondents or between any one or more of said respondents and others not parties hereto to do or perform any of the following acts or practices:

1. Establishing, fixing, or maintaining discounts, terms, or conditions of sale for law books and related legal publications or adhering to or promising to adhere to the discounts, terms, or conditions of sale so fixed.

2. Maintaining or adhering to the selling price, terms, and conditions of sale of law books and related publications fixed and established by the respondent who publishes such books.

3. Holding or participating in any meeting, discussion, or exchange of information among themselves or under the auspices of the respondent American Association of Law Book Publishers or any other medium or agency concerning proposed or future discounts, terms, or conditions of sale or concerning bids and price quotations in advance of the submission of such bids or price quotations to purchasing officials of the Federal Government or to awarding authorities of other governmental units or subdivisions or to any buyer of law books and related legal publications.

4. Arriving at the amount of any bid or the discount, terms, or conditions of sale to be submitted to purchasing officials of the Federal Government, to awarding authorities of other governmental units or subdivisions, or to any buyer of law books and related legal publications through agreement, understanding, or collusion with other bidders.

5. Establishing, fixing, or maintaining the rates of allowances to be made, used, and applied on books and other publications received in trade, or fixing and maintaining the prices, terms, or conditions of sale governing the resale of such law books and related legal publications taken in trade.

6. Jointly or cooperatively inducing or promoting adherence to, or attempting to induce or promote adherence to, agreements and understandings relative to the sale and distribution of law books and related legal publications by interchange of correspondence, by personal contact with one another individually or in groups, or by policing the bids or sales transactions of respondent members through the respondent Association or otherwise.

7. Employing or utilizing any of the actual practices specifically prohibited herein as a means or instrumentality of otherwise restricting, restraining, or eliminating competition in the sale and distribution of law books and related legal publications.

8. Employing or utilizing American Association of Law Book Publishers or any other medium or central agency as an instrument, vehicle, or aid in performing or doing any of the acts and practices prohibited by this order.

It is further ordered, That nothing herein contained shall be construed as prohibiting a parent corporation from directing the prices or terms at which any of its subsidiary corporations shall sell any law book or related legal publication published by the parent corporation or by any of its subsidiaries when such prices or terms have been arrived at by the parent corporation acting separately and independently of any competitor of the partner corporation or of any of its subsidiary corporations.

It is further ordered, That nothing in this order is to be construed as prohibiting any of said corporate respondents from entering into such contracts or agreements relating to the maintenance of resale prices as are not prohibited by the provisions of an act entitled, "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890 (the Sherman Act), as amended.

It is further ordered, That the complaint herein be, and it hereby is, dismissed as to George T. Bisel, an individual trading as George T. Bisel Company.

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

By the Commission.

[SEAL] A. N. ROSS,
Acting Secretary.

[F. R. Doc. 44-10877; Filed, July 21, 1944; 10:31 a. m.]

[Docket No. 4978]

PART 3—DIGEST OF CEASE AND DESIST ORDERS

PRIME MANUFACTURING CO.

§ 3.6 (t) *Advertising falsely or misleadingly—Qualities or properties of product or service* § 3.6 (ff 10). *Advertising falsely or misleadingly—Unique nature or advantages.* In connection with offer, etc., in commerce, of an electric fence controller designated "Prime Electric Fence Controller", or any other similar electric device, representing that (1) such electric fence controllers are free of trouble; (2) such controllers eliminate fence worries; (3) the use of such controllers is a positive or sure method of confining livestock and will prevent the escape of livestock under all conditions; (4) only a fence equipped with respondent's controller is respected by animals; and (5) the use of such controllers will hold or confine fence breakers without clearly and conspicuously disclosing that such fence breakers must first have received proper training; prohibited. (Sec. 5, 38 Stat. 719, as amended by sec. 3, 52 Stat. 112; 15 U.S.C., sec. 45b) [Cease and desist order, The Prime Manufacturing Company, Docket 4978, June 13, 1944]

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 13th day of June, A. D. 1944.

In the Matter of The Prime Manufacturing Company, a Corporation

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and the stipulation of the facts entered into by the respondent, The Prime Manufacturing Company, and Richard P. Whiteley, Assistant Chief Counsel, for the Commission, which provides among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon the respondent findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent, The Prime Manufacturing Company, a corporation, its agents, employees and representatives, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of an electric fence controller designated Prime Electric Fence Controller, or any other electric device of similar construction, whether sold under the same or any other name or names, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing:

1. That such electric fence controllers are free of trouble;

2. That such controllers eliminate fence worries;

3. That the use of such controllers is a positive or sure method of confining livestock and will prevent the escape of livestock under all conditions;

4. That only a fence equipped with respondent's controller is respected by animals;

5. That the use of such controllers will hold or confine fence breakers without clearly and conspicuously disclosing that such fence breakers must first have received proper training;

It is further ordered, That the respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

By the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 44-10878; Filed, July 21, 1944; 10:31 a. m.]

[Docket No. 5037]

PART 3—DIGEST OF CEASE AND DESIST ORDERS

DETROIT SODA PRODUCTS CO., ET AL.

§ 3.6 (t) *Advertising falsely or misleadingly—Qualities or properties of product or service:* § 3.6 (y 10) *Advertising falsely or misleadingly—Scientific or other relevant facts.* In connection with offer, etc., of a baking soda designated "Crystal Brand Baking Soda", or any other similar preparation, and on the part of respondent Detroit Soda Products Co., and respondent Aarons, Sill & Caron, Inc., its advertising agent, and on the part of their officers, etc., and among other things, as in order set forth, disseminating, etc., any advertisements by means of the United States mails, or in commerce, or by any means, to induce, etc., directly or indirectly, purchase in commerce, etc., of said product, which advertisements represent, directly or by implication, (1) that "Crystal Brand Baking Soda," when used as a dentifrice, will freshen the breath, other than in cases where bad breath arises from the accumulation of food, debris and other material on or between the teeth, and which is removable by use of said product and a toothbrush; (2) that said product, when used as a dentifrice, will keep gums healthy; (3) that said product, when used as a dentifrice, will remove teeth stains other than that it will act to some extent as a cleansing and polishing agent if a sufficient quantity is used; (4) that said product, when used as a dentifrice, will restore dentine's natural brilliance; (5) that said product is a remedy or constitutes an effective treatment for indigestion other than temporary relief in cases of stomach distress, caused by hyperacidity; or (6) that said product is a remedy or constitutes a competent or effective treatment for colds or coughs; prohibited. (Sec. 5, 38 Stat. 719, as amended by sec. 3, 52 Stat. 112; 15 U.S.C., sec. 45b). [Cease and desist order, Detroit Soda Products Company et al., Docket 5037, June 26, 1944]

§ 3.6 (t) *Advertising falsely or misleadingly—Qualities or properties of product or service:* § 3.6 (y 10) *Advertising falsely or misleadingly—Scientific or other relevant facts.* In connection with offer, etc., of a baking soda designated "Crystal Brand Baking Soda", or any other similar preparation, and on the part of respondent Detroit Soda Products Co., its officers, etc., and among other things, as in order set forth, disseminating, etc., any advertisements by means of the United States mails, or in commerce, or by any means, to induce, etc., directly or indirectly, purchase in commerce, etc., of said product, which advertisements represent, directly or by implication, (1) that Crystal Brand Baking Soda contains properties which are indispensable for making food easy to digest; (2) that said product relieves inflammation or gives a soothing effect to the membrane of the mouth; (3) that said product is a remedy and constitutes a competent and effective treatment for dyspepsia; (4) that said product is a remedy and constitutes a competent and effective treatment for ivy poisoning, other than that a solution of said product will have some slight tendency to relieve itching caused by poison ivy; (5) that said product is a remedy and constitutes a competent and effective treatment for lumbago, or that the addition of said product to a hot bath will exert beneficial effect in cases of lumbago; (6)

that said product is a remedy and constitutes a competent and effective treatment for scalds or burns, other than that a paste of said product and water is suitable for application to minor scalds and minor burns; (7) that said product constitutes a competent and effective treatment for toothache; (8) that said product is a remedy and constitutes a competent and effective treatment for eczema, other than that a solution of said product is suitable as a cleansing agent for use in removing dried exudates, such as those formed in cases of seborrheic eczema; (9) that said product is a remedy or constitutes a competent and effective treatment for acidity; (10) that said product is a remedy or constitutes a competent and effective treatment for rheumatism; (11) that said product possesses tonic properties or acts as a general tonic to the system; (12) that said product used in solution as an enema is a remedy and constitutes a competent and effective treatment for colic in babies; or (13) that said product is a remedy or constitutes a competent and effective treatment for grippe or influenza, will prevent colds, or will be effective in killing the germs or other organisms which cause colds, grippe and influenza; prohibited. (Sec. 5, 38 Stat. 719, as amended by sec. 3, 52 Stat. 112; 15 U.S.C., sec. 45b) [Cease and desist order, Detroit-Soda Products Company et al., Docket 5037, June 26, 1944]

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 26th day of June, A. D. 1944.

In the Matter of Detroit Soda Products Company, a Corporation, and Aarons, Sill & Caron, Inc., a Corporation

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answers of the respondents, in which answers respondents admit all the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondents, Detroit Soda Products Company, a corporation, and Aarons, Sill & Caron, Inc., a corporation, their officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of a baking soda (bicarbonate of soda) designated "Crystal Brand Baking Soda", or any other preparation of substantially similar composition, or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from, directly or indirectly:

1. Disseminating, or causing to be disseminated, any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents directly or by implication:

(a) That "Crystal Brand Baking Soda", when used as a dentifrice, will freshen the breath, other than in cases where bad breath arises from the accumulation of food, debris and other material on or between the teeth, and which is removable by use of said product and a toothbrush;

(b) That said product, when used as a dentifrice, will keep gums healthy;

(c) That said product, when used as a dentifrice, will remove teeth stains other than that it will act to some extent as a cleansing and polishing agent if a sufficient quantity is used;

(d) That said product, when used as a dentifrice, will restore dentine's natural brilliance;

(e) That said product is a remedy or constitutes an effective treatment for indigestion other than temporary relief in cases of stomach distress, caused by hyperacidity;

(f) That said product is a remedy or constitutes a competent or effective treatment for colds or coughs.

2. Disseminating, or causing to be disseminated, any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said product, which advertisement contains any representation prohibited in Paragraph 1 hereof.

It is further ordered, That the respondent Detroit Soda Products Company, a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of a baking soda (bicarbonate of soda) designated "Crystal Brand Baking Soda", or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating, or causing to be disseminated, any advertisement by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents directly or by implication:

(a) That Crystal Brand Baking Soda contains properties which are indispensable for making food easy to digest;

(b) That said product relieves inflammation or gives a soothing effect to the membrane of the mouth;

(c) That said product is a remedy and constitutes a competent and effective treatment for dyspepsia;

(d) That said product is a remedy and constitutes a competent and effective treatment for ivy poisoning, other than that a solution of said product will have some slight tendency to relieve itching caused by poison ivy;

(e) That said product is a remedy and constitutes a competent and effective treatment for lumbago, or that the addition of said product to a hot bath will exert beneficial effect in cases of lumbago;

(f) That said product is a remedy and constitutes a competent and effective treatment for scalds or burns, other than that a paste of said product and water is suitable for application to minor scalds and minor burns;

(g) That said product constitutes a competent and effective treatment for toothache;

(h) That said product is a remedy and constitutes a competent and effective treatment for eczema, other than that a solution of said product is suitable as a cleansing agent for use in removing dried exudates, such as those formed in cases of seborrheic eczema;

(i) That said product is a remedy or constitutes a competent and effective treatment for acidity;

(j) That said product is a remedy or constitutes a competent and effective treatment for rheumatism;

(k) That said product possesses tonic properties or acts as a general tonic to the system;

(l) That said product used in solution as an enema is a remedy and constitutes a competent and effective treatment for colic in babies;

(m) That said product is a remedy or constitutes a competent and effective treatment for grippe or influenza, will prevent colds, or will be effective in killing the germs or other organisms which cause colds, grippe and influenza.

2. Disseminating, or causing to be disseminated, any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said product, which advertisement contains any representation prohibited in paragraph 1 hereof.

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

By the Commission.

[SEAL] A. N. ROSS,
Acting Secretary.

[F. R. Doc. 44-10879; Filed, July 21, 1944; 10:31 a. m.]

TITLE 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs

[T. D. 51096]

PART 8—LIABILITY FOR DUTIES, ENTRY OF IMPORTED MERCHANDISE

INVOICES COVERING SCREENINGS OR SCALPINGS OF GRAINS OR SEEDS

Additional information required on invoices covering commodities described as screenings or scalpings of grains or seeds and § 8.13 (j), Customs Regulations of 1943, amended.

In addition to all other information required by law or regulations, customs invoices for commodities described as screenings or scalpings of grains or seeds shall contain the following information:

1. Whether the commodity is the product of a screening process.

2. If so, whether any cultivated grains have been added to such commodity.

3. If any such grains have been added, the kinds and percentage of each.

This requirement shall be effective as to invoices certified after 30 days after publication of this document in the weekly Treasury Decisions. (Sec. 481 (a) (10), 46 Stat. 719; 19 U.S.C. 1481 (a) (10))

Section 8.13 (j), Customs Regulations of 1943 (19 CFR 8.13 (j)), is hereby amended by adding the following to the list of merchandise in connection with which additional information is required to be furnished on invoices and by placing opposite such addition the number and date of this Treasury decision:

Screenings or scalpings of grains or seeds.

[SEAL] W. R. JOHNSON,
Commissioner of Customs.

Approved: July 19, 1944.

HERBERT E. GASTON,
Acting Secretary of the Treasury.

[F. R. Doc. 44-10864; Filed, July 20, 1944; 4:39 p. m.]

[T. D. 51097]

PART 6—AIR COMMERCE REGULATIONS

REDESIGNATION OF FORT YUKON AIRFIELD, ALASKA, AS AIRPORT OF ENTRY

JULY 17, 1944.

The Fort Yukon Airfield, Fort Yukon, Alaska, is hereby redesignated as an airport of entry for civil aircraft and merchandise carried thereon arriving from places outside the United States, as defined in section 9 (b) of the Air Commerce Act of 1926 (U.S.C. Title 49, sec. 179 (b)), for a period of one year from July 6, 1944.

The list of temporary airports of entry in § 6.13, Customs Regulations of 1943 (19 CFR, Cum. Supp., 6.13), is hereby amended by changing the date of designation opposite the name of this airport to "July 6, 1944."

(Sec. 7 (b), 44 Stat. 572; 49 U.S.C. 177 (b))

[SEAL] HERBERT E. GASTON,
Acting Secretary of the Treasury.

[F. R. Doc. 44-10883; Filed, July 21, 1944; 10:51 a. m.]

[T. D. 51098]

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

AUTHORITY TO INCUR EXPENSES

Limitation for purchase of articles or services without obtaining authorization and without soliciting competitive bids, increased from $50 to $100 during the fiscal year 1945.

Section 204 of Public 358, 78th Congress provides:

Section 3709, Revised Statutes (41 U. S. C. 5), shall not apply to any purchase by or service rendered to any executive department or independent establishment during the fiscal year 1945 when the aggregate amount involved does not exceed $100, but this section shall not be construed as affecting any provision of law authorizing purchases or services without regard to said section 3709 in amounts greater than $100.

In view of the above provision of law, the limitation of $50 on the amount of expenses which may be incurred without the prior authorization of the Bureau, as set forth in paragraphs (b) (2) and (3), (d) (2), and (f) of § 24.31, Customs Regulations of 1943 (19 CFR, Cum. Supp., 24.31 (b) (2) and (3), (d) (2), and (f)), is hereby suspended as to purchases made or services rendered during the fiscal year 1945 and a limitation of $100 is substituted in lieu therefor during said fiscal year.

(R.S. 161, 251, sec. 624, 46 Stat. 759, R.S. 3709, 54 Stat. 1109; 5 U.S.C. 22, 19 U.S.C. 66, 1624; 41 U.S.C. 5, 6; sec. 204, Public No. 358, 78th Cong.)

[SEAL] W. R. JOHNSON,
Commissioner of Customs.

Approved: July 19, 1944.

HERBERT E. GASTON,
Acting Secretary of the Treasury.

[F. R. Doc. 44-10884; Filed, July 21, 1944; 10:51 a. m.]

TITLE 30—MINERAL RESOURCES

Chapter VI—Solid Fuels Administration for War

[SFAW Rev. Reg. 21]

PART 602—GENERAL ORDERS AND DIRECTIVES

DELIVERIES OF BITUMINOUS COAL AND WESTERN COKE

The fulfillment of requirements for the defense of the United States will result in a shortage in the supply of bituminous coal and western coke for defense, for private account and for export; and the following regulation is deemed necessary and appropriate in the public interest and to promote the national defense:

Sec.

602.410 What this regulation does.
602.411 Definitions.
602.412 Restrictions upon the delivery or receipt of bituminous coal, packaged fuel, briquettes and western coke for domestic heating of water or domestic cooking or space heating purposes.
602.413 Restrictions upon retail dealer deliveries of bituminous coal for industrial use or the production of power or for space heating which is incidental thereto.
602.414 The responsibility of retail dealers distributing bituminous coal, packaged fuel, briquettes, or western coke under this regulation must be faithfully discharged.
602.415 Consumer declarations.
602.416 Limitations upon applicability of this regulation.
602.417 How consumers who need solid fuel may obtain assistance.
602.418 Records.
602.419 Audit and inspection.
602.420 Violations.
602.421 Damages for breach of contract.
602.422 Application for modification and exception.
602.423 Official interpretations.
602.424 Regulation No. 21 is superseded.
602.425 Effective date.

AUTHORITY: §§ 602.410 to 602.425, inclusive, issued under E.O. 9332, 8 F.R. 5355; E.O. 9125, 7 F.R. 2719; WPB Directive 33, as amended, 9 F.R. 64; sec. 2 (a), 54 Stat. 676, as amended by 55 Stat. 236 and 56 Stat. 176.

§ 602.410 *What this regulation does.* (a) This regulation applies to deliveries by retail dealers and receipts by consumers of bituminous coal, packaged fuel and briquettes in the following areas:

The District of Columbia and the States of Virginia, West Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Tennessee, Kentucky, Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota, North Dakota, South Dakota, Iowa, Missouri, Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, New Jersey, Delaware and Maryland.

This regulation also applies to deliveries by retail dealers and receipts by consumers of western coke. (In addition, the limitations placed by § 602.412 of this regulation, are made applicable, in certain instances, by reason of paragraphs (b) and (e) of § 602.512 of SFAW Regulation No. 23, to "industrial consumers," as defined in § 602.501 (j) of that regulation.)

(b) This regulation prohibits a retail dealer from delivering, and a consumer from receiving, during this coal year (April 1, 1944–March 31, 1945) solid fuels in amounts which, when added to what the consumer had in his bin on April 1, 1944, exceed the consumer's annual requirements. This regulation also prohibits a retail dealer from delivering and a consumer from receiving, this coal year, the scarcer kinds of solid fuels (see § 602.411 (g) of this regulation) in amounts which, when added to what the consumer had in his bin on April 1, 1944, exceed 90 percent of the consumer's annual requirements.

(c) Present production estimates indicate that retail dealers in certain consuming areas in the Middle West, such as the States of Illinois, Missouri and Iowa, will receive less than 90 percent of the amount of coal which they obtained last year from District 8 and substantially less than 90 percent of the amount of coal which they obtained last year from District 7. In these areas the alternative solid fuels (see § 602.411 (h) of this regulation) are or will be generally available. Accordingly, a prudent retail dealer in these areas will arrange to purchase sufficient amounts of alternative solid fuels to take care of the full annual requirements of his customers, and a prudent consumer in these areas will put into his bin immediately a sufficient amount of the alternative solid

fuels in order that he may go through the winter with an adequate tonnage of solid fuels on hand.

§ 602.411 *Definitions.* (a) "Person" means any individual, partnership, association, business trust, corporation, governmental corporation or agency, or organized group of persons.

(b) "Coal" means bituminous and sub-bituminous coal.

(c) "Solid fuels" include any form of anthracite, semi-anthracite, bituminous and sub-bituminous coals or coke (including packaged and processed fuels such as briquettes). Lignitic coals produced in the States of North Dakota and South Dakota are not included in this definition of solid fuels because they are not subject to any restriction under this regulation.

(d) "Coke" means coke which is produced from bituminous coal.

(e) "Western coke" means coke delivered by retail dealers to consumers in the States of West Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Tennessee, Kentucky, Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota, North Dakota, South Dakota, Iowa, Missouri, and that part of the State of Pennsylvania west of a straight line drawn from the southern to the northern boundary of Pennsylvania through the western boundary of Gettysburg, in Adams County, and Lock Haven, in Clinton County.

(f) "Eastern coke" means coke delivered by retail dealers to consumers in the District of Columbia and the States of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia, and that part of Pennsylvania east of a straight line drawn from the southern to the northern boundary of Pennsylvania through the western boundary of Gettysburg, in Adams County, and Lock Haven in Clinton County.

(g) "Scarcer kinds of solid fuels" means (1) all sizes of bituminous coal, except slack, produced in District 7 or District 8, (2) packaged fuel or briquettes containing any bituminous coal produced in District 7 or District 8 and (3) western coke except reclaimed coke and run-of-oven beehive coke. (For purposes of this paragraph, resultant coal 1½" x 0 and smaller produced in District 7, and resultant coal 2½" x 0 and smaller produced in District 8, shall be considered slack.)

(h) "Alternative solid fuels" means any bituminous coal that is produced in districts other than District 7 or District 8, and slack (as defined in paragraph (g) of this section) produced in District 7 or District 8. It also means any packaged fuel or briquettes that contain coal other than District 7 or District 8 coal. It also means any reclaimed coke or run-of-oven beehive coke.

(i) "Retail dealer" means any person (including the retail outlet, branch or department of one who is also a producer, wholesaler or dock operator) to the extent that he sells, delivers, or disposes of solid fuels in a transaction involving the disposal of solid fuels physically handled in a truck, wagon or other less-than-carload facility, without regard to quantity or frequency of delivery.

(j) "Equipped retail dealer" means any retail dealer who has both storage facilities and truck scales.

(k) "Unequipped retail dealer" means any retail dealer except an equipped retail dealer.

(l) "Consumer" means any person who consumes less than 10,000 tons of bituminous coal, packaged fuel, briquettes or coke per year at a plant or premises and who receives these solid fuels from a retail dealer.

(m) "Annual requirements" means the number of tons of solid fuels burned at the plant or premises of a consumer during the period April 1, 1943 to March 31, 1944, inclusive, or, in the event solid fuels were not burned as the principal fuel at the plant or premises during that period, the number of tons of solid fuels which were burned in other premises similar thereto in the same locality during the same period.

(n) "Consumer's inventory" means the number of tons of solid fuels in storage at the consumer's premises, or under the consumer's control, on April 1, 1944.

(o) "SFAW" means Solid Fuels Administration for War.

§ 602.412 *Restrictions upon the delivery or receipt of bituminous coal, packaged fuel, briquettes and western coke for domestic heating of water or domestic cooking or space heating purposes.* (a) If you are a retail dealer delivering bituminous coal, packaged fuel, briquettes or western coke to a consumer who uses during a year more than 40 per cent of such solid fuels at a plant or premises for domestic heating of water, domestic cooking, or space heating, the amount of such solid fuels that you may deliver to the consumer for such purposes, and the amount of solid fuels the consumer may receive for such purposes, is limited by this section.

NOTE: By reason of paragraphs (b) and (e) of § 602.512 of SFAW Regulation No. 23, the amount of bituminous coal that industrial consumers may receive this coal year is limited by this section, if the coal is purchased for space heating at a plant or promises, domestic heating of water or domestic cooking. Under Regulation No. 23, no producer, wholesaler or retail dealer may deliver to an industrial consumer this coal year amounts of bituminous coal in excess of the amounts the industrial consumer may receive under this section.

(b) During the period April 1, 1944 to March 31, 1945, inclusive, no equipped or unequipped retail dealer may deliver, and no consumer may receive from all sources combined, the scarcer kinds of solid fuels (all sizes of bituminous coal, except slack, produced in District 7 or District 8, packaged fuel or briquettes containing any bituminous coal produced in District 7 or District 8, or western coke except reclaimed coke and run-of-oven beehive coke) in an amount which, when added to (1) the consumer's inventory of such solid fuels as of April 1, 1944, and (2) the tonnage of such solid fuels received by the consumer after April 1, 1944, exceeds 90 per cent of the consumer's annual requirements for solid fuels.

(c) Alternative solid fuels will be available in some places within the areas referred to in § 602.410 (a) of this regulation. When the alternative solid fuels and the scarcer kinds of solid fuels are delivered and received either together or separately, the retail dealer may not deliver and the consumer may not receive the scarcer kinds of solid fuels in amounts in excess of those permitted by paragraph (b) of this section. Moreover, during the period April 1, 1944 to March 31, 1945, inclusive, no equipped or unequipped retail dealer may deliver, and no consumer may receive from all sources combined, any bituminous coal, packaged fuel, briquettes or western coke, or any or all of them in combination—regardless of whether they are the alternative or scarcer kinds of solid fuels—in an amount which, when added to (1) the consumer's inventory of solid fuels as of April 1, 1944 and (2) the tonnage of solid fuels received by the consumer after April 1, 1944, exceeds 100 per cent of the consumer's annual requirements for solid fuels.

(d) In determining the annual requirements of a consumer, when the consumer burned a certain number of tons of a scarcer kind of solid fuel during the 1943–1944 coal year and is purchasing some alternative solid fuel instead this coal year, the number of tons burned during the 1943–1944 coal year may be increased to reflect the difference, if any, in heat value between the scarcer solid fuel and the alternative solid fuel. For example, assume that a consumer burned ten tons of Pocahontas smokeless coal during the 1943–1944 coal year. The consumer may be able to obtain only five tons of Pocahontas smokeless coal during this 1944–1945 coal year. The consumer may receive an additional six tons of an alternative fuel, or eleven tons of solid fuels altogether during the 1944–1945 coal year, if six tons of the alternative solid fuel are needed to produce the heat produced by five tons of the Pocahontas smokeless coal.

(e) During the period April 1, 1944–March 31, 1945, inclusive, some consumers may want to use some of the solid fuels to which this regulation applies together with, or in addition to, other solid fuels (anthracite and eastern coke) to which SFAW Regulation No. 17 applies. In no event may a retail dealer deliver or a consumer receive from all sources combined during the period April 1, 1944–March 31, 1945, inclusive, an amount of solid fuels exceeding the consumer's annual requirements; and no retail dealer may deliver to a consumer, and no consumer may receive from all sources combined, tonnages of different solid fuels which in the aggregate exceed the amounts permitted to be delivered and received by this regulation and by SFAW Regulation No. 17, as indicated by the following illustrative table:

Solid fuels to be delivered or received	Maximum percentage of consumer's annual requirements which may be delivered or received to Oct. 1, 1944 (appropriate deduction to be made for consumer's Apr. 1, 1944 inventory)	Maximum percentage of consumer's annual requirements which may be delivered or received to Mar. 31, 1945 (appropriate deduction to be made for consumer's Apr. 1, 1944 inventory)
(1) Any of the scarcer kinds of solid fuels (see Section 602.411 (g) of this regulation) and (2) anthracite.	90 percent (not more than 50 percent may be anthracite).	50 percent (not more than 87.5 percent may be anthracite).
(1) Any of the scarcer kinds of solid fuels (excluding western coke) and (2) anthracite or eastern coke or both.	90 percent (not more than 50 percent may be anthracite or eastern coke or both).	90 percent (not more than 87.5 percent may be anthracite or eastern coke or both).
(1) Any of the alternative solid fuels, (2) any of the scarcer kinds of solid fuels and (3) anthracite.	100 percent (not more than 90 percent may be the scarcer kinds of solid fuels; not more than 50 percent may be anthracite).	100 percent (not more than 50 percent may be the scarcer kinds of solid fuels; not more than 87.5 percent may be anthracite).
(1) Any of the alternative solid fuels, (2) any of the scarcer kinds of solid fuels (excluding western coke) and (3) anthracite or eastern coke or both.	100 percent (not more than 90 percent may be the scarcer kinds of solid fuels; not more than 50 percent may be anthracite or eastern coke or both).	100 percent (not more than 90 percent may be the scarcer kinds of solid fuels; not more than 87.5 percent may be anthracite or eastern coke or both).

(f) In applying the percentage of permissible shipments under provisions of this section, the retail dealer may, in respect to one-half ton or a larger fraction, deliver, and the consumer may receive, a full ton; and conversely, in applying the percentage of permissible shipments under provisions of this section, the retail dealer may disregard a fraction of less than one-half ton. For example, if application of the percentage of permissible shipments indicates that two and one-half tons may be delivered, the dealer may deliver three tons; if the application of the percentage of permissible shipments indicates that two and one-third tons may be delivered, the dealer may disregard the one-third ton and deliver two tons.

(g) A retail dealer may deliver to a consumer and a consumer may receive, one load or three tons, whichever is less, of bituminous coal, packaged fuel, briquettes or western coke, if it is necessary to do so in order to assure maximum effective utilization of transportation facilities available to the retail dealer: *Provided, however,* That the tonnage to be delivered shall not, when added to (1) the consumer's inventory of solid fuels as of April 1, 1944, and (2) the tonnage of solid fuels received by the consumer after April 1, 1944, exceed the consumer's annual requirements for solid fuels.

(h) No equipped or unequipped retail dealer shall discriminate in the delivery of bituminous coal, packaged fuel, briquettes or western coke as between or among consumers who are equally entitled to receive such solid fuels under this section: *Provided, however,* That retail dealers shall accord first preference in the delivery of such solid fuels to consumers who have less than a five days' supply of usable solid fuel on hand.

(i) Nothing in this section shall be deemed to require any retail dealer to deliver the scarcer kinds of solid fuels to a consumer whose burning equipment permits the use of alternative solid fuels: *Provided,* That the retail dealer is ready, willing and able to supply such consumer with such other alternative solid fuels.

§ 602.413 *Restrictions upon retail dealer deliveries of bituminous coal for industrial use or the production of power or for space heating which is incidental thereto.* No equipped or unequipped retail dealer in any area referred to in § 602.410 (a) of this regulation may deliver, and no consumer using less than 10,000 tons of bituminous coal per year at a plant or premises may acquire from all retail dealer sources combined, during the period August 1, 1944 to March 31, 1945, inclusive, bituminous coal for (a) use in an industrial process or (b) the production of power or (c) space heating at a plant or premises at which the annual tonnage of solid fuels consumed for space heating does not exceed 40 per cent of the total annual tonnage of solid fuels consumed at the plant or premises, in an amount which, when added to the solid fuels in the possession or under the control of such consumer, exceeds the consumption requirements of such consumer for any such use for a period of 90 days from the date of delivery.

NOTE: "Industrial process" or "production of power" includes without limitation any manufacturing or commercial processing, the generation of electrical energy for resale or otherwise, and the ordinary operations of a commercial bakery or laundry. Industrial process or the production of power does not include the ordinary operations of the following, among others: apartment houses, hotels (exclusive of functions as restaurant), schools and office buildings.

§ 602.414 *The responsibility of retail dealers distributing bituminous coal, packaged fuel, briquettes, or western coke under this regulation must be faithfully discharged.* (a) Each equipped or unequipped retail dealer who has or receives any bituminous coal, packaged fuel, briquettes or western coke has the responsibility for distributing such solid fuels equitably in strict accordance with the provisions of this regulation. It is the responsibility of the retail dealers of solid fuels to see to it that all consumers get a fair share of the total amount of solid fuels available for domestic use in accordance with the provisions of this regulation. It is the responsibility of the retail dealer to make a judgment as to the annual requirements of a consumer. In making this judgment the retail dealer should take into consideration the consumer's statement as to annual requirements, his records concerning purchases by the consumer during previous years, the number of rooms to be heated at the premises of the consumer and other facts readily available to him. It is the responsibility of the retail dealer not to undertake to deliver, in the aggregate, to the consumers he serves a tonnage of the scarcer kinds of solid fuels which exceeds the tonnage of such fuels he reasonably expects to receive in view of applicable SFAW regulations, orders and directions and such advice as he may receive from his sources of supply. Any dealer who does not discharge his responsibility faithfully may be precluded in whole or in part by SFAW from receiving bituminous coal and other solid fuels from his suppliers and he will obtain no assistance from SFAW in respect to his solid fuel supply.

(b) No equipped or unequipped retail dealer may deliver to a consumer the scarcer kinds of solid fuels if the consumer has inflated, duplicated or pyramided his orders for solid fuels.

§ 602.415 *Consumer declarations.* (a) Unlike SFAW Regulation No. 17 (which regulates retail dealer deliveries of anthracite and eastern coke), this regulation does not now require the filing of consumer declarations by consumers of bituminous coal, western coke, packaged fuel or briquettes.

(b) However, SFAW may, after considering such recommendation as may be made, prior to SFAW action, by any SFAW Area Advisory Committee on Local Distribution or SFAW Community Committee on Emergency Distribution, require the filing with retail dealers of consumer declarations by consumers in certain areas before bituminous coal, packaged fuel, briquettes or western coke may be delivered or received.

§ 602.416 *Limitations upon applicability of this regulation.* This regulation does not apply to deliveries of bituminous coal, briquettes, packaged fuel and western coke to, or to the acquisition of such solid fuels by:

(a) The War Department, the Navy Department (including the Marine Corps and Coast Guard), Veterans' Administration, Maritime Commission or War Shipping Administration;

(b) Any person, including a governmental agency, who acquires such solid fuels for export to and use in any foreign country;

(c) Commercial fishing vessels or water-borne vessels engaged in the commercial transportation of cargo or passengers;

(d) Such mine employees of producers of bituminous coal as are engaged in mining operations or functions directly connected therewith in the vicinity of the mining operations;

(e) Except as provided in § 602.413, any consumer to the extent that he acquires such solid fuels for use in an industrial process or for the production of power or for space heating at a plant or premises at which the annual tonnage of solid fuels consumed for space heating does not exceed 40 per cent of the total annual tonnage of solid fuels consumed at the plant or premises; or

(f) Any consumer to the extent that he acquires such solid fuels for use in the ordinary operations of a hospital or for the cooking or the heating of water necessary to the ordinary operation of a commercial restaurant.

§ 602.417 *How consumers who need solid fuel may obtain assistance.* (a) A consumer who has received less solid fuels than is permitted under § 602.412 of this regulation, and who (1) has less than five days' supply of solid fuels on hand, (2) is unable to obtain a supply of solid fuels either from his retail dealer or other retail dealers, and (3) is willing to accept any solid fuel which may reasonably be used in his burning equipment, may obtain assistance from one of the following:

(1) The nearest local representative of any State Fuel Administration functioning under a plan of cooperation proposed by the Governor of the State and approved by SFAW;

(2) The nearest SFAW Area Advisory Committee on Local Distribution appointed pursuant to SFAW Order No. 12 (9 F.R. 2206);

(3) The nearest SFAW Community Committee on Emergency Distribution appointed pursuant to SFAW Order No. 12; or

(4) The nearest regional or field office of SFAW.

(b) A consumer also may advise with any of the representatives, committees or officer, referred to in paragraph (a) of this section, in regard to any complaint as to the operation of this regulation.

§ 602.418 *Records.* Each retail dealer shall keep and preserve for a period of not less than two years accurate and complete records of the details of any transaction to which any portion of this regulation applies.

§ 602.419 *Audit and inspection.* All records required to be kept by this regulation shall, upon request, be submitted for inspection, copy and audit by duly authorized representatives of SFAW.

§ 602.420 *Violations.* Any person who wilfully violates any provision of this regulation or who by any act or omission wilfully falsifies records kept or information furnished in connection with this regulation is guilty of a crime and upon conviction may be punished by fine or imprisonment, or both; and any person who violates any provision of this regulation may also be prohibited by administrative suspension order from delivering or receiving any material, including solid fuels, under priority control, and may be deprived of priorities assistance.

§ 602.421 *Damages for breach of contract.* No person shall be held liable for damages or penalties under any contract for any default which shall result directly or indirectly from compliance with this regulation.

§ 602.422 *Application for modification and exception.* Any application by a retail dealer for modification of or exception from any provision of this regulation shall be filed in triplicate with the appropriate regional office of SFAW for the area in which the dealer is engaged in business. The application shall set forth in detail the provisions sought to be modified or from which an exception is sought, and the reasons and data in support of the request for modification or exception. The Regional Representative, Area Distribution Manager, or other person in charge of the regional office of SFAW shall, after considering the recommendation of the SFAW Area Advisory Committee on Local Distribution (or, in appropriate cases, the recommendations of the Regional Anthracite Distribution Committee acting as an Area Advisory Committee under SFAW Order No. 12), send such application and his recommendation thereon, to the Solid Fuels Administration for War, Washington 25, D. C. for appropriate action.

Any other person subject to or affected by this regulation should address requests for relief in respect to any provision of this regulation to the nearest office of SFAW.

§ 602.423 *Official interpretations.* No interpretation of this regulation is authorized or official unless it is in writing and signed by the Administrator, the Deputy Administrator or the General Counsel of SFAW. Inquiries and communications with reference to the meaning and application of this regulation may be addressed to the Solid Fuels Administration for War, Washington 25, D. C., or to the appropriate Area Distribution Manager of SFAW.

§ 602.424 *Regulation No. 21 is superseded.* SFAW Regulation No. 21, which was issued on March 31, 1944, is hereby superseded: *Provided, however,* That civil or criminal liabilities resulting from violation of that regulation shall not be affected by this section: *And provided, further,* That nothing in this regulation shall be deemed to revoke or modify any local adjustment which was issued pursuant to SFAW Regulation No. 21.

§ 602.425 *Effective date.* This regulation shall become effective at 12:01 a. m., August 1, 1944.

Issued this 19th day of July 1944.

ABE FORTAS,
Acting Solid Fuels Administrator for War.

[F. R. Doc. 44-10871; Filed, July 21, 1944; 9:53 a. m.]

TITLE 32—NATIONAL DEFENSE

Chapter IX—War Production Board

Subchapter B—Executive Vice-Chairman

AUTHORITY: Regulations in this subchapter issued under sec. 2 (a), 54 Stat. 676, as amended by 55 Stat. 236 and 56 Stat. 176; E.O. 9024, 7 F.R. 329; E.O. 9125, 7 F.R. 2719; W.P.B. Reg. 1 as amended March 24, 1943, 8 F.R. 3666, 3696; Pri. Reg. 1 as amended May 15, 1943, 8 F.R. 6727.

PART 1010—SUSPENSION ORDERS

[Suspension Order S-587]

DUBIN & COMPANY, INC.

Dubin & Company, Inc., 182 Ann Street, Hartford, Connecticut, is a corporation engaged chiefly in the selling and servicing of oil burning heating equipment. On October 19 and November 17, 1943, it sold and delivered oil burners which were not on approved orders or otherwise authorized, in violation of General Limitation Order L-74. The responsible officers of Dubin & Company, Inc., were aware of General Limitation Order L-74 and its actions constituted wilful violations of the order. On or about November 26, 1943, a responsible officer of Dubin & Company, Inc., wilfully furnished false and misleading information to the War Production Board.

These violations of General Limitation Order L-74 have diverted critical materials to uses not authorized by the War Production Board. In view of the foregoing, it is hereby ordered, that:

§ 1010.587 *Suspension Order No. S-587.* (a) Dubin & Company, Inc., its successors or assigns, shall not accept delivery of any oil burner or parts thereof or fittings therefor as defined in or governed by General Limitation Order L-74, as amended from time to time, unless hereafter specifically authorized in writing by the War Production Board.

(b) The provisions of this suspension order shall not apply to material or parts to the minimum extent necessary to enable Dubin & Company, Inc., its successors or assigns, to replace or repair equipment which is worn out or damaged beyond repair.

(c) Nothing contained in this order shall be deemed to relieve Dubin & Company, Inc., its successors or assigns, from any restriction, prohibition or provision contained in any other order or regulation of the War Production Board, except insofar as the same may be inconsistent with the provisions hereof.

(d) This order shall take effect on July 20, 1944, and expire on September 30, 1944.

Issued this 13th day of July 1944.

WAR PRODUCTION BOARD,
By J. JOSEPH WHELAN,
Recording Secretary.

[F. R. Doc. 44-10862; Filed, July 20, 1944; 4:22 p. m.]

PART 1010—SUSPENSION ORDERS

[Suspension Order S-583]

UNITY SERVICE CO.

Charles J. Buzak of Marblehead, Massachusetts, doing business as Unity Service Company, 5 School Street, Marblehead, sells fuel oil and oil burners, stoves, refrigerators and washing machines. Charles J. Buzak on October 28, 1943, wilfully furnished false and misleading information to the War Production Board by procuring from Henry B. Byors, and furnishing to the War Production Board, a bill of sale for new plumbing fixtures falsely antedated to February 12, 1940, whereas the new plumbing fixtures therein described were in fact sold and delivered in June, 1943, or thereafter, for installation in premises being constructed by Josephine B. Martin (Mrs. William T. Martin), in violation of Conservation Order L-41, at 160 Atlantic Avenue, Marblehead. These misstatements subjected Charles J. Buzak to administrative action under the provisions of Priorities Regulation No. 1.

In view of the foregoing, it is hereby ordered, that:

§ 1010.583 *Suspension Order No. 583.* (a) Charles J. Buzak, doing business as Unity Service Company or otherwise, his and its successors or assigns, shall not directly or indirectly order or accept delivery of any new metal plumbing or heating equipment as defined in or governed by General Limitation Order L-79 (as amended from time to time), or any oil burner as defined in or governed by General Limitation Order L-74 (as amended from time to time), any new domestic laundry equipment as defined in or governed by General Limitation Order L-6 (as amended from time to time), or any new domestic mechanical refrigerator as defined in or governed by Supplemental General Limitation Order L-5-d (as amended from time to time), including parts and fittings for each of the above described articles, unless hereafter specifically authorized in writing by the War Production Board.

(b) The provisions of this suspension order shall not apply to orders for maintenance or repair (excluding minor capital additions) as defined in CMP Regulation 5 (as amended from time to time).

(c) Nothing contained in this order shall be deemed to relieve Charles J. Buzak, doing business as Unity Service Company, or otherwise, his or its successors or assigns, from any restriction, prohibition or provision contained in any other order or regulation of the War Production Board, except insofar as the same may be inconsistent with the provisions hereof.

(d) This order shall take effect on July 20, 1944, and shall expire on November 20, 1944.

Issued this 13th day of July 1944.

WAR PRODUCTION BOARD,
By J. JOSEPH WHELAN,
Recording Secretary.

[F. R. Doc. 44-10863; Filed, July 20, 1944; 4:22 p. m.]

PART 1029—FARM MACHINERY

[Limitation Order L-257, Direction 1, as Amended July 21, 1944]

CUT-AWAY DISCS

The following amended direction is issued pursuant to Limitation Order L-257:

(a) Until further notice, no disc producer may manufacture "cut-away" disc blades less than 20" diameter which he knows or has reason to believe are for disc harrows or repairs therefor, and no farm machinery producer may accept delivery of any such disc blades from a disc producer for that purpose. This restriction does not apply to any cut-away disc blades which were in the process of manufacture on April 24, 1944.

(b) If any order of a farm machinery producer for cut-away discs cannot be filled because of this direction, he may place a substitute order for an equivalent tonnage (or less) of standard discs without losing his place on the disc producer's schedule.

(c) As used in this direction, "disc producer" means any person who makes agricultural disc or coulter blades from primary forms or shapes of steel, such as billets or sheets.

Issued this 21st day of July 1944.

WAR PRODUCTION BOARD,
By J. JOSEPH WHELAN,
Recording Secretary.

[F. R. Doc. 44-10897; Filed, July 21, 1944; 11:22 a. m.]

PART 3175—REGULATIONS APPLICABLE TO THE CONTROLLED MATERIALS PLAN

[CMP Reg. 5, Amdt. 1]

Add the following items in the schedules to the regulation under the general heading: "Conduct of the Following Businesses or Activities":

I—Air services operating exclusively for crop dusting, seeding and spraying.

I—Civil Air Patrol, "A" category: Operation of airplanes exclusively for tow target and tracting units and bomber-search activities.

Issued this 21st day of July 1944.

WAR PRODUCTION BOARD,
By J. JOSEPH WHELAN,
Recording Secretary.

[F. R. Doc. 44-10892; Filed, July 21, 1944; 11:23 a. m.]

PART 3175—REGULATIONS APPLICABLE TO THE CONTROLLED MATERIALS PLAN

[CMP Reg. 5A, Amdt. 1]

(1) Add the following items to Schedule I of the regulation:

Air Patrol, survey and fire protection services operated by the Forest Service.

Air services operated by or for police and law-enforcement agencies; Bureau of Entomology and Plant Quarantine.

(2) Add the following item to Schedule II:

Air services operated by or for governmental agencies, except as otherwise rated.

Issued this 21st day of July 1944.

WAR PRODUCTION BOARD,
By J. JOSEPH WHELAN,
Recording Secretary.

[F. R. Doc. 44-10893; Filed, July 21, 1944; 11:23 a. m.]

PART 3207—INDUSTRIAL TYPE INSTRUMENTS, CONTROL VALVES AND REGULATORS: SIMPLIFICATION

[Limitation Order L-272, Direction 1 to Schedule IV]

INDICATING DIAL PRESSURE GAUGES—SPECIAL RANGES FOR NAVY COMPOUND PRESSURE GAUGES

The following direction is issued pursuant to Schedule IV of Limitation Order L-272:

Pursuant to paragraph (b) (1) (iv) of Schedule IV to Limitation Order L-272, producers of gauges are authorized to manufacture and supply compound pressure gauges in the following pressure ranges when required by Navy Specifications: 30 in.-400 lb.; 30 in.-600 lb.; 30 in.-800 lb.; and 30 in.-1,000 lb.

Issued this 21st day of July 1944.

WAR PRODUCTION BOARD,
By J. JOSEPH WHELAN,
Recording Secretary.

[F. R. Doc. 44-10833; Filed, July 21, 1944; 11:22 a. m.]

PART 3203—SCHEDULED PRODUCTS

[General Scheduling Order M-293, Direction 2 as Amended July 21, 1944]

EFFECT OF CHANGES IN FORMS FOR REPORTING ORDERS

The following amended direction is issued pursuant to General Scheduling Order M-293:

Old orders which have been previously reported to the War Production Board on the form required by the appropriate table of M-293 at the time the report was filed need not be included on a new form specified for the product by an amendment to the table. The manufacturer may report old orders on the form he used before but must report all new orders on the form shown in the appropriate table.

Issued this 21st day of July 1944.

WAR PRODUCTION BOARD,
By J. JOSEPH WHELAN,
Recording Secretary.

[F. R. Doc. 44-10900; Filed, July 21, 1944; 11:22 a. m.]

PART 3281—PULP AND PAPER

[General Conservation Order M-380]

MOISTURE VAPORPROOF BARRIERS

The fulfillment of requirements for the defense of the United States has created a shortage in the supply of moisture vapor barrier material for defense, for private account and for export; and the following order is deemed necessary and appropriate in the public interest and to promote the national defense:

§ 3281.96 *General Conservation Order M-380—(a) Definitions.* For the purposes of this order:

(1) "Moisture vapor barrier material" means any laminated or coated material composed of the following:

Paper laminated to metallic foil, with or without a textile backing, the foil being coated with or laminated to a heat sealing medium approved for Method II packaging, which laminated or coated material has a maximum moisture vapor transmission rate of 0.25 or less grams per 100 sq. inches in 24 hours when tested at a vapor pressure differential of 42 mm. of mercury at 100° F. The term "moisture vapor barrier material" includes but is not limited to the following commercial barriers:

Reynoldsflex A50 and A51 produced by Reynolds Metals Company.

Shellflex 770 and 803 produced by Shellmar Products Company.

Valley 2A and 4 produced by Valley Industries Company.

(2) "Method II packaging (dehydration)", means packaging complying with any of the following Army-Navy general specifications for packaging and packing: U. S. Army Specifications #100-14A, U. S. Navy Specification #39P16a, U. S. Army Air Corps Specification #An-P-13, and A. S. F. Manual M-406 "Corrosion Prevention Processing and Packing."

(3) "Manufacturer" means any person who produces any moisture vapor barrier material.

(4) "Converter" means any fabricator of any moisture vapor barrier bags or processed sheets from moisture vapor barrier material.

(5) "Moisture vapor barrier bag" means a prefabricated container made by sealing the moisture vapor barrier material together with heat or other approved methods. The finished bag must comply with specifications mentioned in paragraph (a) (2) above.

(6) "Processed sheet" means any sheet fabricated from one or more widths of moisture vapor barrier material, with or without gaskets or reinforcements.

(b) *Restrictions on delivery and use of moisture vapor barrier material.* (1) No manufacturer shall deliver any moisture vapor barrier material except to converters or to the Army or Navy of the United States; and no person, except converters and the Army or Navy of the United States, shall accept delivery of or use moisture vapor barrier material in roll or unprocessed sheet form.

(2) No converter shall deliver any moisture vapor barrier material in any form other than bags or processed sheets, unless the delivery is made to the Army or Navy of the United States; and no converter shall deliver any moisture vapor barrier bags or processed sheets if he knows or has reason to believe that the person accepting delivery will use them for a purpose not permitted by paragraph (b) (3)

(3) No person shall use any moisture vapor barrier material, moisture vapor barrier bags or processed sheets except for packaging products which have been ordered by or for the account of the Army or Navy of the United States, and these bags or processed sheets may be used only when the applicable specifications require Method II packaging (dehydration).

(c) *Inventory restrictions.* No person shall accept delivery of moisture vapor barrier materials in roll or unprocessed sheet form or moisture vapor barrier bags or processed sheets if the amount accepted, together with his inventory of such material then on hand, shall exceed a 30-day supply, having regard to his orders on hand and his current method and rate of operation.

No person shall deliver moisture vapor barrier materials in roll or unprocessed sheet form or moisture vapor barrier bags or processed sheets if he knows or has reason to believe that the person accepting delivery will have, on acceptance, an amount of moisture vapor barrier materials or moisture vapor barrier bags or processed sheets in excess of a 30-day supply.

(d) *Appeals.* Any appeal from the provisions of this order shall be made in duplicate, referring to the particular provision appealed from and stating fully the grounds of the appeal, with the War Production Board, Paper Division, Washington 25, D. C., Ref: M-380.

(e) *Violations.* Any person who wilfully violates any provisions of this order or who, in connection with this order, conceals a material fact or furnishes false information to any department or agency of the United States, is guilty of a crime and upon conviction may be punished by fine or imprisonment. In addition, any such person may be prohibited from making or obtaining further deliveries of, or from processing or using, material under priority control and may be deprived of priorities assistance.

(f) *Communications.* All reports required to be filed hereunder, and all communications concerning this order shall, unless otherwise directed be addressed to the Paper Division, War Production Board, Washington 25, D. C., Ref: M-380.

(g) *Applicability of regulations.* This order and all transactions affected thereby are subject to all applicable provisions of the regulations of the War Production Board, as amended from time to time.

Issued this 21st day of July 1944.

WAR PRODUCTION BOARD,
By J. JOSEPH WHELAN,
Recording Secretary.

[F. R. Doc. 44-10902; Filed, July 21, 1944; 11:23 a. m.]

PART 3286—MISCELLANEOUS MINERALS

[Conservation Order M-49 as Amended July 21, 1944]

IRIDIUM

The fulfillment of requirements for the defense of the United States has created a shortage in the supply of iridium for defense, for private account and for export; and the following order is deemed necessary and appropriate in the public interest and to promote the national defense:

Section 3286.1 *Conservation Order M-49* is amended to read as follows:

§ 3286.1 *Conservation Order M-49*—(a) *Definitions.* For the purpose of this order:

(1) "Iridium" means and includes the element iridium, whether it be in commercially pure form or contained in alloys, chemical compounds, or physical mixtures, or in scrap.

(i) Any alloy containing 0.05 percent or more by weight of the element iridium is an iridium alloy.

(ii) Any chemical compound containing iridium as a recognizable component, using established chemical methods, is an iridium compound.

(iii) Any mixture, as of metal powders, containing iridium as a recognizable component is an iridium mixture.

(iv) Scrap or secondary materials containing commercially recoverable iridium are iridium scrap.

The term "iridium" does not include iridium which has been fabricated or physically incorporated into finished end products or finished parts for such end products; *Provided,* That fuse wire and electrical contacts shall not be deemed to be such end products or parts unless they have become physically attached to some other material or part other than one made entirely of platinum group metals.

(2) "Use" means to change in any way the form, shape, size, or physical or chemical characteristics of the material from those in which such material is received, but shall not be deemed to include refining, melting, alloying, and fabricating of intermediate products such as sheet and wire.

(b) *Purchases and sales.* On and after July 21, 1944, no person shall purchase or accept delivery of iridium except for use as permitted by paragraph (c) of this order, unless such person is engaged regularly in the business of buying and selling iridium. On and after July 21, 1944, no person shall sell or deliver iridium to any other person if he knows or has reason to believe that such other person will use the iridium in violation of paragraph (c) of this order.

(c) *Restrictions on use.* No person shall use iridium except for the manufacture of (1) fuse wires for detonators, (2) laboratory ware, (3) electrical contact points, (4) electrical primers, and (5) parts of instruments and devices which make use of the electrical resistivity or thermoelectric effect of platinum-iridium alloys; except for experimental or instructional work in scientific, research, or instructional laboratories; and except in binary platinum-iridium alloys employed in porcelain dental restorations when the alloys and the porcelain are baked together.

(d) *Allocations and directions.* (1) The War Production Board may from time to time issue special directions allocating the supply of iridium and directing the manner and quantities in which deliveries thereof shall be made and accepted, and the manner and quantities in which iridium may be used with reference to particular purposes or end uses.

(2) The War Production Board may from time to time issue specific directions or prohibitions with respect to the permissible kind or quantity of iridium in the manufacture or composition of any material or product, and it may also in its discretion direct the use in whole or in part of any practical substitute in lieu of iridium in the manufacture of any materials or products.

(e) *Miscellaneous provisions*—(1) *Appeal.* Any appeal from the provisions of this order shall be made by filing a letter in triplicate, referring to the particular provision appealed from and stating fully the grounds of the appeal.

(2) *Applicability of regulations.* This order and all transactions affected thereby are subject to all applicable regulations of the War Production Board, as amended from time to time.

(3) *Communications to War Production Board.* All communications concerning this order, shall, unless otherwise directed, be addressed to: War Pro-

duction Board, Miscellaneous Minerals Division, Washington 25, D. C.; Ref.: M-49.

(4) *Violations.* Any person who wilfully violates any provision of this order, or who, in connection with this order, wilfully conceals a material fact or furnishes false information to any department or agency of the United States is guilty of a crime, and upon conviction may be punished by fine or imprisonment. In addition, any such person may be prohibited from making or obtaining further deliveries of, or from processing or using, material under priority control and may be deprived of priorities assistance.

Issued this 21st day of July 1944.

WAR PRODUCTION BOARD,
By J. JOSEPH WHELAN,
Recording Secretary.

[F. R. Doc. 44-10899; Filed, July 21, 1944; 11:22 a. m.]

PART 3291—CONSUMERS GOODS [1]

[Limitation Order L-67, as Amended July 21, 1944]

LAWN MOWERS

The fulfillment of requirements for the defense of the United States has created a shortage in the supply of iron or steel for defense, for private account and for export; and the following order is deemed necessary and appropriate in the public interest and to promote the national defense:

§ 3291.225 [1] *General Limitation Order L-67*—(a) *Definitions.* For the purposes of this order:

(1) "Lawn mower" means a machine mounted on wheels or rollers used for cutting grass or weeds by means of the shearing or cutting action of a rotating, revolving, or reciprocating blade, but excluding machines used principally for harvesting or cutting crops. The term includes sickle bar mowers having bars 4 ft. or less in length; it does not include sickle bar mowers having bars more than 4 ft. in length.

(2) "Iron and steel used" means the aggregate weight of iron or steel contained in the finished lawn mowers.

(3) "Manufacturer" means any individual, partnership, association, business trust, corporation, governmental corporation or agency, or any organized group of persons, whether incorporated or not, engaged in the production of lawn mowers.

(4) "Production" means the fabrication or processing of material for lawn mowers or the assembly of finished parts into lawn mowers.

(b) [Deleted July 21, 1944]

(c) *Prohibition of production.* No manufacturer shall process, fabricate, work on or assemble any materials for use in the production of lawn mowers, nor shall any manufacturer produce or assemble any lawn mowers, except gang mowers on direct order from and for delivery to the Army or Navy of the United States, the United States Maritime Commission, or the Armed Forces of any country, including those in the Western Hemisphere, pursuant to the Act of March 11, 1941, entitled "An Act to Promote the Defense of the United States" (Lend-Lease Act), provided that during any three months' period beginning May 1, 1944, and until further notice from the War Production Board, no manufacturer shall use in the production of gang mowers more iron and steel in the aggregate than the amount of iron and steel in the aggregate used by him in the production of gang mowers during the three months' period from April 1, 1942 through June 30, 1942, inclusive.

(d) [Deleted July 21, 1944]

(e) [Deleted July 21, 1944]

(f) [Deleted July 21, 1944]

(g) *Violations.* Any person who wilfully violates any provision of this order or who, in connection with this order, wilfully conceals a material fact or furnishes false information to any department or agency of the United States, is guilty of a crime, and upon conviction may be punished by fine or imprisonment. In addition, any such person may be prohibited from making or obtaining further deliveries of, or from processing or using, material under priority control and may be deprived of priorities assistance.

(h) [Deleted July 21, 1944]

(i) *Appeals.* Any appeal from this order should be made on Form WPB-1477 which should be filed in triplicate with the field office of the War Production Board for the district in which is located the plant to which the appeal relates.

(j) *Communications to War Production Board.* All reports required to be filed hereunder and all communications concerning this order shall, unless otherwise directed, be addressed to: War Production Board, Washington 25, D. C. Ref.: L-67.

(k) *Applicability of other orders and regulations.* This order and all transactions affected by it are subject to all applicable regulations of the War Production Board. If any other order of the War Production Board limits the use of any material in making lawn mowers to a greater extent than this order does, the other order shall govern.

Issued this 21st day of July 1944.

WAR PRODUCTION BOARD,
By J. JOSEPH WHELAN,
Recording Secretary.

[F. R. Doc. 44-10595; Filed, July 21, 1944; 11:22 a. m.]

[1] Formerly Part 1136, § 1136.1.

PART 3293—CHEMICALS

[Conservation Order M-332, as Amended July 21, 1944]

OILS FOR PROTECTIVE COATINGS

The fulfillment of requirements for the defense of the United States has created a shortage in the supply of oils for defense, for private account and for export; and the following order is deemed necessary and appropriate in the public interest and to promote the national defense.

§ 3293.466 *Conservation Order M-332*—(a) *Definitions.* (1) "Oils" means all the raw, crude, refined, and pressed oils, whether vegetable, animal, fish, or other marine animal, excepting mineral oil and tall oil.

(2) "Linseed oil" means the oil, crushed, pressed or otherwise extracted from flaxseed, whether raw, bodied or otherwise processed. The term includes linseed oil blended with other oils, whatever the proportion of linseed oil used.

(3) "Fish oil" means the oil produced by the reduction of the whole or any part, including the offal of the sardine, pilchard, and menhaden, whether raw, bodied or otherwise processed. The term includes fish oil blended with other oils, whatever the proportion of fish oil used.

(4) "Manufacturer" means a person who uses oils in the manufacture of any other product, but does not include a painter, householder or other person who uses oils as a reducer for paint or varnish.

(5) "Processor" means any person who blends, bodies or otherwise processes linseed oil or fish oil.

(6) "Crusher" means any person who presses, expels or extracts linseed oil from flaxseed or who presses, expels or extracts fish oil from the sardine, pilchard or menhaden.

(7) "Wholesaler" means a person who buys linseed or fish oil from a crusher or processor and without further processing resells such oils to manufacturers or retailers.

(8) "Retailer" is any person who sells linseed oil or fish oil to the ultimate consumer.

(b) *Restrictions on use.* (1) On and after July 1, 1943, no manufacturer shall use in the production of any of the following products more pounds of oils per gallon of such product than the following:

	Pounds
Class #1—Flats including interior emulsion paints	1.2
Class #2—Semi-gloss paints	1.75
Class #3—Interior gloss paints (except gloss mill-whites) interior enamels, combination interior-exterior floor enamels, combination interior-exterior household enamels, machinery enamels, and interior aluminum paints	3.0
Class #4—Gloss mill-whites for industrial maintenance	3.5
Class #5—Wall primers and undercoaters	2.0
Class #6—Interior varnishes, including clear floor sealers, and combination interior-exterior varnishes	2.8

	Pounds
Class #7—Exterior paints including aluminum paints (except black and graphite paints)	3.75
Class #8—Structural steel finishes (except black and graphite)	3.75
Class #9—All black paints and graphite paints	5.0
Class #10—Exterior enamels and exterior varnishes (intended exclusively for exterior work)	3.25
Class #11—Exterior emulsion paints	2.0

NOTE: The above classes include both paste and ready-mixed paints. Table amended April 12, 1944.

For the purposes of this paragraph (b) (1), all oils shall be considered interchangeable.

(2) The provisions of paragraph (b) (1) are not applicable to the use of oils in the manufacture of paints, varnishes and lacquers delivered or to be delivered to, or used on or incorporated in material and equipment delivered or to be delivered to, the Army, Navy, Marine Corps, or Coast Guard of the United States, the United States Maritime Commission or the War Shipping Administration, or delivered pursuant to the Act of March 11, 1941 (Lend-Lease Act), or for the military, naval or maritime requirements of the United Nations where the manufacturer claiming exemption receives from the Director of Food Distribution, War Food Administration, specific exemption pursuant to paragraph (b) (5) (iii) of Food Distribution Order No. 42 with respect to such use.

(c) *Restrictions on deliveries.* (1) On and after July 1, 1943, no crusher, processor, manufacturer or wholesaler, shall deliver to any other person linseed oil or fish oil having a non-volatile content of more than seventy per cent (70%), by weight.

(2) The restrictions of paragraph (c) (1) shall not apply to:

(i) Deliveries to another crusher, processor, manufacturer or wholesaler.

(ii) Deliveries for medicinal or pharmaceutical purposes or for human or animal consumption.

(iii) Deliveries of linseed oil or fish oil packaged in containers of one pint or less.

(iv) Deliveries by any person of linseed oil or fish oil which on July 1, 1943, and at the time of the delivery was packaged in unopened five-gallon cans or smaller owned by the person making delivery.

(v) Deliveries by any person of boiled linseed oil which on July 1, 1943 and at the time of delivery was packaged in 55-gallon drums or smaller containers and was on both such dates owned by him.

(vi) Deliveries by any wholesaler of raw linseed oil which on July 1, 1943, and at the time of delivery, was packaged in unopened drums or containers having a capacity of more than 8 gallons but not more than 55 gallons and was on both such dates either owned by him or in his possession on consignment from a crusher or processor. The total quantity of raw linseed oil delivered pursuant to this paragraph by any wholesaler of raw linseed oil shall not exceed 1375 gallons.

(vii) Deliveries to the Army, Navy, Marine Corps or Coast Guard of the United States, the United States Maritime Commission, the War Shipping Administration, or pursuant to the Act of March 11, 1941 (Lend-Lease Act), or deliveries of such linseed oil or fish oil to be used on or incorporated in material and equipment delivered or to be delivered to the services or agencies mentioned in this subdivision (vii) or pursuant to the Act of March 11, 1941 (Lend-Lease Act).

(3) No person shall deliver or sell any material represented to be "linseed replacement oil" unless such material meets the requirements of Federal Specification TT-O-371 as amended from time to time.

(d) *Other orders.* The restrictions herein set forth are in addition to those imposed by Food Distribution Order No. 42 and such other orders as have been or may be issued by the War Food Administration with respect to oils.

(e) *Miscellaneous provisions*—(1) *Applicability of regulations.* This order and all transactions affected thereby are subject to all applicable regulations of War Production Board, as amended from time to time.

(2) *Appeals.* Any appeal from the provisions of this order shall be made by filing a letter in triplicate, referring to the particular provisions appealed from and stating fully the grounds of the appeal.

(3) *Violations.* Any person who wilfully violates any provision of this order, or who, in connection with this order, wilfully conceals a material fact or furnishes false information to any department or agency of the United States is guilty of a crime, and upon conviction may be punished by fine or imprisonment. In addition, any such person may be prohibited from making or obtaining further deliveries of, or from processing or using, material under priority control and may be deprived of priorities assistance.

(4) *Communications to War Production Board.* All reports required to be filed hereunder, and all communications concerning this order, shall, unless otherwise directed, be addressed to: War Production Board, Chemicals Division, Washington 25, D. C. Ref.: M-332.

Issued this 21st day of July 1944.

WAR PRODUCTION BOARD,
By J. JOSEPH WHELAN,
Recording Secretary.

[F. R. Doc. 44-10901; Filed, July 21, 1944; 11:23 a. m.]

PART 3302—SERVICE EQUIPMENT

[General Limitation Order L-91, Interpretation 2]

POST EXCHANGE AND SHIP'S SERVICE DEPARTMENT ORDERS

The following interpretation is issued with respect to General Limitation Order L-91:

Paragraph (e) of Order L-91 allows the production of equipment to fill specific United States Army or United States Navy orders. Under paragraph (g) equipment listed in paragraph (c) may be produced to fill specific orders from the War Shipping Administration. Paragraph (j) allows the delivery of new equipment listed in paragraph (b) to the United States Army or the United States Navy. Paragraph (c) permits the use of metal parts without restriction when rebuilding equipment for the United States Army, the United States Navy, or the War Shipping Administration.

The foregoing provisions are military exceptions or exemptions subject to paragraph (c) of Priorities Regulation No. 17. Consequently, orders from Post Exchanges or Ship's Service Departments may not be accepted and filled under these provisions unless the orders are correctly endorsed as specified in Priorities Regulation 17.

In some cases persons have been given the privilege of operating a laundry, dry cleaning or pressing establishment in a Post Exchange or Ship's Service Department on a concession or lease basis. If the operator furnishes the equipment, purchases of equipment by him or for his account do not qualify as Post Exchange or Ship's Service Department orders and are subject to Order L-91 the same as orders from any other civilian laundry.

Issued this 21st day of July 1944.

WAR PRODUCTION BOARD,
By J. JOSEPH WHELAN,
Recording Secretary.

[F. R. Doc. 44-10896; Filed, July 21, 1944; 11:22 a. m.]

PART 3304—SERVICE TRADES

[Preference Rating Order P-150]

RESTORATION OF SERVICE ESTABLISHMENTS RELEASED BY THE ARMY AND NAVY

§ 3304.1 *Preference Rating Order P-150*—(a) *What this order does.* This order provides a way to get priorities assistance for preparing establishments, such as hotels, apartment houses and office buildings, for normal civilian use after they are released by the Army or Navy. This order also tells how to use this priorities assistance after it is granted by the War Production Board.

(b) *How to ask for assistance.* In order to get this priorities assistance, an application must be sent to the War Production Board on Form WPB-3753. This application may be made either before or after the establishment is released by the Army or Navy. It should list and give the estimated cost of all the materials and equipment needed for the particular reconditioning job which are found upon inquiry to be unobtainable from normal sources without preference ratings or specific authorization from the War Production Board. This includes what is needed for building repairs and furnishings, but does not include any controlled materials, as defined in CMP Reg. 1, or any utility services. The application should be made by the person who will get what is listed on the form. He should request only those quantities and kinds of things which he reasonably needs in order to put the establishment in operating condition and he must not specify delivery dates earlier than neces-

sary to complete the job within a reasonable time.

(c) *Assistance will depend on local need for facilities.* The War Production Board will grant priority assistance for the reconditioning of establishments vacated by the Army or Navy only if they are located in areas where those facilities are required for uses essential in the war effort.

(d) *Utility services are obtained in other ways.* If the plans for reconditioning include additional natural or manufactured gas, central steam heating, or electric, water, telephone, or telegraph service, an order for that service should be placed with the appropriate local utility company. The utility company will then take such steps as are required by the Office of War Utilities for supplying the utility service requested, and will indicate on any application it files that the service is directly related to a reconditioning job under Preference Rating Order P–150.

(e) *Assistance for major construction is given in other ways.* Materials for construction not requiring permission from the War Production Board under Order L–41 may be secured under this order on Form WPB–3753. If the plans for reconditioning include construction requiring permission under Order L–41, Form WPB–3753 will not be used to authorize or to provide materials for that construction. The application for permission to construct, and for priorities assistance for the construction materials, should be made on Form WPB–617. The application for all other priorities assistance needed for that reconditioning job should be made on Form WPB–3753, and the two applications should be submitted together. Equipment named in Appendix II of Schedule A to CMP Reg. 6 (Construction Limitations) should be listed both in Section 3 of Form WPB–617 and on Form WPB–3753.

(f) *How to file an application.* Copies of Form WPB–3753 can be obtained from the nearest field office of the War Production Board, or from the Army or Navy representative releasing the establishment. The applicant should fill out a sufficient number of copies of Form WPB–3753 and give five of them to the Army or Navy representative. He should also give the Army or Navy representative his application on Form WPB–617 if authorization under Order L–41 is necessary. The latter will review the Form WPB–3753, and when he has determined that the items and quantities requested are justified and correct, he will certify that fact on the form. The War Production Board will not consider a WPB–3753 application without this certification. The Army or Navy representative who signs the certification will keep one copy of the form and will send four copies (and the WPB–617 application, if needed) to the field office of the War Production Board having jurisdiction over the area in which the property covered by the application is located. The War Production Board will consider the application, and will return one copy of Form WPB–3753 to the applicant with a statement of the action taken in response to his request. This statement may include specific limitations on the use of the priorities assistance which the applicant is given. If an application on WPB–617 accompanies the application on WPB–3753, both will be acted upon and returned at approximately the same time.

(g) *How to use this priorities assistance.* The priorities assistance given on Form WPB–3753 may be used only to the extent specified on the form. In order to let his supplier know that a sale or delivery has been authorized or rated under this order, the applicant must put the standard certification in Priorities Regulation No. 7 on those purchase orders and also the following statement:

Delivery approved on Form WPB–3753 under Order P–150.

If the War Production Board assigns preference ratings to the delivery of things listed on the form, the applicant may validly apply those ratings to the delivery of those items in the foregoing way, regardless of any order requiring him to use a different certification, or to get a preference rating on a certain form. The use of ratings issued on Form WPB–3753 for items subject to Order M–328 is governed by that order.

The applicant may also be authorized on Form WPB–3753 to acquire equipment and materials which he cannot get without specific authorization or approval of the War Production Board. An authorization on Form WPB–3753 has the same effect as a sale or delivery authorization on any form named in any other order of the War Production Board, unless that order specifically states that Form WPB–3753 may not be used.

(h) *Relation between this order, CMP Reg. 5 and CMP Reg. 9A.* If a person is eligible to get what he needs either under this order, or under CMP Reg. 5, or CMP Reg. 9A, he may use whichever method or methods he prefers. Purchases made by using a rating on authorization issued on Form WPB–3753 need not be charged against the purchaser's MRO quota under paragraph (f) of CMP Reg. 5.

(i) *Violations.* Any person who wilfully violates any provision of this order, or who, in connection with this order, wilfully conceals a material fact or furnishes false information to any department or agency of the United States, is guilty of a crime, and upon conviction may be punished by fine or imprisonment. In addition, any such person may be prohibited from making or obtaining further deliveries of or from processing or using material under priority control and may be deprived of priorities assistance.

(j) *Communications.* Any communications concerning this order may be sent to the Service Trades Division, War Production Board, Washington 25, D. C., Ref: P–150.

Issued this 21st day of July 1944.

WAR PRODUCTION BOARD,
By J. JOSEPH WHELAN,
Recording Secretary.

[F. R. Doc. 44–10894; Filed, July 21, 1944; 11:23 a. m.]

Chapter IX—Office of Price Administration

PART 1347—PAPER, PAPER PRODUCTS, RAW MATERIALS FOR PAPER AND PAPER PRODUCTS, PRINTING AND PUBLISHING

[MPR 225,[1] incl. Amdts. 1–13]

PRINTING AND PRINTED PAPER COMMODITIES

This compilation of Maximum Price Regulation 225 includes Amendment 13, effective July 25, 1944. The text amended by Amendment 13 is underscored.

In the judgment of the Price Administrator, it is necessary and proper to establish maximum prices for sales of printing and printed paper products by a separate maximum price regulation.

In the judgment of the Price Administrator, the maximum prices established by this regulation, which apply to the sale of certain printed paper commodities and to printing and related services in connection therewith, are generally fair and equitable and are necessary to check inflation and to effectuate the purposes of the Emergency Price Control Act.

So far as practicable the Price Administrator has given due consideration to prices prevailing between October 1 and 15, 1941, and to relevant factors of general applicability, and has consulted with representatives of trade and industry.

A statement of considerations involved in the issuance of this regulation is issued simultaneously herewith and filed with the Division of the Federal Register.[2]

Therefore, under the authority vested in the Price Administrator by the Emergency Price Control Act of 1942, this Maximum Price Regulation No. 225 (Printing and Printed Paper Commodities) is hereby issued.

NOTE: The meaning of certain provisions and terms of this Maximum Price Regulation No. 225 is further explained and defined in § 1347.472. The explanations and definitions are set forth in alphabetical order. The terms explained and defined are quoted the first time they appear in the text.

Sec.

1347.451 Prohibition against dealing in commodities or services above maximum prices.
1347.452 Maximum prices for commodities and services: general provisions.
1347.453 Maximum prices for services and for "original sales" of commodities, which cannot be priced under § 1347.452.
1347.454 Maximum prices for "resales" of commodities which cannot be priced under § 1347.452.
1347.455 Similar commodities or services subsequently sold.
1347.456 Maximum price for commodities and services which cannot be priced under the foregoing provisions of this regulation.
1347.457 Transfers of business or stock in trade.
1347.458 Export sales.
1347.458a Application to import transactions.
1347.459 Federal and state taxes.
1347.460 Less than maximum prices.
1347.461 Adjustible pricing.

[1] 7 F.R. 7593.

[2] Statements of considerations are also issued simultaneously with amendments. Copies may be obtained from the Office of Price Administration.

Sec.
1347.462 Evasion.
1347.463 Base-period "records" and reports.
1347.464 Current records.
1347.465 Sales slips and receipts.
1347.466 Licensing.
1347.467 Deleted.
1347.468 Enforcement.
1347.469 Applications for amendment.
1347.470 Petitions for amendment.
1347.471 Applicability of the General Maximum Price Regulation.
1347.472 Definitions and explanations.
1347.473 Applicability.
1347.474 Effective date.
1347.474a Effective dates of amendments.
1347.475 Appendix A: Commodities.
1347.476 Appendix B: Services.
1347.477 Appendix C: Exceptions to pricing provisions of §§ 1347.452 through 1347.456.
1347.478 Appendix D: Exemptions.

AUTHORITY: §§ 1347.451 to 1347.478, inclusive, issued under 56 Stat. 23, 765; 57 Stat. 566; Pub. Law 383, 78th Cong.; E.O. 9250, 7 F.R. 7871 and E.O. 9328, 8 F.R. 4681.

§ 1347.451 *Prohibition against dealing in commodities or services above maximum prices.* (a) On and after September 29th, 1942, regardless of any contract or other obligation:

(1) No "person" shall "sell" or deliver any of the "commodities" listed in Appendix A (§ 1347.475) and no person shall sell or supply any of the "services" listed in Appendix B (§ 1347.476) at a price higher than the maximum price permitted by this Maximum Price Regulation No. 225; and

(2) No person, in the course of trade or business, shall buy or receive any of said commodities or services at a price higher than the maximum price permitted by this Maximum Price Regulation No. 225: *Provided,* That in the case of the sale or supply of services or the original sale of commodities for which a maximum price has been established by this Maximum Price Regulation No. 225, the purchaser shall be deemed to have complied with this subparagraph (2) if: (i) the purchaser shall receive from the "seller" a written affidavit that the seller has calculated the maximum price for said commodity or service in accordance with the provisions of this regulation and has filed with the Office of Price Administration the reports required by § 1347.463, and (ii) the purchaser shall have no knowledge of the maximum price applicable beyond the statements made to him by the seller, and no cause to doubt the accuracy of the affidavit, and (iii) the price paid by the purchaser is not in excess of the maximum price as sworn to by the seller.

(b) The provisions of this § 1347.451 shall not be applicable to sales of any service or to sales or deliveries of any commodity to a purchaser if, prior to September 29, 1942, the commodity sold or in connection with which the service had been rendered had been received by a carrier, other than a carrier owned or controlled by the seller, for shipment to the purchaser.

(c) The provisions of this Maximum Price Regulation No. 225 shall not be applicable to any persons engaged primarily in the business of publishing, printing, typesetting, platemaking, binding, or rendering related services, or any combination thereof, whose total gross sales in 1941 of printed "papers" and printed paper products and services in connection therewith did not exceed $20,000. This exemption, however, shall not apply to any person who was not engaged primarily in any of said businesses, or any combination thereof, throughout the calendar year 1941. Such person shall be subject to the provisions of this regulation unless and until he shall have been primarily engaged in one or more of said businesses, or any combination thereof, for an entire calendar year, during which year his total gross sales of printed papers and printed paper products and services in connection therewith did not exceed $20,000.

§ 1347.452 *Maximum prices for commodities and services; general provisions.* Each seller of any commodity or service subject to this Maximum Price Regulation No. 225 must determine his maximum price by applying the first one of the methods set forth in sequence in §§ 1347.452 through 1347.456, which fits the commodity or service being priced. A few exceptions to this pricing procedure are set forth in Appendix C (§ 1347.477) and take precedence over all other pricing provisions of this regulation.

As the first pricing method under this regulation, each seller must, if possible, take as his maximum price the "highest price which he charged during March, 1942" as defined in § 1347.472, paragraph (a) (6) of this regulation.

(a) For the same commodity or service; or

(b) If no charge was made for the same commodity or service, for the "similar commodity or service" most nearly like it.

Provided, however, That if the cost of the paper used in said commodity or service has increased over the cost of the paper to him in March, 1942, (1) by reason of the lightweight differentials permitted by Maximum Price Regulation 449,[3] Groundwood Specialty Papers, Maximum Price Regulation 450,[4] Writing Paper and Certain Other Fine Papers and Maximum Price Regulation 451,[5] Book Paper; or (2) with respect to sellers located within the states of Arizona, California, Idaho, Montana, Nevada, New Mexico, Oregon, Utah and Washington, if such cost has increased by reason of an increase in the zone differential under Maximum Price Regulation 450 and Maximum Price Regulation 451 for deliveries made in those states, then the seller may add to his maximum price established under the foregoing provisions of this section either by a change in price or by a decrease in sheet count, whichever he shall elect, the dollar and cent amount of such cost increase or increases incurred by him.

For the purpose of this section, the term "lightweight differential" shall include the difference in price between 16 lb. and 20 lb. paper specified in Maximum Price Regulation 450 as well as specifically mentioned "lightweight differentials" in any of the three regulations.

The seller shall, with respect to each commodity the price for which has been so increased, keep records showing

(1) The exact amount of the cost increase incurred by him.

(2) The exact amount of the price increase or sheet decrease, whichever shall be applicable. Such records shall be preserved for a period of two years for examination by the Office of Price Administration or by the purchaser of the printing service for printed paper commodity involved.

[Proviso added by Am. 8, 8 F.R. 15456, effective 11-15-43; amended by Am. 11, 9 F.R. 3709, effective 4-11-44 and Am. 13, effective 7-25-44]

[§ 1347.452 amended by Am. 3, 8 F.R. 1060, effective 1-21-43 and as otherwise noted]

§ 1347.453 *Maximum prices for services and for "original sales" of commodities, which cannot be priced under § 1347.452.* The seller's maximum price for a service or for an "original sale" of a commodity which cannot be priced under § 1347.452 of this Maximum Price Regulation No. 225 shall be established in accordance with the seller's customary methods of computing prices on the basis of cost of materials, production charges and margins. Such maximum price shall be a combination of the items set forth below in this § 1347.453.

(a) *Cost of materials.* An item for the actual "delivered" net cost to the seller of the materials used in producing the commodity or supplying the service: *Provided,* That in no event shall such cost exceed the maximum price, for purchase of the materials by the seller, established by the Office of Price Administration. If during March, 1942, the seller used, or, if in making such sale, would have used a method of averaging or otherwise computing his material costs, he shall continue such method in employing this pricing provision.

(b) *Production charges.* An item for charges for hand and machine operations which shall employ the same hourly and piece rates used by such seller in determining the selling price of the most nearly "comparable commodity or service" sold or "supplied" or offered for sale or supply by him during March, 1942. The same standards of production and the same methods or principles of applying production charges shall be employed as were employed during March, 1942, so that direct and indirect production charges shall be computed in the manner customarily employed during March, 1942. Charges for a different type of operation employed in producing any product or service (for example, hand

[3] 8 F.R. 11515, 14985; 9 F.R. 6633, 7504.
[4] 8 F.R. 11522, 14278; 9 F.R. 5803, 6711.
[5] 8 F.R. 11529; 9 F.R. 1532, 3030, 5083.

rather than machine operation) shall not be substituted for customary production charges as a means of increasing the price of the product or the service. No hourly or piece rate, other than a lower rate for an identical operation, shall be employed which was not used by the seller in March, 1942, until it has been filed with the Office of Price Administration in Washington, D. C. in the manner provided in § 1347.463 of this Maximum Price Regulation No. 225. Such new hourly or piece rate shall be a rate which the seller would have used in March, 1942, and shall be in line with the seller's schedule of production charges actually employed during March, 1942.

(c) *Margin.* An item for a margin over the cost of materials and production charges (i. e., paragraph (a) plus paragraph (b)) computed on the same percentage basis, or on the same rate per unit of material, or on a combination thereof and by the same method as the seller employed in pricing the most nearly comparable commodity or service sold, supplied or offered for sale or supply during March, 1942, to a "purchaser of the same class" as defined in § 1347.472, paragraph (13) of this regulation. If during March, 1942, the seller employed the practice of including his charges for margin in his hourly and piece rates for hand and machine operations, he shall continue such practice in pricing any commodity or service under this section, and in such a case the seller shall make no duplicate calculation for margin under this paragraph (c). No new rate for margin, other than a lower rate for the sale of a comparable commodity or service to a purchaser of the same class, shall be employed which was not used by the seller in March, 1942, until it has been filed with the Office of Price Administration in Washington, D. C., in the manner provided in § 1347.463 of this Maximum Price Regulation No. 225. Such new rate for margin shall be a rate which the seller would have used in March 1942, and shall be in line with the seller's schedule of rates for margin actually employed during March 1942.

(d) No seller shall change his customary allowances, discounts, or other price differentials unless such change results in a lower price.

(e) No seller shall require any purchaser, and no purchaser shall be permitted, to pay a larger proportion of transportation costs incurred in the delivery or in the supply of any commodity or service, than the seller required purchasers of the same class to pay during March, 1942, on deliveries or supplies of comparable types of commodities or services.

§ 1347.454 *Maximum prices for "resales" of commodities which cannot be priced under § 1347.452.* The seller's maximum price for the "resale" of a commodity which cannot be priced under § 1347.452 of this Maximum Price Regulation No. 225 shall be:

(a) The highest price charged during March, 1942, by the "most closely competitive seller of the same class" as defined in § 1347.472, paragraph (7) of this regulation:

(1) For the same commodity; or

(2) If no charge was made for the same commodity, for the similar commodity most nearly like it; or

(b) If a maximum price cannot be ascertained under paragraph (a) of this § 1347.454, a price determined by the seller in accordance with the following procedure:

(1) The seller shall select from the same general classification and price range as the commodity being priced under this paragraph (b) the comparable commodity for which a maximum price is established under § 1347.452 and of which the seller delivered the largest number of units during March, 1942:

(2) The seller shall divide his maximum price for that commodity by his "replacement cost" of that commodity; and

(3) The seller shall multiply the percentage so obtained by the cost to him of the commodity being priced under this paragraph (b).

The resulting figure shall be the maximum price of the commodity being priced. Within ten days after determining such maximum price under this paragraph (b), the seller shall report such price to the appropriate field office of the Office of Price Administration upon a form to be obtained from such office, duly filled out and signed under oath or affirmation.

§ 1347.455 *Similar commodities or services subsequently sold.* Any maximum price determined under § 1347.453, or paragraph (b) of § 1347.454 shall be subject to adjustment in writing at any time by the Office of Price Administration. In the absence of such adjustment, the maximum price so determined shall be the maximum price for all commodities or services subsequently sold or supplied which are the same or similar to the commodity or service for which a maximum price has been so determined, without regard to subsequent changes in cost.

§ 1347.456 *Maximum prices for commodities and services which cannot be priced under the foregoing provisions of this regulation.* Where a maximum price is sought for a commodity or a service which cannot be priced under the foregoing provisions of this Maximum Price Regulation No. 225, the maximum price for the commodity or service shall be a price approved by the Office of Price Administration. Application for such approval shall be filed in duplicate with the Office of Price Administration in Washington, D. C. The application shall contain:

(a) An "appropriate description and identification" of the commodity or service for which a price is being requested;

(b) A statement of the reasons why it cannot be priced except under this § 1347.456;

(c) A statement of the proposed maximum price. In the case of the sale of a service or the original sale of a commodity, the seller shall set forth separately the amount included in the proposed price for cost of materials, production charges and margin. In the case of the resale of a commodity, he shall set forth separately his purchase price, transportation charges, if any, and mark-up.

Unless the Office of Price Administration or an authorized representative thereof shall, by letter mailed to the applicant within 21 days from the date of filing the application, disapprove the maximum price as reported, such price shall be deemed to have been approved, subject to non-retroactive written disapproval or adjustment at any later time by the Office of Price Administration.

§ 1347.457 *Transfers of business or stock in trade.* If the business, assets or stock in trade of any business are sold or otherwise transferred after April 28, 1942, and the transferee carries on the business, or continues to deal in the same type of commodities or services, in an establishment separate from any other establishment previously owned or operated by him, the maximum prices of the transferee and his status with regard to the exemptions provided for in §§ 1347.451 (c) and 1347.463 (c) shall be the same as those to which his transferor would have been subject if no such transfer had taken place, and his obligation to keep records sufficient to verify such prices shall be the same. The transferor shall either preserve and make available, or turn over, to the transferee all the records of transactions prior to the transfer which are necessary to enable the transferee to comply with the record provisions of this Maximum Price Regulation No. 225.

§ 1347.458 *Export sales.* The maximum price at which a person may export any commodity shall be determined in accordance with the provisions of the Revised Maximum Export Price Regulation[6] issued by the Office of Price Administration.

§ 1347.458a *Application to import transactions.* This regulation applies to transactions in commodities to be imported into the continental United States.

[§ 1347.458a added by Supplementary Order 78, 8 F.R. 14811, effective 11-4-43]

§ 1347.459 *Federal and state taxes.* Any tax upon, or incident to, the sale, delivery, processing, or use of a commodity, or the sale or supplying of a service, imposed by any statute of the United States or statute or ordinance of any state or subdivision thereof, shall be treated as follows in determining the seller's maximum prices for such commodity or service and in preparing the records of such seller with respect thereto:

(a) *As to a tax in effect during March, 1942.* (1) If the seller paid such tax, or if the tax was paid by any prior vendor, irrespective of whether the amount thereof was separately stated and col-

[6] Second revision; 8 F.R. 4132, 5987, 7662, 9333, 15193; 9 F.R. 1036.

lected from the seller, but the seller did not customarily state and collect separately from the purchase price during March, 1942, the amount of the tax paid by him or tax reimbursement collected from him by his vendor, the seller may not collect such amount in addition to the maximum price, and in such case shall include such amount in determining the maximum price under this Maximum Price Regulation No. 225.

(2) In all other cases, if, at the time the seller determines his maximum price, the statute or ordinance imposing such tax does not prohibit the seller from stating and collecting the tax separately from the purchase price, and the seller does state it separately, the seller may collect, in addition to the maximum price, the amount of the tax actually paid by him or an amount equal to the amount of tax paid by any prior vendor and separately stated and collected from the seller by the vendor from whom he purchased, and in such case the seller shall not include such amount in determining the maximum price under this Maximum Price Regulation No. 225.

(b) *As to a tax or increase in a tax which becomes effective after March 31, 1942.* If the statute or ordinance imposing such tax or increase does not prohibit the seller from stating and collecting the tax or increase separately from the purchase price, and the seller does separately state it, the seller may collect, in addition to the maximum price, the amount of the tax or increase actually paid by him or an amount equal to the amount of tax paid by any prior vendor and separately stated and collected from the seller by the vendor from whom he purchased.

§ 1347.460 *Less than maximum prices.* Lower prices than those established by this Maximum Price Regulation No. 225 may be charged, demanded, paid or offered.

§ 1347.461 *Adjustable pricing.* Any person may agree to sell at a price which can be increased up to the maximum price in effect at the time of delivery; but no person may deliver or agree to deliver at prices to be adjusted upward in accordance with action taken by the Office of Price Administration after delivery, unless a request for a change in the applicable maximum price, filed in accordance with a Procedural Regulation issued by this office, is pending at the date of such delivery or agreement to deliver.

[§ 1347.461 amended by Am. 5, 8 F.R. 7382, effective 6-7-43]

§ 1347.462 *Evasion.* The price limitations set forth in this Maximum Price Regulation No. 225 shall not be evaded, whether by direct or indirect methods, in connection with an offer, solicitation, agreement, sale, delivery, purchase or receipt of, or relating to the commodities and services for which maximum prices are established by this regulation alone or in conjunction with any other commodity or service or by way of commission, service, transportation, or other charge, or discount, premium or other privilege, or by tying agreement or other trade understanding, or otherwise.

§ 1347.463 *Base-period "records" and reports*—(a) *Preservation of existing records.* Every person selling commodities or services for which maximum prices are established by this Maximum Price Regulation No. 225 shall preserve for examination by the Office of Price Administration for a period of two years all his existing records relating to the prices which he charged for such of those commodities or services for which maximum prices are established by this Maximum Price Regulation No. 225 as he delivered or supplied during March 1942, and his "offering prices" for delivery or supply of such commodities or services during such month.

(b) *Statements by all sellers.* Every person making sales of commodities or services for which maximum prices are established by this Maximum Price Regulation No. 225 shall prepare, on or before October 29th, 1942, to the full extent of all available information and records, a statement showing:

(1) The highest prices which he charged for such of those commodities or services for which maximum prices are established by this Maximum Price Regulation No. 225 as he delivered or supplied during March 1942, and his offering prices for delivery or supply of such commodities or services during such month, together with an appropriate description or identification of each such commodity or service; and

(2) All his customary allowances, discounts and other price differentials.

Persons supplying a service or making an original sale of a commodity shall keep such statement for examination by a duly authorized representative of the Office of Price Administration. Persons making a resale of a commodity shall keep such statement for examination by any person during ordinary business hours.

(c) *Reports required from persons supplying services or making original sales.* Every person selling or supplying services or making original sales of commodities for which maximum prices are established by this Maximum Price Regulation No. 225 shall file, signed under oath or affirmation upon Form No. 325:1 to be obtained from the "appropriate field office of the Office of Price Administration:"

(1) A report showing all hourly and piece rates for hand and machine operations and all percentage and per piece rates for margins, and any combinations thereof, together with a statement of "pricing methods" and customary allowances, discounts and other price differentials employed by such person during March 1942, in determining the selling prices of any such commodities delivered and services supplied or offered for delivery or supply by such person during that period. Such report shall be filed with the Office of Price Administration in Washington, D. C., on or before November 28th, 1942.

(2) A report of any hourly and piece rates and rates for margin, not used by such person in March 1942, but subsequently proposed to be employed. Such report shall be filed with the Office of Price Administration in Washington, D. C., prior to the employment of such rates. Unless the Office of Price Administration or a duly authorized representative thereof shall, by letter mailed to such person within 21 days from the filing of such report, disapprove such hourly and piece rates and rates for margin as reported, they shall be deemed to have been approved.

No report, however, under this paragraph (c) shall be required from persons engaged primarily in the business of publishing, printing, typesetting, platemaking, binding or rendering related services, or any combination thereof, whose total gross sales in 1941 of printed papers and printed paper products and services in connection therewith did not exceed $50,000. This exemption, however, shall not apply to any person who was not engaged primarily in any of said businesses, or any combination thereof, throughout the calendar year 1941. Such person shall be subject to the provisions of this paragraph (c) unless and until he shall have been primarily engaged in one or more of said businesses, or any combination thereof, for an entire calendar year, during which year his total gross sales of printed papers and printed paper products and services in connection therewith did not exceed $50,000.

§ 1347.464 *Current records.* Every person selling commodities or services for which maximum prices are established by this Maximum Price Regulation No. 225 shall keep, and make available for examination by the Office of Price Administration, records of the same kind as he has customarily kept, relating to the prices which he charged for such of those commodities or services as he sold after the effective date of this regulation; and, in addition, records showing, as precisely as possible, the basis upon which he determined the maximum prices for those commodities and services.

§ 1347.465 *Sales slips and receipts.* Any seller of commodities or services for which maximum prices are established by this Maximum Price Regulation No. 225 who has customarily given a purchaser a sales slip, receipt, or similar evidence of purchase shall continue to do so. Upon request from a purchaser, any such seller, regardless of previous custom, shall give the purchaser a receipt showing the date, the name and address of the seller, the name of each commodity or service sold, and the price received for it.

§ 1347.466 *Licensing.* The provisions of Licensing Order No. 1,[1] licensing all persons who make sales under price control, are applicable to all sellers subject to this regulation or schedule. A seller's license may be suspended for violations of the license or of one or more applicable price schedules or regulations. A person whose license is suspended may not, dur-

[1] 8 F.R. 13240.

ing the period of suspension, make any sale for which his license has been suspended.

[§ 1347.466 amended by Supplementary Order 72, 8 F.R. 13244, effective 10-1-43]

§ 1347.467 [Deleted]

[§ 1347.467 deleted by Supplementary Order 72]

§ 1347.468 *Enforcement.* (a) Persons violating any provisions of this Maximum Price Regulation No. 225 are subject to the criminal penalties, civil enforcement actions, proceedings for the suspension of licenses and suits for treble damages provided for by the Emergency Price Control Act of 1942.

(b) Persons who have evidence of any violation of this Maximum Price Regulation No. 225 or any price schedule, regulation or order issued by the Office of Price Administration or of any acts or practices which constitute such a violation are urged to communicate with the nearest district office, state office, or regional office of the Office of Price Administration or its principal office in Washington, D. C.

§ 1347.469 *Applications for adjustment.* (a) The Office of Price Administration, any Regional Administrator or any District Director as may be authorized by order issued by the appropriate Regional Administrator may adjust the maximum price established by this Maximum Price Regulation No. 225 in the case of any seller or group of sellers whenever it can be established that a seller or group of sellers is unable to deliver or supply such commodity or service at the existing maximum price and that either:

(1) The supply of this commodity or service is required to meet military or essential civilian needs; or

(2) The loss of the supply of this commodity or service will force purchasers to resort to higher priced sources of supply, and that no adequate substitute for this commodity or service is available at a price equal to or lower than the requested maximum price.

Any Regional Administrator may at his discretion direct any District Director located within his region to perform any or all of the responsibilities delegated to such Regional Administrator under this § 1347.469.

[Paragraph (a) amended by Am. 12, 9 F.R. 5803, effective 6-1-44]

(b) Amount of relief. The relief granted under this section shall be limited to the amount necessary to permit the seller to supply this commodity or service: *Provided, however,* That where an application is filed under paragraph (a) (2) above, the seller's maximum price will not be raised above the general level of prices prevailing for alternative sources of supply of this commodity or service or for an adequate substitute therefor.

(c) Applications for adjustment shall be filed in accordance with subpart B of Revised Procedural Regulation No. 1,[8] issued by the Office of Price Administration. In addition to the material required in that Procedural Regulation, the applicant shall set forth in his application the following data:

(1) Statement of the seller's maximum price, the section of Maximum Price Regulation 225 under which such price is determined, and the proposed adjusted price.

(2) Evidence that the seller comes within either of the classes listed in paragraph (a) above. If the application is based on subparagraph (2) of that paragraph, the applicant shall submit statements from his largest customers upon this point.

(3) Analyses as of March 1942, and as of the date of the application, of the following factors:

(i) Cost per unit of commodity or service of paper, other materials used, and any other outside purchases.

(ii) Charges per unit of commodity or service for each productive operation.

(iii) Charges per unit of commodity or service for each type of margin including profit.

(iv) Hourly and/or piece rates upon which the unit production charges in (ii) above are based.

(v) Percentage rates upon which the unit charges for margin in (iii) above are based.

(4) If the applicant considers that he did not receive a reasonable operating margin on the sale of this commodity or service in March 1942, he may also submit an analysis of the points listed in subparagraph (3) above, for the period next preceding March 1942, in which he received a reasonable operating margin, together with a statement of the reasons why the operating margin in March was not reasonable. This material shall be in addition to the analysis for March 1942, required by subparagraph (3).

(5) Description of the grade delivered net cost per cwt. of the paper used in said commodity or service in each of the periods reported in subparagraphs (3) and (4) above.

(6) Detailed statement of the changes in costs of each productive operation which occurred between each of the periods reported in subparagraphs (3) and (4) above.

(7) Dollar volume of sales by the applicant of this commodity or service, and total dollar volume of all other sales by the applicant during each of the two fiscal years immediately preceding the filing of the application.

(8) Number of units of this commodity or service sold during each of the two fiscal years immediately preceding the filing of the application.

(9) Annual profit and loss statements for the applicant's business from 1936 through the latest complete fiscal year. Quarterly profit and loss statements should be included, if possible, for each quarterly period subsequent to the year covered by the most recent annual statement.

If the application concerns the adjustment of prices of a large number of different commodities or services or of the seller's general rate structure, the cost and sales data required in this subparagraph (c) may be presented in summary form.

If any of the foregoing data are already on file with the Office of Price Administration, the seller shall so state in his application, and it will not be necessary for him to file such data again. If any of this data is not available, applicant may so state, giving the reasons therefor.

[Paragraph (c) amended by Am. 12, 9 F.R. 5803, effective 6-1-44 and Am. 13, effective 7-25-44]

(d) No application for adjustment filed after June 1, 1944, under Procedural Regulation No. 6[9] with respect to commodities and services covered by this regulation will be granted.

[Paragraph (d) added by Am. 12, 9 F.R. 5803, effective 6-1-44]

[§ 1347.469 amended by Am. 2, 7 F.R. 8339, effective 11-4-42; and Am. 4, 8 F.R. 4181, effective 4-6-43 and as otherwise noted]

§ 1347.470 *Petitions for amendment.* Any person seeking an amendment of any provision of this Maximum Price Regulation No. 225 may file a petition for amendment in accordance with the provisions of Revised Procedural Regulation No. 1.

[§ 1347.470 amended by Supplementary Order 26, 7 F.R. 8948, effective 11-4-42]

§ 1347.471 *Applicability of the General Maximum Price Regulation.*[10] The provisions of this Maximum Price Regulation No. 225 supersede the provisions of the General Maximum Price Regulation with respect to sales and deliveries of commodities and services for which maximum prices are established by this Maximum Price Regulation No. 225 and with respect to sales and deliveries of commodities and services for which specific exemptions are provided in this regulation; consequently, any sale specifically exempted from this Maximum Price Regulation No. 225 is exempt from all price control.

[§ 1347.471 amended by Am. 10, 9 F.R. 3073, effective 3-27-44]

§ 1347.472 *Definitions and explanations.* (a) When used in this Maximum Price Regulation No. 225:

(1) "Appropriate description and identification" means a complete listing of the specifications, processes and other characteristics of the commodity or service, or of the various grades of commodities or services.

(2) "Appropriate field office of the Office of Price Administration" means

[8] 9 F.R. 5791, 7501.

[9] 7 F.R. 5037, 5635; 8 F.R. 6173, 6174, 12024.

[10] 9 F.R. 1385, 5169.

the district office for the district (or in the absence of such district office, the state office for the State) in which is located the seller's place of business from which his sales of commodities and services are made.

(3) "Commodity" includes articles, products, and materials.

(4) "Comparable commodities and services". For the purposes of § 1347.453 only, one commodity or service shall be deemed comparable to another commodity or service if (i) the first has the same use as the second, (ii) affords the purchaser fairly equivalent serviceability, (iii) is produced by the same or substantially the same productive operations, and (iv) is customarily priced by the same pricing method as the first, although its price as determined by such pricing method is not the same or substantially the same as the first.

(5) "Delivered". A commodity shall be deemed to have been "delivered" during March 1942, if during such month it was received by the purchaser or by any carrier, including a carrier owned or controlled by the seller, for shipment to the purchaser.

(6) "Highest price charged during March, 1942" means:

(i) The highest price which the seller charged for a commodity delivered or service supplied by him during March, 1942, to a purchaser of the same class; or

(ii) If the seller delivered no such commodity or supplied no such service during March 1942, his highest offering price for such delivery or supply during that month to a purchaser of the same class; or

(iii) If the seller did not deliver the commodity or supply the service to be priced and had no offering price for such commodity or service to a purchaser of the same class, it shall be the highest price charged by the seller during March 1942, to a purchaser of a different class, adjusted to reflect the seller's customary differential between the two classes of purchasers;

(iv) [Revoked]

[Subparagraph (iv) revoked by Am. 6, 8 F.R. 10983, effective 8-11-43]

(v) No seller shall change such of his customary allowances, discounts or other price differentials as were in effect in March 1942, unless such change results in a lower price.

(vi) No seller shall require any purchaser, and no purchaser shall be permitted, to pay a larger proportion of transportation costs incurred in the delivery or supply of any commodity or service, than the seller required purchasers of the same class to pay during March, 1942 on deliveries or supplies of the same or similar types of commodities or services.

(7) "Most closely competitive seller of the same class" means a seller of the same class who (i) is selling the same or a similar commodity or service, and (ii) is closely competitive in the sale of such commodities or services, and (iii) is located nearest to the seller.

(8) "Offering price" means the price quoted in the seller's price list, or, if he had no such price list, the price which he regularly quoted in any other manner or the price determined by the pricing method which the seller regularly adopted, except that in the case of sales of commodities by an establishment selling at retail, the offering price shall be the price at which the commodity was offered for sale at the immediate point of sale (for example, the shelves or counters). But offering price shall not include a price intended to withhold a commodity or service from the market, or a price offered as a bargaining price by a seller who usually sells at a price lower than his asking price.

(9) "Original sale" means the sale of a commodity by a person who has created or substantially changed the form of the commodity being sold.

(10) "Paper" and "paper products" shall, for the purpose of this Maximum Price Regulation 225, include all kinds, types, and grades of paper, paperboard and cellophane-type materials (regenerated cellulose, cellulose acetate and ethyl cellulose).

[Subparagraph (10) amended by Am. 7, 8 F.R. 12660, effective 9-20-43]

(11) "Person" means an individual, corporation, partnership, association, any other organized group of persons, legal successor or representative of any of the foregoing, and includes the United States, any agency thereof, any other government, or any of its political subdivisions, and any agency of any of the foregoing.

(12) "Pricing methods" means the formulas by which the seller figures his price for any commodity or service, whether such formulas are disclosed to the purchaser or are merely the seller's devices for figuring costs of materials, production charges, and margin.

(13) "Purchaser of the same class" refers to the practice adopted by the seller in setting different prices for commodities or services for sales to different purchasers or kinds of purchasers (for example, manufacturer, wholesaler, jobber, retailer, government agency, public institution, individual consumer) or for purchasers located in different areas or for different quantities or under different conditions of sale.

(14) "Records" means books of account, sales lists, sales slips, orders, vouchers, contracts, receipts, invoices, bills of lading, and other papers and documents.

(15) "Replacement cost" means the net price paid by the seller after September 29th, 1942, or the net price which the seller would have to pay to replace such commodity after such date.

(16) "Resale" means a sale by a person other than the creator of a commodity who receives delivery thereof and resells it, without substantially changing its form.

(17) "Sale at retail" or "selling at retail" means a sale or selling to an ultimate consumer other than an industrial or commercial user.

(18) "Sell" means sell, supply, dispose, barter, exchange, lease, transfer, and deliver, and contracts and offers to do any of the foregoing. The terms "sale", "selling", "sold", "seller", "buy", "purchase", and "purchaser" shall be construed accordingly. Nothing in this Maximum Price Regulation No. 225 shall be construed to prohibit the making of a contract to sell a commodity or service at a price not to exceed the maximum price permitted by the Office of Price Administration at the time of delivery or supply.

(19) "Seller" includes a seller of any commodity or service for which maximum prices are established by this Maximum Price Regulation No. 225. Where a seller makes sales or supplies services through more than one selling unit, other than salesmen making sales at uniform prices, each separate place of business of the seller shall be deemed to be a separate seller, except that for the purposes of § 1347.466 of this regulation, the owner of the business shall be considered the seller regardless of the number of separate places of business he owns.

(20) "Seller of the same class" means a seller (i) performing the same function (for example, manufacturing, distributing, retailing, processing, storing, repairing, typesetting, platemaking or publishing); (ii) of similar type (for example, department store, mail order house, chain store, specialty shop, cut-rate store, printer, electrotyper or photoengraver); (iii) dealing in the same type of commodity or service, and (iv) selling to the same class of purchaser.

(21) "Service" means any service rendered or supplied, otherwise than as an employee, in connection with the processing, distribution, storage, repair, or negotiation of purchase or sale of a commodity, and generally, without limiting the foregoing, all services which preserve or add to the value or utility of a commodity.

(22) "Similar commodities or services". One commodity shall be deemed similar to another commodity, if the first has the same use as the second, affords the purchaser fairly equivalent serviceability, and belongs to a type which would ordinarily be sold for the same or substantially the same price. In determining the similarity of such commodities, differences merely in style or design which do not substantially affect use, or serviceability, or the price for which such commodities would ordinarily have been sold, shall not be taken into account. One service shall be deemed similar to another service if the first has the same use and purpose as the second and belongs to a type which would ordinarily be sold for the same or substantially the same price. For the purpose of determining maximum prices for services and for original sales of commodities under § 1347.452, a similar commodity or service is further defined as a commodity or service which is produced to the same or substantially the same specifications and is produced by the same or substantially the same productive operations.

(23) "Supplied". A service shall be deemed to have been supplied during March, 1942, if during such month the service was completed and the commodity in connection with which the service was rendered was delivered to the purchaser.

(b) Unless the context otherwise requires, the definitions set forth in sec-

tion 302 of the Emergency Price Control Act of 1942 shall apply to other terms used herein.

§ 1347.473 *Applicability.* The provisions of this Maximum Price Regulation No. 225 shall be applicable to the continental United States and the District of Columbia, but not to the territories and possessions of the United States.

§ 1347.474 *Effective date.* All provisions of this Maximum Price Regulation No. 225 (§§ 1347.451 to 1347.476 inclusive) shall become effective September 29th, 1942. [MPR 225 originally issued September 24, 1942]

§ 1347.474a *Effective dates of amendments.*

[Effective dates of amendments are shown in notes following the parts affected]

§ 1347.475 *Appendix A: Commodities.* This Maximum Price Regulation No. 225 shall apply to the following commodities:

Bound blank books, including but not limited to:

General books of account, such as bill books, cash books, cash sales books, check or voucher registers, columnar books, combination books, day books, figuring books, journals, ledgers, note records, records, and trial balance books.

Books of account or record for specific uses, such as bank forms, bound and mortgage records, business records, club registers, collection books, corporate records, counter books, delivery books, due ledgers, engineers' field books, garage registers, guest registers, hotel registers, index books, insurance registers, investment and income records, law record books, merchandise stock books, milkmen's account books, notarial records, order registers, payroll books, receiving clerks' records, rent collection books, roll books, sales records, scale books, shipping records, social security books, tally books, time books, tourist registers, used car records, and wage rate books.

Columnar pads, such as accounting pads and analysis pads.

Detachable forms, such as bill heads, bills of lading, business blanks, check books, correspondence books, draft books, invoice books, note books, order books, package receipt books, parcel post records, purchase order books, receipt books, remittance books, rent receipt books, sales books, statements, trade acceptances, and warrants.

Memorandum books, such as appointment books (except for resales), date books (except for resales), diaries (except for resales), memo books, pass books, telephone-address books, telephone call pads, and travelers' expense books.

Scrap book type books, such as autograph books, match-book albums, photograph albums, post-card albums, record albums, and scrap books.

Books for personal use, such as baby books, brides' books, budget books, family expense books, graduation books, household expense books, pocket wallets for stamps, recipe books, service books, stamp approval books, trip books, and wedding books.

Miscellaneous blank books, such as bookkeeping blanks, composition books, letter copying books, note books, perforated scratch pads, stenographers' notebooks, and students' notebooks.

Looseleaf binders and covers, including but not limited to:

Chain binders.
Compression binders.
Ledger binders.
Magazine type, single and multi-blade binders.
Prong binders.
Ring binders.
Screw, post and screw-post binders and covers.
Storage and transfer binders.
Binders and covers with fastening devices other than the above.
Spring binders, sheet and chart holders, and clip binders.

Plain and faint-ruled fillers and printed commercial forms, produced for use in any of the looseleaf binders or covers above specified.

Indexes, indexing systems, index tabs and blank division sheets for indexing purposes, to supplement any of the looseleaf binders and covers listed above.

Greeting cards and related products, as follows:

Greeting cards (except resales of Christmas and New Year's nonpersonalized greeting cards).
Decorated tags, seals, and enclosures (except resales of Christmas and New Year's tags, seals and enclosures).
Printed gift wrapping papers (except resales of Christmas and New Year's printed gift wrapping papers).
Gift money holders (except resales of Christmas and New Year's gift money holders).
Mottoes.
Printed decorative paper ribbons and tapes (except resales of Christmas and New Year's printed decorative paper ribbons and tapes).
Social calendars (except for resales).
Souvenir post cards.

Social stationery, printed, engraved or plain, including but not limited to:

Papeteries: matching paper and envelopes boxed or packaged together or separately.
Package or pound papers and/or package or pound envelopes.
Correspondence quire or ream goods.
Paper and paperboard writing portfolios and similar containers sold together with personal correspondence paper and/or envelopes.
Announcements (weddings, births, deaths, etc.) paper, cards and/or envelopes.
Invitations (weddings, occasions, etc.) paper, cards and/or envelopes.
Calling cards: personal or business.
Book plates: ownership or library classification labels.

Tablets, pads and related products, as follows:

Composition books.
Drawing papers.
Exercise books.
Graph papers.
Plain and faint-ruled loose-leaf fillers.
Memorandum books.
Music books (blank).
Music papers (blank).
Note books.
Pads.
Quadrille pads and papers.
Ruled papers.
Second sheets.
Stenographers' note books.
Tablets.
Typewriter papers.
Ream papers, plain or ruled.

Commercial supplies, as follows:

Bonds
Certificates.
Commercial calendars (except separate bases made of materials other than paper and paperboard, and except for resales).
Commercial forms
Commercial letter heads.
Coupons, checks, and tickets (except pin tickets and marking machine tickets).
Currency.
File folders and dividers.
Guide cards.
Index cards.
Labels, package wraps, and bands.
Legal forms and contracts.
Ruled legal papers.
Blotters.
Wallpaper.
Unframed printed pictures.

[§ 1347.475 amended by Am. 1, 7 F.R. 8923, effective 11-7-42; Am. 7, 8 F.R. 12669, effective 9-20-43; and Am. 9, 8 F.R. 16596, effective 12-13-43]

§ 1347.476 *Appendix B: Services.* This Maximum Price Regulation No. 225 shall apply to the services of publishing, printing, typesetting, platemaking, binding, and related services rendered in connection with:

(a) The commodities listed in Appendix A (§ 1347.475) of this Maximum Price Regulation No. 225.

(b) All papers and paper products, other than those listed in Supplementary Regulation No. 1 [11] and Revised Supplementary Regulation No. 11 [12] to the General Maximum Price Regulation and any and all amendments and supplements to said supplementary regulations now or hereafter issued, when such services are performed by persons engaged primarily in the business of publishing, printing, typesetting, platemaking, binding, or rendering related services or any combination thereof.

§ 1347.477 *Appendix C: Exceptions to pricing provisions of §§ 1347.452 through 1347.456*—(a) *Sales by school stores.* (1) Maximum prices for sales of any of the items listed in Appendix A (§ 1347.475) by school stores which during March 1942 dealt in the same or similar articles shall be the cost of acquisition plus the highest percentage mark-up charged by the school store during March 1942, on the same or a similar article. Prices may be rounded to the nearest whole cent; ½¢ may be taken as 1¢.

(2) *Definitions.* For the purpose of this parargaph (a) of § 1347.477 only, the following definitions shall be used:

(i) "Same article" means an article identical in all respects with another article, except that it may contain a different number of sheets.

(ii) "Similar article" means a similar commodity as defined in § 1347.472 (a) (22) except that it may contain a different number of sheets.

(iii) "School store" means any store operated by an elementary or secondary school or by a board of education for the benefit of elementary or secondary school students and not for profit directly or indirectly.

[§ 1347.477 added by Am. 3, 8 F.R. 1060, effective 1-21-43]

(b) *Equalization of maximum prices, established under certain long term contracts, to sellers' general levels of prices as of March 1942.* This paragraph (b) provides a method by which a seller can, in re-negotiating certain long term contracts, restore normal pricing differentials between his various classes of purchasers.

(1) To establish a maximum price under this paragraph (b), a seller must prove to the Office of Price Administration that prior to April 1942, he had put into effect a price increase and made delivery or supply pursuant thereto of:

[11] Revised: 9 F.R. 3531, 4391, 3530, 4348, 5269, 5936, 6570, 6848, 7020.
[12] 9 F.R. 4775, 5314, 5441, 5722, 7020.

(i) The same or a similar commodity or service, or

(ii) Most commodities or services produced or supplied by him which are comparable to the commodity or service being repriced.

He must also prove that his reason for having delivered, supplied, or offered to deliver or supply this article or service during March, 1942 at a lower price than is reflected in his general March price level was a contract entered into before his general price increase and before January 1, 1942.

(2) If the seller meets the requirements of subparagraph (1) above, his maximum price shall be:

(i) The highest price which he charged on deliveries or supplies during March 1942, of the same or a similar commodity or service to a purchaser of a different class, adjusted to reflect his customary differential in price between the two classes of purchasers or, if he had no customary differential, the actual percentage differential existing at the date of the contract; or

(ii) If he made no delivery or supply of the same or a similar commodity or service to any other class of purchasers during March 1942, then his maximum price shall be computed according to the pricing formula in §§ 1347.453 or 1347.454 (b), whichever shall be applicable.

(3) Every seller determining a maximum price under the provisions of this paragraph (b), shall, before making a sale at such a price, file a report with the Office of Price Administration, Printing and Publishing Unit, Reference 695, Washington, D. C., specifying in full detail all of the data necessary to prove the requirements of this section. If the new maximum price has been calculated under subparagraph (2) (i), OPA Form No. 695–406 shall be used; if under paragraph (2) (ii), OPA Form No. 695–407. These forms may be obtained from any regional or district office of the Office of Price Administration or its national office in Washington, D. C. Unless the Office of Price Administration shall, by letter mailed to the applicant within 21 days from the date of the filing of this report, disapprove the maximum price as reported, this price shall be deemed to have been approved, subject to nonretroactive written disapproval or adjustment at any later time by the Office of Price Administration.

(4) Any seller whose maximum price for the sale of a commodity or service is established and approved under this § 1347.477, paragraph (b), shall promptly send written notice thereof to every purchaser of the class for which a maximum price has thus been established.

[Paragraph (b) added by Am. 6, 8 F.R. 10983, effective 8–11–43]

(c) *Sales of tablets, pads, and related products made from newsprint paper.* This paragraph (c) provides a method by which a manufacturer or reseller of any of the enumerated items may reduce the number of sheets contained in the item without accompanying reduction in the maximum price of the item: *Provided, however,* That this paragraph (c) shall not apply to the commodities identified in paragraph (d).

(1) Tablets, pads, and related products as listed in § 1347.475 of Maximum Price Regulation 225, when made from white newsprint and when measuring 80 square inches or more in surface; and any such items made from yellow newsprint and measuring 90 square inches or more in surface. Sheet count may be reduced by not more than 5 sheets from the number supplied at maximum price prior to November 1, 1943 in an item made to be sold at retail at 5 cents per unit, and not more than 10 sheets may be withdrawn from an item made to be sold at retail at 10 cents per unit.

(2) Tablets, pads, and related products as listed in § 1347.475 of Maximum Price Regulation 225, when measuring less than 80 square inches in surface; and any such items made from yellow newsprint and measuring less than 90 square inches in surface. Sheet count may be reduced by not more than 10 sheets from the number supplied at maximum price prior to November 1, 1943 in an item made to be sold at retail at 5 cents per unit, and not more than 20 sheets may be withdrawn from an item made to be sold at retail at 10 cents per unit.

(3) In determining whether an item made from white newsprint paper is less than 80 square inches or whether an item made from yellow newsprint paper is less than 90 square inches, customary manufacturing tolerances in dimensions shall be followed; thus, a tablet known as "8 by 10, white" shall be considered 80 square inches in surface notwithstanding that manufacturing tolerances might cause its actual dimensions to be 7⅞ inches by 10 inches.

(d) *Sales of plain or ruled newsprint paper cut to size, packaged in 500 or 1000 sheets.* The seller may add to his maximum price as established under § 1347.452 a sum equal to the difference between paper cost to him in March 1942 and the paper cost to him under applicable regulations and orders of the Office of Price Administration. Such regulations and orders include but are not limited to Revised Maximum Price Regulation No. 130[13] and Maximum Price Regulation No. 449 as amended.

(e) For the purpose of paragraphs (c) and (d) above the term "newsprint paper" includes but is not limited to any of the papers listed in Revised Maximum Price Regulation No. 130, Newsprint, and Maximum Price Regulation No. 449, Groundwood Specialty Papers.

[Paragraphs (c), (d) and (e) added by Am. 9, 8 F.R. 16596, effective 12–13–43]

§ 1347.478 *Appendix D: Exemptions.* Neither this Maximum Price Regulation No. 225 nor the General Maximum Price Regulation shall apply to sales of printing and printed paper commodities by the Library of Congress.

[§ 1347.478 added by Am. 10, 9 F.R. 3078, effective 3–27–44]

NOTE: The record-keeping and reporting requirements of this regulation have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942

Issued this 20th day of July 1944.

JAMES G. ROGERS, Jr.,
Acting Administrator.

[F. R. Doc. 44–10865; Filed, July 20, 1944; 5:04 p. m.]

[13] 7 F.R. 9251, 10255; 8 F.R. 1686, 2670, 7766, 11382, 16918; 9 F.R. 8589, 4540.

PART 1423—GUMS AND NATURAL RESINS

[MPR 297, Amdt. 1]

NATURAL RESINS

Correction

The FEDERAL REGISTER serial number for the above-entitled document appearing on page 8255 of the issue for Friday, July 21, 1944, should read "F.R. Doc. 44–10844".

PART 1351—FOOD AND FOOD PRODUCTS

[FPR 2]

GENERAL PRICING PROVISIONS FOR CERTAIN GRAINS

A statement of the considerations involved in the issuance of this regulation has been issued and filed with the Division of the Federal Register.*

FOOD PRODUCTS REGULATION NO. 2—GENERAL PRICING PROVISIONS FOR CERTAIN GRAINS

ARTICLE I—GENERAL PROVISIONS

Sec.
1.1 Effect of this regulation.
1.2 Miscellaneous provisions for use in supplements to this regulation.

ARTICLE II—SPECIAL RULES FOR USE IN CONNECTION WITH PRICING PROVISIONS OF SUPPLEMENTS TO THIS REGULATION

2.1 Rules relating to delivery.
2.2 Rule relating to commingling.
2.3 General rules for determining the price applicable to a withdrawal from a place of business.
2.4 Limitation on markups by a person having certain agreements with his supplier.
2.5 Rules relating to persons performing several marketing functions.
2.6 Rules relating to pricing by processors.
2.7 Rules relating to sales of grains for special purposes.

ARTICLE III—DEFINITIONS

ARTICLE IV—PRICING PROVISIONS FOR MIXED GRAIN

4.1 Base price of mixed grain.
4.2 Maximum prices for sales of mixed grain.
4.3 Applicability of this article.

ARTICLE V—SALES ON CONTRACT FUTURES MARKETS

AUTHORITY: Secs. 1.1 to 5.1, inclusive, (§ 1351.390) issued under 56 Stat. 23, 765; 57 Stat. 566; Pub. Law 383, 78th Cong.; E.O. 9250, 7 F.R. 7871; E.O. 9328, 8 F.R. 4681.

ARTICLE I—GENERAL PROVISIONS

SECTION 1.1 *Explanation of the regulation.* The purpose of this regulation is to gather into a single document provisions most commonly used in fixing maximum prices for certain grains.

Taken by itself, the regulation names no maximum prices. These are printed in separate documents which are issued as "supplements" to the regulation. For

*Copies may be obtained from the Office of Price Administration.

example, the basic maximum prices and pricing provisions for oats are set forth in a separate supplement which contains the provisions which apply only to oats. It is only some of the more general provisions applicable to a number of commodities which are collected here. Compliance with maximum prices, it is expected, will be made easier by this standardization of generally applicable provisions and by including them in a single document rather than in many separate regulations.

Moreover, the provisions of this regulation apply to particular grains only as they become parts of supplements. Thus, for example, whether or not section 2.5 (Rules Relating to Integrated Businesses) becomes a part of a particular supplement depends upon whether section 2.5 is stated in that supplement to be a part of it. Not all the sections of this regulation will apply to every supplement and when particular sections are not listed in a supplement, they are to be disregarded for purposes of that supplement.

NOTE: In many sections of this regulation reference is made to "the applicable supplement". "Applicable supplement" means the supplement to this regulation in which is established maximum prices for the particular sale of the particular commodity being priced.

SEC. 1.2 *Miscellaneous provisions for use in Supplements to this regulation*—(a) *Exemption of emergency purchases.* Whenever circumstances of emergency make a purchase by the United States or any of its agencies imperative and it is impossible to secure or unfair to require immediate delivery at the maximum price which would otherwise be applicable, such purchases and deliveries may be made pursuant to provisions of section 4.3 (f) of Revised Supplementary Regulation No. 1 of the General Maximum Price Regulation, as amended: *Provided, however,* That the Administrator may by order waive the reporting of any part of the information required by section 4.3 (f) in connection with the particular purchase or group of purchases upon determining that such information may not reasonably be required under all the circumstances and he may in lieu thereof require the reporting of other information more suited to the circumstances.

(b) *Adjustable pricing.* Any person may agree to sell at a price which can be increased up to the maximum price in effect at the time of delivery; but no person may, unless authorized by the Office of Price Administration, deliver or agree to deliver at prices to be adjusted upward in accordance with action taken by the Office of Price Administration after delivery. Such authorization may be given when a request for a change in the applicable maximum price is pending, but only if the authorization is necessary to promote distribution or production and if it will not interfere with the purposes of the Emergency Price Control Act of 1942, as amended. The authorization may be given by an order of the Administrator or of any official of the Office of Price Administration having authority to act upon the pending request for a change in price or to give the authorization.

(c) *Documents, records and reports.* (1) Every seller, and every purchaser in the course of trade or business, shall keep for inspection by the Office of Price Administration for so long as the Emergency Price Control Act of 1942, as amended, remains in effect, records of all sales and purchases covered by the applicable supplements to this regulation, including the date thereof, the name of the seller and purchaser, the kind of commodity, the grade and quality upon which the maximum price was based, the price paid or received, buyer's receiving point, and the quantity sold: except, that if a retailer posts his maximum price conspicuously in his store, he need not keep a record of sales made at or below such price unless required to do so under other provisions.

(2) Upon demand every such person shall submit such records to the Office of Price Administration and keep such further records as the Office of Price Administration may from time to time require.

(d) *Licensing.* The provisions of Licensing Order No. 1, licensing all persons who make sales under price control, are applicable to all sellers subject to the applicable supplements to this regulation. A seller's license may be suspended for violations of the license or of one or more applicable price schedules or regulations. A person whose license is suspended may not, during the period of suspension, make any sale for which his license has been suspended.

(e) *Enforcement.* Persons violating any provisions of an applicable supplement to this regulation are subject to the license revocation and suspension provisions, civil enforcement actions, suits for treble damages and criminal penalties as provided in the Emergency Price Control Act of 1942, as amended.

(f) *Protests and petitions for amendment.* Any person desiring to file a protest against or seeking an interpretation or an amendment of any provision of an applicable supplement to this regulation may do so in accordance with Revised Procedural Regulation No. 1, as amended, issued by the Office of Price Administration.

ARTICLE II—SPECIAL RULES FOR USE IN CONNECTION WITH PRICING PROVISIONS OF SUPPLEMENTS TO THIS REGULATION

SEC. 2.1 *Rules relating to delivery*—(a) *Quantity delivered.* Whenever a maximum price is dependent on the quantity delivered and the delivery is made by a vehicle such as a rail car, truck, wagon, barge or vessel, the quantity delivered shall be the quantity received by or for the customer at one time on one vehicle. Any practice of delivering in small quantities, which has no sound business reason other than to secure a higher maximum price will be an evasive device.

(b) *Point of delivery.* Under an applicable supplement, a "point of delivery" is frequently made the test of what maximum price applies. In those cases, the term is not used in the sense of legal delivery under a contract, but of actual delivery to and receipt at the point. The obligation of the seller to consummate the movement to that point is a part of the consideration upon which the maximum price is based. When the price is dependent upon delivery to an elevator, warehouse or store, the delivery is not made unless the lot is delivered to and unloaded into an elevator, warehouse or store, which is commercially operated as such.

(c) *Delivery by negotiable warehouse receipt or negotiable Bill of Lading.* It is common trade practice in dealing with commodities covered by an applicable supplement to accomplish delivery by transfer of a negotiable warehouse receipt or negotiable Bill of Lading. This practice is recognized as constituting delivery under an applicable supplement, even though the point of delivery is determined under paragraph (b). For example, when a carload shipment is in transit under a negotiable Bill of Lading, delivery may be accomplished by negotiation of the Bill of Lading before the car arrives at its destination, in which case the point of delivery is not the named destination in the Bill of Lading since the seller does not effect the delivery at that point.

(d) *Delivery as related to the effective date of an applicable supplement to this regulation.* When a question arises as to whether a delivery was made before the effective date of an applicable supplement, the general interpretation of the Office of Price Administration on the point governs. Information on this rule can be secured from any District Office.

SEC. 2.2 *Rule relating to commingling.* It is expected that a person may commingle a lot of grain owned by him with other grain owned by him. He may also commingle his grain with grain owned by others, provided such commingling is not used as a device to evade any maximum price. In either case he will continue to own an equivalent amount of grain. In such cases, his relationship, under an applicable supplement, to the "equivalent amount" of grain shall be deemed to be the same as his relationship to the original grain and the terms "any particular lot" of grain and "such" grain as used herein shall be considered accordingly.

SEC. 2.3 *General rules for determining the price applicable to a withdrawal from a place of business.* If you unload a lot of grain into a "place of business" such as an elevator, warehouse, processing plant or store, you will require a method of pricing the lot upon its "withdrawal" whether it is shipped out of the place of business, or is used there in processing, or is put into a mixed grain. If each such "inbound lot" were kept separate in your place of business, and were withdrawn separately, there would be no problem in determining its price upon withdrawal. In practice, however, such individual inbound lots are not kept separate, but usually are commingled or their identity is otherwise lost. For this reason, a method must be provided which permits you to select an inbound lot, or lots, or parts of

lots, and use the "history" of such lots in determining the price for a withdrawal of an equal quantity of the same grain. This section provides two alternative methods for pricing such withdrawals from a place of business.

(a) *Definitions.* When used in this section, the following terms shall have the following meanings:

(1) "Place of business" means a warehouse, elevator, store or processing plant, or any combination of such facilities operated as a unit at one location.

(2) "Withdrawal" means any movement of grain out of a place of business whether pursuant to a sale or otherwise, or any movement of grain within a place of business for use in manufacturing or mixing with other grain in the same place of business.

(3) "Inbound lot" means any quantity of grain unloaded into your place of business which was received at one time and which has the same "history".

(4) "History" means, with respect to any inbound lot of grain, your supplier's maximum price on his sale and delivery to you, plus your transportation cost, if any, to the place of business where it is unloaded and from which it will be withdrawn, and plus any other charges you are permitted to add under the applicable supplement for handling of the lot prior to such unloading.

(b) *Rules*—(1) *Determination of uncancelled inbound lots in your stock.* In using this section you must know the uncancelled, inbound lots in your stock and the history of each such lot. At the time you commence using this section, you must take an inventory of each grain in stock at the place of business. Then, by reference to your records of inbound lots, determine the most recent receipts up to the total weight of such grain in your inventory. These receipts constitute the uncancelled, inbound lots at that time and they remain such until cancelled as provided below.

Thereafter each new inbound lot and the history of the lot is carried in your records as uncancelled until it is used and cancelled as provided below.

(2) *Mixed grains.* An inbound lot of mixed grain may be carried with the history of such lot as mixed grain, until it is commingled or further mixed so as to change the proportions of the various grains in the mixture. If such proportions are changed, however, it cannot any longer be carried as an inbound lot of mixed grain, but must be carried as separate lots of each of the grains in the mixture. To do so, you must multiply the weight of the inbound lot by the percentage of each grain and of the foreign material if any, in the mixture and carry the resulting weight of each as if they were separate inbound lots of each such grain and foreign material, together with the history of each lot separately. Thus, for example, if an inbound lot of 100,000 pounds contains 50 percent barley and 50% oats, it must, if it is commingled or further mixed, be entered and carried as two separate receipts of 50,000 pounds of barley and 50,000 pounds of oats, each with its own price as determined from the history of the lot.

(c) *Pricing withdrawals against individual inbound lots.* (1) You may, if you wish, determine your withdrawal price by reference to individual inbound lots. To do so, you select any uncancelled inbound lot, and the history of such lot is your withdrawal price for an equal weight of the grain withdrawn, except that if the grade or quality of the withdrawal differs from the grade or quality of the inbound lot, the price shall be adjusted according to the schedule of premiums and discounts in the applicable supplement. Thereafter, the inbound lot or lots selected are considered cancelled and their histories may not be used again.

(2) *Records.* You must keep some permanent record of your uncancelled inbound lots in stock and their history. You must also keep some permanent record of each withdrawal and cancellation so that no inbound lot may be twice applied. Such records may be kept on the invoices themselves or in any other form you select.

(d) *Pricing withdrawals against a weighted average of inbound lots.* You may, if you prefer, select any uncancelled, inbound lots which could be applied against a withdrawal under paragraph (c) and determine a withdrawal price for the total quantity of such lots, by averaging them and adjusting them as follows:

(1) When a number of inbound lots are put into an average it is necessary (except in the case of a retail store as provided in Supplement No. 1 to this regulation) to eliminate the factors of grade and quality and previous markups from the history of the inbound lots. In order to accomplish this, you must deduct all previous markups (including commission merchants' and brokers' service charges) from the history of each lot being averaged and you must adjust such price to the corresponding price for the standard grade and quality of each such inbound lot. Such standards are as follows: for oats, No. 3 oats with a test weight of 27 pounds per bushel; for corn, No. 2 corn; for barley, No. 2 barley with a test weight of 46 pounds per bushel; for grain sorghums, No. 2 grain sorghums; and for wheat, No. 1 wheat of its sub-class.

(2) Having selected the inbound lots you desire to average and having adjusted the prices to be used as above, you determine a weighted average of such prices by multiplying each weight by its price and dividing the total by the total weight averaged.

Example:

Inbound lot A—1000 bushels at $1.40	$1,400
Inbound lot B—500 bushels at $1.34	670
1500 bushels	2,070

Average price per bushel $1.38

When you average any inbound lots, the lots so averaged are cancelled and they may not be used again either in another average or for application as individual lots against a withdrawal. Withdrawals may be made against the average price so figured up to the weight of the lots averaged.

(3) The price of each withdrawal under this method shall be determined by adjusting the average price computed as above (which is for standard grade and quality and without prior markups) to the grade and quality of the grain withdrawn, by the premiums and discounts set forth in the applicable supplement. Since this resulting price does not include prior markups, (because under subparagraph (1) such markups, if any, were deducted from the history of each inbound lot before averaging,) you select a previously deducted prior markup which has not since been used against any other withdrawal, and add it to the above resulting price to arrive at a withdrawal price. Of course, if any inbound lot had no prior markup, an equivalent quantity must be withdrawn without adding a prior markup.

(4) *Records.* A record must be kept of prior markups so deducted and the quantity of grain involved, and when such a markup is added again in pricing a withdrawal, it shall be "cancelled" from the record for the quantity of grain withdrawn. (This provision for deducting and re-adding markups applies only to inbound lots put into an average, since when pricing withdrawals against individual inbound lots, the actual markups for each such inbound lot must be used.)

A record must also be kept of each average, how it was computed, and the withdrawals applied against it.

(e) Whenever the provisions of this section are made applicable to a supplement, they may be used in the computation of a maximum price except when the pricing provisions in such supplement establish maximum prices by reference to a base price or formula price at your place of business or at a subsequent destination.

SEC. 2.4 *Limitation on markups by a person having certain agreements with his supplier.* No person shall include in his maximum price a merchandising markup upon the sale of any grain purchased from a supplier with whom he has an agreement to pay, or actually pays any rebate, dividend or share of his profit except in cases where and to the extent that such arrangement has been in effect continuously since January 1, 1943.

No person shall be deemed to have "incurred" any service charge for services rendered by anyone with whom he has an agreement to pay, or actually pays any rebate, dividend or share of his profit except in cases where and to the extent that such arrangement has been in effect continuously since January 1, 1943.

SEC. 2.5 *Rules relating to persons performing several marketing functions.* ("Integrated Business" rule.) Following are minimum tests which must be met before a country shipper or a merchandiser may qualify to add the merchandising markups provided in this section to his maximum price calculated under the applicable supplement. To be eligible for these additional markups, you must maintain two or more offices located as indicated below, but not in the same town or city. Each office must be a place of business, owned or leased and maintained exclusively by you where you

conduct a business of buying or selling grain, at which place and in the course of which business you employ one or more full-time salaried employees or yourself work on substantially a full-time basis. In respect to any lot of grain, one such office (hereinafter called the buying office) must buy the grain and another such office (hereinafter called the selling office) must sell the grain. No selling office shall qualify hereunder unless on January 1, 1943 it was engaged and has continuously since been engaged in the selling of grain as a substantial part of its business.

(a) *Merchandising markups permitted to such persons when they are country shippers.* If you are a country shipper under an applicable supplement and comply with the above requirements as to buying and selling offices, you will be entitled to include the appropriate maximum markup shown below in your maximum price subject to all limitations on total markups set forth in this regulation or in the applicable supplement.

(1) If you sell as a country shipper in a quantity of 60,000 pounds or more or as a carload shipment, a markup, depending on the grain being sold, of 1 cent per bushel if oats; or 1¼ cents per bushel if barley; or 1¼ cents per bushel if corn; or 1½ cents per bushel if wheat; or 4 cents per 100 pounds if grain sorghums, *Provided:*

(i) The lot is shipped from the point at which you receive it from your supplier and is sold on a recognized grain exchange by your selling office, or

(ii) The lot is shipped by rail or barge and after such shipment and before delivery to your customer, is unloaded into an elevator or warehouse by or for your account, or

(iii) The lot is sold by your selling office to a feeder, retailer or processor who was a regular customer of your selling office for such grain prior to January 1, 1943; or

(iv) Your selling office is located at least 200 miles from your buying office and the lot is shipped to and received by your customer at a point at least 200 miles apart from the point at which you received the lot from your supplier.

(2) If you sell as a country shipper in a quantity of 60,000 pounds or more or as a carload shipment, a markup, depending on the grain being sold, of 1½ cents per bushel if oats; or 2 cents per bushel if barley; or 2 cents per bushel if corn; or 2¼ cents per bushel if wheat, *Provided:*

(i) The lot is shipped to and received by your customer at a point at least 1,000 miles from the point at which you receive the lot from your supplier, and your selling office is at least 1,000 miles apart from your buying office; or

(ii) Your selling office is located at least 200 miles from your buying office, the lot is shipped to and received by your customer at a point at least 200 miles apart from the point at which you received the lot from your supplier, *and* before delivery to your customer, the grain is unloaded into an elevator or warehouse by you or for your account, or

(iii) Prior to January 1, 1943 and continuously since that date you have maintained at a terminal base point city two selling offices which are and have been operated as separate businesses, and one of which is the central selling office for your country elevators and/or country buying offices which have bought the lot in question while the other is strictly a terminal merchandising office buying grain in carload quantities from other persons as well as handling grain turned over to it by your other office, and which sells the lot in question. In order to qualify under this paragraph, the selling office for your country department must have sold grain independently to other persons, and your terminal merchandising department must have bought grain independently from other persons, both in addition to the grain transferred from the one to the other. Furthermore, before qualifying under this paragraph, a business so organized shall within 60 days from the effective date of the applicable supplement file with the District or Regional Office of the state in which such offices are located, an application to operate in such manner, stating in all necessary detail the location and nature of the two offices, the country elevators and buying offices served, terminal elevators operated at that point, if any, whether the two offices keep separate books, and the volume of grain business in bushels done by each office with other persons as well as with each other during the crop year 1941-42.

(3) If you sell as a country shipper in a quantity of 60,000 pounds or more or as a carload shipment, a merchandising markup of 2 cents per bushel if oats; 2¾ cents per bushel if barley; 2¾ cents per bushel if corn; or 3 cents per bushel if wheat, *Provided:*

(i) Your selling office is located at least 1,000 miles from your buying office, the lot is shipped to and received by your customer at a point at least 1,000 miles apart from the point at which you received the lot from your supplier, and before delivery to your customer the grain is unloaded into an elevator or warehouse by you or for your account.

(4) Qualifying under more than one of the tests set forth in subparagraph (1) does not entitle you to a greater markup, than qualifying under a single test, except to the extent that a higher markup may be provided for combinations of tests as set forth in subparagraphs (2) and (3). The markups provided in subparagraphs (1), (2) and (3) are not cumulative.

(b) *Extra merchandising markups permitted to such persons when they are merchandisers.* If you are a merchandiser under an applicable supplement and comply with the above requirements as to buying and selling offices, you will be entitled to add to any merchandising markup you may otherwise include in your maximum price, the appropriate extra markup shown below, subject to all limitations on total markups set forth in this regulation, or in an applicable supplement.

(1) If you sell as a merchandiser in a quantity of 60,000 pounds or more or as a carload shipment, an extra markup, depending on the grain being sold, of ½ cent per bushel if oats; or ¾ cent per bushel if barley; or ¾ cent per bushel if corn; or ¾ cent per bushel if wheat; or 2 cents per 100 pounds if grain sorghums, *Provided:*

(i) The lot is shipped by rail or barge and after such shipment and before delivery to your customer, is unloaded into an elevator or warehouse by or for your account, or

(ii) Your selling office is located at least 200 miles from your buying office and the lot is shipped to and received by your customer at a point at least 200 miles apart from the point at which you receive the lot from your supplier, or

(iii) The lot is sold by your selling office to a feeder, retailer or processor who was a regular customer of your selling office for such grain prior to January 1, 1943.

(2) If you sell as a merchandiser in a quantity of 60,000 pounds or more or as a carload shipment, an extra markup, depending on the grain being sold, of 1 cent per bushel if oats; or 1½ cents per bushel if barley; or 1½ cents per bushel if corn; or 1½ cents per bushel if wheat; or 4 cents per 100 pounds if grain sorghums, *Provided:*

(i) The lot is shipped to and received by your customer at a point at least 1000 miles from the point at which you receive the lot from your supplier, and your selling office is at least 1000 miles apart from your buying office; or

(ii) Your selling office is located at least 200 miles from your buying office, the lot is shipped to and received by your customer at a point at least 200 miles apart from the point at which you received the lot from your supplier, and before delivery to your customer, the grain is unloaded into an elevator or warehouse by you or for your account.

(3) If you sell as a merchandiser in a quantity of 60,000 pounds or more or as a carload shipment, an extra markup, depending on the grain being sold, of 1½ cents per bushel if oats; or 2¼ cents per bushel if barley; or 2¼ cents per bushel if corn; or 2¼ cents per bushel if wheat, *Provided:*

(i) Your selling office is located at least 1000 miles from your buying office, the lot is shipped to and received by your customer at a point at least 1000 miles apart from the point at which you received the lot from your supplier, and before delivery to your customer the grain is unloaded into an elevator or warehouse by you or for your account.

(4) Qualifying under more than one of the tests set forth in subparagraph (1) does not entitle you to a greater markup, than qualifying under a single test, except to the extent that a higher markup may be provided for combinations of tests as set forth in subparagraphs (2) and (3). The markups provided in subparagraphs (1), (2) and (3) are not cumulative.

SEC. 2.6 *Rule relating to pricing by processors.* In some cases an applicable supplement or another regulation requires that a processor, in order to compute his maximum price on a processed

commodity know the maximum price he could have paid for a lot of grain received into his plant. If the processor operates a separate grain business at a different location from his processing plant, and that separate office sells grain to others besides supplying grain to the processing plant, the maximum price the processor could have paid for any lot of grain purchased by such separate grain office and delivered to the processing plant shall be deemed to be the maximum price which the grain office could have charged another person for a like sale and delivery to the processing plant: *Provided,* That before delivery to the processing plant such grain was unloaded by or for the grain office into an elevator or warehouse from which it was shipped to the processing plant as a carload or barge shipment. For example, this will permit markups to be added under section 2.5.

SEC. 2.7 *Rules relating to sales of grain for special purposes.* (a) Under an applicable supplement special treatment such as exemption from the regulation or receiving a special premium may be given to certain grains when sold for use for special purposes, and reference is made to this section for rules relating to such sales. This would apply, for example, to sales of seed grains which are exempted, and to sales of racehorse oats, malting barley and the like for which a premium may be charged under the applicable supplement. The special treatment (exemption or premiums as the case may be) is permitted only under the following conditions:

(1) Each buyer shall certify in writing to his supplier at the time he contracts for its purchase, both that such grain is being purchased for use by the buyer for the described purpose or for resale for such use, and that the grain will not be used by him or by any person affiliated with him, for any other purpose. The purchase of any lot of grain above the maximum prices established in the applicable supplement for the same grain when not sold or used for such special purpose, followed by its use by the buyer or by any affiliated person for any other purpose will be a purchase above the maximum price and a violation of the regulation: Except, that a producer who finds he has purchased more seed grain than he needs for planting, may use the excess up to a reasonable amount, for feeding to his livestock on his farm; and except that if the grain is handled in a process customary to preparation for the intended use, and part is separated as unfit for the special purpose, such part may be used by the person for other normal uses.

(b) If grain is resold for other than its intended use, or if part is used for any other purpose consistently with paragraph (a) (1), and the maximum price under the applicable supplement upon such resale or use depends upon a suppliers' maximum price, such suppliers' maximum price shall be recalculated according to the history of that particular lot of grain under the provisions of the applicable supplement and the price which the supplier charged for such grain for the special purpose shall not be used.

(c) No grain purchased for any special purpose shall be commingled with grain not purchased for the same purpose, unless and until the owner has determined to sell for a different use as provided in paragraph (b).

ARTICLE III—DEFINITIONS

SEC. 3.1 *Definitions applying to all provisions of this regulation.* The following definitions apply only to those sections of the applicable supplement which are set forth in Food Products Regulation No. 2, and not to the other sections of the supplement, unless it specifically provides otherwise.

(a) When used in this regulation, the following terms shall have the following meanings:

(1) "Person" means an individual, corporation, partnership, association or other organized group of persons or the legal successor or representative of any of the foregoing and includes the United States or any other government or any political subdivision or agency of any of the foregoing.

(2) "Bushel", as a unit of measurement of grain, means the following:

	Pounds
Oats	32
Barley	48
Corn	56
Grain sorghums	56
Wheat	60
Rye	56

(3) The terms "corn", "oats", "barley", "wheat", "rye", "grain sorghums" and "mixed grain" mean such grains as defined in Official Grains Standards of the United States.

(4) "Grain" includes the grains and mixed grain described above.

(5) "Feeder" means, with respect to any lot of grain, a person who uses such grain for feeding to animals or poultry.

(6) "His supplier" or "your supplier" means, as to any seller, the person from whom he or you purchased the grain involved.

(7) "His customer" or "your customer" means, as to any seller, the person to whom he or you sell the lot of grain involved.

(8) "Processor" means any person who converts grain into a product other than grain or mixed grain.

(9) "Carload shipment" means any lot of grain of 30,000 pounds or more when shipped by rail in such a manner as to take a carload rate under tariff requirements.

(10) "Less than carload lot" or "less than carload quantity" means a lot of grain less than 60,000 pounds, other than a carload shipment. It includes any delivery by or into truck.

(11) "Retailer" means, with respect to any lot of grain, a person who is a retailer as defined in the applicable supplement.

ARTICLE IV—PRICING PROVISIONS FOR MIXED GRAIN

SEC. 4.1 *Base price of mixed grain.* If mixed grain is received in a place of business as mixed grain, without further commingling which would change the proportion of each ingredient, it shall be priced as a withdrawal of mixed grain under the rules set forth in section 2.3 of this regulation up to the amount of any similar inbound lots of mixed grain. In all other cases (referred to as cases in which the grain becomes mixed or further mixed while owned by the seller), the maximum price of each grain in the mixture shall be determined for each grain separately according to the rules set forth in section 2.3 relating to withdrawals.

(a) If the grain becomes mixed or further mixed while owned by the seller, the base price per 100 pounds, bulk, for the mixed grain, shall be determined by multiplying the percentage of each grain and the foreign material in the mixture by its maximum price per 100 pounds (or if no maximum price is established thereon, by its reasonable value per 100 pounds) subject to the following rules:

(1) That for mixed grain, other than sample grade mixed grain, each grain in the mixture for which you have or can make a grade and quality determination shall be priced at its actual grade and quality. If grain is mixed while in your place of business you are required to make a determination of the grade and quality of each grain put into the mixture, and price such grain accordingly. All grain for which you do not have or cannot make a grade and quality determination shall be priced as follows:

(i) Oats shall be priced as No. 3 oats with a test weight of 27 pounds;

(ii) Barley shall be priced as No. 3 barley with a test weight of 43 pounds;

(iii) Grain sorghums shall be priced as No. 3 grain sorghums;

(iv) Corn shall be priced as No. 3 yellow corn;

(v) Rye shall be priced as No. 3 rye;

(vi) Wheat shall be priced as No. 2 hard winter wheat, less 5 cents per bushel; except that if purchased from Commodity Credit Corporation it shall be priced at the highest price at which it may be sold under the purchase agreement with the Commodity Credit Corporation.

(2) That for sample grade mixed grain, each grain in the mixture shall be priced as sample grade grain of its kind.

SEC. 4.2 *Maximum prices for sales of mixed grain.* (a) The maximum price per 100 pounds, bulk, for the sale of any mixed grain by the person who produced it, if naturally mixed, or by the person who mixed the grain, shall be computed as provided in the applicable supplement covering the predominant grain in the mixture by using, in place of the base price, formula price, or supplier's maximum price appearing in the pricing provision of the applicable supplement the base price computed as above.

(b) The maximum price per 100 pounds, bulk, for the sale of any lot of mixed grain which you purchased as mixed grain shall be your supplier's maximum price on the sale and delivery to you, plus such additions as are provided in the applicable supplement for the predominant grain in the mixture, all figures being converted to a per 100 pound basis.

(c) The maximum price per 100 pounds, bulk, for the sale of that mixed grain known to the industry as "Stub

Oats" (which are described as oats of small, plump berry containing a mixture of groats, small-grained barley, and wheat resulting from a separation and sizing process) when testing at least 40 pounds per bushel, shall be the maximum price for No. 3 oats with a test weight of 40 pounds per bushel as determined under Supplement No. 2 to this regulation, Oats.

(d) All sales of mixed grain shall be at a price per 100 pounds and all base prices, formula prices, markups, elevation charges, and other factors stated on a per bushel basis shall be converted to a per 100 pound basis.

SEC. 4.3 *Applicability of this article.* (a) This article has no application to sales of mixed grain under a registered brand name as a Scratch Feed, which shall be subject to the provisions of Maximum Price Regulation 378, as amended.

(b) This regulation applies to all sales of mixed grain to any person for further processing.

ARTICLE V—SALES ON CONTRACT FUTURES MARKETS

SEC. 5.1 *Maximum prices for sales of grain on futures markets.* The maximum price per bushel, bulk, for the sale of any grain on any futures market designated as a contract market under authority of the Commodity Exchange Act shall be the base price, or formula price determined under the applicable supplement at the point of delivery required by the contract for the grade and quality stipulated in such contract, plus the amounts provided in the applicable supplement for one merchandising markup, one commission merchant's service charge, and one elevation charge. Upon delivery no additional charges, such as a loading out charge, may be made to the buyer. In connection with any limitations in the applicable supplement on the total number or amount of markups or the total amount of service charges that may be included in a maximum price, the above maximum price shall be deemed to include one merchandising markup, one commission merchant's service charge, and one elevation charge.

This regulation shall become effective July 26, 1944.

NOTE: The record keeping and reporting requirements of this regulation have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

Issued this 21st day of July 1944.

IVAN D. CARSON,
Acting Administrator.

Approved: July 11, 1944.

GROVER B. HILL,
Acting War Food Administrator.

[F. R. Doc. 44-10911; Filed, July 21, 1944; 11:34 a. m.]

PART 1351—FOOD AND FOOD PRODUCTS

[FPR 2, Supp. 1]

SALES OF GRAIN BY RETAILERS

In the judgment of the Price Administrator, it is necessary and proper to establish permanent maximum prices for the sale and delivery of grain to feeders out of a retail store. The prices established herein are, in the judgment of the Administrator, generally fair and equitable and will effectuate the purposes of the Emergency Price Control Act of 1942, as amended, and of Executive Orders Nos. 9250 and 9328.

Maximum Price Regulation 511, 2nd Revised Maximum Price Regulation 346 and Revised Maximum Price Regulation 487, as amended, are superseded insofar as they establish maximum prices for the sale and delivery of grain by retailers as they are defined herein.

Such specifications and standards as are used in this supplement, were, prior to such use, in general use in the trade or industry.

A statement of the considerations involved in the issuance of this supplement, issued simultaneously herewith, has been filed with the Division of the Federal Register.*

FOOD PRODUCTS REGULATION NO. 2, SUPP. 1—SALES OF GRAIN BY RETAILERS

Sec.
1. Applicability.
2. Sales at other than maximum prices.
3. Evasion.
4. Applicability of certain provisions of Food Products Regulation No. 2.
5. Definitions.
6. Maximum prices for sales by retailers.
7. Base prices.

AUTHORITY: Secs. 1 to 7, inclusive (1351-391), issued under 56 Stat. 23, 765; 57 Stat. 566; Pub. Law 383, 78th Cong.; E.O. 9250, 7 F.R. 7871; E.O. 9328, 8 F.R. 4681.

EXPLANATION OF THE RELATION OF THIS SUPPLEMENT TO FOOD PRODUCTS REGULATION NO. 2

Not all of the provisions affecting the maximum prices for sales of grain by retailers are stated in this supplement. Those which are not specifically set forth here are stated in Food Products Regulation No. 2, and they are just as much a part of this Supplement as if they were printed here.

The particular sections of Food Products Regulation No. 2 which are applicable to this supplement are listed at appropriate places in the provisions which follow. When any applicable section of the regulation is amended, the amendment also is applicable to this Supplement.

SECTION 1. *Applicability.* Except for those sales exempted by paragraph (a) of this section, this supplement shall apply to all sales of grain by retailers, and to all deliveries of such grain, whether immediate or future.

(a) *Exempt sales*—(1) *Export sales.* This supplement shall not apply to any export sale. The maximum price for such sales shall be determined in accordance with the provisions of the 2nd Revised Maximum Export Price Regulation, as amended.

(2) *Emergency purchases.* Section 1.2 (a) of Food Products Regulation No. 2, dealing with the exemption of emergency purchases, is applicable to this supplement.

(3) *Seed grains and racehorse oats.* This supplement shall not apply to sales by retailers of grains used for seed for planting, or of racehorse oats as they are defined in Supplement No. 2 to Food Products Regulation No. 2. Section 2.7 of Food Products Regulation No. 2, dealing with special rules for such sales is applicable to this supplement.

SEC. 2. *Sales at other than maximum prices.* (a) Regardless of any contract or obligation, no retailer shall sell or deliver, and no person shall, in the course of trade or business, buy or receive, any commodity covered by this supplement at a price above the maximum price established by this supplement, nor shall any person agree, solicit, offer or attempt to do any of the foregoing: *Provided, however,* That certain agreements to raise prices are permissible, as provided for in subparagraph (1) of this paragraph.

(1) *Adjustable pricing.* Section 1.2 (b) of Food Products Regulation No. 2, dealing with adjustable pricing, is applicable to this supplement.

(b) Prices lower than the maximum prices established by this supplement may of course, be charged or paid.

SEC. 3. *Evasion.* Any method whereby a seller obtains greater consideration than the maximum price, or whereby he gives less than the consideration due the buyer for the maximum price is an evasion of this supplement, and therefore prohibited; and any offer or agreement which accomplishes or attempts to accomplish such results is equally prohibited.

SEC. 4. *Applicability of certain provisions of Food Products Regulation No. 2.* (a) Provisions relating to the following matters are set forth in Food Products Regulation No. 2, and the sections of that regulation listed below are applicable to and made a part of this supplement as though set forth herein in full.

(1) *Documents, records and reports.* (Sec. 1.2 (c))
(2) *Licensing.* (Sec. 1.2 (d))
(3) *Enforcement.* (Sec. 1.2 (e))
(4) *Protests and petitions for amendment.* (Sec. 1.2 (f))
(5) *Rule relating to commingling.* (Sec. 2.2)
(6) *Pricing provisions for mixed grain.* (Article IV)

(b) In addition, various other provisions of Food Products Regulation No. 2 are applicable to and made a part of this supplement. References to such provisions are made at appropriate points throughout the supplement.

SEC. 5. *Definitions.* When used herein (either in provisions specifically set out in this supplement, or in those provisions of Food Products Regulation No. 2, which are applicable), the following terms shall have the following meanings:

(1) "Person" means an individual, corporation, partnership, association or other organized group of persons or the legal successor or representative of any of the foregoing and includes the United States or any other government or any political subdivision or agency of any of the foregoing.

(2) "Store" means a building where a regular business of selling and delivering grain and/or feeds to feeders is

*Copies may be obtained from the Office of Price Administration.

carried on, and where the owner or one or more of his employees work on a substantially full-time basis in such business or in a general retail business of which such grain and feed business is a part. If several employees divide their time between the retail business and other work, the requirement of a substantially full-time employee will be satisfied if the aggregate time which the several employees spend in the retail business equals a full work day for one person. Occasional sales of grain and feed to other than feeders may be made, but only as an incidental part of the business if its status as a "store" is to be maintained.

(3) "Retailer" means, with respect to any lot of grain or feed, a person who receives such grain or feed into his store, and sells and delivers it to a feeder.

(4) "Your cost" means, with respect to any lot received into your store, your supplier's charge to you plus your transportation cost, if any, to your store from the point at which your supplier delivers the lot to you.

(5) "Your transportation cost" means:

(i) If you employ a common carrier, contract carrier or other carrier for hire or compensation, the charge which you actually incur for the transportation service; or

(ii) If you do your own hauling by truck or wagon, the hauling allowance at the scale set forth in definition (6), or

(iii) When any movement involves a combination of more than one of the types of transportation included in (i) and (ii) the transportation cost for the movement of each type shall be computed separately and the results added.

(6) "Hauling allowance" means the following scale of charges:

(i) If the total haul does not exceed 100 miles—3 cents per 100 pounds for the first five miles or fraction thereof plus 1 cent per 100 pounds for each additional five miles or fraction thereof;

(ii) If the haul exceeds 100 miles, the lowest carload rail rate applicable to the commodity from the rail point nearest the point of origin to the rail point nearest point of destination plus 8 cents per 100 pounds, but not to exceed 22 cents per 100 pounds, plus ¼ cent per 100 pounds for each five miles or fraction thereof over 100 miles.

(iii) In applying the above mileage scale all distances shall be determined via the shortest route between point of origin and point of destination reasonably suitable for truck movement.

(7) "Bushel", as a unit of measurement of grain means the following:

	Pounds
Oats	32
Barley	48
Corn	56
Grain Sorghums	56
Wheat	60
Rye	56

(8) The terms "corn", "oats", "barley", "wheat", "rye", "grain sorghums" and "mixed grain" mean such grains as defined in Official Grain Standards of the United States.

(9) "Grain" refers to oats, barley, grain sorghums, corn, wheat, and all mixed grains.

(10) "Commodity" means a kind of grain, except that if a retailer sells on grade as to any particular grain, each grade or quality on which he bases a separate price shall be a different "commodity" hereunder. Retailers are not, however, required to sell grains according to grade or quality.

(11) "Feeder" means, with respect to any lot of grain, a person who uses such grain for feeding to animals or poultry.

(12) "His supplier" or "Your supplier" means, as to any seller, the person from whom he or you purchased the grain involved.

(13) "His customer" or "Your customer" means, as to any seller, the person to whom he or you sell the lot of grain involved.

(14) "Carload shipment" means any lot of grain of 30,000 pounds or more when shipped by rail in such a manner as to take a carload rate under tariff requirements.

(15) "Less than carload lot" means a lot of grain of less than 60,000 pounds, other than a carload shipment. It includes any delivery by or into a truck.

(16) "Carload receipt" means, as to any grain received into your store, a lot which your supplier delivered to you, pursuant to a sale to you, in a carload quantity. If the term carload quantity is defined in the regulation establishing a maximum price on the delivery to you, it shall have the same meaning in this supplement; if it is not so defined, it shall mean a quantity of 60,000 pounds or more or any carload shipment.

(17) "Less than carload receipt" means as to any grain received into your store, a lot which your supplier delivered to you in less than carload quantity. The term less than carload quantity means any quantity other than a carload quantity or pool car lot.

SEC. 6. *Maximum prices for sales by retailers.* You are a retailer under this supplement only on sales to feeders of grain which you have handled through your "store". The maximum price for any sale by you as a retailer is determined by adding the applicable markup, delivery charge and addition for bags, if any, shown in paragraphs (a), (b), and (c) of this section, to a base price determined under section 7 of this supplement. (Several ways of determining a base price are provided, and you may choose the method which best fits your actual practices.)

(a) *Maximum markups.* The maximum markup for the sale of any grain as a retailer shall be:

(1) $4.00 per ton of 2,000 pounds (or 20 cents per 100 pounds), or,

(2) If you customarily sell at a "per bushel" price, the appropriate one of the following:

	Cents
Oats	6½
Barley	9½
Corn	11
Wheat	12
Grain Sorghums	11

(b) *Delivery charge.* (1) If you use a common carrier, contract carrier, or other carrier for hire or compensation, the maximum delivery charge from your store shall be the charge you incur.

(2) If you do your own hauling, your delivery charge shall be:

$1.00 per ton for distances of not more than 5 miles; or,

$1.50 per ton for distances over 5 miles; or,

At your option, the "hauling allowance" as defined herein.

(i) Any Regional Administrator, or any District Director authorized by the appropriate Regional Administrator, may adjust the delivery charge provided in this subparagraph (2) insofar as it applies to deliveries to a specified locality from any named point or points, when it appears that the nature of the haul is such that the charges otherwise permitted are, in view of the unusual local conditions, inadequate and are likely to disrupt the movement of the commodity to that locality.

(c) *Addition for bags.* If you receive grain in bulk and deliver it in bags furnished by you, you may add the reasonable value of the bags, not exceeding any maximum price thereon.

SEC. 7. *Base prices.* In this section, 6 methods for arriving at base prices are provided for use by you on your sales to feeders out of your store. Obviously, you use as your base price for sales for immediate delivery, the base price appropriate at the time of the sale and delivery. On sales for future delivery, you may use the base price appropriate at the time of sale if delivery is made within 60 days, or you may agree to use the base price that will be appropriate at the time of delivery.

In connection with each method, provision is made for the records that you must keep if you use that method. These are in addition to the standard record keeping provisions found in section 1.2 (c) of Food Products Regulation No. 2. In many instances you will, for any commodity, be able to use any number of the methods outlined. In such a case, you may use the method or, where not prohibited below, the several methods you think will be most convenient for you. If you choose, you may vary your methods and use one for one commodity and another for a different commodity, and, under the conditions specified below, change from one method to another for the same commodity.

(a) *First method: Cost of the lot.* (1) If you maintain the identity of each receipt into your store, you may use as the base price on resale of such a receipt "your cost" on that receipt. You may use this method of figuring a base price for all your sales as a retailer even if you also occasionally sell part of such a receipt as a wholesaler, or otherwise.

(2) *Posting.* If you use this method, you may post your maximum price conspicuously in your store. If you do so, and if you keep some permanent record of your posted prices, you will be relieved of keeping the records of your sales otherwise required by section 1.2 (c) of Food Products Regulation No. 2.

(b) *Second method: First in first out.* (1) If you do not wish to maintain the identity of each receipt of a commodity into your store, you may use as your base price for your sales as a retailer, "your cost" on your oldest receipt in stock at

the time you are fixing a maximum price. To determine your oldest receipt in stock, you must first estimate your present inventory of a commodity and then consult your invoices for your most recent receipts into your store up to a total weight equal to your estimated inventory. From these invoices, choose the oldest receipt, and from that, you can arrive at "your cost" of your oldest receipt in stock. You use this as your base price for all sales of the commodity until you have sold, either on the basis of this price or at the price referred to in paragraph (g), an amount of the commodity equal to the weight of that receipt. Thereafter, you use the next oldest receipt.

(2) *Posting and records.* If you use this method, you must post, conspicuously in your store, your maximum price for each commodity whose base price is figured by this method. You must also keep a record, in some form, of the total quantity sold at any maximum price.

(c) *Third method: Weighted average of cost.* (1) If you qualify to use the second method, you may use as your base price on your sales as a retailer, a weighted average of your costs on any two or more lots you select instead of using your cost on individual lots. You arrive at this weighted average by multiplying "your cost" on your oldest receipt in stock (determined as explained in section 7 (b) (1) above, except that you disregard any receipt, and its cost, that you are excluding from the average) by the weight of such receipt and by multiplying your cost on each of your more recent receipts by the weight of each such receipt, adding the results and dividing by the total weight of the lots averaged. This average price shall be your base price for all sales of the commodity, except for sales of those lots not included in the average, from the time you determine the average price until you have sold, either on the basis of the price so figured or at the price referred to in paragraph (g), an amount of the commodity equal to the total weight averaged. You may, however, at any time prior thereto, calculate a new average base price. In doing so, you use as your oldest receipt the unsold weight included in the previous average, and you use as your cost of such receipt the previous average base price.

(2) *Posting and records.* If you use this method, you must post, conspicuously in your store, your maximum price for each commodity whose base price is figured by this method. You must keep a record in your files of the calculation upon which such price was determined, and, in some form, a record of the total quantity sold at any maximum price.

(d) *Fourth method: Weekly selling price.* (1) The first three methods depend upon your keeping some record of the quantity received and sold. This fourth method, the weekly selling price method, permits the calculation of a base price (and therefore of a maximum price) without regard to quantity sold or its relation to the quantity received. Under this method you calculate your base price for each commodity for which you use this method, once each week. You select a day for calculations and recalculate on that day each week thereafter (except that when that day falls on a legal holiday, you recalculate on the next business day). For each commodity for which you calculate a weekly selling price, you may use, to arrive at your base price, either one of the following methods which is appropriate.

(i) *Average cost.* You may calculate a base price for use for one week by reference to your costs of receipts in stock. Whenever you begin to use this method, you may use as your base price the weighted average of your cost of your last receipt of the commodity and of all receipts of the commodity for the 28 days preceding such last receipt. You use this as your base price for all sales of the commodity for the first week. Upon the next and all succeeding calculation days, you refigure your base price by taking a weighted average of your cost of your last receipt and of any other receipts of the commodity during the 14 day period preceding such last receipt.

(ii) *Supplier's list price.* If you can establish, by your old list prices or otherwise, that you have customarily figured some or all of your selling prices on the basis of the list price of a customary supplier and provided that you have not customarily kept records adequate for the computation of a base price under (i) above, you may use as your base price for any commodity for any week, the price shown on the list for that week of the customary supplier whose list you customarily used for that commodity.

(2) *Posting and records.* If you use this method, you must post your maximum price conspicuously in your store and retain a permanent record in your files of your maximum and selling prices for the week, and the basis on which such price was determined. You need not keep a record of the quantity sold during any one week.

(3) If you wish to discontinue using this method, you may do so only if, on the next calculation day, you take an inventory of the commodity. You then may treat the amount in inventory as a receipt on which your cost is the base price you would compute for the succeeding week. Subsequently, you may use any of the other methods applicable.

(e) *Fifth method: Supplier's maximum price.* (1) If you wish to check your supplier's maximum price to you and be responsible for its accuracy as to all your sales of a commodity, you may use, in lieu of "your cost" under any of the above methods, your supplier's maximum price on the sale to you plus your transportation cost if any, to your store.

(2) *Records.* If you use this method, you must preserve in your store a permanent record of the evidence from which you ascertained your supplier's maximum price, in addition to the records required by the method under which you use your supplier's maximum price in lieu of "your cost."

(f) *Sixth method: Withdrawals.* (1) If you are a processor or manufacturer of some grain products or feeds you sell, and if you also sell grains to feeders from a store, your sales of grain from your store are covered by this supplement. If, on arrival, you segregate those of your receipts which you will use only for resale as a retailer, you may establish a base price for the sale of such grains under any of the methods provided above. However, if any grain you sell as a retailer is not so segregated on receipt all of your receipts which are commingled are subject to the provisions relating to withdrawals set forth in section 2.3 of Food Products Regulation No. 2 which is hereby made applicable to this supplement. Each lot must be withdrawn, as provided in section 2.3 of Food Products Regulation No. 2. Following such withdrawal, you figure your base price for sales at retail as follows:

(i) If you make a withdrawal only for an individual sale at retail, your base price is the withdrawal price figured under section 2.3.

(ii) If you make a general withdrawal for a separate stock for sales at retail, each such withdrawal may be considered as a receipt into your retail stock, and "your cost" on such a receipt is the withdrawal price figured under section 2.3 of Food Products Regulation No. 2. Thereafter you may use any of the methods set forth in (a), (b), (c) or (d) above.

(2) *Records.* If you are subject to this method of figuring a base price, you must keep the records provided for in section 2.3, in addition to those provided for in connection with the pricing method you use.

(g) *Occasional sales.* Those occasional sales that a seller makes from his store to persons other than feeders and which he is permitted to make without having his place of business lose its status as a "store" under this regulation, are not priced under this supplement. The maximum price for such a sale is determined under the supplement covering sales other than at retail of the grain.

This supplement shall become effective on the 26th day of July 1944.

NOTE: The record-keeping provisions of this supplement have been approved by the Bureau of the Budget, in accordance with the Federal Reports Act of 1942.

Issued this 21st day of July 1944.

IVAN D. CARSON,
Acting Administrator.

Approved: July 11, 1944.

GROVER B. HILL,
Acting War Food Administrator.

[F. R. Doc. 44-10312; Filed, July 21, 1944; 11:33 a. m.]

PART 1351—FOOD AND FOOD PRODUCTS

[FPR 2, Supp. 2]

OATS

In the judgment of the Price Administrator, it is necessary and proper to establish permanent maximum prices for the sale and delivery of oats. The prices established herein are, in the judgment of the Administrator, generally fair and equitable and will effectuate the purposes of the Emergency Price Control Act of

1942, as amended, and of Executive Orders Nos. 9250 and 9328.

Maximum Price Regulation 511, as amended, is superseded insofar as it establishes maximum prices for the sale and delivery of oats.

Such specifications and standards as are used in this supplement were, prior to such use, in general use in the trade or industry.

A statement of the considerations involved in the issuance of this supplement, issued simultaneously herewith, has been filed with the Division of the Federal Register.*

FOOD PRODUCTS REGULATION NO. 2, SUPPLEMENT 2—OATS

Sec.

1. Applicability.
2. Sales at other than maximum prices.
3. Evasion.
4. Applicability of provisions of Food Products Regulation No. 2.
5. Definitions and explanation of the supplement.
6. Base prices.
7. Maximum prices for sales by producers.
8. Maximum prices for sales by trucker-merchants.
9. Maximum prices for sales by country shippers.
10. Maximum prices for sales by merchandisers.
11. Maximum prices for purchases and sales by importers.
12. Limitations on total markups of country shippers and merchandisers and on service charges of commission merchants and brokers which may be included in a maximum price.
13. Rules relating to additions to the maximum price.
14. Separate invoicing of charges, markups, and costs.

Appendix A—Table I (a) Schedule of premiums and discounts over or under standard grade and quality.

Table I (b) Method of adjusting prices for grade and quality.

Appendix A—Table II Description of "Area A".

Appendix A—Table III Base prices at barge loading points.

Appendix A—Table IV List of State and County base prices in "Area B".

AUTHORITY: Secs. 1 to 14, inclusive, (§ 1351.392) issued under 56 Stat. 23, 765; 57 Stat. 566; Pub. Law 383, 78th Cong.; E.O. 9250, 7 F.R. 7871; E.O. 9328, 8 F.R. 4681.

EXPLANATION OF THE RELATION OF THIS SUPPLEMENT TO FOOD PRODUCTS REGULATION NO. 2

Not all of the provisions affecting the maximum prices for sales of oats are stated in this supplement. Those which are not specifically set forth here are stated in Food Products Regulation No. 2, and they are just as much a part of this supplement as if they were printed here.

The particular sections of Food Products Regulation No. 2 which are applicable to this supplement are listed at appropriate places in the provisions which follow. When any applicable section of the regulation is amended, the amendment also is applicable to this supplement.

SECTION 1. *Applicability.* Except for those sales exempted by paragraph (a) of this section, this supplement shall apply to all sales of imported and domestic oats, to all deliveries of such oats, whether immediate or future, and to all purchases in the course of trade or business of Canadian oats to be imported into the United States.

(a) *Exempt sales*—(1) *Sales by retailers.* This supplement shall not apply to sales by retailers as defined herein. Supplement No. 1 to Food Products Regulation No. 2 shall apply.

(2) *Export sales.* This supplement shall not apply to any export sale. The maximum price for such sales shall be determined in accordance with the provisions of the 2nd Revised Maximum Export Price Regulation, as amended.

(3) *Emergency purchases:* Section 1.2 (a) of Food Products Regulation No. 2, dealing with the exemption of emergency purchases, is applicable to this supplement.

(4) *Seed oats.* This supplement shall not apply to sales of oats which the buyer intends to use for seed for planting or to resell for ultimate use as seed for planting. Section 2.7 of Food Products Regulation No. 2, dealing with special rules for such sales, is applicable to this supplement.

(5) *Prior contracts.* This supplement shall not apply to deliveries made prior to August 1, 1944 pursuant to contracts for oats entered into before the date of issuance of this supplement, if such contracts complied with the provisions of Maximum Price Regulation 511, as amended.

SEC. 2. *Sales at other than maximum prices.* Regardless of any contract or obligation, no person shall sell or deliver, and no person shall in the course of trade or business buy or receive, any oats covered by this supplement at a price above the maximum price established by this supplement, nor shall any person agree, solicit, offer, or attempt to do any of the foregoing: *Provided, however,* That certain agreements to raise prices are permissible, as provided for in paragraph (a) of this section.

(a) *Adjustable pricing.* Section 1.2 (b) of Food Products Regulation No. 2, dealing with adjustable pricing, is applicable to this supplement.

(b) Prices lower than the maximum prices established by this supplement may, of course, be charged or paid.

SEC. 3. *Evasion.* Any method whereby a seller obtains greater consideration than the maximum price, or whereby he gives less than the consideration due the buyer for the maximum price, is an evasion of this supplement, and, therefore, prohibited; any offer or agreement which accomplishes or attempts to accomplish such results is equally prohibited.

SEC. 4. (a) *Applicability of provisions of Food Products Regulation No. 2.* All provisions of Food Products Regulation No. 2 are applicable to and made a part of this supplement. The sections of Article I not heretofore referred to, and the sections of Articles II, III, IV, and V, with an indication of their subject matter, follows:

ARTICLE I

Section 1.2 (c) Documents, records and reports.
Section 1.2 (d) Licensing.
Section 1.2 (e) Enforcement.
Section 1.2 (f) Protests and petitions for amendment.

ARTICLE II

Section 2.1 Rules relating to delivery.
Section 2.2 Rules relating to commingling.
Section 2.3 General rules for determining the prices applicable to a withdrawal from a place of business. (This includes both provisions for averaging and for selling without averaging.)
Section 2.4 Limitation on markups by persons having certain agreements with their suppliers under which the supplier receives a rebate, dividend, or share of the profit.
Section 2.5 Rules providing markups for persons performing several marketing functions—the so-called "integrated business" rule.
Section 2.6 Pricing grains handled by processors when used in processing.
Section 2.7 Rules respecting sales of grain exempted, or for which a premium may be paid on basis of ultimate use.

ARTICLE III

Section 3.1 Definitions.

ARTICLE IV

Section 4.1 Base price of mixed grain.
Section 4.2 Maximum prices for sales of mixed grain.
Section 4.3 Applicability of this article.

ARTICLE V

Section 5.1 Sales on contract futures markets.

SEC. 5. *Definitions and explanation of the supplement*—(a) *Definitions appearing in Food Products Regulation No. 2.* The definitions of the following terms, set forth in the designated sections of Food Products Regulation No. 2, are applicable to all the provisions of this supplement:

(1) "Person": Section 3.1 (a) (1) of Food Products Regulation No. 2.

(2) "Bushel": Section 3.1 (a) (2) of Food Products Regulation No. 2.

(3) "Oats" and "mixed grain": Section 3.1 (a) (3) of Food Products Regulation No. 2.

(4) "Feeder": Section 3.1 (a) (5) of Food Products Regulation No. 2.

(5) "His supplier" or "your supplier": Section 3.1 (a) (6) of Food Products Regulation No. 2.

(6) "His customer" or "your customer": Section 3.1 (a) (7) of Food Products Regulation No. 2.

(7) "Processor": Section 3.1 (a) (8) of Food Products Regulation No. 2.

(8) "Carload shipment": Section 3.1 (a) (9) of Food Products Regulation No. 2.

*Copies may be obtained from the Office of Price Administration.

(9) "Less than carload lot" and "less than carload quantity": Section 3.1 (a) (10) of Food Products Regulation No. 2.

(b) *Additional definitions.* When used in this supplement, the following terms shall have the following meanings:

(1) "Test weight per bushel" means that factor in determining the grade of oats under the method prescribed in the Official Grain Standards of the United States.

(2) "Racehorse oats" means oats grading No. 2 oats or better, with a test weight of 38 pounds per bushel or better, which have been carefully sized and recleaned to contain less than one percent foreign material and to remove all string, metal, and foreign substance, and which the buyer intends to use for feeding to thoroughbred horses or to resell for ultimate use for such purpose.

(3) "United States," when it refers to an area, means the 48 states and the District of Columbia.

"Area A" means the surplus producing areas of oats in the United States, as described in Table II of Appendix A.

"Area B" means all parts of the United States not included in "Area A."

(4) "Your transportation cost" means

(i) If you employ a common carrier, contract carrier, or other carrier for hire or compensation, the charge which you actually incur for the transportation service; or

(ii) If you do your own hauling by truck or wagon, the hauling allowance at the scale set forth in definition (5); or

(iii) If you transport the lot by barge or vessel owned, leased, or chartered and operated by you, the going rate for the same movement, if there is such a going rate, or if there is no going rate for the same movement, then the going rate for the most similar movement not to exceed the reasonable value of the service; or

(iv) When any movement involves a combination of more than one of the types of transportation included in (i), (ii), and (iii), the transportation cost for the movement of each type shall be computed separately and the results added.

(v) If any part of the movement is by barge or vessel, you may add customary vessel brokerage, cargo insurance, and outturn insurance or allowance on such lot, to the extent not included in the cost computed under (i) or (iii) above.

(5) "Hauling allowance" means the following scale of charges:

If the total haul does not exceed 100 miles—3 cents per 100 pounds for the first five miles or fraction thereof plus 1 cent per 100 pounds for each additional five miles or fraction thereof;

If the haul exceeds 100 miles, the lowest carload rail rate from the rail point nearest the point of origin to the rail point nearest point of destination plus 8 cents per 100 pounds, but not to exceed 22 cents per 100 pounds plus ¼ cent per 100 pounds for each five miles or fraction thereof over 100 miles.

In applying the above mileage scale all distances shall be determined via the shortest route between point of origin and point of destination reasonably suitable for truck movement.

(6) "Producer" means, with respect to any lot of oats, grown in the United States, either.

(i) The person who grew or harvested such lot of oats; or

(ii) A landlord who received such lot of oats as or in lieu of rent for the farm where grown; or

(iii) Any person who delivers the oats to his customer at the farm where grown or at roadside near such farm. The result of this is that if you do not deliver the oats to your customer off the farm where grown you do not secure a higher price than the person who grew them would have received.

(7) "Country shipper" means, with respect to any lot of oats, a person who purchases and receives the oats from a producer in any quantity before any movement by rail car or barge, and (i) delivers them to his customer at a point which is neither on the farm where grown nor at roadside near such farm, and (ii) delivers them in any manner other than as a trucker-merchant or as a retailer.

(8) "Trucker-merchant" means, with respect to any lot of oats, a person who purchases such oats for resale and without loading them into a barge or railroad car or unloading them into an elevator or warehouse for his own account and use, transports and delivers the same to his customer in a truck or wagon owned or leased and operated by him.

(9) "Merchandiser" means, with respect to any lot of oats owned by him, a seller, other than a retailer, for whom a maximum price is not otherwise provided in this supplement. In other words, he is a person who merchandises the oats other than as a producer, country shipper, trucker-merchant, importer, or retailer.

(10) "Retailer" means, with respect to any lot of oats, a person who unloads such oats into his store and sells and delivers them to a feeder.

(11) "Store" means a building where a regular business of selling and delivering grain and/or feeds to feeders is carried on, and where the owner or one or more of his employees work on a substantially full-time basis in such business or in a general retail business of which such grain and feed business is a part. If several employees divide their time between the retail business and other work, the requirement of a substantially full-time employee will be satisfied if the aggregate time which the several employees spend in the retail business equals a full work day for one person. Occasional sales of grain and feed to other than feeders may be made, but only as an incidental part of the business if its status as a "store" is to be maintained.

(12) "Broker" means, with respect to any lot of oats, a person who, acting for the account of either seller or buyer or both, negotiates a sale or purchase of such oats for either seller or buyer or both other than as a commission merchant or as an employee of either seller or buyer. No person can be a broker as to oats owned by him.

(13) "Commission merchant" means, with respect to any lot of oats, a person who receives a carload shipment or a lot of 60,000 pounds or more on behalf of another person who is the owner thereof and negotiates or has negotiated a sale of such oats in his own name to a person other than himself on a recognized grain exchange in any of the following cities:

Buffalo, N. Y.	Louisville, Ky.
Chicago, Ill.	Memphis, Tenn.
Cincinnati, Ohio	Milwaukee, Wis.
Dallas, Tex.	Minneapolis, Minn.
Denver, Colo.	Omaha, Nebr.
Des Moines, Iowa.	Peoria, Ill.
Duluth, Minn.	St. Joseph, Mo.
Enid, Okla.	St. Louis, Mo.
Fort Worth, Tex.	Salina, Kans.
Hutchinson, Kans.	Sioux City, Iowa
Indianapolis, Ind.	Toledo, Ohio
Kansas City, Mo.	

Regardless of any of the provisions of this supplement, division of commission charges may be made with and paid to exchange members in accordance with rules of the respective exchanges which were in effect January 1, 1943, and sellers of oats who are members may receive such divisions.

(14) "Terminal base point" means any city listed in Section 6, and includes all points within the corporate or switching limits of such city.

(15) "Interior point" means any point other than a terminal base point, except that with respect to any particular lot of oats it does not include the farm where such oats were grown.

(16) "Interior rail point" means any point other than a terminal base point having facilities for the loading of railroad freight cars and from which railroad freight rates are published as provided by law.

(17) "Barge loading point" means the barge loading facility or facilities at the points specified or described as barge loading points in Table 3 of Appendix A.

(18) "Base price" means the price per bushel, with adjustments for grade and quality, as provided in section 6. These base prices shall not be used independently as maximum prices nor shall they be used in any other method than is specifically provided in the maximum pricing provisions (sections 7 to 11, inclusive).

(c) *General explanation of the pricing provisions in this supplement.* This supplement provides a maximum price for every kind of seller and for every kind of sale not exempted under other provisions of this supplement. You may not always be the same type of seller on different lots of oats that you sell, and you must consult the definitions to learn the type of seller you are in connection with any particular sale. In order that pricing provisions should be fair to every kind of handler, it has been necessary to define types of sellers more closely by

reference to the functions they perform in each transaction rather than by popular terminology used by the trade. You must, therefore, be careful to study the definitions in connection with the particular sale you want to price. After you have decided the type of seller you are on a particular sale, you look in the following sections for your maximum price.

If you are a producer, see section 7.
If you are a trucker-merchant, see section 8.
If you are a country shipper, see section 9.
If you are a merchandiser, see section 10.
If you are an importer, see section 11.
If you are a retailer, you will find your maximum price in Supplement No. 1 to Food Products Regulation No. 2.
If you are selling mixed grain, your maximum price is provided in Article IV of Food Products Regulation No. 2.

In some cases, you will find that your maximum price depends on your supplier's maximum price. In other cases, as in sections 7, 9, 10, or 11, you will find that your maximum price for the sale of a particular lot of oats depends on what is called a "base price," which you will find in section 6. Base prices are not maximum prices although sometimes you will find that the maximum price on a particular lot is the same as the base price; but more often the maximum pricing provisions provide that you deduct something from, or add something to, the base price in computing your maximum price.

SEC. 6. *Base price.* As explained in the preceding section, "base prices" are not maximum prices but are used in the determination of maximum prices. All oats do not have the same value because of variations in grade and quality, and also because oats located at one point may command a different price than oats located at another point. Base prices are, accordingly, worked out to reflect differences in grade and quality and differences in location. Generally speaking, this supplement starts any lot of oats into marketing channels with a maximum price at or near its origin, and these base prices are for the purpose of arriving at such initial maximum price for the particular grade, quality, and location. At different levels of marketing the supplement permits the addition to base prices of transportation costs, markups, and similar incidents to distribution.

In order to provide a base price for domestic oats at every point in the United States for every grade and quality, it is necessary to establish base prices by location for a "standard grade" of oats and provide premiums and discounts from that "standard grade" for other grades and qualities. The "standard grade" is No. 3 oats having a test weight of 27 pounds per bushel and a moisture content of not more than 14½ per cent. Base prices for other grades and qualities are determined by adding or subtracting the premiums and discounts provided in Table I of Appendix A to or from the corresponding price for the "standard grade;" Except, that oats grown in California and Nevada and in the counties of Lake and Klamath in Oregon are not required to be sold on grade and the base prices in paragraph (a) shall apply on all sales of such oats without discount or premium.

(a) Base prices by location for the "standard grade" of oats, and for other oats not required to be sold on grade, shall be as follows:

(1) At the following terminal base points, the prices per bushel as shown:

Terminal base point:	*Price per bushel*
Chicago, Ill	$0.76
Milwaukee, Wis	.76
Minneapolis and St. Paul, Minn	.72
Duluth, Minn., and Superior, Wis	.72
Omaha, Nebr., and Council Bluffs, Iowa	.72
Kansas City, Mo., and Kansas City, Kans	.74
St. Louis, Mo., and East St. Louis, Ill	.76
Philadelphia, Pa	.83½
Portland, Oreg	.71
Seattle and Tacoma, Wash	.71
Ogden, Utah	.75

(2) At any interior rail point in Area A the highest price determined by deducting from the base price at any terminal base point the transportation charges per bushel from such interior rail point to such terminal base point at the lowest domestic carload freight rate.

(3) At any interior point in Area A, other than an interior rail or barge loading point, the base price at the nearest interior rail point.

(4) At any barge loading point, the price set forth in Table III of Appendix A: *Provided,* That if any oats are shipped out of the barge loading point other than by barge, the base price on resale shall be the base price which would be applicable to such interior point if it were not also a barge loading point.

(5) At any interior point in Area B, the price set forth in Table IV of Appendix A opposite the state and county or parish wherein the interior point in question is situated. If any interior point lies in two price zones, its base price shall be the price of the higher zone. If any interior point lies in a zone for which no price is named, its base price shall be the highest base price in any county or parish abutting such zone.

(6) At the farm where grown (i) the base price of the nearest interior rail point or barge loading point (whichever is nearer to such farm) less 3¢ per bushel or (ii) the base price at the nearest barge loading point less 2¢ per bushel and less hauling allowance: *Provided,* That if not hauled and delivered to a barge loading point, the base price on resale shall be as in (i) above.

(b) For base prices on Canadian oats see Section 11 of this supplement.

SEC. 7. *Maximum prices for sales by producers.* You will find that the term "producer" has been defined to include several persons. It includes a person who grew or harvested the lot of oats, and a landlord who received such oats as or in lieu of rent for the farm where grown. In addition, for the purposes of the maximum pricing provisions, it includes any other person who delivers the oats to his customer on the farm where grown or at roadside near such farm, the price result of this being that you must deliver the oats to your customer away from the farm where grown or roadside nearby in order to secure a higher price than the person who grew the oats could have received.

You will not be acting as a producer in selling such oats, but as a country shipper, merchandiser, or retailer, as the case may be: *Provided,* That before selling the oats you have them transported to a store, elevator, or warehouse operated by you at which you carry on a regular business of buying and selling grain produced by others, and in the operation of which business you employ, at such place, one or more full-time salaried employees, or yourself work in such business at such place on substantially a full-time basis. Under such circumstances, your maximum price shall be determined as though you purchased the oats from another producer at such producer's maximum price on the delivery made to such store, elevator, or warehouse.

In connection with any delivery by you as a producer, if your customer performs any service or incurs any expense in connection with growing, threshing, harvesting, collecting from field, or assembling at point where available for ready transportation from farm, the reasonable value of all such services performed and the expense so incurred must be deducted when he pays you the appropriate maximum price.

The maximum price of a producer is as follows:

(a) If you deliver any lot of oats on the farm where grown or at roadside near such farm, your maximum price per bushel, bulk, shall be the base price at the farm where grown, with the following two exceptions:

(1) If there is an interior rail point on the farm, and you deliver the oats to your customer at a rail loading facility at such interior rail point, your maximum price shall be the base price at the interior rail point, less one cent per bushel if delivered to your customer loaded in a rail car or less 2 cents per bushel if not so loaded.

(2) If you are a landlord and you receive the oats from your tenant as or in lieu of rent, and if the lease or rental agreement between you provides for delivery of the oats at some point other than the farm where grown, then your maximum price for the sale of the oats to your tenant for delivery at such farm shall be the base price at the farm plus one cent per bushel.

(b) If you deliver the oats by truck or wagon from the farm where grown to an elevator or warehouse (not including a delivery to a feeder, store, or processing plant in Area B which is covered in paragraph (d) separately), your maximum prices per bushel, bulk, are as follows:

(1) If such elevator or warehouse is located within the switching, corporate, town, or city limits in which a barge load-

ing point is located, your maximum price is the base price at such barge loading point less 2 cents per bushel.

(2) If such elevator or warehouse is located at any interior point other than a barge loading point, your maximum price is the higher of either

(i) The base price at such point less 2 cents per bushel, or

(ii) (In order to allow such elevator or warehouse to handle the oats in a competitive manner with a nearby barge loading point) The base price at the nearest barge loading point less 2 cents per bushel and less the hauling allowance provided in section 5 (b) (5) depending on the distance from the elevator or warehouse to the barge loading point.

(3) If you store the oats in any elevator or warehouse located at an interior point and deliver them to your customer in storage, your maximum price shall be the base price at such point less 1 cent per bushel, but you must either pay or have deducted from the payment of the maximum price to you all accrued storage and handling charges, including the loading out charges. If your customer is also the warehouseman, the deduction for handling and loading shall be not less than 1 cent per bushel.

(c) (1) If you deliver the oats by truck or wagon from the farm where grown to your customer at a rail loading facility at an interior rail point, without loading into cars, your maximum price per bushel, bulk, shall be the base price at such point less 2 cents per bushel; or

(2) If you deliver the oats to your customer loaded aboard a rail car or barge, and if they are delivered at point of loading, your maximum price shall be the base price at point of loading less 1 cent per bushel; or

(3) If after so loading the oats on a rail car or barge, you deliver them to your customer following a rail or barge movement, your maximum price shall be the base price at point of loading less 1 cent per bushel but plus your transportation cost from the point of loading: *Provided,* That if after such a movement you store the oats, you must either pay or have deducted from the payment of such maximum price to you all accrued storage and handling charges, and the loading out charges. If your customer is also the warehouseman, such deduction for handling and loading out shall be not less than 1 cent per bushel.

(d) You may deliver the oats by truck or wagon to either a feeder, store, or processing plant, in which case your maximum price per bushel, bulk, shall be the base price at the farm where grown plus your transportation cost from such farm to the point of delivery to your customer.

(e) If you deliver the oats to your customer in any manner other than as provided above, your maximum price shall be the base price on the farm where grown plus 1 cent per bushel.

SEC. 8. *Maximum prices for sales by trucker-merchants.* Trucker-merchant is defined as one who purchases oats for resale and, without loading them into a barge or railroad car or unloading them into an elevator or warehouse for his own account and use, transports and delivers the oats to his customer in a truck or wagon owned or leased and operated by him.

If you are a trucker-merchant under this definition, your maximum price per bushel, bulk, for the sale of any lot of oats is your supplier's maximum price on the sale and delivery to you plus your hauling allowance from the point where you received delivery from your supplier to the point of delivery to your customer: *Provided,* That if you deliver the oats to a terminal base point or a barge loading point, your maximum price shall not exceed the base price at such point less 1 cent per bushel.

Every trucker-merchant shall, with respect to every lot of oats transported by him as such, procure or prepare a statement of information which shall accompany the oats while in transit on the truck. Such statement shall set forth the name and address of the trucker-merchant and of his supplier, the date of purchase, and the grade and purchase price of the oats. Upon delivery of the oats by the trucker-merchant to his customer, a copy of the statement of information signed by the trucker-merchant shall be given to his customer showing also the transportation charge being made. Copies of this statement shall be retained by the trucker-merchant and by his customer as a part of their records.

For enforcement purposes, it is necessary that both the shipments themselves and the records of the trucker-merchant covering such shipments be inspected while in transit. Failure of a trucker-merchant to stop for such inspection in response to instructions in a sign conspicuously posted at roadsides or upon signal by an Office of Price Administration enforcement officer shall be a violation of this supplement, subject to all penalties of the Emergency Price Control Act of 1942, as amended.

SEC. 9. *Maximum prices for sales by country shippers.* "Country shipper" is defined in section 5 (b) (7) to mean, with respect to any lot of oats, a person who purchases and receives the oats from a producer in any quantity before any movement by rail or barge and delivers them to his customer at a point which is neither on the farm where grown nor at roadside near such farm, in any manner other than as a trucker-merchant or retailer.

This section sets forth the maximum prices for the ordinary "country shipper" marketing transactions. To these prices you may be entitled to add various charges which you may incur, or allowances for special handling of the oats, under the rules provided in section 13. Subject to such additions, the maximum prices per bushel, bulk, for sales by a country shipper are as follows:

(a) If you deliver the oats in a lot of 60,000 pounds or more, or as a carload shipment, loaded in a rail car or barge, or after a movement by such rail car or barge, your maximum price per bushel, bulk, shall be the base price at the point where first so loaded plus your transportation cost, if any, from such point of loading: *Provided,* That (1) If, after such a movement you store the oats, you must either pay or have deducted from the payment to you of such maximum price all accrued storage and handling charges, and the loading out charge. If your customer is also the warehouseman, such deductions for handling and loading out shall be not less than 1 cent per bushel.

(2) If your delivery, after any movement by rail car or barge, is in a less-than-carload quantity, you shall add 2 cents per bushel if delivered to a feeder, or 1 cent per bushel if delivered to any other person, to your maximum price for a carload shipment as computed in paragraph (a), and plus your transportation cost, if any: *Provided,* That if in making delivery you do your own hauling, you shall add the hauling allowance, but if the distance is more than 60 miles, you shall not add the extra markup provided in this paragraph.

(b) If you deliver the oats in any quantity stored in the elevator or warehouse to which they were hauled by truck or wagon from the farm where grown, your maximum price per bushel, bulk, shall be the base price at the point where the elevator or warehouse is located, but you must either pay, or have deducted from payment of the maximum price to you, all accrued storage and handling charges, and the loading out charges. If your customer is also the warehouseman, the deduction for handling and loading out shall be not less than 1 cent per bushel.

(1) If you deliver the oats from such elevator or warehouse, except as provided in paragraph (c), in a less-than-carload quantity, your maximum price shall be the base price at such point plus 2 cents per bushel if delivered to a feeder, or plus 1 cent per bushel if delivered to any other person, and plus your transportation cost, if any: *Provided,* That if in making delivery you do your own hauling, you shall add the hauling allowance, but if the distance is more than 60 miles, you shall not add the extra markup provided in the paragraph.

(c) If you deliver the oats to an elevator or warehouse which is within the switching, corporate, town, or city limits in which a barge loading point is located, your maximum price shall be the base price at such barge loading point less 1 cent per bushel.

(d) If you deliver the oats from the farm where grown by a for-hire truck or wagon to a store, feeder, or processor, your maximum price shall be the base price at such farm, plus 2 cents per bushel, and plus your transportation cost. (If so delivered in your own truck, you would come under the definition of "trucker-merchant" and price accordingly.)

(e) The maximum price for the sale by a country shipper of any lot of oats handled in any manner not specified above shall be the base price at the farm where grown plus 1 cent per bushel.

SEC. 10. *Maximum prices for sales by merchandisers.* With the exception of persons acting as producers, country shippers, or importers, all sellers who deliver oats in any manner other than as

trucker-merchants or retailers, are "merchandisers" by definition.

(a) This section sets forth the maximum prices for the ordinary "merchandiser" marketing transactions. All markups are subject to the limitations of section 12 of this supplement. To these prices you may be entitled to add various charges which you may incur, or allowances for special handling of the grain, under the rules provided in section 13 of this supplement. Subject to such additions, the maximum prices per bushel, bulk, for sales by a merchandiser are as follows:

(1) For all deliveries of oats, which you receive and deliver in quantities of 60,000 pounds, or more, or as a carload shipment, you calculate your maximum price by adding to your supplier's maximum price on the sale and delivery to you (or to the price of a withdrawal as determined under section 2.3 of Food Products Regulation No. 2) your transportation cost and a markup of 1 cent per bushel.

(2) If you receive any lot of oats from your supplier by truck or wagon, and his maximum price on the sale and delivery to you exceeds the base price at the point where he delivered the oats to you, less 1 cent per bushel, you must, if you reship the oats by rail or barge or sell them in storage, use such base price less 1 cent per bushel in place of your supplier's maximum price, and after such adjustment you calculate your maximum price as provided in paragraph (1).

(3) If you deliver any lot of oats in a less-than-carload quantity, your maximum price shall be as computed in subparagraph (1) plus 2 cents per bushel if delivered to a feeder or plus 1 cent per bushel if delivered to any other person, and plus your transportation cost, if any: *Provided,* That if you do your own hauling and, therefore, your transportation cost is the hauling allowance set forth in section 5 (b) (5), and if the distance hauled is more than 60 miles, the scale is so established that it includes markups for the sale of the grain so hauled and, therefore, you shall not be permitted to add the markups provided above in such cases. The additional markups in this paragraph will not be subject to the limitations on markups as provided in section 12 of this supplement.

(b) If you deliver the oats to your customer in storage, you must either pay or have deducted from the payment of the maximum price to you all accrued storage and handling charges, and the loading out charges. If your customer is also the warehouseman, such deduction for handling and loading out shall be not less than 1 cent per bushel.

SEC. 11. *Maximum prices for purchases and sales by importers.* (a) (1) "Importer" means, with respect to any lot of oats grown outside the United States, the first person who owns such lot after entry into the United States, and who sells it through his office located in the United States or who processes it at his plant located within the United States. When he sells the oats, the importer will be either a merchandiser, trucker-merchant, or retailer, according to the manner in which he sells.

(2) "Canadian oats" means any lot of oats grown in Canada which is either:

(i) To be imported into the United States, or

(ii) Still owned by the importer of such lot.

(3) "Cif" (cost, insurance, freight) means, with respect to the price of any lot of oats delivered by vessel, the price delivered alongside or on the vessel at the port where discharged, the seller having paid all customary expenses to that point and also marine insurance and freight to the delivery port, together with any export taxes, or other fees or charges, if any, levied because of exportation. The buyer shall receive the oats upon arrival, handle and pay for all subsequent movement of the oats, including taking delivery from the vessel in accordance with bill of lading clauses and terms; pay all costs of landing, including any duties, taxes, and other expenses at the named point of destination. The buyer must also pay for war risk insurance, if any, provided by the seller and for certificates of origin, consular invoices, or any other documents issued in the country of origin, or of shipment, or both, which may be required for importation of the oats into the United States.

(b) (1) Base prices for Canadian oats entering the United States via different gateways are determined with reference to the following base points: For vessel shipment via the Great Lakes, the base point is Buffalo, New York; for rail shipments entering the United States via Sweetgrass, Montana, or via rail points of entry west of Sweetgrass, Montana, the base point is Portland, Oregon; for rail shipments entering the United States via rail points of entry east of Sweetgrass, Montana, but west of Lake Superior, the base point is Minneapolis, Minnesota; for rail shipments entering the United States east of Lake Superior, the base point is Boston, Massachusetts.

(2) Following are the base prices in United States dollars, bulk, per bushel of 32 pounds for Canadian oats at the base points listed below:

Base points:	*Cents per bushel*
Buffalo, N. Y.	85
Minneapolis, Minn.	78
Portland, Oreg.	77
Boston, Mass.	92

Whenever it becomes necessary under the provisions of this supplement to adjust the price of such oats according to premiums or discounts provided for oats graded under United States Official Grain Standards, the foregoing base prices shall be deemed to be for No. 3 oats with a test weight of 38 pounds per bushel and with a moisture content not exceeding 14½%.

(3) The base prices per bushel, bulk, for Canadian oats delivered by rail or vessel at any destination in the United States other than the above base points, shall be determined as follows:

(i) If the transportation charge from the Canadian point of origin to such destination exceeds the transportation charge from such point of origin to the base point appropriate for the shipment, by adding such excess to the base point price; if it is less, by deducting the difference.

(4) The base prices per bushel, bulk, for Canadian oats which enter the United States by truck or wagon shall be the base price on domestic oats at the point of delivery, adjusted to the basis of No. 3 oats with a test weight of 38 pounds per bushel.

(c) If you are an importer, the maximum price per bushel, bulk, at which you can purchase any lot of Canadian oats shall be:

(1) For vessel shipment via the Great Lakes:

(i) If purchased loaded aboard rail cars, barge or truck, the base price at the port of discharge of the vessel, plus your supplier's transportation cost, if any, from such port of discharge, or

(ii) If purchased in storage at any point, the maximum price as calculated in subdivision (i) for such point but your supplier must either pay or have deducted from the payment of the maximum price to him all accrued storage and handling charges including loading out charges, and the out inspection and weighing charges, or

(iii) If purchased Cif the port of discharge, the base price at such point less 1¼ cents per bushel.

(2) If purchased for rail shipment into the United States, the base price at the destination to which your supplier incurs the freight: *Provided,* That if purchased in storage after rail shipment into the United States, your supplier must either pay or have deducted from the payment of the maximum price to him all accrued storage and handling charges, and the loading out charges.

(3) (i) If purchased for shipment or after shipment into the United States by truck or wagon the base price at the point of delivery to you less two cents per bushel: *Provided,* That if purchased in storage after such movement, the maximum price is the base price less 1 cent per bushel, but your supplier must either pay or have deducted from the payment of the maximum price to him all accrued storage and handling charges, and the loading out charge, or

(ii) If purchased loaded aboard rail cars after shipment into the United States by truck or wagon, the base price at the rail point where so loaded less 1 cent per bushel, and plus your supplier's transportation cost, if any, on his sale and delivery to you.

(d) If you are an importer, your maximum price per bushel, bulk, for the sale of any lot of Canadian oats shall be determined under section 8 of this supplement if you sell as a trucker-merchant, or section 10 if you sell as a merchandiser, or under Supplement No. 1 to Food Products Regulation No. 2 if you sell as a retailer, by substituting your maximum

purchase price as computed in this section, for "your supplier's" maximum price.

(e) Canadian oats may be resold in the United States on the basis of their Canadian inspection without application of the schedule of premiums and discounts in Table I of Appendix A provided they are not commingled or averaged with domestic oats, but if commingled or averaged with other Canadian oats, they will not be subject to the provision of section 2.3 of Food Products Regulation No. 2 relating to use of standard grade and quality, and all Canadian oats so commingled or averaged shall be considered to be of the same grade and quality.

If commingled or averaged with oats grown in the United States, all provisions of section 2.3 of Food Products Regulation No. 2 shall apply.

SEC. 12. *Limitations on total markups of country shippers and merchandisers, and on service charges of commission merchants and brokers which may be included in a maximum price.* In order to prevent undue accumulation of markups for distribution services, all markups which merchandisers may add under this supplement (except the extra markup referred to in section 10 (a) (3)) or under Food Products Regulation No. 2, also all service charges of commission merchants and brokers and all merchandising markups of country shippers under Food Products Regulation No. 2 are subject to the limitations provided in this section. These limitations apply to the total of all such markups and service charges for commission merchants and brokers.

(a) The maximum price for the sale of any lot of oats shall never include an amount in excess of 4 cents per bushel as a total of all merchandising markups and of all service charges for brokers and commission merchants, but this maximum of 4 cents per bushel shall be subject to the following zoning limitations as to transactions in Areas A and B:

(1) If you are the first person who contracts to deliver into Area A to a customer located in Area A a lot of oats originating or which has originated in Area B, such total shall not exceed 1½ cents per bushel: *Provided,* That this zoning limitation shall not apply to sales in Area A by a selling office located in Area A of a merchandiser otherwise entitled to a greater markup under section 2.5 of Food Products Regulation No. 2.

(2) When oats are delivered to anyone in Area A, except as provided in (1), such total shall not exceed 2½ cents per bushel.

(3) If you are the first person who contracts to deliver into Area B to a customer located in Area B oats originating in Area A or oats which previously have been marketed in Area A, such total shall not exceed 2½ cents per bushel: *Provided,* That this zoning limitation shall not apply to sales in Area B by a selling office located in Area B of a merchandiser otherwise entitled to a greater markup under section 2.5 of Food Products Regulation No. 2.

These are limitations on the total of markups and service charges which may be included in any maximum price. They may lessen, but will never increase, the amount of any single maximum markup or maximum service charge.

SEC. 13. *Rules relating to additions to the Maximum price*—(a) *Maximum charges for services of brokers and commission merchants, also provision for adding such charges subject to limitations.* (1) Notwithstanding the provisions of any other regulation, the maximum charge which a broker or a commission merchant may charge for all services in connection with any purchase and sale of a lot of oats shall be as set forth below. These are maximum service charges regardless of whether the oats are sold at their maximum price and regardless of whether the markups may be added to any maximum price.

(i) *Brokers.* The maximum service charge for all services of a broker with respect to a purchase and sale of any lot of oats is ½ cent per bushel.

(ii) *Commission merchants.* The maximum service charge for all services of commission merchants with respect to a purchase and sale of any lot of oats is 1 cent per bushel.

(2) Subject to the limitations set forth in section 12 of this supplement, any seller may add the service charge of a broker and any seller may add the service charge of a commission merchant to the maximum price he would otherwise be entitled to charge: *Provided,* That the seller actually incurs such charge and provided that no maximum price shall ever include more than 1 cent per bushel for broker's service charges and 1 cent per bushel for commission merchant's charges.

(b) *Elevation charges which may be added to your maximum price.* (1) Except as provided in subparagraph (2), if oats are unloaded into an elevator or warehouse from a rail car, barge, or vessel, the maximum price of the seller shall be increased by 1 cent per bushel provided the seller has actually incurred the expense of such elevation or handling, including loading out, except that if the seller is not the warehouseman and the expense he incurs or bears is less than 1 cent per bushel, he shall add to his maximum price only the actual amount so incurred or borne.

(2) When any lot of oats is transferred from rail cars or barge through an elevator or warehouse to lake vessel, the elevation or handling charges actually incurred by the seller (but not exceeding the charges in effect December 6, 1943) may be added to his maximum price: *Provided,* That if the oats are handled through an elevator or warehouse operated by the seller, he may add 1 cent per bushel.

(c) *Inspection and weighing charges.* (1) Where to complete a contract of sale of oats official inspection is necessary, the cost thereof shall be borne by the seller.

(2) Where to complete a contract of sale of oats official weighing is necessary, the cost thereof may be borne by either seller or buyer as the parties may agree: *Provided,* That if paid by the buyer, said expenditure shall not be added to the maximum price for any resale of said oats.

(d) *Sacks and sacking.* (1) When oats are sold in sacks furnished by the seller, there may be added to the appropriate maximum price the reasonable market value of the sacks used (not exceeding any maximum price established thereon) plus a sacking charge of 2½ cents per bushel.

(2) When oats are sold in sacks furnished by the buyer and the seller does the sacking, there may be added to the appropriate maximum price a sacking charge of 2½ cents per bushel.

(3) These charges may be added to the appropriate maximum price for succeeding sales while the oats are sold in sacks.

(e) *Storage and carrying charges.* (1) If the seller, under a contract of sale, agrees to carry the oats beyond the date of sale, there may be added to the maximum price otherwise applicable a storage and carrying charge of not to exceed ⅛ of a cent per bushel per day, commencing at any agreed time after date of sale and continuing to the date of delivery or shipment, or until 5 days after the date which the buyer names as the shipping or delivery date, whichever is earlier, provided that the buyer incurs no other cost of storage and carrying charge upon such oats during that period.

(2) For any resale, the maximum price of the seller shall not be increased for any such storage and carrying charges so added.

(3) This provision for the addition of storage and carrying charges shall have no application to oats stored or remaining on the farm where grown.

(f) Under certain special conditions persons performing several marketing functions may add to their maximum price merchandising markups for special services. These markups, and the conditions under which they may be added, are set forth in Section 2.5 of Food Products Regulation No. 2.

SEC. 14. *Separate invoicing of charges, markups, and costs.* All service charges, markups, elevation and handling costs, and transportation costs permitted in respect to distributors in carload quantities shall be separately stated on the invoice to each purchaser of a carload quantity of oats.

APPENDIX A

TABLE I

(a) *Schedule of premiums and discounts over or under standard grade and quality.* The base price of the standard grade and quality, no. 3 oats with a test weight of 27 pounds per bushel and moisture content not over 14½ percent, shall be adjusted for other grades and qualities by the following premiums (shown as plus) and discounts (shown as minus):

Grade (all classes and special grade designations)	Minimum test weights per bushel								
	under 27#	27#	30#	32#	34#	36#	38#	40#	42#
#1 oats				+4	+5	+6	+8	+10	+12
#2 oats			+3	+3½	+4	+5	+7	+9	+11
#3 oats		0	+2	+2½	+3	+4	+6	+7½	+9
#4 oats 85% S. C. or better	−2	−1	+1	+1½	+2	+3	+4½	+6	+7½
#4 oats under 85%	−3	−2	0	+½	+1	+2	+3½	+5	+5
Sample grade	−4	−3	−1	−½	0	+1	+2½	+4	+4
			26#	29#	32#	34#	36#	38#	
#1 feed oats 70% S. C., or better					−1	0	+1	+2	
#1 feed oats under 70% S. C.					−2	−1	0	+1	
#2 feed oats				−4	−3	−2	−1	−1	
#3 feed oats			−6	−5	−4	−3	−2	−2	
Sample grade feed oats			−7	−6	−5	−4	−3	−3	
#1 mixed feed oats					−5	−4	−3	−3	
#2 mixed feed oats				−7	−6	−5	−4	−4	
#3 mixed feed oats			−9	−8	−7	−6	−5	−5	
Sample grade mixed feed oats			−10	−9	−8	−7	−6	−6	

The above to be discounted from the schedule prices if carrying the following grade notations: "Weevily"—1¢; "Thin"—1¢; "Smutty"—2¢; "Tough"—1¢; "Garlicky"—2¢; "Ergoty"—2¢. These discounts shall be cumulative.

Premiums for special oats:

"Racehorse oats," as defined herein may be sold, subject to all the provisions of section 2.7 of Food Products Regulation No. 2 for sales of such special commodities, at a premium of 10 cents per bushel over the maximum price for the grade and quality of oats so delivered as computed elsewhere in this supplement.

"Recleaned oats." Oats which have been processed by cleaning and separation and containing less than 1 per cent of foreign material may be sold at a premium of 2 cents per bushel over the maximum price for the grade and quality of the oats so delivered as computed elsewhere in this regulation. This provision shall not apply as an additional premium in the case of "racehorse oats."

(b) *Method of adjusting prices for grade and quality.* The premiums and discounts in paragraph (a) of this table are used to adjust the price for the standard grade and quality (No. 3 oats, testing 27 pounds per bushel) so as to arrive at the price for a lot of oats grading other than standard. When oats are shipped out of a place of business, such outbound lot may be of different grade and quality than the inbound lot whose history you are using for the purpose of pricing the outbound lot. In such cases it is necessary to make a price adjustment to reflect such differences in grade and quality. This is done by adjusting the price of the inbound lot to a No. 3—27 pound (standard grade and quality) basis, by applying the schedule of premiums and discounts set forth in paragraph (a) of this table, and then adjusting that price in the same manner to determine the correct price for the grade and quality of the outbound shipment.

TABLE II—DESCRIPTION OF "AREA A"

"Area A" includes: the states of North Dakota and Iowa; the following counties of Illinois: Adams, Brown, Cass, Menard, Logan, Macon, Piatt, Champaign, and Vermilion, and all counties north thereof; the following counties of Indiana: St. Joseph, La Porte, Porter, Lake, Marshall, Starke, Fulton, Pulaski, Jasper, Newton, Cass, White, Carroll, Benton, Warren, Tippecanoe, Fountain, and Vermillion; the following counties of Minnesota: Kittson, Marshall, Pennington, Clearwater, Becker, Otter Tail, Douglas, Pope, Stearns, Wright, Hennepin, and Dakota, and all counties south and west thereof; the following counties of Missouri: Holt, Andrew, De Kalb, Daviess, Livingston, Linn, Macon, Shelby, and Marion, and all counties north thereof; the following counties of Montana: Glacier, Pondera, Teton, Cascade, Judith Basin, Fergus, Petroleum, Garfield, Prairie, and Wibaux, and all counties north thereof; the following counties of Nebraska: Knox, Antelope, Boone, Nance, Merrick, Hamilton, Clay, and Nuckolls, and all counties east thereof; that portion of the State of South Dakota each of the Missouri River; the following counties of Wisconsin: Pierce, Pepin, Buffalo, Trempealeau, Jackson, Juneau, Adams, Waushara, Winnebago, Calumet, and Manitowoc, and all counties south thereof; the following counties of Washington: Spokane, Whitman, Asotin, Garfield, Columbia, Walla Walla, Benton, Franklin, Adams, Lincoln, Grant, Douglas, and Kittitas; the following counties of Oregon: Wasco, Sherman, Gilliam, Morrow, Umatilla, Union, and Wallowa; the following counties in Idaho: Boundary, Bonner, Kootenai, Benewah, Latah, Nez Perce, Clearwater, Lewis, Idaho, Custer, Blaine, Butte, Clark, Jefferson, Fremont, Madison, Teton, Bonneville, Bingham, Caribou, Bannock, Power, Oneida, Franklin, and Bear Lake; the following counties in Utah: Box Elder, Cache, and Rich.

TABLE III—BASE PRICES AR BARGE LOADING POINTS

Barge loading point:	*Price per bushel*
Morris, Ill	$0.75½
Seneca, Ill	.75¼
Ottawa, Ill	.75¼
La Salle, Ill	.75
Peru, Ill	.75
Hennepin, Ill	.75
Henry, Ill	.74¾
Lacon, Ill	.74¾
Chillicothe, Ill	.74¾
Peoria, Ill	.74½
Pekin, Ill	.74½
Havana, Ill	.74½
Beardstown, Ill	.74½
Naples, Ill	.74½
Clinton, Iowa	.74½
Davenport, Iowa	.74½
Rock Island, Ill	.74½
Muscatine, Iowa	.74½
New Boston, Ill	.74½
Keithburg, Ill	.74½
Oquawka, Ill	.74½
Burlington, Iowa	.74½
Dallas City, Ill	.74½
Meyer Light, Ill	.74½
Quincy, Ill	.74½
Stillwater, Minn	.73¾
Hastings, Minn	.73¾
Redwing, Minn	.73¾
Winona, Minn	.74¼
La Crosse, Wis	.74¼
Warsaw, Ill	.74½

TABLE IV—LIST OF STATE AND COUNTY BASE PRICES IN AREA B

State, county, and price per bushel

ALABAMA

Autauga	$0.88	Houston	$0.90
Baldwin	.87	Jackson	.87
Barbour	.89	Jefferson	.86
Bibb	.87	Lamar	.86
Blount	.86	Lauderdale	.84
Bullock	.89	Lawrence	.86
Butler	.88	Lee	.89
Calhoun	.87	Limestone	.86
Chambers	.89	Lowndes	.88
Cherokee	.87	Macon	.89
Chilton	.87	Madison	.86
Choctaw	.87	Marengo	.87
Clarke	.87	Marion	.86
Clay	.88	Marshall	.87
Cleburne	.88	Mobile	.87
Coffee	.89	Monroe	.88
Colbert	.84	Montgomery	.88
Conecuh	.88	Morgan	.86
Coosa	.88	Perry	.87
Covington	.88	Pickens	.86
Crenshaw	.88	Pike	.89
Cullman	.86	Randolph	.88
Dale	.89	Russell	.89
Dallas	.88	Saint Clair	.87
De Kalb	.87	Shelby	.87
Elmore	.88	Sumter	.87
Escambia	.88	Talladega	.88
Etowah	.87	Tallapoosa	.89
Fayette	.86	Tuscaloosa	.86
Franklin	.85	Walker	.86
Geneva	.89	Washington	.87
Greene	.87	Wilcox	.88
Hale	.87	Winston	.86
Henry	.90		

ARIZONA

Apache	.83	Mohave	.83
Cochise	.83	Navajo	.83
Coconimo	.83	Pima	.82
Gila	.83	Pinal	.82
Graham	.83	Santa Cruz	.83
Greenlee	.83	Yavapai	.83
Maricopa	.82	Yuma	.91

ARKANSAS

Arkansas	.82	Lee	.82
Ashley	.83	Lincoln	.82
Baxter	.78	Little River	.78
Benton	.75	Logan	.77
Boone	.76	Lonoke	.81
Bradley	.82	Madison	.76
Calhoun	.82	Marion	.77
Carroll	.76	Miller	.79
Chicot	.83	Mississippi	.80
Clark	.80	Monroe	.82
Clay	.80	Montgomery	.78
Cleburne	.80	Nevada	.80
Cleveland	.82	Newton	.77
Columbia	.81	Quachita	.81
Conway	.79	Perry	.79
Craighead	.80	Phillips	.83
Crawford	.75	Pike	.79
Crittenden	.81	Poinsett	.80
Cross	.81	Polk	.77
Dallas	.81	Pope	.78
Desha	.83	Prairie	.81
Drew	.83	Pulaski	.80
Faulkner	.80	Randolph	.79
Franklin	.76	St. Francis	.81
Fulton	.78	Saline	.80
Garland	.79	Scott	.77
Grant	.81	Searcy	.78
Greene	.80	Sebastian	.76
Hempstead	.79	Sevier	.78
Hot Spring	.80	Sharp	.79
Howard	.78	Stone	.79
Independence	.80	Union	.82
Izard	.79	Van Buren	.79
Jackson	.80	Washington	.75
Jefferson	.81	White	.80
Johnson	.77	Woodruff	.81
Lafayette	.80	Yell	.78
Lawrence	.79		

TABLE IV—LIST OF STATE AND COUNTY BASE PRICES IN AREA B—Continued

State, county, and price per bushel

CALIFORNIA

Alameda	$0.86	Plumas	$0.83
Alpine	.84	Riverside	.86
Amador	.84	Sacramento	.84
Butte	.84	San Benito	.84
Calaveras	.84	San Bernardino	.86
Colusa	.84	San Diego	.87
Contra Costa	.86	San Francisco	.87
Del Norte	.87	San Joaquin	.84
Eldorado	.84	San Luis Obispo	.86
Fresno	.84	San Mateo	.87
Glenn	.84	Santa Barbara	.86
Humboldt	.87	Santa Clara	.86
Imperial	.86	Santa Cruz	.87
Inyo	.84	Shasta	.81
Kern	.86	Sierra	.84
Kings	.84	Siskiyou	.79
Lake	.84	Solano	.86
Lassen	.81	Sonoma	.87
Los Angeles	.87	Stanislaus	.84
Madera	.84	Sutter	.84
Marin	.87	Tehama	.83
Mariposa	.84	Trinity	.84
Mendocino	.87	Tulare	.84
Merced	.84	Tuolumne	.84
Modoc	.79	Ventura	.86
Mono	.84	Yolo	.84
Monterey	.86	Yuba	.84
Napa	.84		
Nevada	.84		
Orange	.87		
Placer	.84		

COLORADO

Adams	.75	Lake	.79
Alamosa	.79	La Plata	.81
Arapahoe	.75	Larimer	.75
Archuleta	.80	Las Animas	.77
Baca	.76	Lincoln	.75
Bent	.76	Logan	.73
Boulder	.75	Mesa	.80
Chaffee	.78	Mineral	.80
Cheyenne	.75	Moffat	.79
Clear Creek	.77	Montezuma	.81
Conejos	.79	Montrose	.80
Costilla	.79	Morgan	.74
Crowley	.76	Otero	.76
Custer	.78	Ouray	.81
Delta	.80	Park	.77
Denver	.76	Phillips	.73
Dolores	.81	Pitkin	.80
Douglas	.76	Prowers	.76
Eagle	.80	Pueblo	.77
Elbert	.76	Rio Blanco	.79
El Paso	.76	Rio Grande	.79
Fremont	.77	Routt	.78
Garfield	.79	Saguache	.79
Gilpin	.77	San Juan	.81
Grand	.75	San Miguel	.81
Gunnison	.79	Sedgwick	.72
Hinsdale	.81	Summit	.79
Huerfano	.78	Teller	.76
Jackson	.77	Washington	.74
Jefferson	.76	Weld	.74
Kiowa	.76	Yuma	.74
Kit Carson	.75		

CONNECTICUT

All counties	.86

DELAWARE

All counties	.84

DISTRICT OF COLUMBIA

	.83

FLORIDA

Baker	.92	Hamilton	.92
Bay	.91	Holmes	.90
Calhoun	.91	Jackson	.90
Columbia	.92	Lafayette	.92
Duval	.92	Leon	.91
Escambia	.88	Liberty	.91
Franklin	.91	Madison	.92
Gadsden	.91	Nassau	.92
Gulf	.91	Okaloosa	.88

TABLE IV—LIST OF STATE AND COUNTY BASE PRICES IN AREA B—Continued

State, county, and price per bushel

FLORIDA—continued

Santa Rosa	$0.83	Walton	$0.89
Suwannee	.92	Washington	.90
Taylor	.92	All other counties	.93
Wakulla	.91		

GEORGIA

Appling	.90	Lamar	.89
Baker	.90	Laurens	.90
Baldwin	.89	Lee	.90
Banks	.89	Liberty	.90
Barrow	.89	Lincoln	.89
Bartow	.88	Long	.90
Ben Hill	.90	Lumpkin	.88
Bibb	.89	McDuffie	.89
Bleckley	.90	McIntosh	.90
Bryan	.90	Macon	.89
Bulloch	.90	Madison	.89
Burke	.90	Marion	.89
Butts	.89	Meriwether	.89
Calhoun	.90	Miller	.90
Candler	.90	Monroe	.89
Carroll	.88	Montgomery	.90
Catoosa	.87	Morgan	.89
Chatham	.90	Murray	.87
Chattahoochee	.89	Muscogee	.89
Chattooga	.87	Newton	.89
Cherokee	.88	Oconee	.89
Clarke	.89	Oglethorpe	.89
Clay	.90	Paulding	.88
Clayton	.88	Peach	.89
Cobb	.88	Pickens	.88
Columbia	.89	Pike	.89
Coweta	.88	Polk	.88
Crawford	.89	Pulaski	.90
Crisp	.90	Putnam	.89
Dade	.87	Quitman	.89
Dawson	.88	Rabun	.88
Decatur	.90	Randolph	.90
De Kalb	.88	Richmond	.90
Dodge	.90	Rockdale	.89
Dooly	.90	Schley	.89
Dougherty	.90	Screven	.90
Douglas	.88	Seminole	.90
Early	.90	Spalding	.89
Effingham	.90	Stephens	.88
Elbert	.89	Stewart	.89
Emanuel	.90	Sumter	.89
Evans	.90	Talbot	.89
Fannin	.88	Taliaferro	.89
Fayette	.88	Tattnall	.90
Floyd	.87	Taylor	.89
Forsyth	.88	Telfair	.90
Franklin	.89	Terrell	.90
Fulton	.88	Toombs	.90
Gilmer	.88	Towns	.88
Glascock	.89	Treutlen	.90
Gordon	.87	Troup	.89
Greene	.89	Turner	.90
Gwinnett	.89	Twiggs	.89
Habersham	.89	Union	.88
Hall	.88	Upson	.89
Hancock	.89	Walker	.87
Haralson	.88	Walton	.89
Harris	.89	Warren	.89
Hart	.89	Washington	.89
Heard	.88	Wayne	.90
Henry	.89	Webster	.89
Houston	.89	Wheeler	.90
Jackson	.89	White	.88
Jasper	.89	Whitefield	.87
Jeff Davis	.90	Wilcox	.90
Jefferson	.90	Wilkes	.89
Jenkins	.90	Wilkinson	.89
Johnson	.90	All other counties	.91
Jones	.89		

IDAHO

Ada	.67	Gooding	.69
Adams	.65	Jerome	.69
Boise	.67	Lemhi	.65
Camas	.65	Lincoln	.69
Canyon	.67	Minidoka	.69
Cassia	.69	Owyhee	.67
Elmore	.68	Payette	.67
Gem	.67	Shoshone	.64

TABLE IV—LIST OF STATE AND COUNTY BASE PRICES IN AREA B—Continued

State, county, and price per bushel

IDAHO—continued

Twin Falls	$0.69	All other counties in area A.	
Valley	.65		
Washington	.68		

ILLINOIS

Alexander	.79	Madison	$0.75
Bond	.75	Marion	.75
Calhoun	.73	Massac	.80
Christian	.73	Monroe	.76
Clark	.75	Montgomery	.74
Clay	.75	Morgan	.73
Clinton	.75	Moultrie	.73
Coles	.74	Perry	.77
Crawford	.76	Pike	.73
Cumberland	.74	Pope	.73
Douglas	.73	Pulaski	.79
Edgar	.74	Randolph	.77
Edwards	.77	Richland	.76
Effingham	.74	Saint Clair	.76
Fayette	.74	Saline	.78
Franklin	.77	Sangamon	.73
Gallatin	.78	Scott	.73
Greene	.73	Shelby	.73
Hamilton	.77	Union	.79
Hardin	.79	Wabash	.77
Jackson	.78	Washington	.76
Jasper	.75	Wayne	.76
Jefferson	.76	White	.78
Jersey	.74	Williamson	.78
Johnson	.79	All other counties in area A.	
Lawrence	.76		
Macoupin	.74		

INDIANA

Adams	.77	Madison	.76
Allen	.76	Marion	.76
Bartholomew	.78	Martin	.77
Blackford	.76	Miami	.74
Boone	.75	Monroe	.77
Brown	.77	Montgomery	.74
Clark	.79	Morgan	.76
Clay	.75	Noble	.75
Clinton	.74	Ohio	.80
Crawford	.78	Orange	.78
Daviess	.77	Owen	.76
Dearborn	.80	Parke	.74
Decatur	.78	Perry	.79
De Kalb	.76	Pike	.78
Delaware	.77	Posey	.79
Dubois	.78	Putnam	.75
Elkhart	.74	Randolph	.78
Fayette	.78	Ripley	.79
Floyd	.79	Rush	.78
Franklin	.79	Scott	.79
Gibson	.78	Shelby	.77
Grant	.75	Spencer	.79
Greene	.76	Steuben	.76
Hamilton	.76	Sullivan	.76
Hancock	.77	Switzerland	.80
Harrison	.79	Tipton	.75
Hendricks	.75	Union	.78
Henry	.77	Vanderburgh	.79
Howard	.74	Vigo	.75
Huntington	.75	Wabash	.75
Jackson	.78	Warrick	.79
Jay	.77	Washington	.78
Jefferson	.80	Wayne	.78
Jennings	.79	Wells	.76
Johnson	.77	Whitley	.75
Knox	.77	All other counties in area A.	
Kosciusko	.74		
Lagrange	.75		
Lawrence	.77		

IOWA

All counties in area A.

KANSAS

Allen	.72	Butler	.71
Anderson	.72	Chase	.71
Atchison	.72	Chautauqua	.72
Barber	.71	Cherokee	.72
Barton	.71	Cheyenne	.74
Bourbon	.72	Clark	.72
Brown	.71	Clay	.71

TABLE IV—LIST OF STATE AND COUNTY BASE PRICES IN AREA B—Continued

State, county, and price per bushel

KANSAS—continued

Cloud	$0.71	Miami	$0.73
Coffey	.72	Mitchell	.71
Comanche	.72	Montgomery	.72
Cowley	.71	Morris	.71
Crawford	.72	Morton	.75
Decatur	.73	Nemaha	.71
Dickinson	.71	Neosho	.72
Doniphan	.71	Ness	.72
Douglas	.73	Norton	.72
Edwards	.72	Osage	.72
Elk	.72	Osborne	.71
Ellis	.72	Ottawa	.71
Ellsworth	.71	Pawnee	.72
Finney	.73	Phillips	.72
Ford	.72	Pottawatomie	.72
Franklin	.73	Pratt	.71
Geary	.71	Rawlins	.73
Gove	.73	Reno	.71
Graham	.72	Republic	.70
Grant	.74	Rice	.71
Gray	.73	Riley	.71
Greeley	.74	Rooks	.72
Greenwood	.72	Rush	.72
Hamilton	.75	Russell	.71
Harper	.71	Saline	.71
Harvey	.71	Scott	.73
Haskell	.73	Sedgwick	.71
Hodgeman	.72	Seward	.73
Jackson	.72	Shawnee	.72
Jefferson	.73	Sheridan	.73
Jewell	.70	Sherman	.74
Johnson	.74	Smith	.71
Kearny	.74	Stafford	.71
Kingman	.71	Stanton	.75
Kiowa	.72	Stevens	.74
Labette	.72	Sumner	.71
Lane	.73	Thomas	.73
Leavenworth	.73	Trego	.72
Lincoln	.71	Wabaunsee	.72
Linn	.72	Wallace	.74
Logan	.73	Washington	.70
Lyon	.72	Wichita	.74
McPherson	.71	Wilson	.72
Marion	.71	Woodson	.72
Marshall	.71	Wyandotte	.74
Meade	.73		

KENTUCKY

Adair	.83	Gallatin	.80
Allen	.83	Garrard	.83
Anderson	.81	Grant	.81
Ballard	.79	Graves	.81
Barren	.82	Grayson	.80
Bath	.84	Green	.82
Bell	.86	Greenup	.83
Boone	.81	Hancock	.79
Bourbon	.83	Hardin	.80
Boyd	.83	Harlan	.87
Boyle	.82	Harrison	.82
Bracken	.82	Hart	.81
Breathitt	.87	Henderson	.79
Breckinridge	.79	Henry	.80
Bullitt	.79	Hickman	.80
Butler	.81	Hopkins	.81
Caldwell	.80	Jackson	.84
Calloway	.81	Jefferson	.79
Campbell	.81	Jessamine	.83
Carlisle	.80	Johnson	.85
Carroll	.80	Kenton	.81
Carter	.83	Knott	.87
Casey	.82	Knox	.85
Christian	.82	Larue	.81
Clark	.84	Laurel	.84
Clay	.85	Lawrence	.84
Clinton	.84	Lee	.86
Crittenden	.80	Leslie	.86
Cumberland	.84	Letcher	.87
Daviess	.79	Lewis	.83
Edmonson	.82	Lincoln	.83
Elliott	.84	Livingston	.80
Estill	.85	Logan	.82
Fayette	.83	Lyon	.80
Fleming	.83	McCracken	.80
Floyd	.86	McCreary	.84
Franklin	.81	McLean	.80
Fulton	.80	Madison	.84

TABLE IV—LIST OF STATE AND COUNTY BASE PRICES IN AREA B—Continued

State, county, and price per bushel

KENTUCKY—continued

Magoffin	$0.86	Powell	$0.85
Marion	.81	Pulaski	.83
Marshall	.80	Robertson	.82
Martin	.85	Rockcastle	.83
Mason	.82	Rowan	.84
Meade	.79	Russell	.83
Menifee	.85	Scott	.82
Mercer	.82	Shelby	.80
Metcalfe	.83	Simpson	.83
Monroe	.84	Spencer	.80
Montgomery	.84	Taylor	.82
Morgan	.85	Todd	.82
Muhlenberg	.81	Trigg	.81
Nelson	.80	Trimble	.80
Nicholas	.83	Union	.79
Ohio	.80	Warren	.82
Oldham	.79	Washington	.81
Owen	.81	Wayne	.84
Owsley	.85	Webster	.80
Pendleton	.81	Whitley	.85
Perry	.87	Wolfe	.86
Pike	.85	Woodford	.82

LOUISIANA

Acadia	.85	Madison	.84
Allen	.84	Morehouse	.83
Ascension	.88	Natchitoches	.82
Assumption	.88	Orleans	.88
Avoyelles	.86	Ouachita	.82
Beauregard	.83	Plaquemines	.88
Bienville	.81	Pointe Coupee	.87
Bossier	.80	Rapides	.85
Caddo	.80	Red Rover	.81
Calcasieu	.84	Richland	.83
Caldwell	.83	Sabine	.82
Cameron	.84	St. Bernard	.88
Catahoula	.85	St. Charles	.89
Claiborne	.81	St. Helena	.87
Concordia	.86	St. James	.89
De Soto	.80	St. John the Baptist	.88
East Baton Rouge	.86	St. Landry	.86
East Carroll	.84	St. Martin	.86
East Feliciana	.86	St. Mary	.87
Evangeline	.85	St. Tammany	.87
Franklin	.84	Tangipahoa	.87
Grant	.84	Tensas	.85
Iberia	.86	Terrebonne	.89
Iberville	.87	Union	.82
Jackson	.82	Vermilion	.85
Jefferson	.89	Vernon	.83
Jefferson Davis	.84	Washington	.87
Lafayette	.86	Webster	.81
Lafourche	.89	West Baton Rouge	.87
La Salle	.84	West Carroll	.84
Lincoln	.82	West Feliciana	.86
Livingston	.87	Winn	.83

MAINE

All counties	.87

MARYLAND

All counties	.84

MASSACHUSETTS

All counties	.86

MICHIGAN

Alcona	.80	Clare	.79
Alger	.78	Clinton	.77
Allegan	.75	Crawford	.80
Alpena	.81	Delta	.77
Antrim	.81	Dickinson	.77
Arenac	.79	Eaton	.76
Baraga	.77	Emmet	.81
Barry	.76	Genesee	.79
Bay	.79	Gladwin	.79
Benzie	.80	Gogebic	.75
Berrien	.74	Grand Traverse	.80
Branch	.76	Gratiot	.78
Calhoun	.76	Hillsdale	.77
Cass	.74	Houghton	.77
Charlevoix	.81	Huron	.80
Cheboygan	.81	Ingham	.77
Chippewa	.80		

TABLE IV—LIST OF STATE AND COUNTY BASE PRICES IN AREA B—Continued

State, county, and price per bushel

MICHIGAN—continued

Ionia	$0.77	Montcalm	$0.78
Iosco	.80	Montmorency	.81
Iron	.76	Muskegon	.78
Isabella	.79	Newaygo	.79
Jackson	.77	Oakland	.79
Kalamazoo	.76	Oceana	.79
Kalkaska	.80	Ogemaw	.80
Kent	.77	Ontonagon	.76
Keweenaw	.78	Osceola	.79
Lake	.79	Oscoda	.80
Lapeer	.79	Otsego	.81
Leelanau	.80	Ottawa	.77
Lenawee	.78	Presque Isle	.81
Livingston	.78	Roscommon	.80
Luce	.80	Saginaw	.78
Mackinac	.80	Saint Clair	.79
Macomb	.79	St. Joseph	.75
Manistee	.80	Sanilac	.80
Marquette	.77	Schoolcraft	.79
Mason	.79	Shiawassee	.78
Mecosta	.79	Tuscola	.79
Menominee	.76	Van Buren	.75
Midland	.79	Washtenaw	.78
Missaukee	.80	Wayne	.79
Monroe	.79	Wexford	.80

MINNESOTA

Aitkin	.70	Lake of the Woods	.68
Anoka	.70	Mille Lacs	.70
Beltrami	.68	Morrison	.69
Benton	.69	Pine	.71
Carlton	.71	Ramsey	.72
Cass	.69	Roseau	.67
Chisago	.70	Saint Louis	.70
Crow Wing	.69	Sherburne	.69
Hubbard	.68	Todd	.68
Isanti	.70	Wadena	.68
Itasca	.69	Washington	.71
Kanabec	.70	All other counties in area A.	
Koochiching	.69		
Lake	.71		

MISSISSIPPI

Adams	.85	Leflore	.85
Alcorn	.82	Lincoln	.85
Amite	.86	Lowndes	.85
Attala	.85	Madison	.86
Benton	.82	Marion	.86
Bolivar	.83	Marshall	.82
Calhoun	.84	Monroe	.85
Carroll	.85	Montgomery	.86
Chickasaw	.85	Neshoba	.85
Choctaw	.85	Newton	.86
Claiborne	.84	Noxubee	.85
Clarke	.86	Oktibbeha	.85
Clay	.85	Panola	.83
Coahoma	.83	Pearl River	.86
Copiah	.85	Perry	.86
Covington	.85	Pike	.86
De Soto	.81	Pontotoc	.84
Forrest	.86	Prentiss	.83
Franklin	.85	Quitman	.83
George	.86	Rankin	.86
Greene	.86	Scott	.86
Grenada	.85	Sharkey	.84
Hancock	.86	Simpson	.86
Harrison	.86	Smith	.86
Hinds	.85	Stone	.86
Holmes	.85	Sunflower	.84
Humphreys	.84	Tallahatchie	.84
Issaquena	.83	Tate	.82
Itawamba	.84	Tippah	.82
Jackson	.86	Tishomingo	.83
Jasper	.85	Tunica	.82
Jefferson	.85	Union	.83
Jefferson Davis	.85	Walthall	.86
Jones	.85	Warren	.84
Kemper	.85	Washington	.83
Lafayette	.83	Wayne	.85
Lamar	.86	Webster	.85
Lauderdale	.85	Wilkinson	.86
Lawrence	.85	Winston	.85
Leake	.85	Yalobusha	.81
Lee	.84	Yazoo	.85

TABLE IV—LIST OF STATE AND COUNTY BASE PRICES IN AREA B—Continued

State, county, and price per bushel

MISSOURI

Audrain	$0.74	Maries	$0.76
Barry	.74	Miller	.75
Barton	.73	Mississippi	.80
Bates	.73	Moniteau	.74
Benton	.74	Monroe	.73
Bollinger	.79	Montgomery	.75
Boone	.74	Morgan	.74
Buchanan	.72	New Madrid	.80
Butler	.79	Newton	.73
Caldwell	.72	Oregon	.78
Callaway	.75	Osage	.75
Camden	.75	Ozark	.77
Cape Girardeau	.79	Pemiscot	.80
Carroll	.72	Perry	.78
Carter	.78	Pettis	.73
Cass	.74	Phelps	.76
Cedar	.73	Pike	.74
Chariton	.72	Platte	.73
Christian	.75	Polk	.74
Clay	.73	Pulaski	.76
Clinton	.72	Ralls	.73
Cole	.75	Randolph	.73
Cooper	.73	Ray	.73
Crawford	.76	Reynolds	.78
Dade	.73	Ripley	.78
Dallas	.75	St. Charles	.76
Dent	.77	St. Clair	.73
Douglas	.76	St. Francois	.77
Dunklin	.80	Ste. Genevieve	.77
Franklin	.76	St. Louis	.76
Gasconade	.75	Saline	.73
Greene	.74	Scott	.79
Henry	.73	Shannon	.77
Hickory	.74	Stoddard	.79
Howard	.73	Stone	.75
Howell	.77	Taney	.76
Iron	.77	Texas	.77
Jackson	.74	Vernon	.73
Jasper	.73	Warren	.75
Jefferson	.76	Washington	.76
Johnson	.73	Wayne	.79
Laclede	.76	Webster	.75
Lafayette	.74	Wright	.76
Lawrence	.74	All other counties in area A.	
Lincoln	.75		
McDonald	.74		
Madison	.78		

MONTANA

Beaverhead	.65	Meagher	.59
Big Horn	.63	Mineral	.63
Broadwater	.60	Missoula	.63
Carbon	.64	Musselshell	.59
Carter	.65	Park	.63
Custer	.61	Powder River	.65
Deer Lodge	.63	Powell	.61
Fallon	.63	Ravalli	.63
Flathead	.59	Rosebud	.60
Gallatin	.63	Sanders	.63
Golden Valley	.59	Silver Bow	.63
Granite	.63	Stillwater	.61
Jefferson	.61	Sweet Grass	.62
Lake	.61	Treasure	.60
Lewis and Clark	.59	Wheatland	.59
Lincoln	.62	Yellowstone	.61
Madison	.65	All other counties in area A.	

NEBRASKA

Adams	.70	Franklin	.71
Arthur	.70	Frontier	.71
Banner	.73	Furnas	.71
Blaine	.70	Garden	.71
Box Butte	.72	Garfield	.69
Boyd	.67	Gosper	.71
Brown	.69	Grant	.70
Buffalo	.70	Greeley	.69
Chase	.72	Hall	.70
Cherry	.70	Harlan	.71
Cheyenne	.72	Hayes	.71
Custer	.70	Hitchcock	.72
Dawes	.71	Holt	.68
Dawson	.70	Hooker	.70
Deuel	.71	Howard	.69
Dundy	.72	Kearney	.71

TABLE IV—LIST OF STATE AND COUNTY BASE PRICES IN AREA B—Continued

State, county, and price per bushel

NEBRASKA—continued

Keith	$0.71	Scotts Bluff	$0.73
Keyapaha	.68	Sheridan	.71
Kimball	.73	Sherman	.70
Lincoln	.71	Sioux	.72
Logan	.70	Thomas	.70
Loup	.70	Valley	.70
McPherson	.70	Webster	.70
Morrill	.73	Wheeler	.63
Perkins	.71	All other counties in area A.	
Phelps	.71		
Redwillow	.72		
Rock	.69		

NEVADA

Churchill	.79	Lyon	.79
Clark	.83	Mineral	.79
Douglas	.79	Nye	.81
Elko	.78	Ormsby	.79
Esmeralda	.79	Pershing	.79
Eureka	.79	Storey	.79
Humboldt	.78	Washoe	.79
Lander	.79	White Pine	.78
Lincoln	.83		

NEW HAMPSHIRE

All counties .87

NEW JERSEY

All counties .84

NEW MEXICO

Bernalillo	.81	Mora	.78
Catron	.82	Otero	.83
Chaves	.80	Quay	.77
Colfax	.78	Rio Arriba	.80
Curry	.78	Roosevelt	.79
De Baca	.79	Sandoval	.80
Dona Ana	.83	San Juan	.82
Eddy	.82	San Miguel	.78
Grant	.83	Santa Fe	.79
Guadalupe	.79	Sierra	.82
Harding	.78	Socorro	.81
Hidalgo	.83	Taos	.79
Lea	.80	Torrance	.80
Lincoln	.82	Union	.77
Luna	.83	Valencia	.82
McKinley	.82		

NEW YORK

Allegany	.83	Niagara	.83
Broome	.84	Oneida	.84
Cattaraugus	.83	Onondaga	.84
Cayuga	.84	Ontario	.84
Chautauqua	.83	Orleans	.84
Chemung	.84	Oswego	.84
Chenango	.84	Otsego	.84
Cortland	.84	Schuyler	.84
Delaware	.84	Seneca	.84
Erie	.83	Steuben	.84
Genesee	.84	Sullivan	.84
Herkimer	.84	Tioga	.84
Jefferson	.84	Tompkins	.84
Lewis	.84	Wyoming	.84
Livingston	.84	Yates	.84
Madison	.84	All other counties	.85
Monroe	.84		

NORTH CAROLINA

Alamance	.83	Davie	.83
Alexander	.88	Durham	.83
Alleghany	.87	Edgecombe	.83
Ashe	.87	Forsyth	.87
Avery	.88	Franklin	.83
Beaufort	.88	Gates	.87
Bertie	.87	Graham	.83
Buncombe	.88	Granville	.83
Burke	.88	Guilford	.83
Caldwell	.88	Halifax	.87
Camden	.87	Haywood	.83
Caswell	.88	Henderson	.83
Cherokee	.88	Hertford	.87
Chowan	.87	Hyde	.83
Clay	.88	Jackson	.88
Currituck	.87	McDowell	.83
Dare	.87	Macon	.88
Davidson	.88	Madison	.83

TABLE IV—LIST OF STATE AND COUNTY BASE PRICES IN AREA B—Continued

State, county, and price per bushel

NORTH CAROLINA—continued

Martin	$0.87	Swain	$0.83
Mitchell	.83	Transylvania	.83
Nash	.83	Tyrrell	.87
Northampton	.87	Vance	.83
Orange	.83	Warren	.87
Pasquotank	.87	Washington	.87
Perquimans	.87	Watauga	.83
Person	.83	Wilkes	.83
Pitt	.83	Wilson	.83
Polk	.83	Yadkin	.83
Rockingham	.87	Yancey	.83
Rutherford	.83	All other counties	.89
Stokes	.87		
Surry	.87		

NORTH DAKOTA

All counties in Area A.

OHIO

Adams	.83	Licking	.81
Allen	.78	Logan	.80
Ashland	.81	Lorain	.81
Ashtabula	.82	Lucas	.79
Athens	.81	Madison	.81
Auglaize	.79	Mahoning	.82
Belmont	.82	Marion	.81
Brown	.82	Medina	.81
Butler	.80	Meigs	.81
Carroll	.82	Mercer	.78
Champaign	.80	Miami	.80
Clark	.80	Monroe	.82
Clermont	.81	Montgomery	.80
Clinton	.81	Morgan	.81
Columbiana	.82	Morrow	.81
Coshocton	.81	Muskingum	.81
Crawford	.81	Noble	.82
Cuyahoga	.81	Ottawa	.80
Darke	.79	Paulding	.77
Defiance	.77	Perry	.81
Delaware	.81	Pickaway	.81
Erie	.81	Pike	.82
Fairfield	.81	Portage	.81
Fayette	.81	Preble	.79
Franklin	.81	Putnam	.78
Fulton	.78	Richland	.81
Gallia	.82	Ross	.81
Geauga	.81	Sandusky	.80
Greene	.81	Scioto	.83
Guernsey	.81	Seneca	.80
Hamilton	.81	Shelby	.79
Hancock	.79	Stark	.81
Hardin	.79	Summit	.81
Harrison	.82	Trumbull	.82
Henry	.78	Tuscarawas	.81
Highland	.82	Union	.81
Hocking	.81	Van Wert	.77
Holmes	.81	Vinton	.81
Huron	.81	Warren	.81
Jackson	.82	Washington	.82
Jefferson	.82	Wayne	.81
Knox	.81	Williams	.77
Lake	.81	Wood	.79
Lawrence	.83	Wyandot	.80

OKLAHOMA

Adair	.74	Dewey	.73
Alfalfa	.72	Ellis	.73
Atoka	.76	Garfield	.72
Beaver	.74	Garvin	.74
Beckham	.74	Grady	.74
Blaine	.73	Grant	.72
Bryan	.76	Greer	.74
Caddo	.74	Harmon	.74
Canadian	.73	Harper	.73
Carter	.75	Haskell	.75
Cherokee	.74	Hughes	.74
Choctaw	.77	Jackson	.74
Cimarron	.76	Jefferson	.75
Cleveland	.74	Johnson	.75
Coal	.75	Kay	.72
Comanche	.74	Kingfisher	.73
Cotton	.74	Kiowa	.74
Craig	.73	Latimer	.76
Creek	.73	Le Flore	.76
Custer	.74	Lincoln	.73
Delaware	.74	Logan	.73

TABLE IV—LIST OF STATE AND COUNTY BASE PRICES IN AREA B—Continued

State, county, and price per bushel

OKLAHOMA—continued

Love	$0.75	Pittsburg	$0.75
McClain	.74	Pontotoc	.74
McCurtain	.77	Pottawatomie	.74
McIntosh	.74	Pushmataha	.76
Major	.72	Roger Mills	.74
Marshall	.75	Rogers	.72
Mayes	.73	Seminole	.74
Murray	.75	Sequoyah	.75
Muskogee	.74	Stephens	.74
Noble	.72	Texas	.75
Nowata	.72	Tillman	.74
Okfuskee	.73	Tulsa	.73
Oklahoma	.73	Wagoner	.73
Okmulgee	.73	Washington	.72
Osage	.72	Washita	.74
Ottawa	.73	Woods	.72
Pawnee	.72	Woodward	.72
Payne	.73		

OREGON

Baker	.66	Klamath	.79
Benton	.71	Lake	.78
Clackamas	.73	Lane	.73
Clatsop	.74	Lincoln	.76
Columbia	.74	Linn	.71
Coos	.76	Malheur	.70
Crook	.74	Marion	.72
Curry	.77	Multnomah	.71
Deschutes	.74	Polk	.71
Douglas	.75	Tillamook	.76
Grant	.69	Washington	.73
Harney	.71	Wheeler	.71
Hood River	.73	Yamhill	.72
Jackson	.76	All other counties in area A.	
Jefferson	.72		
Josephine	.76		

PENNSYLVANIA

Adams	.83	Greene	.82
Allegheny	.82	Huntingdon	.83
Armstrong	.82	Indiana	.82
Beaver	.82	Jefferson	.82
Bedford	.83	Juniata	.83
Blair	.83	Lawrence	.82
Butler	.82	McKean	.83
Cambria	.83	Mercer	.82
Cameron	.83	Mifflin	.83
Centre	.83	Perry	.83
Clarion	.82	Potter	.83
Clearfield	.83	Somerset	.83
Clinton	.83	Venango	.82
Crawford	.82	Warren	.83
Cumberland	.83	Washington	.82
Elk	.83	Westmoreland	.82
Erie	.82	York	.83
Fayette	.82	All other counties	.83½
Forest	.82		
Franklin	.83		
Fulton	.83		

RHODE ISLAND

All counties	.86

SOUTH CAROLINA

Cherokee	.89	Spartanburg	.89
Chester	.89	Union	.89
Greenville	.89	York	.89
Lancaster	.89	All other counties	.90
Oconee	.89		
Pickens	.89		

SOUTH DAKOTA

Armstrong	.65	Meade	.66
Bennett	.70	Mellette	.68
Butte	.66	Pennington	.68
Corson	.65	Perkins	.65
Custer	.69	Shannon	.70
Dewey	.65	Stanley	.66
Fall River	.70	Todd	.69
Gregory	.67	Tripp	.67
Haakon	.67	Washabaugh	.69
Harding	.65	Washington	.69
Jackson	.68	Ziebach	.66
Jones	.67	All other counties in Area A	
Lawrence	.67		
Lyman	.67		

TABLE IV—LIST OF STATE AND COUNTY BASE PRICES IN AREA B—Continued

State, county, and price per bushel

TENNESSEE

Anderson	$0.87	Lauderdale	$0.80
Bedford	.86	Lawrence	.85
Benton	.83	Lewis	.85
Bledsoe	.87	Lincoln	.86
Blount	.88	Loudon	.88
Bradley	.88	McMinn	.87
Campbell	.86	McNairy	.82
Cannon	.85	Macon	.84
Carroll	.82	Madison	.81
Carter	.88	Marion	.87
Cheatham	.84	Marshall	.85
Chester	.82	Maury	.85
Clairborne	.86	Meigs	.87
Clay	.84	Monroe	.88
Cocke	.83	Montgomery	.83
Coffee	.86	Moore	.86
Crockett	.81	Morgan	.86
Cumberland	.86	Obion	.80
Davidson	.84	Overton	.85
Decatur	.83	Perry	.84
De Kalb	.85	Pickett	.85
Dickson	.84	Polk	.88
Dyer	.80	Putnam	.85
Fayette	.81	Rhea	.87
Fentress	.85	Roane	.87
Franklin	.87	Robertson	.83
Gibson	.81	Rutherford	.85
Giles	.86	Scott	.86
Grainger	.87	Sequatchie	.87
Greene	.88	Sevier	.88
Grundy	.86	Shelby	.80
Hamblen	.88	Smith	.84
Hamilton	.87	Stewart	.82
Hancock	.87	Sullivan	.87
Hardeman	.82	Sumner	.83
Hardin	.83	Tipton	.80
Hawkins	.87	Trousdale	.84
Haywood	.81	Unicoi	.88
Henderson	.82	Union	.87
Henry	.82	Van Buren	.86
Hickman	.84	Warren	.85
Houston	.83	Washington	.88
Humphreys	.83	Wayne	.84
Jackson	.84	Weakley	.81
Jefferson	.88	White	.85
Johnson	.87	Williamson	.85
Knox	.87	Wilson	.84
Lake	.80		

TEXAS

Anderson	.78	Cherokee	.78
Andrews	.80	Childress	.75
Angelina	.80	Clay	.75
Aransas	.84	Cochran	.79
Archer	.75	Coke	.77
Armstrong	.76	Coleman	.77
Atascosa	.83	Collin	.76
Austin	.81	Collingsworth	.74
Bailey	.79	Colorado	.81
Bandera	.81	Comal	.81
Bastrop	.79	Comanche	.76
Baylor	.75	Concho	.77
Bee	.84	Cooke	.76
Bell	.77	Coryell	.76
Bexar	.82	Cottle	.76
Blanco	.79	Crane	.81
Borden	.78	Crockett	.80
Bosque	.76	Crosby	.77
Bowie	.78	Culberson	.84
Brazoria	.83	Dallam	.76
Brazos	.80	Dallas	.76
Brewster	.83	Dawson	.79
Briscoe	.76	Deaf Smith	.77
Brooks	.85	Delta	.77
Brown	.76	Denton	.76
Burleson	.79	De Witt	.82
Burnet	.78	Dickens	.76
Caldwell	.80	Dimmit	.84
Calhoun	.84	Donley	.75
Callahan	.76	Duval	.85
Cameron	.85	Eastland	.76
Camp	.78	Ector	.81
Carson	.74	Edwards	.80
Cass	.79	Ellis	.77
Castro	.77	El Paso	.84
Chambers	.83	Erath	.76

TABLE IV—LIST OF STATE AND COUNTY BASE PRICES IN AREA B—Continued

State, county, and price per bushel

TEXAS—continued

Falls	$0.78	Martin	$0.79
Fannin	.77	Mason	.78
Fayette	.80	Matagorda	.83
Fisher	.76	Maverick	.84
Floyd	.76	Medina	.82
Foard	.75	Menard	.78
Fort Bend	.82	Midland	.80
Franklin	.78	Milam	.78
Freestone	.78	Mills	.76
Frio	.83	Mitchell	.77
Gaines	.80	Montague	.76
Galveston	.83	Montgomery	.82
Garza	.77	Moore	.76
Gillespie	.79	Morris	.78
Glasscock	.79	Motley	.76
Goliad	.81	Nacogdoches	.79
Gonzales	.81	Navarro	.78
Gray	.74	Newton	.82
Grayson	.76	Nolan	.76
Gregg	.79	Nueces	.84
Grimes	.81	Ochiltree	.74
Guadalupe	.81	Oldham	.76
Hale	.77	Orange	.83
Hall	.75	Palo Pinto	.76
Hamilton	.76	Panola	.80
Hansford	.74	Parker	.76
Hardeman	.75	Parmer	.76
Hardin	.82	Pecos	.82
Harris	.82	Polk	.81
Harrison	.79	Potter	.75
Hartley	.76	Presidio	.84
Haskell	.76	Rains	.77
Hays	.80	Randall	.76
Hemphill	.74	Reagan	.79
Henderson	.78	Real	.81
Hidalgo	.85	Red River	.78
Hill	.77	Reeves	.83
Hockley	.78	Refugio	.81
Hood	.76	Roberts	.74
Hopkins	.77	Robertson	.79
Houston	.79	Rockwall	.77
Howard	.78	Runnels	.77
Hudspeth	.84	Rusk	.79
Hunt	.77	Sabine	.81
Hutchinson	.74	San Augustine	.81
Irion	.78	San Jacinto	.81
Jack	.75	San Patricio	.84
Jackson	.82	San Saba	.77
Jasper	.82	Schleicher	.78
Jeff Davis	.84	Scurry	.77
Jefferson	.83	Shackelford	.76
Jim Hogg	.85	Shelby	.81
Jim Wells	.85	Sherman	.76
Johnson	.77	Smith	.78
Jones	.76	Somervell	.76
Karnes	.83	Star	.85
Kaufman	.77	Stephens	.76
Kendall	.80	Sterling	.78
Kenedy	.85	Stonewall	.77
Kent	.77	Sutton	.79
Kerr	.80	Swisher	.77
Kimble	.79	Tarrant	.76
King	.76	Taylor	.76
Kinney	.82	Terrell	.82
Kleberg	.85	Terry	.79
Knox	.76	Throckmorton	.75
Lamar	.77	Titus	.78
Lamb	.78	Tom Green	.77
Lampasas	.77	Travis	.79
La Salle	.84	Trinity	.80
Lavaca	.81	Tyler	.81
Lee	.79	Upshur	.78
Leon	.79	Upton	.80
Liberty	.82	Uvalde	.83
Limestone	.78	Val Verde	.81
Lipscomb	.74	Van Zandt	.77
Live Oak	.84	Victoria	.83
Llana	.78	Walker	.81
Loving	.82	Waller	.81
Lubbock	.77	Ward	.82
Lynn	.78	Washington	.80
McCulloch	.77	Webb	.85
McLennan	.77	Wharton	.82
McMullen	.84	Wheeler	.74
Madison	.80	Wichita	.76
Marion	.79	Wilbarger	.76

TABLE IV—LIST OF STATE AND COUNTY BASE PRICES IN AREA B—Continued

State, county, and price per bushel

TEXAS—continued

Willacy	$0.85	Wood	$0.78
Williamson	.78	Yoakum	.80
Wilson	.82	Young	.75
Winkler	.82	Zapata	.85
Wise	.75	Zavala	.83

UTAH

Beaver	.78	San Juan	.79
Carbon	.77	Sanpete	.77
Daggett	.76	Sevier	.73
Davis	.75	Summit	.76
Duchesne	.76	Tooele	.76
Emery	.78	Uintah	.76
Garfield	.79	Utah	.76
Grand	.77	Wasatch	.76
Iron	.79	Washington	.79
Juab	.77	Wayne	.78
Kane	.79	Weber	.75
Millard	.77	All other counties in area A.	
Morgan	.74		
Piute	.78		
Salt Lake	.75		

VERMONT

All counties	.86

VIRGINIA

Bland	.85	Nottaway	.85
Brunswick	.86	Patrick	.86
Buchanan	.85	Pittsylvania	.86
Campbell	.85	Prince Edward	.85
Carroll	.86	Prince George	.85
Charlotte	.86	Princess Anne	.83
Dickenson	.86	Russell	.85
Dinwiddie	.85	Scott	.87
Floyd	.85	Smyth	.86
Franklin	.85	Southampton	.86
Grayson	.86	Surry	.85
Greensville	.86	Sussex	.85
Halifax	.87	Tazewell	.85
Henry	.86	Washington	.87
Isle of Wight	.85	Wise	.87
Lee	.87	Wythe	.85
Lunenburg	.86	All other counties	.84
Mecklenburg	.87		
Nansemond	.86		
Norfolk	.86		

WASHINGTON

Chelan	.69	Pend Oreille	.65
Clallam	.77	Pierce	.74
Clark	.74	San Juan	.73
Cowlitz	.74	Skagit	.74
Ferry	.66	Skamania	.72
Grays Harbor	.75	Snohomish	.74
Island	.73	Stevens	.66
Jefferson	.77	Thurston	.74
King	.74	Wahkiakum	.74
Kitsap	.72	Whatcom	.74
Klickitat	.70	Yakima	.71
Lewis	.74	All Other counties in area A.	
Mason	.75		
Okanogan	.69		
Pacific	.75		

TABLE IV—LIST OF STATE AND COUNTY BASE PRICES IN AREA B—Continued

State, county, and price per bushel

WEST VIRGINIA

Brooke	$0.82	Mercer	$0.85
Cabell	.82	Mingo	.85
Calhoun	.83	Monongalia	.83
Clay	.83	Ohio	.82
Doddridge	.83	Pleasants	.82
Fayette	.83	Preston	.83
Gilmer	.83	Putnam	.82
Hancock	.82	Ritchie	.83
Jackson	.82	Roane	.82
Kanawha	.82	Tyler	.83
Lincoln	.83	Wetzel	.83
Logan	.85	Wirt	.82
McDowell	.85	Wood	.82
Marion	.83	Wyoming	.85
Marshall	.82	All other counties	.84
Mason	.82		

WISCONSIN

Ashland	.73	Oconto	.73
Barron	.71	Oneida	.75
Bayfield	.72	Outagamie	.73
Brown	.73	Polk	.71
Burnett	.72	Portage	.72
Chippewa	.71	Price	.74
Clark	.72	Rusk	.72
Door	.73	St. Croix	.70
Douglas	.71	Sawyer	.73
Dunn	.70	Shawano	.73
Eau Claire	.71	Taylor	.73
Florence	.76	Vilas	.75
Forest	.75	Washburn	.72
Iron	.74	Waupaca	.73
Kewaunee	.73	Wood	.72
Langlade	.74	All other counties in Area A.	
Lincoln	.74		
Marathon	.73		
Marinette	.75		

WYOMING

Albany	.75	Niobrara	.71
Big Horn	.66	Park	.66
Campbell	.66	Platte	.73
Carbon	.76	Sheridan	.66
Converse	.71	Sublette	.71
Crook	.66	Sweetwater	.76
Fremont	.71	Teton	.69
Goshen	.73	Uinta	.73
Hot Springs	.69	Washakie	.69
Johnson	.67	Weston	.68
Laramie	.73	Yellowstone National Park	.66
Lincoln	.71		
Natrona	.71		

This regulation shall become effective July 26, 1944.

NOTE: All record keeping and reporting requirements of this regulation have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

Issued this 21st day of July 1944.

IVAN D. CARSON,
Acting Administrator.

Approved: July 11, 1944.

GROVER B. HILL,
Acting War Food Administrator.

[F. R. Doc. 44-10913; Filed, July 21, 1944; 11:34 a. m.]

PART 1364—FRESH, CURED AND CANNED MEAT AND FISH PRODUCTS

[MPR 394,[1] Amdt. 6]

RETAIL CEILING PRICES FOR KOSHER BEEF, VEAL, LAMB AND MUTTON CUTS

A statement of the considerations involved in the issuance of this amendment has been issued simultaneously herewith and filed with the Division of the Federal Register.*

Maximum Price Regulation No. 394 is amended in the following respects:

1. Section 1 is amended to read as follows:

SECTION 1. *What this regulation does.* This regulation fixes dollar-and-cents ceiling prices on all retail sales of kosher beef, veal, lamb and mutton cuts, variety meats and edible by-products and kosher sausage. It also fixes dollar-and-cents ceiling prices on all sales of retail cuts of kosher beef, veal, lamb and mutton, variety meats and edible by-products and kosher sausage, which kosher retail dealers are permitted to make to purveyors of kosher meals. It also fixes dollar-and-cents ceiling prices on the kosher meat items covered by this regulation when permission has been granted kosher retail dealers to sell to other kosher retail dealers for resale purposes. You shall not sell any retail kosher beef, veal, lamb or mutton cuts, variety meat item or edible by-product at a price higher than the ceiling price for the corresponding non-kosher retail cut or item, or at the ceiling price fixed in this regulation, unless you maintain a store at or through which you regularly and generally sell kosher meat as such.

Kosher meat means any retail cut, variety meat item, edible by-product, or kosher sausage product derived from livestock slaughtered, approved and stamped as kosher under rabbinical supervision and sold after preparation according to Jewish dietary law. The only retail kosher beef, veal, lamb and mutton cuts which may be sold are those described in section 16 of this regulation. The United States is divided into zones, and different ceiling prices depend on the zone where your store is, its group, and the grade of meat you are selling. A store includes any place where kosher beef, veal, lamb and mutton cuts or variety meats and edible by-products are sold at retail.

2. Section 2 (a) is amended to read as follows:

(a) You will find your ceiling price for each grade of kosher beef, veal, lamb and

*Copies may be obtained from the Office of Price Administration.

[1] 8 F.R. 6364, 6548, 6618, 7200, 7692, 11237, 12621; 9 F.R. 15609.

mutton cuts on your "OPA List of Retail Ceiling Prices for Kosher Beef, Veal, Lamb, and Mutton—Fresh, Frozen, Cured" (Article II section 19), for variety meats and edible by-products on your "OPA List of Retail Ceiling Prices for Kosher Variety Meats and Edible By-Products" (Article II, section 22), and for kosher sausage products on your OPA List of Ceiling Prices for Kosher Sausage (Article II, section 23), on all sales made to individuals for consumption by themselves or their families off your premises. You will also use the same ceiling prices on sales to kosher eating places if the dollar volume of such sales does not exceed 20% of your total dollar volume of all kosher sales during any calendar month. If you have not obtained written permission in advance from your appropriate Regional Office you cannot sell more than 20% of the total dollar volume of your sales of kosher meat during any calendar month to purveyors of kosher meals. In exceptional cases where you have been granted permission in advance to sell more than 20% of your dollar volume of kosher meats to kosher eating places your ceiling prices on all sales made to kosher eating places shall be the prices on your "OPA List of Retail Ceiling Prices on Specially Authorized Sales to Kosher Eating Places or Other Kosher Retailers" (Article II, section 24). In those cases where you have been granted permission to make sales to another kosher retail dealer for resale purposes you will find your ceiling prices for such sales on your "OPA List of Retail Ceiling Prices on Specially Authorized Sales to Kosher Eating Places or Other Kosher Retailers" (Article II, section 24). A copy of the lists for each kind of kosher meat, variety meat and edible by-products, and kosher sausage product for your zone will be attached to this regulation. A complete price list showing prices for all retail cuts of kosher meat, variety meats and edible by-products, and kosher sausage products can be obtained from your local War Price and Rationing Board or from your District Office of the Office of Price Administration.

3. Section 3 (d) is added to read as follows:

(d) On July 26, 1944, the dollars-and-cents supplementary ceiling prices fixed for kosher beef, veal, lamb and mutton cuts, variety meats and edible by-products, and kosher sausage products to which this regulation applies sold to kosher eating places or to other retail kosher dealers for resale where written permission to make such sales has been granted in advance (Article II, section 24), take the place of all previous ceiling prices fixed by the Office of Price Administration for these particular sales made to the limited types of buyers and sales described. On and after July 26, 1944, in the exceptional instances where these special types of kosher sales are permitted to be made, you must not sell or offer to sell any of the items named and priced in Article II, section 24, to purveyors of kosher meals or to other retail kosher dealers, at prices higher than those therein specified.

4. Section 5, including the headnote, is amended to read as follows:

SEC. 5. *The types of kosher sales you are allowed to make.* (a) You may make sales to individuals for consumption by themselves or their families off your premises.

(b) You may make sales to hotels, restaurants, institutions, and other purveyors of meals selling or furnishing kosher meals, of not more than 20% of the total dollar volume of your kosher sales during any month. Your ceiling prices for such sales are the ceiling prices fixed by this regulation for sales to individuals for consumption by themselves or their families off your premises.

(c) You may make sales to hotels, restaurants, institutions and other purveyors of meals selling or furnishing kosher meals, of more than 20% of the total dollar volume of your kosher sales during any month only after the appropriate Regional Administrator has declared the area in which your store is located to be an area deficient in supplies of fabricated meat cuts for purveyors of meals, and, following such declaration, you have applied to the appropriate OPA District Office for, and have received written permission to make such sales.

Each Regional Administrator is authorized either on his own motion or after consideration of applications made by one or more retail dealers, to declare any portion of the region under his jurisdiction to be an area deficient in supplies of fabricated meat cuts for purveyors of meals when he finds that the following conditions exist:

(1) Purveyors of meals within the area are unable to obtain fabricated meat cuts in sufficient volume to supply their requirements as determined under Ration Order No. 16 during the two month period immediately preceding May 1, 1944;

(2) The deficiency in supply is caused either by the fact that there are no dealers in the area selling fabricated meat cuts, or the dealers in the area selling fabricated meat cuts do not have adequate facilities or quotas to supply the requirements of surveyors of meals located in the area as determined under the first condition;

(3) Purveyors of meals in the area customarily have relied upon, and find it necessary to continue to rely upon local retail dealers for supplies of meat sufficient to fill their requirements.

Applications calling upon the appropriate Regional Administrator to declare a specific area to be deficient in supplies of fabricated meat cuts for purveyors of meals may be filed with the appropriate OPA District or Regional Office at any time during business hours on any business day by one or more retail dealers who operate a retail store or stores within the area.

Applications must be in writing, must be signed by the applicant or applicants, must describe the specific area for which the declaration is sought, and must set forth facts which indicate the existence of the conditions under which the Regional Administrator is authorized to declare the area to be deficient in supplies of fabricated meat cuts for purveyors of meals. If the application is filed in an OPA District Office, it shall be forwarded within five days to the appropriate Regional Office together with the recommendations of the OPA District Office Director based upon an accompanying analysis of the conditions existing in the specific area for which the declaration is sought.

Upon a finding by the Regional Administrator, either on his own motion or after consideration of a proper application or applications, that the conditions under which he is authorized to act exist, he shall declare the specific area to be deficient in supplies of fabricated meat cuts for purveyors of meals.

Following a declaration by the appropriate Regional Administrator that any specific area under his jurisdiction is deficient in supplies of fabricated meat cuts for purveyors of meals any retail dealer having a store located in that area may apply in writing to his OPA District Office for permission to sell more than 20% of the total dollar volume of his sales of meat made at his retail store or stores located in the area to purveyors of meals. The application for permission must be in duplicate, must be signed by the applicant, must give the address of the store or stores from which he intends to make sales by virtue of the permission, and must declare that the applicant, in all sales made from such store or stores to purveyors of meals after receipt of the requested permission, will charge no more than the ceiling prices listed in his "OPA List of Retail Ceiling Prices on Specially Authorized Sales to Kosher Eating Places or Other Kosher Retailers" (Article II sec-

tion 24). For purposes of convenience he may combine an application made under this section with applications made under the analogous sections of Meximum Price Regulation No. 336 and/or Maximum Price Regulation No. 355.

Upon receipt of an application the OPA District Director shall grant the applicant the requested permission in writing. When the applicant has received such permission, his ceiling prices on all kosher sales thereafter made to purveyors of kosher meals must not exceed the ceiling prices for each grade of kosher beef, veal, lamb and mutton retail cuts listed in the "OPA List of Retail Ceiling Prices on Specially Authorized Sales to Kosher Eating Places or Other Kosher Retailers" (Article II, section 24).

(d) You may make sales to other kosher retail dealers who purchase your retail kosher meat cuts for resale, or you may buy retail kosher meat cuts for resale purposes from other kosher retail dealers, only after written permission to make such sales or purchases has been granted to both the seller and the buyer by the appropriate Regional Office. The seller and the buyer must submit joint applications in duplicate to the appropriate OPA District Office for such permission and must state therein the reasons why permission to make such sales and purchases is being sought. The joint application submitted must be signed by both parties and must set forth facts which indicate the existence of the following conditions:

(1) The purchasing kosher retail dealer serves an area which will be deprived of its adequate supply of kosher meats unless provision is made for him to procure kosher meats in the form of retail cuts;

(2) The purchasing kosher retail dealer does not have the facilities necessary to cut kosher wholesale cuts into retail cuts;

(3) The purchasing kosher retail dealer either customarily purchased his kosher meats in the form of retail cuts prior to May 17, 1943, or is just starting to sell kosher meats at retail in the designated location;

(4) The selling kosher retail dealer is regularly engaged in the business of making sales at retail, the major portion of his kosher meat business consisting of sales to individuals for consumption by themselves or their families off his premises;

(5) The contemplated sale of kosher retail cuts to the purchasing kosher retail dealer will constitute only an incidental part of the selling kosher retail dealer's business. In no event may sales of kosher retail cuts to other kosher retail dealers exceed 40% of the total dollar volume of kosher sales made by the selling kosher retail dealer.

The application also must include statements showing (1) the approximate total volume of kosher retail cuts expected to be transferred monthly as a result of the arrangement, (2) the expected duration of the arrangement, (3) the name and address of both parties. For purposes of convenience buyers and sellers may combine applications made under this section with applications made under the analogous sections of Maximum Price Regulation No. 336 and/or Maximum Price Regulation No. 355. The OPA District Office shall forward the application to the appropriate Regional Office together with its recommendations.

Upon receipt of a joint application, together with the recommendations of the OPA District Office, the appropriate Regional Office shall conduct whatever investigations it deems necessary concerning the statements in the joint application. Upon a finding by the Regional Administrator that all of the requirements of this section have been satisfied, he is authorized to grant permission in writing authorizing the purchasing kosher retail dealer to buy and the selling kosher retail dealer to sell kosher retail cuts for resale in whatever quantity and for whatever period as he may find to be appropriate under the circumstances. He also shall send a copy of whatever order he may make to the forwarding OPA District Office.

Where such permission has been granted, and if you are the kosher retail seller, you may charge the kosher retail dealer authorized to purchase kosher retail cuts from you no more than the ceiling price for the cut and grade of kosher beef, veal, lamb and mutton retail cuts listed on your "OPA List of Retail Ceiling Prices on Specially Authorized Sales to Kosher Eating Places or Other Kosher Retailers" (Article II, section 24).

If you are the authorized purchasing kosher retail dealer you may pay the authorized selling kosher retail dealer no more than the ceiling price for the cut and grade of kosher beef, veal, lamb and mutton retail cuts listed on your "OPA List of Retail Ceiling Prices on Specially Authorized Sales to Kosher Eating Places or Other Kosher Retailers" (Article II, section 24).

5. Section 9 is amended to read as follows:

SEC. 9. *Records, sales slips, and receipts.* After May 17, 1943, you shall keep the same kind of records you have customarily kept, showing the prices you charge for kosher beef, veal, lamb and mutton cuts, variety meats and edible by-products, and kosher sausage products. On all sales to hotels, restaurants, institutions and other eating places selling or furnishing kosher meals made after July 26, 1944, you must keep records and give receipts to each respective purchaser, showing the name and address of each such purchaser, the date of each purchase, your name and address, the component items of each order including the name, weight and grade of each retail kosher meat cut, variety meat item and edible by-product, or kosher sausage products sold, and the price charged therefor. If you are permitted to sell to other kosher retail dealers for resale purposes you must keep records of each transaction and give receipts showing the same facts that you are required to show on your sales to kosher eating places. You shall show the records to any representative of the Office of Price Administration upon request. If you have customarily given a customer a sales slip, receipt or similar evidence of purchase, you shall continue to do so. Furthermore, regardless of your previous custom, you shall, upon request by any customer, give a receipt showing the date, your name and address, the name, weight and grade of each cut of kosher meat, variety meat or edible by-product sold, the name, type, weight, and casing, container or wrapper identification of each kosher sausage product sold, and the price you received for the kosher meat cut, variety meat or edible by-product or kosher sausage product.

6. In section 19 (g) the New York area in Zone 7 is amended to read as follows:

The county of Chautauqua in New York.

7. In section 19 (i) the New York area in Zone 8 North, is amended to read as follows:

All that portion of New York west of and including the counties of Oswego, Oneida, Madison, Chenango, and Broome; but excluding the county of Chautauqua.

8. Section 24 is added to read as follows:

SEC. 24. (a) *Retail Ceiling Prices on Specially Authorized Sales to Kosher Eating Places or Other Kosher Retailers.—Zone 1.*

Cuts of meat	Grades				
	AA or choice	A or good	B or commercial	C or utility	D[1]
I. KOSHER BEEF	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*
Rib:					
1. 10" steaks or roast	31	30	28	25	21
2. 7" Steaks or roast	34	32	30	26	22
3. Short ribs (flanken)	19	19	18	18	14
Chuck:					
4. Blade pot-roast (also shoulder pot-roast, bone-in; chuck roast, bone-in)	30	28	26	24	20
5. Blade steak (bone-in)	30	28	26	24	20
6. Boneless chuck	38	36	33	30	26
7. English cut	30	28	26	24	20
8. Arm or chuck pot-roast (bone-in)	30	28	26	24	20
9. Arm or chuck steak (bone-in)	30	28	26	24	20
10. Boneless neck	30	28	26	24	20
Brisket:					
11. Boneless brisket (also called breast of beef, boneless; breast deckel, boneless)	32	32	28	28	24
12. Brisket (bone-in) (also breast flanken, bone-in)	25	25	22	22	18
Plate:					
13. Plate (bone-in) (also called plate flanken or long bone flanken)	19	19	18	18	14
14. Boneless plate (also called plate flanken or long bone flanken, boneless)	23	23	22	22	18
Shank:					
15. Shank (bone-in)	19	19	19	19	15
16. Shank (boneless)	25	25	25	25	21
Ground beef (including skirt steak)	28	28	28	28	28
Retail prices of wholesale cuts:					
17. Rib—whole	27	26	24	22	18
18. Chuck—whole	23	22	21	18	14
19. Brisket—whole	19	19	17	17	13
20. Plate—whole	17	17	16	16	12
21. Shank—whole	15	15	15	15	11
II. KOSHER VEAL					
1. Breast (bone-in)	20	20	18	17	14
2. Shoulder (square-cut) (bone-in)	27	26	24	22	18
3. Shoulder chops or roast (bone-in) (also arm and blade)	33	32	30	27	22
4. Shoulder clod (boneless) (also square cut shoulder)	50	48	45	41	33
5. Shank (bone-in)	20	20	18	17	14
6. Shank (boneless)	28	27	25	23	19
7. Rib chops or roast	36	35	33	30	25
8. Neck (bone-in)	20	20	18	17	14
9. Neck (boneless)	28	27	25	23	19
10. Patties—ground veal	34	34	34	34	34
11. Retail prices of wholesale cuts:					
A Forequarters	22	22	20	19	15

[1] Beef—D grade is cutters and canners and veal—D grade is cull.

ZONE I—Continued

Cuts of meat	Lamb				Mutton		
	Grade AA or choice	Grade A or good	Grade B or commercial	Grade C or utility	Grade S or prime choice and good	Grade M or commercial	Grade R or utility and culls
III. KOSHER LAMB AND MUTTON	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*
1. Rib chops and roast	41	39	36	33	20	18	15
2. Yoke, rattle or triangle (bone-in)	24	24	23	22	12	11	10
3. Breast and shank (bone-in)	18	17	16	15	9	8	7
4. Square cut chuck (bone-in)	31	29	27	25	15	13	11
5. Shoulder chops, blade or arm chops	36	34	32	29	17	15	13
6. Neck (bone-in)	21	20	18	17	10	9	8
7. Neck (boneless)	28	28	28	28	22	22	22
8. Patties (ground meat) including boneless breast and shank	28	28	28	28	22	22	22
9. Retail prices of wholesale cuts:							
A Forequarters	25	23	22	20	12	11	9
B Bracelet—whole	28	27	24	21	15	13	11
C Chuck—whole	23	22	21	20	11	10	9

(b) Retail ceiling prices on specially authorized sales to kosher eating places or other kosher retailers. Zone II.

Cuts of meat	Grades				
	AA or choice	A or good	B or commercial	C or utility	D[1]
I. KOSHER BEEF	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*
Rib:					
1. 10" steaks or roast	30	29	26	24	20
2. 7" steaks or roast	33	31	29	25	21
3. Short ribs (flanken)	18	18	17	17	13
Chuck:					
4. Blade pot-roast (also shoulder pot-roast, bone-in; chuck roast, bone-in)	28	27	25	22	18
5. Blade steak (bone-in)	28	27	25	22	18
6. Boneless chuck	36	34	32	28	24
7. English cut	28	27	25	22	18
8. Arm or chuck pot-roast (bone-in)	28	27	25	22	18
9. Arm or chuck steak (bone-in)	28	27	25	22	18
10. Boneless neck	28	27	25	22	18
Brisket:					
11. Boneless brisket (also called breast of beef, boneless; breast deckel, boneless)	30	30	26	26	22
12. Brisket (bone-in) (also breast flanken, bone-in)	23	23	20	20	16
Plate:					
13. Plate (bone-in) (also called plate flanken or long bone flanken)	18	18	17	17	13
14. Boneless plate (also called plate flanken or long bone flanken, boneless)	22	22	21	21	17
Shank:					
15. Shank (bone-in)	17	17	17	17	13
16. Shank (boneless)	24	24	24	24	20
Ground beef (including skirt steak)	27	27	27	27	27
Retail prices of wholesale cuts:					
17. Rib—whole	26	25	23	21	17
18. Chuck—whole	22	21	20	18	14
19. Brisket—whole	18	18	16	16	12
20. Plate—whole	16	16	15	15	11
21. Shank—whole	14	14	14	14	10
II. KOSHER VEAL					
1. Breast (bone-in)	19	18	17	15	13
2. Shoulder (square-cut) (bone-in)	25	24	23	21	17
3. Shoulder chops or roast (bone-in) (also arm and blade)	31	31	28	26	21
4. Shoulder clod (boneless) (also square cut shoulder)	48	46	43	39	31
5. Shank (bone-in)	19	18	17	15	13
6. Shank (boneless)	26	26	24	22	17

ZONE II—Continued

Cuts of meat	Grades				
	AA or choice	A or good	B or commercial	C or utility	D[1]
II. KOSHER VEAL	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*
7. Rib chops or roast	35	34	31	20	23
8. Neck (bone-in)	19	18	17	15	13
9. Neck (boneless)	26	26	24	22	17
10. Patties—ground veal	32	32	32	32	32
11. Retail prices of wholesale cuts:					
A Forequarters	21	21	19	18	14

Cuts of meat	Lamb				Mutton		
	Grade AA or choice	Grade A or good	Grade B or commercial	Grade C or utility	Grade S or prime choice and good	Grade M or commercial	Grade R or utility, and culls
III. KOSHER LAMB AND MUTTON	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*
1. Rib chops and roast	39	37	34	31	18	16	13
2. Yoke, rattle or triangle (bone-in)	22	22	21	20	10	9	8
3. Breast and shank (bone-in)	16	15	14	13	7	6	5
4. Square cut chuck (bone-in)	29	27	25	23	13	11	9
5. Shoulder chops, blade or arm chops	34	32	30	27	15	13	11
6. Neck (bone-in)	19	18	16	15	9	7	6
7. Neck (boneless)	26	26	26	26	20	20	20
8. Patties (ground meat) including boneless breast and shank	26	26	26	26	20	20	20
9. Retail prices of wholesale cuts:							
A Forequarters	23	22	20	18	10	9	8
B Bracelet—whole	27	25	23	19	13	12	10
C Chuck—whole	22	20	20	18	10	9	8

(c) Retail ceiling prices on specially authorized sales to kosher eating places or other kosher retailers. Zone III

Cuts of meat	Grades				
	AA or choice	A or good	B or commercial	C or utility	D[1]
I. KOSHER BEEF	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*
Rib:					
1. 10" steaks or roast	29	27	25	22	18
2. 7" steaks or roast	32	30	28	24	20
3. Short ribs (flanken)	17	17	16	16	12
Chuck:					
4. Blade pot-roast (also shoulder pot-roast, bone-in; chuck roast, bone-in)	27	25	24	21	17
5. Blade steak (bone-in)	27	25	24	21	17
6. Boneless chuck	30	28	28	27	23
7. English cut	27	25	24	21	17
8. Arm or chuck pot-roast (bone-in)	27	25	24	21	17
9. Arm or chuck steak (bone-in)	27	25	24	21	17
10. Boneless neck	27	25	24	21	17
Brisket:					
11. Boneless brisket (also called breast of beef, boneless; breast deckel, boneless)	28	28	24	24	20
12. Brisket (bone-in) (also breast flanken, bone-in)	22	22	19	19	15
Plate:					
13. Plate (bone-in) (also called plate flanken or long bone flanken)	17	17	16	16	12
14. Boneless plate (also called plate flanken or long bone flanken, boneless)	21	21	19	19	15
Shank:					
15. Shank (bone-in)	16	16	16	16	12
16. Shank (boneless)	23	23	23	23	18
Ground beef (including skirt steak)	25	25	25	25	25

[1] Beef—D grade is cutters and canners and veal—D grade is cull.

ZONE III—Continued

Cuts of meat	Grades				
	AA or choice	A or good	B or commercial	C or utility	D[1]
I. KOSHER BEEF—continued	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*
Retail prices of wholesale cuts:					
17. Rib—whole	26	24	22	20	16
18. Chuck—whole	21	20	19	17	13
19. Brisket—whole	17	17	15	15	11
20. Plate—whole	15	15	14	14	10
21. Shank—whole	13	13	13	13	9
II. KOSHER VEAL					
1. Breast (bone-in)	17	17	16	14	11
2. Shoulder (square-cut) (bone-in)	24	23	21	20	16
3. Shoulder chops or roast (bone-in) (also arm and blade)	30	29	27	25	20
4. Shoulder clod (boneless) (also square cut shoulder)	47	45	42	33	30
5. Shank (bone-in)	17	17	16	14	11
6. Shank (boneless)	25	25	23	21	16
7. Rib chops or roast	33	33	30	27	22
8. Neck (bone-in)	17	17	16	14	11
9. Neck (boneless)	25	25	23	21	16
10. Patties—ground veal	31	31	31	31	31
11. Retail prices of wholesale cuts:					
A Forequarters	20	20	18	17	13

Cuts of meat	Lamb				Mutton		
	Grade AA or choice	Grade A or good	Grade B or commercial	Grade C or utility	Grade S or prime, choice, and good	Grade M or commercial	Grade R or utility and culls
III. KOSHER LAMB AND MUTTON	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*
1. Rib chops and roast	39	37	34	31	18	16	13
2. Yoke, rattle or triangle (bone-in)	22	22	21	20	10	9	8
3. Breast and shank (bone-in)	16	15	14	13	7	6	5
4. Square cut chuck (bone-in)	29	27	25	23	13	11	9
5. Shoulder chops, blade or arm chops	34	32	30	27	15	13	11
6. Neck (bone-in)	19	18	16	15	9	7	6
7. Neck (boneless)	26	26	26	26	20	20	20
8. Patties (ground meat) including boneless breast and shank	26	26	26	26	20	20	20
9. Retail prices of wholesale cuts:							
A Forequarters	23	22	20	18	10	9	8
B Bracelet—whole	27	25	23	19	13	12	10
C Chuck—whole	22	20	20	18	10	9	8

(d) Retail ceiling prices on specially authorized sales to kosher eating places or other kosher retailers. Zone IV.

Cuts of meat	Grades				
	AA or choice	A or good	B or commercial	C or utility	D[1]
I. KOSHER BEEF	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*
Rib:					
1. 10" steaks or roast	29	27	25	23	18
2. 7" steaks or roast	32	30	28	24	20
3. Short ribs (flanken)	17	17	16	16	12
Chuck:					
4. Blade pot roast (also shoulder pot-roast, Bone-in, chuck roast, bone-in)	27	25	24	21	17
5. Blade steak (bone-in)	27	25	24	21	17
6. Boneless chuck	30	28	28	27	23
7. English cut	27	25	24	21	17

ZONE IV—Continued

Cuts of meat	Grades				
	AA or choice	A or good	B or commercial	C or utility	D[1]
	Cents per pound	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*
Chuck—Continued					
8. Arm or chuck pot-roast (bone-in)	27	25	24	21	17
9. Arm or chuck steak (bone-in)	27	25	24	21	17
10. Boneless neck	27	25	24	21	17
Brisket:					
11. Boneless brisket (also called breast of beef, boneless; breast deckel, boneless)	28	28	24	24	20
12. Brisket (bone-in) (also breast flanken, bone-in)	22	22	19	19	15
Plate.					
13. Plate (bone-in) (also called plate flanken or long bone flanken)	17	17	16	16	12
14. Boneless plate (also called plate flanken or long bone flanken, boneless)	21	21	19	19	15
Shank:					
15. Shank (bone-in)	16	16	16	16	12
16. Shank (boneless)	22	22	22	22	18
Ground beef (including skirt steak)	25	25	25	25	25
Retail prices of wholesale cuts:					
17. Rib—whole	26	24	22	20	16
18. Chuck—whole	21	20	19	17	13
19. Brisket—whole	17	17	15	15	11
20. Plate—whole	15	15	14	14	10
21. Shank—whole	13	13	13	13	9
II. KOSHER VEAL					
1. Breast (bone-in)	17	16	15	13	11
2. Shoulder (square cut) (bone-in)	23	22	21	19	15
3. Shoulder chops or roast (bone-in) (also arm and blade).	29	29	26	24	19
4. Shoulder clod (boneless) (also square cut shoulder).	46	44	41	37	29
5. Shank (bone-in)	16	16	15	13	11
6. Shank (boneless)	24	24	22	20	15
7. Rib chops or roast	33	32	29	27	21
8. Neck (bone-in)	17	16	15	13	11
9. Neck (boneless)	24	24	22	20	15
10. Patties—ground veal	30	30	30	30	30
11. Retail prices of wholesale cuts:					
A. Forequarters	20	19	18	16	13

Cuts of meat	Lamb				Mutton		
	Grade AA or choice	Grade A or good	Grade B or commercial	Grade C or utility	Grade S or prime, choice, and good	Grade M or commercial	Grade R or utility and culls
III. KOSHER LAMB AND MUTTON	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*
1. Rib chops and roast	39	37	34	31	18	16	13
2. Yoke, rattle or triangle, (bone-in)	22	22	21	20	10	9	8
3. Breast and shank (bone-in)	16	15	14	13	7	6	5
4. Square cut chuck (bone-in)	29	27	25	23	13	11	9
5. Shoulder chops, blade or arm chops	34	32	30	27	15	13	11
6. Neck (bone-in)	19	18	16	15	9	7	6
7. Neck (boneless)	26	26	26	26	20	20	20
8. Patties (ground meat) including boneless breast and shank	26	26	26	26	20	20	20
9. Retail prices of wholesale cuts:							
A Forequarters	23	22	20	18	10	9	8
B Bracelet—whole	27	25	23	19	13	12	10
C Chuck—whole	22	20	20	18	10	9	8

[1] Beef—D grade is cutters and canners; and veal—D grade is cull.

(c) Retail selling prices on specially authorized sales to kosher eating places or other kosher retailers. Zone V.

Cuts of meat	Grades				
	AA or choice	A or good	B or commercial	C or utility	D[1]
	Cents per pound	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*
I. KOSHER BEEF					
Rib:					
1. 10" steaks and roast	29	28	26	23	19
2. 7" steaks and roast	32	31	28	24	20
3. Short ribs (flanken)	17	17	16	16	12
Chuck:					
4. Blade pot-roast (also shoulder pot-roast, bone-in; chuck roast, bone-in)	28	26	25	21	17
5. Blade steak (bone-in)	28	26	24	21	17
6. Boneless chuck	35	33	31	27	23
7. English cut	28	26	24	21	17
8. Arm or chuck pot-roast (bone-in)	28	26	24	21	17
9. Arm or chuck steak (bone-in)	28	26	24	21	17
10. Boneless neck	28	26	24	21	17
Brisket:					
11. Boneless brisket (also called breast of beef, boneless; breast deckel, boneless)	29	29	25	25	21
12. Brisket (bone-in) (also breast flanken, bone-in)	22	22	20	20	16
Plate:					
13. Plate (bone-in) (also called plate flanken or long bone flanken)	17	17	16	16	12
14. Boneless plate (also called plate flanken or long bone flanken, boneless)	21	21	20	20	16
Shank:					
15. Shank (bone-in)	17	17	17	17	13
16. Shank (boneless)	22	22	22	22	18
Ground beef (including skirt steak)	26	26	26	26	26
Retail prices of wholesale cuts:					
17. Rib—whole	26	25	23	20	16
18. Chuck—whole	22	20	20	17	13
19. Brisket—whole	18	18	16	16	12
20. Plate—whole	15	15	15	15	11
21. Shank—whole	13	13	13	13	9
II. KOSHER VEAL					
1. Breast (bone-in)	17	16	15	14	11
2. Shoulder (square-cut) (bone-in)	23	23	21	19	15
3. Shoulder chops or roast (bone-in) (also arm and blade)	30	29	27	24	19
4. Shoulder clod (boneless) (also square cut shoulder)	47	45	42	37	29
5. Shank (bone-in)	17	16	15	14	11
6. Shank (boneless)	25	24	22	20	16
7. Rib chops or roast	33	32	30	27	21
8. Neck (bone-in)	17	16	15	14	11
9. Neck (boneless)	25	24	22	20	16
10. Patties—ground veal	30	30	30	30	30
11. Retail prices or wholesale cuts:					
A. Forequarters	20	20	18	16	13

Cuts of meat	Lamb				Mutton		
	Grade AA or choice	Grade A or good	Grade B or commercial	Grade C or utility	Grade S or prime, choice and good	Grade M or commercial	Grade R or utility and culls
III. KOSHER LAMB AND MUTTON	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*
1. Rib chops and roast	40	38	34	32	18	16	14
2. Yoke, rattle or triangle (bone-in)	23	22	21	20	11	10	9
3. Breast and shank (bone-in)	17	16	15	13	8	7	6
4. Square cut chuck (bone-in)	29	27	25	23	14	12	10
5. Shoulder chops, blade or arm chops	34	32	30	27	16	14	12
6. Neck (bone-in)	19	18	17	15	9	8	7
7. Neck (boneless)	26	26	26	26	20	20	20
8. Patties (ground meat) including boneless breast and shank	26	26	26	26	20	20	20
9. Retail prices of wholesale cuts:							
A. Forequarters	23	22	20	19	11	9	8
B. Bracelet—whole	27	26	23	20	14	12	10
C. Chuck—whole	22	21	20	19	10	9	8

(f) Retail ceiling prices on specially authorized sales to kosher eating places or other kosher retailers. Zone VI.

Cuts of meat	Grades				
	AA or choice	A or good	B or commercial	C or utility	D[1]
I. KOSHER BEEF	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*
Rib:					
1. 10" steaks and roast	30	28	26	23	19
2. 7" steaks and roast	31	31	29	25	21
3. Short ribs (flanken)	18	18	17	17	13
Chuck:					
4. Blade pot-roast (also shoulder pot-roast, bone-in; chuck roast, bone-in)	28	26	25	22	18
5. Blade steak (bone-in)	28	26	25	22	18
6. Boneless chuck	36	34	31	28	24
7. English cut	28	26	25	22	18
8. Arm or chuck pot-roast (bone-in)	28	26	25	22	18
9. Arm or chuck steak (bone-in)	28	26	25	22	18
10. Boneless neck	28	26	25	22	18
Brisket:					
11. Boneless brisket (also called breast of beef, boneless; breast deckel, boneless)	29	29	25	25	21
12. Brisket (bone-in) (also breast flanken, bone-in)	23	23	20	20	16
Plate:					
13. Plate (bone-in) (also called plate flanken or long bone flanken)	18	18	17	17	13
14. Boneless plate (also called plate flanken or long bone flanken, boneless)	22	22	20	20	17
Shank:					
15. Shank (bone-in)	17	17	17	17	13
16. Shank (boneless)	23	23	23	23	19
Ground beef (including skirt steak)	26	26	26	26	26
Retail prices of wholesale cuts:					
17. Rib—whole	26	25	23	20	16
18. Chuck—whole	22	21	19	17	13
19. Brisket—whole	18	18	16	16	12
20. Plate—whole	16	16	15	15	11
21. Shank—whole	14	14	14	14	10
II. KOSHER VEAL					
1. Breast (bone-in)	17	17	16	14	11
2. Shoulder (square cut) (bone-in)	24	23	21	20	16
3. Shoulder chops or roast (bone-in) (also arm and blade)	30	29	27	25	20
4. Shoulder clod (boneless) (also square cut shoulder)	47	45	42	38	30
5. Shank (bone-in)	17	17	16	14	11
6. Shank (boneless)	23	23	23	21	16
7. Rib chops or roast	33	33	30	27	22
8. Neck (bone-in)	17	17	16	14	11
9. Neck (boneless)	25	25	23	21	16
10. Patties—ground veal	31	31	31	31	31
11. Retail prices of wholesale cuts:					
A. Forequarters	20	20	18	17	13

	Lamb				Mutton		
	Grade AA or choice	Grade A or good	Grade B or commercial	Grade C or utility	Grade S or prime, choice and good	Grade M or commercial	Grade R or utility and culls
III. KOSHER LAMB AND MUTTON	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*
1. Rib chops and roast	40	38	35	32	19	16	14
2. Yoke, rattle or triangle (bone-in)	23	22	22	20	11	10	9
3. Breast and shank (bone-in)	17	16	15	14	8	7	6
4. Square cut chuck (bone-in)	30	28	25	24	14	12	10
5. Shoulder chops blade or arm chops	35	33	30	28	16	14	12
6. Neck (bone-in)	20	19	17	16	9	8	7
7. Neck (boneless)	27	27	27	27	21	21	21

[1] Beef—D grade is cutters and canners, and veal—D grade is calf.

ZONE VI—Continued

Cuts of meat	Lamb				Mutton		
	Grad AA or choice	Grade A or good	Grade B or commercial	Grade C or utility	Grade S or prime, choice, and good	Grade M or commercial	Grade R or utility and culls
III. KOSHER LAMB AND MUTTON—con.	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*
8. Patties (ground meat) including boneless breast and shank	27	27	27	27	21	21	21
9. Retail prices of wholesale cuts							
A. Forequarters	24	22	21	19	11	10	8
B. Bracelet—whole	27	26	23	20	14	12	10
C. Chuck—whole	22	21	20	19	10	9	8

(g) Retail ceiling prices on specially authorized sales to kosher eating places or other kosher retailers. Zone VII.

Cuts of meat	Grades				
	AA or choice	A or good	B or commercial	C or utility	D[1]
I. KOSHER BEEF	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*
Rib:					
1. 10" steaks or roast	30	29	26	24	20
2. 7" steaks or roast	33	31	29	25	21
3. Short ribs (flanken)	18	18	17	17	13
Chuck:					
4. Blade pot-roast (also shoulder pot-roast, bone-in; chuck roast, bone-in)	28	27	25	22	18
5. Blade steak (bone-in)	28	27	25	22	18
6. Boneless chuck	36	34	32	28	24
7. English cut	28	27	25	22	18
8. Arm or chuck pot-roast (bone-in)	28	27	25	22	18
9. Arm or chuck steak (bone-in)	28	27	25	22	18
10. Boneless neck	28	27	25	22	18
Brisket:					
11. Boneless brisket (also called breast of beef, boneless; breast deckel, boneless)	30	30	28	28	22
12. Brisket (bone-in) (also breast flanken, bone-in)	23	23	20	20	16
Plate:					
13. Plate (bone-in) (also called plate flanken or long bone flanken)	18	18	17	17	13
14. Boneless plate (also called plate flanken or long bone flanken, boneless)	22	22	21	21	17
Shank:					
15. Shank (bone-in)	17	17	17	17	13
16. Shank (boneless)	24	24	24	24	20
Ground beef (including skirt steak)	27	27	27	27	27
Retail prices of wholesale cuts:					
17. Rib—whole	26	25	23	21	17
18. Chuck—whole	22	21	20	18	14
19. Brisket—whole	18	18	16	16	12
20. Plate—whole	16	16	15	15	11
21. Shank—whole	14	14	14	14	10
II. KOSHER VEAL					
1. Breast (bone-in)	18	18	16	15	12
2. Shoulder (square cut) (bone-in)	24	24	22	20	16
3. Shoulder chops or roast (bone-in) (also arm and blade)	31	30	27	25	20
4. Shoulder clod (boneless) (also square cut shoulder)	47	46	43	38	30
5. Shank (bone-in)	18	17	16	15	12
6. Shank (boneless)	26	25	23	21	17
7. Rib chops or roast	34	33	30	28	22
8. Neck (bone-in)	18	17	16	15	13
9. Neck (boneless)	26	25	23	21	17
10. Patties—ground veal	31	31	31	31	31
11. Retail prices of wholesale cuts:					
A. Forequarters	21	20	19	17	14

ZONE VII—Continued

Cuts of meat	Lamb				Mutton		
	Grade AA or choice	Grade A or good	Grade B or commercial	Grade C or utility	Grade S or prime choice and good	Grade M or commercial	Grade R or utility and culls
III. KOSHER LAMB AND MUTTON	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*
1. Rib chops and roast	41	38	36	32	19	17	14
2. Yoke, rattle or triangle (bone-in)	23	23	22	21	12	10	9
3. Breast and shank (bone-in)	17	16	15	14	8	8	7
4. Square cut chuck (bone-in)	30	28	26	24	14	13	11
5. Shoulder chops, blade or arm chops	35	33	31	28	16	15	13
6. Neck (bone-in)	20	19	18	16	10	9	8
7. Neck (boneless)	27	27	27	27	21	21	21
8. Patties (ground meat) including boneless breast and shank	27	27	27	27	21	21	21
9. Retail prices of wholesale cuts:							
A. Forequarters	24	23	21	19	11	10	9
B. Bracelet—whole	28	26	24	20	14	13	11
C. Chuck—whole	22	21	21	19	11	10	8

(h) Retail ceiling prices on specially authorized sales to kosher eating places or other kosher retailers. ZONE VIII NORTH.

Cuts of meat	Grades				
	AA or choice	A or good	B or commercial	C or utility	D[1]
I. KOSHER BEEF	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*
Rib:					
1. 10" steaks and roast	30	29	27	24	20
2. 7" steaks and roast	34	32	29	26	22
3. Short ribs (flanken)	18	18	17	17	13
Chuck:					
4. Blade pot-roast (also shoulder pot-roast, bone-in; chuck roast, bone-in)	29	27	25	23	19
5. Blade steak (bone-in)	29	27	25	23	19
6. Boneless chuck	37	35	32	29	25
7. English cut	29	27	25	23	19
8. Arm or chuck pot-roast (bone-in)	29	27	25	23	19
9. Arm or chuck steak (bone-in)	29	27	25	23	19
10. Boneless neck	29	27	25	23	19
Brisket:					
11. Boneless brisket (also called breast of beef, boneless; breast deckel, (boneless)	30	30	26	26	22
12. Brisket (bone-in) (also breast flanken, bone-in)	24	24	21	21	17
Plate:					
13. Plate (bone-in) (also called plate flanken or bone flanken)	18	18	17	17	13
14. Boneless plate (also called plate flanken or long bone flanken, boneless)	22	22	21	21	17
Shank:					
15. Shank (bone-in)	18	18	18	18	14
16. Shank (boneless)	24	24	24	24	20
Ground beef (including skirt steak)	27	27	27	27	
Retail prices of wholesale cuts:					
17. Rib—whole	27	25	24	21	17
18. Chuck—whole	23	21	26	18	14
19. Brisket—whole	19	19	17	17	13
20. Plate—whole	16	16	15	15	11
21. Shank—whole	14	14	14	14	10
II. KOSHER VEAL					
1. Breast (bone-in)	18	18	16	15	12
2. Shoulder (square cut) (bone-in)	25	24	22	20	16
3. Shoulder chops or roast (bone-in) (also arm and blade)	31	30	28	25	20
4. Shoulder clod (boneless) (also square cut shoulder)	48	46	43	39	31
5. Shank (bone-in)	18	18	15	15	12

[1] Beef—D grade is cutters and canners and veal—D grade is cull.

ZONE VIII NORTH—Continued

Cuts of meat	Grades				
	AA or choice	A or good	B or commercial	C or utility	D[1]
II. KOSHER VEAL—CON.	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*
6. Shank (boneless)	26	25	23	21	17
7. Rib chops or roast	34	33	31	28	23
8. Neck (bone-in)	18	18	16	15	12
9. Neck (boneless)	26	25	23	21	17
10. Patties—ground veal	32	32	32	32	32
11. Retail prices of wholesale cuts:					
A. Forequarters	21	20	19	17	14

Cuts of meat	Lamb				Mutton		
	Grade AA or choice	Grade A or good	Grade B or commercial	Grade C or utility	Grade S or prime, choice, and good	Grade M or commercial	Grade R or utility and culls
III. KOSHER LAMB AND MUTTON	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*
1. Rib chops and roast	41	39	36	33	20	18	15
2. Yoke, rattle or triangle (bone-in)	24	24	23	22	12	11	10
3. Breast and shank (bone-in)	18	17	16	15	9	8	7
4. Square cut chuck (bone-in)	31	29	27	25	15	13	11
5. Shoulder chops, blade or arm chops	36	34	32	29	17	15	13
6. Neck (bone-in)	21	20	18	17	10	9	8
7. Neck (boneless)	28	28	28	28	22	22	22
8. Patties (ground meat) including boneless breast and shank	28	28	28	28	22	22	22
9. Retail prices of wholesale cuts:							
A. Forequarters	25	23	22	20	12	11	9
B. Bracelet—whole	28	27	24	21	15	13	11
C. Chuck—whole	23	22	21	20	11	10	9

(i) Retail ceiling prices on specially authorized sales to kosher eating places or other kosher retailers. ZONE VIII SOUTH.

Cuts of meat	Grades				
	AA or choice	A or good	B or commercial	C or utility	D[1]
I. KOSHER BEEF	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*
Rib:					
1. 10" steaks or roast	30	29	27	24	20
2. 7" steaks or roast	34	32	29	26	22
3. Short ribs (flanken)	18	18	17	17	13
Chuck:					
4. Blade pot-roast (also shoulder pot-roast, bone-in, chuck roast, bone-in)	29	27	25	23	19
5. Blade steak (bone-in)	29	27	25	23	19
6. Boneless chuck	37	35	32	29	25
7. English cut	29	27	25	23	19
8. Arm or chuck pot-roast (bone-in)	29	27	25	23	19
9. Arm or chuck steak (bone-in)	29	27	25	23	19
10. Boneless neck	29	27	25	23	19
Brisket:					
11. Boneless brisket (also called breast of beef, boneless breast deckel, boneless)	30	30	26	26	22
12. Brisket (bone-in) (also breast flanken, bone-in)	24	24	21	21	17
Plate:					
13. Plate (bone-in) (also called plate flanken or long bone flanken)	18	18	17	17	13
14. Boneless plate (also called plate flanken or long bone flanken, boneless)	22	22	21	21	17
Shank:					
15. Shank (bone-in)	18	18	18	18	14
16. Shank (boneless)	24	24	24	24	20

ZONE VIII SOUTH—Continued

Cuts of meat	Grades				
	AA or choice	A or good	B or commercial	C or utility	D [1]
I. KOSHER BEEF—continued	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*
Ground beef (including skirt steak)	27	27	27	27	27
Retail prices of wholesale cuts:					
17. Rib—whole	27	25	24	21	17
18. Chuck—whole	23	21	20	18	14
19. Brisket—whole	19	19	17	17	13
20. Plate—whole	16	16	15	15	11
21. Shank—whole	14	14	14	14	10
II. KOSHER VEAL					
1. Breast (bone-in)	18	18	16	15	12
2. Shoulder (square cut) (bone-in)	25	24	22	20	16
3. Shoulder chops or roast (bone-in) (also arm and blade)	31	30	28	25	20
4. Shoulder clod (boneless) (also square cut shoulder)	48	46	43	39	31
5. Shank (bone-in)	18	18	16	15	12
6. Shank (boneless)	26	25	23	21	17
7. Rib chops or roast	34	33	31	28	23
8. Neck (bone-in)	18	18	16	15	12
9. Neck (boneless)	26	25	23	21	17
10. Patties—ground veal	32	32	32	32	32
11. Retail prices of wholesale cuts:					
A. Forequarters	21	20	19	17	14

Cuts of meat	Lamb				Mutton		
	Grade AA or choice	Grade A or good	Grade B or commercial	Grade C or utility	Grade S or prime, choice, and good	Grade M or commercial	Grade R or utility and culls
III. KOSHER LAMB AND MUTTON	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*
1. Rib chops and roast	41	39	36	33	19	17	15
2. Yoke, rattle or triangle (bone-in)	24	23	23	21	12	11	10
3. Breast and shank (bone-in)	18	17	16	14	9	8	7
4. Square cut chuck (bone-in)	30	29	29	24	15	13	11
5. Shoulder chops, blade or arm chops	35	34	31	23	17	15	13
6. Neck (bone-in)	21	19	18	17	10	9	8
7. Neck (boneless)	23	23	23	23	22	22	22
8. Patties (ground meat) including boneless breast and shank	23	23	23	23	22	22	22
9. Retail prices of wholesale cuts:							
A. Forequarters	24	23	21	20	12	10	9
B. Bracelet—Whole	33	27	24	21	15	13	11
C. Chuck—Whole	23	22	21	20	11	10	9

(j) Retail ceiling prices on specially authorized sales to kosher eating places or other kosher retailers. Zone IX North

Cuts of meat	Grades				
	AA or choice	A or good	B or commercial	C or utility	D [1]
I. KOSHER BEEF	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*
Rib:					
1. 10" steaks or roast	33	31	29	26	23
2. 7" steaks or roast	30	34	32	28	24
3. Short ribs (flanken)	21	21	19	19	15
Chuck:					
4. Blade pot-roast (also shoulder pot-roast, bone-in; chuck roast, bone-in)	31	30	28	25	21
5. Blade steak (bone-in)	31	30	28	25	21

[1] Beef—D grade is cutters and canners and veal—D grade is cull.

ZONE IX NORTH—Continued

Cuts of meat	Grades				
	AA or choice	A or good	B or commercial	C or utility	D [1]
Chuck—Continued.	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*
6. Boneless chuck	40	38	35	32	28
7. English cut	31	30	28	25	21
8. Arm or chuck pot-roast (bone-in)	31	30	28	25	21
9. Arm or chuck steak (bone-in)	31	30	28	25	21
10. Boneless neck	31	30	28	25	21
Brisket:					
11. Boneless brisket (also called breast of beef, boneless, breast deckel, boneless)	34	34	30	30	26
12. Brisket (bone-in) (also breast flanken, bone-in)	26	26	23	23	19
Plate:					
13. Plate (bone-in) (also called plate flanken or long bone flanken)	21	21	20	20	16
14. Boneless plate (also called plate flanken or long bone flanken, boneless)	25	25	24	24	20
Shank:					
15. Shank (bone-in)	20	20	20	20	16
16. Shank (boneless)	27	27	27	27	23
Ground beef (including skirt steak)	31	31	31	31	31
Retail prices of wholesale cuts:					
17. Rib—whole	28	26	24	22	18
18. Chuck—whole	23	22	21	19	15
19. Brisket—whole	19	19	17	17	13
20. Plate—whole	17	17	16	16	12
21. Shank—whole	15	15	15	15	11
II. KOSHER VEAL					
1. Breast (bone-in)	21	20	19	18	15
2. Shoulder (square cut) (bone-in)	27	27	25	23	19
3. Shoulder chops or roast (bone-in) (also arm and blade)	34	33	31	28	23
4. Shoulder clod (boneless) (also square cut shoulder)	51	49	46	41	33
5. Shank (bone-in)	21	20	19	18	15
6. Shank (boneless)	28	28	26	24	20
7. Rib chops or roast	37	36	34	31	25
8. Neck (bone-in)	21	20	19	18	15
9. Neck (boneless)	28	28	26	24	20
10. Patties—ground veal	34	34	34	34	34
11. Retail prices of wholesale cuts:					
A. Forequarters	22	21	20	18	15

Cuts of meat	Lamb				Mutton		
	Grade AA or choice	Grade A or good	Grade B or commercial	Grade C or utility	Grade S or prime, choice, and good	Grade M or commercial	Grade R or utility and culls
III. KOSHER LAMB AND MUTTON	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*
1. Rib chops and roast	42	40	37	34	21	18	16
2. Yoke, rattle or triangle (bone-in)	25	24	24	23	13	13	11
3. Breast and shank (bone-in)	19	18	17	16	10	9	8
4. Square cut chuck (bone-in)	33	30	27	26	16	14	13
5. Shoulder chops, blade or arm chops	37	35	32	30	18	16	14
6. Neck (bone-in)	23	21	19	18	11	10	9
7. Neck (boneless)	29	29	29	29	23	23	23
8. Patties (ground meat) including boneless breast and shank	29	29	29	29	23	23	23
9. Retail prices of wholesale cuts:							
A. Forequarters	25	24	23	20	13	11	10
B. Bracelet—whole	29	27	25	21	15	14	10
C. Chuck—whole	24	23	23	20	13	11	13

(k) Retail ceiling prices on specially authorized sales to kosher eating places or other kosher retailers. Zone IX South.

Cuts of meat	Grades				
	AA or choice	A or good	B or commercial	C or utility	D[1]
I. KOSHER BEEF	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*
Rib:					
1. 10" steaks or roast	31	29	27	24	20
2. 7" steaks or roast	34	32	30	26	22
3. Short ribs (flanken)	19	19	18	18	14
Chuck:					
4. Blade pot-roast (also shoulder pot-roast, bone-in; chuck roast, bone-in)	29	28	26	23	19
5. Blade steak (bone-in)	29	28	26	23	19
6. Boneless chuck	37	35	33	29	25
7. English cut	29	28	26	23	19
8. Arm or chuck pot-roast (bone-in)	29	28	26	23	19
9. Arm or chuck steak (bone-in)	29	28	26	23	19
10. Boneless neck	29	28	26	23	19
Brisket:					
11. Boneless brisket (also called breast of beef, boneless; breast deckel, boneless)	31	31	27	27	23
12. Brisket (bone-in) (also breast flanken, bone-in)	24	24	21	21	18
Plate:					
13. Plate (bone-in) (also called plate flanken or long bone flanken)	19	19	18	18	14
14. Boneless plate (also called plate flanken or long bone flanken, boneless)	23	23	22	22	18
Shank:					
15. Shank (bone-in)	18	18	18	18	14
16. Shank (boneless)	25	25	25	25	21
Ground beef (including skirt steak)	28	28	28	28	28
Retail prices of wholesale cuts:					
17. Rib—whole	27	26	24	21	17
18. Chuck—whole	23	22	20	18	14
19. Brisket—whole	19	19	17	17	13
20. Plate—whole	17	17	16	16	12
21. Shank—whole	14	14	14	14	10
II. KOSHER VEAL					
1. Breast (bone-in)	19	18	17	15	13
2. Shoulder (square cut) (bone-in)	25	24	23	21	17
3. Shoulder chops or roast (bone-in) (also arm and blade)	31	31	28	26	21
4. Shoulder clod (boneless) (also square cut shoulder)	48	46	43	39	31
5. Shank (bone-in)	19	18	17	15	13
6. Shank (boneless)	26	26	24	22	17
7. Rib chops or roast	35	34	31	29	23
8. Neck (bone-in)	19	18	17	15	13
9. Neck (boneless)	26	26	24	22	17
10. Patties—ground veal	32	32	32	32	32
11. Retail prices of wholesale cuts:					
A. Forequarters	21	21	19	18	14

Cuts of meat	Lamb				Mutton		
	Grade AA or choice	Grade A or good	Grade B or commercial	Grade C or utility	Grade S or prime, choice, and good	Grade M or commercial	Grade R or utility and culls
III. KOSHER LAMB AND MUTTON	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*
1. Rib chops and roast	41	39	36	33	20	18	15
2. Yoke, rattle or triangle (bone-in)	24	24	23	22	12	11	10
3. Breast and shank (bone-in)	18	17	16	15	9	8	7
4. Square cut chuck (bone-in)	31	29	27	25	15	13	11
5. Shoulder chops, blade or arm chops	36	34	32	29	17	15	13
6. Neck (bone-in)	21	20	18	17	10	9	8
7. Neck (boneless)	28	28	28	28	22	22	22
8. Patties (ground meat) including boneless breast and shank	28	28	28	28	22	22	22

[1] Beef—D grade is cutters and canners, and veal—D grade is cull.

ZONE IX SOUTH—Continued

Cuts of meat	Lamb				Mutton		
	Grade AA or choice	Grade A or good	Grade B or commercial	Grade C or utility	Grade S or prime, choice, and good	Grade M or commercial	Grade R or utility and culls
III. KOSHER LAMB AND MUTTON—con.	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*
9. Retail prices of wholesale cuts:							
A. Forequarters	25	23	22	20	12	11	9
B. Bracelet—whole	28	27	24	21	15	13	11
C. Chuck—whole	23	22	21	20	11	10	9

(l) Retail ceiling prices on specially authorized sales to kosher eating places or other kosher retailers. Zone X.

Cuts of meat	Grades				
	AA or choice	A or good	B or commercial	C or utility	D[1]
I. KOSHER BEEF	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*	*Cents per pound*
Rib:					
1. 10" steaks or roast	31	30	28	25	21
2. 7" steaks or roast	34	32	30	26	22
3. Short ribs (flanken)	19	19	18	18	14
Chuck:					
4. Blade pot-roast (also shoulder pot-roast, bone-in; chuck roast, bone-in)	30	28	26	24	20
5. Blade steak (bone-in)	30	28	26	24	20
6. Boneless chuck	33	30	33	30	26
7. English cut	30	28	26	24	20
8. Arm or chuck pot-roast (bone-in)	30	28	26	24	20
9. Arm or chuck steak (bone-in)	30	28	26	24	20
10. Boneless neck	30	28	26	24	20
Brisket:					
11. Boneless brisket (also called breast of beef, boneless; breast deckel, boneless)	32	32	28	28	24
12. Brisket (bone-in) (also breast flanken, bone-in)	25	25	22	22	18
Plate:					
13. Plate (bone-in) (also called plate flanken or long bone flanken)	19	19	18	18	14
14. Boneless plate (also called plate flanken or long bone flanken, boneless)	23	23	22	22	18
Shank:					
15. Shank (bone-in)	19	19	19	19	15
16. Shank (boneless)	25	25	25	25	21
Gound Beef (including skirt steak)	28	28	28	28	28
Retail prices of wholesale cuts:					
17. Rib—whole	27	26	24	22	18
18. Chuck—whole	23	22	21	18	14
19. Brisket—whole	19	19	17	17	13
20. Plate—whole	17	17	16	16	12
21. Shank—whole	15	15	15	15	11

ZONE X

Cuts of meat	Grades				
	AA or choice	A or good	B or commercial	C or utility	D[1]
II. KOSHER VEAL	Cents per pound	Cents per pound	Cents per pound	Cents per pound	Cents per pound
1. Breast (bone-in)	19	18	17	16	13
2. Shoulder (square cut) (bone-in)	25	25	23	21	17
3. Shoulder chops or roast (bone-in) (also arm and blade)	32	31	29	26	21
4. Shoulder clod (boneless) (also square cut shoulder)	49	47	44	39	31
5. Shank (bone-in)	19	18	17	16	13
6. Shank (boneless)	27	26	24	22	18
7. Rib chops or roast	35	34	32	29	23
8. Neck (bone-in)	19	18	17	16	13
9. Neck (boneless)	27	26	24	22	18
10. Patties—ground veal	32	32	32	32	32
11. Retail prices of wholesale cuts: A Forequarters	22	21	20	18	14

Cuts of meat	Lamb				Mutton		
	Grade AA or choice	Grade A or good	Grade B or commercial	Grade C or utility	Grade S or prime, choice, and good	Grade M or commercial	Grade R or utility and culls
III. KOSHER LAMB AND MUTTON	Cents per pound	Cents per pound	Cents per pound	Cents per pound	Cents per pound	Cents per pound	Cents per pound
1. Rib chops and roast	42	39	37	34	20	18	16
2. Yoke, rattle or triangle (bone-in)	25	24	23	22	13	12	10
3. Breast and shank (bone-in)	19	18	17	15	10	9	8
4. Square cut chuck (bone-in)	31	29	27	25	16	14	12
5. Shoulder chops, blade or arm chops	36	34	32	29	18	16	14
6. Neck (bone-in)	21	20	19	17	11	10	9
7. Neck (boneless)	23	23	23	23	22	22	22
8. Patties (ground meat) including boneless breast and shank	23	23	23	23	22	22	22
9. Retail prices of wholesale cuts:							
A. Forequarters	25	24	22	20	12	11	10
B. Breast—whole	29	27	25	21	15	14	11
C. Chuck—whole	23	22	21	20	11	10	9

(m) Retail ceiling prices on specially authorized sales to Kosher eating places or other Kosher retailers. Variety meats and edible by-products fresh, cured or frozen.

I. KOSHER BEEF

[Price per pound]

Item	Zone 1	Zone 2	Zones 3, 4	Zone 5	Zone 6	Zone 7	Zone 8	Zone 9	Zone 10
Brains	23	23	21	22	22	22	23	23	23
Cheek meat lip on	21	20	19	20	20	20	21	21	21
Feet	19	18	17	17	17	18	18	18	19
Heart blemished	20	19	18	18	19	19	19	20	20
Kidneys	19	18	17	17	17	18	18	18	19
Lips	12	11	10	11	11	11	12	12	12
Livers unblemished	45	44	43	44	44	44	45	45	45
Livers blemished	40	39	38	38	39	39	39	40	40
Lungs	08	07	06	07	07	07	08	08	08
Melts	08	07	06	07	07	07	08	08	08
Sweetbreads unblemished	47	46	45	46	46	46	47	47	47
Sweetbreads blemished	30	29	28	28	29	29	29	30	30
Tails under ¾ lb	17	16	16	16	16	16	17	17	17
Tails ¾ lb. and up	21	20	19	20	20	20	21	21	21
Tongues unblemished	37	36	35	36	36	36	37	37	37
Tongues, canner	29	28	27	28	28	28	29	29	29
Tripe (scalded)	10	09	08	08	08	09	09	09	10

[1] Beef—D grade is cutters and canners, and veal—D grade is cull.

II. KOSHER VEAL

[Price per pound]

Item	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8	Zone 9	Zone 10
Brains	27	26	25	25	26	26	26	27	27	27
Caul fat	18	17	16	16	16	17	17	17	18	18
Feet	17	16	15	16	16	16	16	17	17	17
Head, skinned	24	23	22	22	22	23	23	23	24	24
Heart	20	19	18	18	18	19	19	19	20	20
Heart and melt	16	15	14	14	15	15	15	16	16	16
Lips	12	11	10	10	11	11	11	12	12	12
Livers unblemished	81	80	79	79	79	80	80	80	81	81
Livers blemished	77	76	75	75	75	76	76	76	77	77
Lungs, heart and melt	12	11	09	10	10	10	11	11	11	12
Melts	08	07	06	06	07	07	07	08	08	08
Sweetbreads unblemished	59	58	57	57	57	58	58	58	59	59
Pairs, under 6 oz	59	58	57	57	57	58	58	58	59	59
Pairs 6–12 oz	66	65	63	64	64	64	65	65	65	66
Pairs over 12 oz	79	78	77	77	77	78	78	78	79	79
Tails under ¾ lb	17	16	15	16	16	16	16	17	17	17
Tails ¾ lb. and up	21	20	19	19	20	20	20	21	21	21
Tongues unblemished	32	31	30	30	30	31	31	31	32	32
Tongues canner	25	24	23	23	24	24	24	25	25	25

III. KOSHER LAMB AND MUTTON

(Price per pound)

Item	Zone 1	Zones 2, 3, 4	Zone 5	Zone 6	Zone 7	Zone 8	Zone 9	Zone 10
Brains	20	19	19	19	20	20	20	21
Caul fat	18	16	16	17	18	17	18	18
Head skinned	13	12	12	12	13	13	13	14
Livers	38	37	37	37	38	38	38	39
Lungs and heart	13	12	12	12	13	13	13	14
Melts	08	06	07	07	07	08	08	08
Plucks	20	19	19	19	20	20	20	21
Sweetbreads	42	40	40	41	41	41	42	42
Tongues	23	23	24	24	24	25	25	25
Tripe (scalded)	03	06	07	07	07	03	03	03

(n) Retail ceiling prices on specially authorized sales to kosher eating places or other kosher retailers. Kosher sausage.

(Price per pound)

Item	Zone 1	Zone 2	Zone 3	Zone 4	Zone 4a	Zone 5	Zone 6	Zone 7	Zone 8	Zone 9 No.	Zone 9 So.	Zone 10
1. Frankfurters: Sheep casings (S. C.)	43	47	44	44	42	42	42	42	43	45	43	43
Artificial casings (A. C.)	44	43	40	40	39	38	38	38	39	41	40	39
2. Bologna & knackwurst: Natural casings (N. C.)	42	41	38	38	36	35	35	34	37	39	37	37
Artificial casings (A. C.)	41	40	37	37	35	34	34	33	36	38	36	36
3. Salami—soft: Artificial casings (A. C.)	45	45	42	42	41	41	41	41	42	44	42	42
4. Salami—medium or hard (sold weight shall not exceed 80% of the purchased weight) artificial casings (A. C.)	63	63	60	60	59	59	59	59	60	62	60	60

Hard salami is 43% (or 18¢) higher in base zone than soft Salami. The 18¢ differential is used throughout all zones. Kosher sausage prices at retail to purveyors of meats.

This amendment shall become effective July 26, 1944.

NOTE: The record keeping and reporting provisions of this amendment have been approved by the Bureau of the Budget.

Issued this 21st day of July 1944.

JAMES G. ROGERS, Jr.,
Acting Administrator.

[F. R. Doc. 44-10914; Filed, July 21, 1944; 11:34 a. m.]

PART 1364—FRESH, CURED AND CANNED MEAT AND FISH PRODUCTS

[MPR 336,[1] Amdt. 15]

RETAIL CEILING PRICES FOR PORK CUTS AND CERTAIN SAUSAGE PRODUCTS

A statement of the considerations involved in the issuance of this amendment has been issued simultaneously herewith and filed with the Division of the Federal Register.*

Maximum Price Regulation No. 336 is amended in the following respects:

1. Section 1 is amended to read as follows:

SECTION 1. *What this regulation does.* This regulation fixes dollar-and-cents ceiling prices on all retail sales of fresh and processed pork cuts, and on all retail sales of the following sausage products: fresh and smoked pork sausage and breakfast sausage, frankfurters, bologna, Lebanon bologna, all beef knackwurst and all beef salami, loaves, Braunschweiger, fresh and smoked liver sausage, liver cheese, liver pudding, New England, minced luncheon, Berliner or Berlin, and Polish sausage. It also fixes dollar-and-cents ceiling prices on all sales of retail pork cuts and the sausage products subject to this regulation which retail dealers are permitted to make to purveyors of meals. It also fixes dollars-and-cents ceiling prices on the meat items covered by this regulation when permission has been granted retail dealers to sell to other retail dealers for resale purposes. The only retail pork cuts which may be sold are those named and priced in section 19 of this regulation. The United States is divided into zones and different ceiling prices depend on the zone where your store is, its group, the pork cut you are selling, or the type and casing, wrapper or container of the sausage product you are selling. A store includes any place where pork cuts or sausage products subject to this regulation are sold at retail.

2. Section 2 (a) is amended to read as follows:

(a) You will find your ceiling prices for pork cuts on your "OPA List of Retail Ceiling Prices for Pork Cuts" (Article III, section 19) and for sausage products subject to this regulation on your "OPA List of Retail Ceiling Prices for Sausage Products covered by Maximum Price Regulation No. 336" (Article III, section 20) on all sales made to individuals for consumption by themselves or their families off your premises. You will also use the same ceiling prices on sales to eating places if the dollar volume of such sales does not exceed 20% of your total dollar volume of all sales during any calendar month. If you have not obtained written permission in advance from your appropriate District Office, you cannot sell more than 20% of the total dollar volume of your sales during any calendar month to purveyors of meals. In exceptional cases where you have been granted permission in advance to sell more than 20% of your dollar volume of meats to eating places your ceiling price on all sales made to eating places shall be the prices on your "OPA List of Retail Ceiling Prices on Specially Authorized Sales to Eating Places or Other Retailers" (Article III, section 21. In those cases where you have been granted permission to make sales to another retail dealer for resale purposes you will find your ceiling prices for such sales on your "OPA" List of Retail Ceiling Prices on Specially Authorized Sales to Eating Places or Other Retailers" (Article III, section 21). A copy of these lists for your zone and group will be attached to this regulation. A complete price list showing prices for both pork cuts and sausage products may be obtained from your local War Price and Rationing Board or from your District Office of the Office of Price Administration. (If you are a "Group 3 and 4" store you should obtain your copy of the complete price list from your Regional Office of Price Administration Office.)

3. Section 3 (d) is added to read as follows:

(d) On July 26, 1944, the dollars-and-cents specially authorized ceiling prices for fresh and processed pork cuts and the sausage products subject to this regulation sold to eating places or to other retail dealers for resale where written permission to make such sales has been granted in advance (Article III, section 21) take the place of all previous ceiling prices fixed by the Office of Price Administration for these particular sales made to the limited types of buyers and sales described. On and after July 26, 1944, in the exceptional instances where these special types of sales are permitted to be made, you must not sell or offer to sell any of the items named and priced in Article III, section 21, to purveyors of meals or to other retail dealers at prices higher than those therein specified.

4. Section 5, including the headnote is amended to read as follows:

SEC. 5. *The types of sales you are allowed to make.* (a) You may make sales to individuals for consumption by themselves or their families off your premises.

(b) You may make sales to hotels, restaurants, institutions, and other purveyors of meals selling or furnishing meals, of not more than 20% of the total dollar volume of your sales during any month. Your ceiling prices for such sales are the ceiling prices fixed by this regulation for sales to individuals for consumption by themselves or their families off your premises. (Article III, sections 19 and 20).

(c) You may make sales to hotels, restaurants, institutions and other eating places selling or furnishing meals, of more than 20% of the total dollar volume of your sales during any month only after the appropriate Regional Administrator has declared the area in which your store is located to be an area deficient in supplies of fabricated meat cuts for purveyors of meals, and—following such declaration—you have applied to the appropriate OPT District Office for, and have received written permission to make such sales.

Each Regional Administrator is authorized, either on his own motion or after consideration of applications made by one or more retail dealers, to declare any portion of the region under his jurisdiction to be an area deficient in supplies of fabricated meat cuts for purveyors of meals when he finds that the following conditions exist:

(1) Purveyors of meals within the area are unable to obtain fabricated meat cuts in sufficient volume to supply their requirements as determined under Ration Order No. 16 during the two month period immediately preceding May 1, 1944;

(2) The deficiency in supply is caused either by the fact that there are no dealers in the area selling fabricated meat cuts, or the dealers in the area selling fabricated meat cuts do not have adequate facilities or quotas to supply the requirements of purveyors of meals located in the area as determined under the first condition;

(3) Purveyors of meals in the area customarily have relied upon, and find it necessary to continue to rely upon local retail dealers for supplies of meat sufficient to fill their requirements.

Application calling upon the appropriate Regional Administrator to declare a specific area to be deficient in supplies of fabricated meat cuts for purveyors of meals may be filed with the appropriate OPA District or Regional Office at any time during business hours on any business day by one or more retail dealers who operate a retail store or stores within the area.

Applications must be in writing, must be signed by the applicant or applicants, must describe the specific area for which the declaration is sought, and must set forth facts which indicate the existence of the conditions under which the Regional Administrator is authorized to declare the area to be deficient in supplies of fabricated meat cuts for purveyors of meals. If the application is filed in an OPA District Office, it shall be forwarded within five days to the appropriate Regional Office together with the recommendations of the OPA District Office Director based upon an accompanying analysis of the conditions existing in the specific area for which the declaration is sought.

Upon a finding by the Regional Administrator, either on his own motion or

*Copies may be obtained from the Office of Price Administration.

[1] 9 F.R. 167, 2212, 3709, 4356, 5589.

after consideration of a proper application or applications, that the conditions under which he is authorized to act exist, he shall declare the specific area to be deficient in supplies of fabricated meat cuts for purveyors of meals.

Following a declaration by the appropriate Regional Administrator that any specific area under his jurisdiction is deficient in supplies of fabricated meat cuts for purveyors of meals any retail dealer having a store located in that area may apply in writing to his OPA District Office for permission to sell more than 20% of the total volume of his sales of meat made at his retail store or stores located in the area to purveyors of meals. The application for permission must be in duplicate, must be signed by the applicant, must give the address of the store or stores from which he intends to make sales by virtue of the permission, and must declare that the applicant, in all sales made from such store or stores to purveyors of meals after receipt of the requested permission, will charge no more than the ceiling prices listed in his "OPA List of Retail Ceiling Prices on Specially Authorized Sales to Eating Places or Other Retailers" (Article III, section 21). For purposes of convenience he may combine an application made under this section with applications made under the analogous sections of Maximum Price Regulation No. 355 and/or Maximum Price Regulation No. 394.

Upon receipt of an application the OPA District Director shall grant the applicant the requested permission in writing. When the applicant has received such permission, his ceiling prices on all sales thereafter made to purveyors of meals must not exceed the ceiling prices for each grade of beef, veal, lamb and mutton retail cuts listed in the "OPA List of Retail Ceiling Prices on Specially Authorized Sales to Eating Places or Other Retailers" (Article III, section 21).

(d) You may make sales to other retail dealers who purchase your retail pork cuts for resale or you may buy retail pork cuts for resale purposes from other retail dealers only after written permission to make such sales or purchases has been granted to both the seller and the buyer by the appropriate Regional Office. The buyer and seller must submit joint applications in duplicate to the appropriate OPA District Office for such permission and must state therein the reasons why permission to make such sales and purchases is being sought. The joint application submitted must be signed by both parties and must set forth facts which indicate the existence of the following conditions:

(1) The purchasing retail dealer serves an area which will be deprived of its adequate supply of meats unless provision is made for him to procure meats in the form of retail cuts;

(2) The purchasing retail dealer does not have the facilities necessary to cut wholesale cuts into retail cuts;

(3) The purchasing retail dealer either customarily purchased his meats in the form of retail cuts prior to May 17, 1943, or is just starting to sell meats at retail in the designated location;

(4) The selling retail dealer is regularly engaged in the business of making sales at retail, the major portion of his meat business consisting of sales to individuals for consumption by themselves or their families off his premises;

(5) The contemplated sale of retail cuts to the purchasing retail dealer will constitute only an incidental part of the selling retail dealer's business. In no event may sales of retail cuts to other retail dealers exceed 40% of the total dollar volume of sales made by the selling retail dealer.

The application also must include statements showing (1) the approximate total volume of meat cuts expected to be transferred monthly as a result of the arrangement, (2) the expected duration of the arrangement, (3) the name and address of both parties. For purposes of convenience buyers and sellers may combine applications made under this section with applications made under the analogous sections of Maximum Price Regulation No. 355 and/or Maximum Price Regulation No. 394. The OPA District Office shall forward the application to the appropriate regional office together with its recommendations.

Upon receipt of a joint application together with the recommendations of the OPA District Office, the appropriate Regional Office shall conduct whatever investigations it deems necessary concerning the statements in the joint application. Upon a finding by the Regional Administrator that all of the requirements of this section have been satisfied he is authorized to grant permission in writing authorizing the purchasing retail dealer to buy, and the selling retail dealer to sell retail meat cuts for resale in whatever quantity and for whatever period as he may find to be appropriate under the circumstances. He also shall send a copy of whatever order he may make to the forwarding OPA District Office.

Where such permission has been granted, and if you are the retail seller, you may charge the retail dealer authorized to purchase retail pork cuts and the sausage products subject to this regulation from you no more than the ceiling price for the pork cuts and sausage products listed on your "OPA List of Retail Ceiling Prices on Specially Authorized Sales to Eating Places or Other Retailers" (Article III, section 21).

If you are the authorized purchasing retail dealer you may pay the authorized selling retail dealer no more than the ceiling price for the pork cuts and sausage products listed in your "OPA List of Retail Ceiling Prices on Specially authorized Sales to Eating Places or Other Retailers (Article III, section 21).

5. Section 7 is amended to read as follows:

SEC. 7. *Records and Reports.* After May 17, 1943, you shall keep the same kind of records you have customarily kept, showing the prices you charge for fresh and processed pork cuts, and sausage products subject to this regulation. On all sales to hotels, restaurants, institutions and other eating places selling or furnishing meals made after July 26, 1944, you must keep records and give receipts to each respective purchaser, showing the name and address of each such purchaser, the date of each purchase, your name and address, the component items of each order including the name and weight, of each pork cut and the name, type, weight and casing, container or wrapper identification of each sausage product sold and the price charged therefor. If you are permitted to sell to other retail dealers for resale purposes you must keep records of each transaction and give receipts showing the same facts that you are required to show on your sales to eating places. You shall show the records to any representative of the Office of Price Administration upon request. If you have customarily given a customer a sales slip, receipt or similar evidence of purchase, you shall continue to do so. Furthermore, regardless of your previous custom, you shall, upon request by any customer, give a receipt showing the date, your name and address, the name and weight of each pork cut, the name, type, weight and casing, container or wrapper identification of each sausage product sold, and the price you received for the pork cut or sausage product.

6. Section 21 is added to read as follows:

SEC. 21. *Retail ceiling prices on specially authorized sales to eating places or other retailers.*—(a) *Pork cuts.*

NOTE 1. *Deduction for oily pork cuts.* The ceiling price for a pork cut which comes from an oily hog carcass is lower than the ceiling price listed below for that pork cut. The ceiling price is one cent a pound lower for all hams, fat back, and dressed hogs from oily hogs. The ceiling price is four cents a pound lower for all shoulders, shoulder cuts, pork loins, bellies, and slab bacon from oily hogs.

NOTE 2. *Slices of processed picnics and processed bone-in hams.* Slices from processed picnics and processed bone-in hams shall be center slices only and shall not be more than 33⅓% of the weight of the total picnic or bone-in ham.

NOTE 3. *Slices of fresh picnics and hams.* Slices from fresh picnics and hams shall be center slices only and shall not be more than 20% of the weight of the total picnic or ham.

NOTE 4. *Shank and round or butt halves and ends.* Shank and round or butt halves and ends of fresh, smoked and ready to eat hams and picnics may be split lengthwise once and the pieces so produced may be sold at or below the applicable ceiling prices listed for shank and round or butt halves and ends.

NOTE 5. *Center cut pork chops.* Center cut pork chops shall be not more than 33⅓% of the weight of the pork loin.

(Price per pound)

	Zone 1	Zone 2	Zones 3 and 4	Zone 4a	Zone 5	Zones 6 and 7	Zones 8 and 9 North	Zones 8 and 9 South	Zone 10
1A. Smoked ham, whole:	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*
1. Regular bone-in	34	33	32	31	31	32	32	32	33
2. Regular boneless	37	37	36	34	35	35	36	36	36
3. Regular boneless and fatted	43	43	41	41	41	41	42	42	43
4. Skinned bone-in	36	36	35	34	34	34	35	35	36
5. Skinned boneless	40	39	38	37	37	38	38	39	39
6. Skinless, boneless and fatted	46	46	45	44	44	44	45	45	46
1B. Smoked ham, shank half or end:									
1. Regular bone-in	32	32	31	30	30	30	31	31	32
2. Regular boneless	37	37	36	34	35	35	36	36	36
3. Regular boneless and fatted	43	43	42	41	41	41	42	42	43
4. Skinned bone-in	34	34	33	32	32	33	33	33	34
5. Skinned boneless	40	39	38	37	37	38	38	39	39
6. Skinless, boneless and fatted	46	46	45	44	44	44	45	45	46
1C. Smoked ham, round half or ends:									
1. Regular bone-in	33	33	32	31	31	31	32	32	32
2. Regular boneless	37	37	36	34	35	35	36	36	36
3. Regular boneless and fatted	43	43	42	41	41	41	42	42	43
4. Skinned bone-in	35	35	34	33	33	34	34	34	35
5. Skinned boneless	40	39	38	37	37	38	38	39	39
6. Skinless, boneless and fatted	46	46	45	44	44	44	45	45	46
1D. Smoked ham, slices:									
1. Regular bone-in	42	42	40	39	39	40	40	41	41
2. Regular boneless	45	44	43	42	42	42	43	43	44
3. Regular boneless and fatted	52	52	51	49	50	50	51	51	52
4. Skinned bone-in	45	45	43	42	42	43	43	44	44
5. Skinned boneless	48	48	46	45	45	46	46	47	47
6. Skinless, boneless and fatted	56	56	54	53	53	54	54	55	55
2A. Ready to eat ham, whole:									
1. Regular bone-in	37	36	35	34	34	35	35	36	36
2. Regular boneless	40	40	39	38	38	38	39	39	40
3. Regular boneless and fatted	47	47	46	44	45	45	46	46	46
4. Skinned bone-in	39	39	38	37	37	37	38	38	39
5. Skinned boneless	43	43	42	41	41	41	42	42	43
6. Skinless, boneless and fatted	50	50	49	48	48	48	49	49	50
2B. Ready to eat ham, shank half or end:									
1. Regular bone-in	35	35	34	33	33	33	34	34	34
2. Regular boneless	40	40	39	38	38	38	39	39	40
3. Regular boneless and fatted	47	47	46	44	45	45	46	46	46
4. Skinned bone-in	38	37	36	35	36	36	36	37	37
5. Skinned boneless	43	43	42	41	41	41	42	42	43
6. Skinless, boneless and fatted	50	50	49	48	48	48	49	49	50
2C. Ready to eat ham, round half or end:									
1. Regular bone-in	36	36	35	34	34	34	35	35	35
2. Regular boneless	40	40	39	38	38	38	39	39	40
3. Regular boneless and fatted	47	47	46	44	45	45	46	46	46
4. Skinned bone-in	39	38	37	36	37	37	37	38	38
5. Skinned boneless	43	43	42	41	41	41	42	42	43
6. Skinless, boneless and fatted	50	50	49	48	48	48	49	49	50
2D. Ready to eat ham, slices:									
1. Regular bone-in	46	46	44	43	43	43	44	44	45
2. Regular boneless	49	48	47	46	46	46	47	47	48
3. Regular boneless and fatted	57	56	55	54	54	54	55	55	56
4. Skinned bone-in	49	49	48	46	47	47	48	48	49
5. Skinned boneless	52	52	51	49	50	50	51	51	52
6. Skinless, boneless and fatted	61	60	59	58	58	58	59	59	60
3A. Fresh ham, whole:									
1. Regular bone-in	31	31	30	29	29	29	31	30	31
2. Regular boneless	34	34	33	32	32	32	34	33	34
3. Regular boneless and fatted	40	40	38	37	37	38	40	39	40
4. Skinned bone-in	34	33	32	31	31	32	33	33	34
5. Skinned boneless	38	37	36	35	35	36	37	37	38
6. Skinless, boneless and fatted	43	43	41	40	40	41	43	42	43
3B. Fresh ham, shank end:									
1. Regular bone-in	31	31	30	28	29	29	31	30	31
2. Regular boneless	34	34	42	31	32	32	34	33	34
3. Regular boneless and fatted	40	39	38	37	37	38	39	39	40
4. Skinned bone-in	33	33	32	31	31	32	33	32	33
5. Skinned boneless	37	37	36	35	35	35	37	36	37
6. Skinless, boneless and fatted	43	42	41	40	40	41	42	42	43
3C. Fresh ham, round or butt end:									
1. Regular bone-in	32	31	30	29	29	30	31	31	32
2. Regular boneless	35	34	33	32	32	33	34	34	35
3. Regular boneless and fatted	41	40	39	38	38	39	40	40	41
4. Skinned bone-in	34	34	33	31	32	32	34	33	34

	Zone 1	Zone 2	Zones 3 and 4	Zone 4a	Zone 5	Zones 6 and 7	Zones 8 and 9 North	Zones 8 and 9 South	Zone 10
3C. Fresh ham, round or butt ends—Con.	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*
5. Skinned boneless	38	38	37	35	36	36	38	37	38
6. Skinless, boneless and fatted	44	43	42	41	41	42	43	43	44
3D. Fresh ham, slices:									
1. Regular bone-in	34	34	32	31	31	32	34	33	34
2. Regular boneless	37	37	35	34	34	35	37	36	37
3. Regular boneless and fatted	43	43	42	40	41	41	43	42	43
4. Skinned bone-in	36	36	35	34	34	34	36	35	36
5. Skinned boneless	41	40	39	38	38	39	40	40	41
6. Skinless, boneless and fatted	46	46	45	44	44	44	46	45	46
4A. Smoked picnics, whole:									
1. Bone-in	32	31	30	29	29	30	30	31	31
2. Boneless	35	35	34	33	33	33	34	34	35
3. Boneless and fatted	42	41	40	39	39	40	40	41	41
4B. Smoked picnics, shank end:									
1. Bone-in	30	30	29	28	28	28	29	29	30
2. Boneless	34	33	32	31	32	32	32	33	33
3. Boneless and fatted	40	39	38	37	38	38	38	39	39
4C. Smoked picnics, round or butt end:									
1. Bone-in	31	31	30	29	29	29	30	30	30
2. Boneless	35	34	33	32	32	33	33	34	34
3. Boneless and fatted	41	41	40	38	39	39	40	40	40
4D. Smoked picnics, slices:									
1. Bone-in	40	39	38	36	37	37	38	38	39
2. Boneless	44	44	42	41	41	42	42	43	43
3. Boneless and fatted	52	52	50	49	49	50	50	51	51
5A. Fresh picnics, whole (fresh, frozen or cured):									
1. Bone-in	29	29	28	26	27	27	29	28	29
2. Boneless	32	32	31	30	30	31	32	32	32
3. Boneless and fatted	38	38	36	35	35	36	38	37	38
5B. Fresh picnics, shank half (fresh, frozen or cured):									
1. Bone-in	29	29	27	26	27	27	29	28	29
2. Boneless	32	32	31	30	30	30	32	31	32
3. Boneless and fatted	38	37	36	35	35	36	37	37	38
5C. Fresh picnics, round half (fresh, frozen or cured):									
1. Bone-in	30	29	28	27	27	28	29	29	30
2. Boneless	33	33	31	30	31	31	33	32	33
3. Boneless and fatted	38	38	37	36	36	37	38	38	38
5D. Fresh picnics, slices (fresh, frozen or cured):									
1. Bone-in	32	31	30	29	29	30	31	31	32
2. Boneless	35	35	34	32	33	33	35	34	35
3. Boneless and fatted	41	41	39	38	38	39	41	40	41
6A. Ready to eat picnics, whole:									
1. Bone-in	35	34	33	32	32	33	33	34	35
2. Boneless	39	38	37	36	36	37	37	37	38
3. Boneless and fatted	45	45	44	43	43	43	44	44	45
6B. Ready to eat picnics, shank end:									
1. Bone-in	33	33	32	31	31	31	32	32	33
2. Boneless	37	37	36	34	35	40	36	36	36
3. Boneless and fatted	43	43	42	41	41	42	42	42	43
6C. Ready to eat picnics, round end:									
1. Bone-in	34	34	33	32	32	32	33	33	34
2. Boneless	38	38	36	35	36	36	36	37	37
3. Boneless and fatted	45	44	43	42	43	43	43	44	44
6D. Ready to eat picnics, slices:									
1. Bone-in	43	43	42	40	41	41	42	42	43
2. Boneless	48	48	47	45	46	46	47	47	48
3. Boneless and fatted	57	57	55	54	54	55	55	56	56
7. Aged Dry cured Hams:									
1. Whole or half	50	50	48	47	48	48	48	49	49
2. Sliced	54	54	53	51	52	52	52	53	54
8. Prosciutto Hams:									
1. Whole or half	48	48	47	46	46	46	47	47	48
2. Sliced bone-in	52	52	51	49	50	50	51	51	52
3. Sliced boneless and fatted	89	88	87	86	86	86	87	87	89
9A. Bellies or slab bacon, whole or piece:									
1. Fresh with rine	26	25	24	23	23	24	25	25	26
2. Fresh derined	28	28	27	26	26	26	28	27	28
3. Smoked with rine	32	31	30	29	29	29	30	30	31
4. Smoked derined	35	35	33	32	32	33	33	34	34

(Price per pound)

	Zone 1	Zone 2	Zones 3 and 4	Zone 4a	Zone 5	Zones 6 and 7	Zones 8 and 9 North	Zones 8 and 9 South	Zone 10
9B. Bellies or slab bacon, store sliced:	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*
1. Fresh with rine	28	27	26	25	25	26	27	27	28
2. Fresh derined	31	30	29	28	28	29	30	30	31
3. Smoked with rine	34	34	33	31	32	32	33	33	34
4. Smoked derined	38	37	36	35	35	35	37	36	37
10A. Boston butts, whole or piece:									
1. Fresh, frozen or cured	34	34	32	31	32	32	34	33	34
2. Smoked	37	37	36	35	35	36	36	36	37
3. Ready to eat	40	39	38	37	37	38	38	39	39
10B. Boston butts, store sliced:									
1. Fresh, frozen or cured	37	36	35	34	34	35	36	36	37
2. Smoked	40	40	39	37	38	38	39	39	40
3. Ready to eat	43	42	41	40	40	40	41	41	42
11. Pork shoulders, fresh, frozen or cured, whole only:									
1. Skinned bone-in	32	31	30	29	29	30	31	31	32
2. Skinned boneless	35	35	33	32	32	33	35	34	35
3. Skinned boneless and fatted	39	38	37	36	36	37	38	38	39
4. Regular	29	29	28	26	27	27	29	28	29
5. Rough neck bone-in	29	28	27	26	26	27	28	28	29
6. Rough neck boneless	29	29	27	26	26	27	29	28	29
12. Pork shoulders smoked, whole only:									
1. Skinned bone-in	34	34	32	31	32	32	32	33	33
2. Skinned boneless	37	37	36	35	35	36	36	36	37
3. Skinned boneless and fatted	42	42	41	40	40	41	41	41	42
4. Regular	32	31	30	29	29	30	30	31	31
5. Rough neck bone-in	31	31	30	29	29	29	30	30	31
6. Rough neck boneless	31	31	30	29	29	29	30	30	31
13. Pork shoulder cooked:									
1. Skinned bone-in	37	37	36	35	35	35	36	36	37
2. Skinned boneless	41	40	39	38	38	39	39	39	40
14A. Boneless butts (whole or piece):									
1. Fresh, frozen or cured	39	38	37	36	36	37	38	38	39
2. Smoked	46	45	44	43	43	44	44	44	45
3. Ready to eat	49	49	48	47	47	47	48	48	49
14B. Boneless butts (stored sliced):									
1. Fresh, frozen or cured	42	42	40	39	39	40	42	41	42
2. Smoked	49	49	47	46	46	47	47	48	48
3. Ready to eat	53	53	51	50	51	51	51	52	52
15A. Boneless loins (Canadian bacon) whole or piece:									
1. Fresh, frozen or cured	44	44	43	41	42	42	44	43	44
2. Smoked	53	53	52	51	51	51	52	52	53
3. Ready to eat	58	57	56	55	55	56	56	57	57
15B. Boneless loins (Canadian bacon) store sliced:									
1. Fresh, frozen or cured	48	47	46	45	45	46	47	47	48
2. Smoked	58	57	56	55	55	55	56	56	57
3. Ready to eat	63	62	61	60	60	60	61	61	62
16. Briskets (whole):									
1. Fresh or frozen	19	19	18	17	17	18	19	19	19
2. Cured	21	20	19	18	18	19	19	20	20
3. Smoked	26	26	24	23	23	24	24	25	25
17. Fat back (whole or piece):									
1. Fresh, cured or frozen	18	18	17	16	16	16	18	17	18
2. Smoked	21	21	20	19	19	19	20	20	21
18A. Pork loins (whole):									
1. Fresh or frozen	32	32	31	29	30	30	32	31	32
2. Cured	33	32	30	30	30	31	31	32	32
3. Smoked	38	38	37	35	36	36	37	37	38
18B. Pork loins, rib half or end:									
1. Fresh or frozen	32	30	29	28	28	29	29	29	30
2. Cured	31	31	30	29	29	29	30	30	30
3. Smoked	36	36	35	34	34	34	35	35	36
18C. Pork loins, loin half or end:									
1. Fresh or frozen	32	32	31	29	30	30	32	31	32
2. Cured	33	32	31	30	30	31	31	32	32
3. Smoked	38	38	37	35	36	36	37	37	38
18D. Pork loins, center cut:									
1. Fresh or frozen	35	34	33	32	32	33	34	34	35
2. Cured	35	35	34	33	33	33	34	34	35
3. Smoked	41	41	40	38	39	39	40	40	41
19. Sliced bacon (derined, smoked):									
1. Standard Grade A	40	40	38	37	37	38	38	39	39
2. Standard Grade B	36	36	35	34	34	34	35	35	36
3. Standard Grade C	35	35	33	32	32	33	33	34	34
4. Sliced jowl butts	26	26	25	24	24	24	25	25	26

	Zone 1	Zone 2	Zones 3 and 4	Zone 4a	Zone 5	Zones 6 and 7	Zones 8 and 9 North	Zones 8 and 9 South	Zone 10
19. Sliced bacon (derined, smoked)—Continued.	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*
5. Sliced regular plates	26	25	24	23	23	24	24	24	25
6. Bacon end slices	23	23	22	21	21	21	22	22	23
7. Sliced Canadian bacon	63	63	62	61	61	61	62	62	63
20A. Spare ribs:									
1. Fresh or frozen	24	23	22	21	21	22	23	23	24
2. Cured	25	24	23	22	22	23	23	24	24
3. Smoked	31	30	29	28	28	29	29	29	30
20B. Barbecue spare ribs, (briskot boneless):									
1. Fresh or frozen	28	28	28	24	24	24	26	25	26
2. Cured	27	27	26	25	25	25	26	26	27
3. Smoked	33	33	32	31	31	31	32	32	33
4. Barbecued	33	33	37	36	36	37	37	33	33
20C. Hocks:									
1. Fresh or frozen	21	21	20	18	19	19	21	20	21
2. Cured	22	22	21	20	20	20	21	21	22
3. Smoked	26	25	24	23	23	24	24	24	25
20D. Knuckles:									
1. Fresh or frozen	17	17	16	15	15	15	17	16	17
2. Cured	18	17	17	16	16	16	17	17	18
3. Smoked	22	21	20	19	19	20	20	21	21
20E. Pigs feet, long cut:									
1. Fresh or frozen	13	13	11	10	10	11	13	12	13
2. Vinegar pickled	19	19	15	17	17	17	18	18	19
20F. Pigs feet, short cut:									
1. Fresh or frozen	10	10	8	7	7	8	10	9	10
2. Vinegar pickled	16	15	14	13	13	14	14	15	15
20G. Tails:									
1. Fresh or frozen	16	16	15	13	14	14	16	15	16
2. Cured	17	17	16	15	15	15	16	16	17
3. Smoked	21	20	19	18	18	18	19	19	20
20H. Neck bones:									
1. Fresh, frozen or cured	10	10	8	7	7	8	10	9	10
2. Smoked	13	13	12	10	11	11	12	12	13
20I. Bacon skins:									
1. Fresh, frozen or cured	10	9	8	7	7	8	9	9	10
2. Smoked	12	11	10	9	9	10	10	10	11
20J. Blade butts:									
1. Fresh, frozen or cured	25	25	23	24	24	25	26	26	26
2. Smoked	31	30	29	28	28	29	29	29	30
20K. Back bones:									
1. Fresh, frozen or cured	9	8	7	6	6	7	8	8	9
20L. Pork tenderloins:									
1. Fresh, frozen or cured	45	45	44	43	43	44	45	45	45
20M. Pork tenderloin tips:									
1. Fresh, frozen or cured	43	43	42	41	41	41	43	42	43
21. Dry salt bellies:									
1. Fresh, frozen or cured	22	22	20	19	20	20	22	21	22
2. Smoked	26	25	24	23	23	23	24	24	25
22. Plate and jowls, fresh, frozen or cured:									
1. Clear plates	17	16	15	14	14	15	16	16	17
2. Regular plates	18	18	16	15	16	16	18	17	18
3. Jowl butts	17	16	15	14	14	15	16	16	17
4. Square jowl butts	19	18	17	16	16	17	18	18	19
23. Plates and jowls, smoked:									
1. Clear plates	20	20	19	17	18	18	19	19	19
2. Regular plates	21	21	20	19	19	19	20	21	21
3. Jowl butts	20	20	19	17	18	18	19	19	19
4. Square jowl butts	24	23	22	21	21	22	22	23	23
24A. Cooked or boiled ham, shoulder, picnic, boneless and fatted (whole or piece):									
1. Regular ham	50	50	49	47	48	48	49	49	49
2. Skinless ham	54	53	52	51	51	52	52	52	53
3. Skinless picnics	46	46	45	44	44	44	45	45	45
4. Skinned shoulder	46	46	45	44	44	44	45	45	46
24B. Cooked or boiled ham, picnic, boneless and fatted, (sliced):									
1. Regular ham	63	62	61	59	60	60	61	61	62
2. Skinless ham	67	67	65	64	64	65	65	66	66
3. Skinless picnics	58	58	56	55	55	56	56	57	57
25A. Cooked or boiled and smoked ham and picnic, boneless and fatted (whole):									
1. Regular ham	51	51	50	49	49	49	50	50	51
2. Skinless ham	55	55	54	53	53	53	54	54	55
3. Skinless picnics	47	46	45	44	44	45	45	46	46
25B. Cooked or boiled and smoked ham and picnic, boneless and fatted (sliced):									
1. Regular ham	64	64	63	61	62	62	63	63	64
2. Skinless ham	69	69	67	66	66	67	67	68	68
3. Skinless picnics	58	58	57	55	56	56	57	57	58

(Price per pound)

	Zone 1	Zone 2	Zones 3 and 4	Zone 4a	Zone 5	Zones 6 and 7	Zones 8 and 9 North	Zones 8 and 9 South	Zone 10
26A. Baked and barbecued ham, shoulder and picnic, boneless and fatted (whole):	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*
1. Regular ham	55	55	54	52	53	53	54	54	54
2. Skinless ham	59	58	59	56	56	57	59	57	58
3. Skinless picnics	51	51	49	48	49	49	49	50	50
4. Skinned shoulder	50	50	49	48	48	48	49	49	50
26B. Baked and barbecued ham, shoulder and picnic, boneless and fatted (sliced):									
1. Regular ham	69	68	67	66	66	66	67	67	68
2. Skinless ham	73	73	72	70	71	71	72	72	73
3. Skinless picnics	64	63	62	60	61	61	62	62	63
4. Skinned shoulder	63	63	61	60	60	60	61	62	62
27A. Dried specialties (whole or piece):									
1. Aged dry cured bacon	37	37	36	35	35	35	36	36	37
2. Aged dry cured sides	34	34	32	31	32	32	32	33	33
3. Aged dry cured jowls	26	25	24	23	23	24	24	24	25
4. Aged dry cured shoulder	39	38	37	36	36	37	37	38	38
5. Capicalli butts	55	55	54	53	53	53	54	54	55

	Zone 1	Zone 2	Zones 3 and 4	Zone 4a	Zone 5	Zones 6 and 7	Zones 8 and 9 North	Zones 8 and 9 South	Zone 10
27B. Dried specialties (store sliced):									
1. Aged dry cured bacon	*Cents* 40	*Cents* 40	*Cents* 39	*Cents* 37	*Cents* 38	*Cents* 38	*Cents* 39	*Cents* 39	*Cents* 40
2. Aged dry cured sides	37	36	35	34	34	34	35	35	36
3. Aged dry cured jowls	28	27	26	25	25	25	26	26	27
4. Aged dry cured shoulder	42	42	40	39	39	40	40	41	41
5. Capicalli butts	60	60	58	57	57	58	58	59	59
28. Loin ribs:									
1. Fresh or frozen	24	24	23	22	22	23	24	24	24
2. Cured	26	25	24	23	23	24	24	25	25
3. Smoked	32	31	30	29	29	30	30	30	31

(Price per hundredweight)

	Zone 1	Zone 2	Zones 3 and 4	Zone 4a	Zone 5	Zones 6 and 7	Zones 8 and 9 North	Zones 8 and 9 South	Zone 10
29. Dressed hogs (whole, or side):	*Dollars*	*Dollars*	*Dollars*	*Dollars*	*Dollars*	*Dollars*	*Dollars*	*Dollars*	*Dollars*
1. Packer Style	21.50	21.25	20.25	19.25	19.50	20.00	21.25	20.75	21.50
2. Shipper Style	20.50	20.25	19.25	18.50	18.50	19.00	20.25	19.75	20.50

(b) *Sausage products covered by Maximum Price Regulation 336.*

(Price per pound)

Item	Zone 1	Zone 2	Zone 3	Zone 4	Zone 4A	Zone 5	Zone 6	Zone 7	Zone 8 North and 8 South	Zone 9 North and 9 South	Zone 10
1. Berliner or Berlin:	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*
1. Natural casings (N. C.)	33	32	31	31	30	31	31	32	32	32	32
2. Artificial casings (A. C.)	32	31	31	30	30	30	31	31	31	32	32
2A. Bologna, natural casings (N. C.):											
1. Lebanon	39	38	37	37	37	37	38	38	38	{39N. 40S.}	39
2. All beef	37	36	34	34	33	33	33	33	34	34	34
3. Type 1	32	31	31	30	30	30	31	31	31	32	32
4. Type 2	32	30	30	30	29	30	30	30	30	31	31
5. Type 3	29	27	27	27	26	27	27	27	28	28	28
6. Type 4	24	23	23	23	22	23	23	23	24	24	24
2B. Bologna, artificial casings (A. C.):											
1. Lebanon	38	37	36	36	36	36	37	37	37	{38N. 39S.}	38
2. All beef	36	35	33	33	32	32	32	32	33	33	33
3. Type 1	31	30	30	29	29	29	30	30	30	31	31
4. Type 2	31	29	29	29	28	29	29	29	30	30	30
5. Type 3	28	26	26	26	25	26	26	26	27	27	27
6. Type 4	24	22	22	22	21	22	22	22	23	23	23
3. Braunschweiger:											
1. Sewed hog bungs (H. C.)	37	35	35	35	34	35	35	35	36	36	36
2. Other hog casings (H. C.)	35	33	33	33	32	33	33	33	34	34	34
3. Artificial casings (A. C.)	31	30	30	29	29	29	30	30	30	31	31
4A. Frankfurters, sheep casings (S. C.):											
1. All beef	43	42	40	40	39	39	39	40	40	40	41
2. Type 1	38	37	36	36	35	36	36	37	37	37	38
3. Type 2	38	37	36	36	35	36	36	37	37	37	38
4. Type 3	35	33	33	33	32	33	33	33	34	34	34
5. Type 4	31	29	29	29	28	29	29	29	30	30	30
4B. Frankfurters, hog casings (H. C.), artificial casings (A. C.) or skinless:											
1. All beef	39	38	36	36	35	35	35	35	36	36	36
2. Type 1	35	33	33	33	32	33	33	33	34	34	34
3. Type 2	34	33	33	32	32	32	33	33	33	33	34
4. Type 3	31	30	29	29	29	29	30	30	30	30	31
5. Type 4	27	26	25	25	24	25	25	26	26	26	27
5A. Knackwurst, natural casings (N. C.):											
1. All beef	37	36	34	34	33	33	33	33	34	34	34
5B. Knackwurst, artificial casings (A. C.):											
1. All beef	36	35	33	33	32	32	32	33	33	33	33
6A. Liver Sausage, Fresh:											
1. Hog bungs (H. C.)	32	30	30	30	29	30	30	30	31	31	31
2. Beef casings (S. C.)	30	28	28	28	27	28	28	26	29	29	29
3. Artificial casings (A. C.)	29	28	27	27	26	27	27	28	28	28	29
6B. Liver Sausage, Smoked:											
1. Sewed hog bungs (H. C.)	36	34	34	34	33	34	34	34	35	35	35
2. Other hog bungs (H. C.)	34	32	32	32	31	32	32	32	33	33	33
3. Artificial casing (A. C.)	31	30	29	29	28	29	29	30	30	30	31
7. Liver cheese:											
1. Artificial casings (A. C.), cardboard cartons or sealed packages of moisture resistant paper	38	36	36	36	35	36	36	36	37	37	37

Item	Zone 1	Zone 2	Zone 3	Zone 4	Zone 4A	Zone 5	Zone 6	Zone 7	Zone 8 North and 8 South	Zone 9 North and 9 South	Zone 10
8. Liver Loaf:											
1. Artificial casings (A. C.), natural casings (N. C.) cardboard cartons or sealed packages of moisture resistant paper	*Cts.* 30	*Cts.* 29	*Cts.* 28	*Cts.* 28	*Cts.* 27	*Cts.* 28	*Cts.* 28	*Cts.* 29	*Cts.* 29	*Cts.* 29	*Cts.* 30
9. Liver pudding:											
1. Beef casings (B. C.)	27	25	25	25	24	25	25	25	26	26	26
2. Artificial casings (A. C.), cardboard cartons or sealed packages of moisture resistant paper	26	25	24	24	23	24	24	25	25	25	26
10. Loaves, artificial casings (A. C.), cardboard cartons or sealed packages of moisture resistant paper:											
1. Type 1	56	54	54	53	52	53	53	53	54	54	54
2. Type 2	43	41	41	41	40	41	41	41	42	42	42
3. Type 3	31	29	29	29	28	29	29	29	30	30	30
4. Type 4	26	25	24	24	23	24	24	25	25	25	26
11. Minced luncheon:											
1. Natural casings (N. C.)	35	33	33	33	32	33	33	33	34	34	34
2. Artificial casings (A. C.)	34	33	32	32	32	32	32	33	33	33	34
12. New England:											
1. Natural casings (N. C.)	51	50	49	49	49	49	49	50	50	50	51
2. Artificial casings (A. C.)	50	49	49	49	48	49	49	49	49	50	50
13. Polish sausage, hog casings (H. C.) or skinless:											
1. Type 1	50	49	49	48	48	48	49	49	49	50	50
2. Type 2	41	40	39	39	38	39	39	40	40	40	41
3. Type 3	32	31	31	30	30	30	31	31	31	32	32
14A. Pork or breakfast sausage, fresh, sheep casings (S. C.):											
1. Type 1	56	54	51	48	48	46	49	48	50	50	51
2. Type 2	44	43	43	42	41	42	42	42	42	43	43
3. Type 3	38	36	36	35	34	35	35	35	36	36	36
4. Type 4	31	30	30	29	28	29	28	29	29	30	30
14B. Pork or breakfast sausage, fresh, hog casings (H. C.):											
1. Type 2	41	39	39	38	38	38	38	38	39	39	39
2. Type 3	34	33	32	32	31	31	31	32	32	32	33
3. Type 4	28	26	26	25	24	25	25	25	26	26	26
14C. Pork or breakfast sausage, fresh, artificial casings (A. C.) or sealed heavy cardboard waxed cups, 1 lb. each or less:											
1. Type 2	39	38	37	37	36	36	36	37	37	37	38
2. Type 3	32	31	30	30	29	29	29	30	30	30	31
3. Type 4	26	24	24	24	23	23	23	24	24	24	24
14D. Pork or breakfast sausage fresh, cardboard cartons or sealed packages of moisture resistant paper, 1 lb. each or less:											
1. Type 2	38	36	36	35	34	35	35	35	36	36	36
2. Type 3	31	29	29	29	26	28	28	29	29	29	29
3. Type 4	22	21	20	20	19	19	20	20	20	20	21

(b) *Sausage products covered by Maximum Price Regulation 336*—Continued.

(Price per pound)

Item	Zone 1	Zone 2	Zone 3	Zone 4	Zone 4A	Zone 5	Zone 6	Zone 7	Zone 8 North and 8 South	Zone 9 North and 9 South	Zone 10
14E. Pork or breakfast sausage, fresh, bulk:	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
1. Type 1	48	46	43	40	40	38	41	40	42	42	43
2. Type 2	36	35	35	34	33	33	34	34	34	35	35
3. Type 3	29	28	28	27	26	27	27	27	23	23	23
4. Type 4	21	20	19	19	18	18	18	19	19	19	20
15. Pork or breakfast sausage smoked, hog casings (H. C.), artificial casings (A. C.) or skinless:											
1. Type 2	45	43	43	43	42	43	43	43	44	44	44
2. Type 3	39	38	38	38	37	38	38	38	38	39	39
3. Type 4	31	30	30	29	29	29	30	30	30	31	31

Item	Zone 1	Zone 2	Zone 3	Zone 4	Zone 4A	Zone 5	Zone 6	Zone 7	Zone 8 North and 8 South	Zone 9 North and 9 South	Zone 10
16A. Salami, soft, artificial casings (A. C.):	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
1. All beef	41	40	40	39	39	39	39	39	40	40	40
16B. Salami, medium or hard, artificial casings (A. C.):											
1. All beef	57	56	56	55	55	55	55	55	56	56	56

This amendment shall become effective July 26, 1944.

NOTE: The record keeping and reporting provisions of this amendment have been approved by the Bureau of the Budget.

Issued this 21st day of July 1944.

JAMES G. ROGERS, Jr.,
Acting Administrator.

[F. R. Doc. 44-10906; Filed, July 21, 1944; 11:31 a. m.]

PART 1394—RATIONING OF FUEL AND FUEL PRODUCTS

[RO 5C[1], Amdt. 137]

MILEAGE RATIONING: GASOLINE REGULATIONS

A rationale accompanying this amendment issued simultaneously herewith, has been filed with the Division of the Federal Register.*

Ration Order 5C is amended in the following respects:

1. In § 1394.7751 (a) the statement in parentheses is amended to read as follows:

(other than passenger automobiles and motorcycles owned or leased and operated by the armed forces of the United States or by State military forces organized pursuant to section 61 of the National Defense Act, as amended)

2. In § 1394.7801 (a) the first sentence is amended to read as follows:

Subject to the provisions of § 1394.7802, transport rations shall be issued by a Board to permit the acquisition of gasoline required for the propulsion of registered and unregistered commercial motor vehicles and motor vehicles owned or leased by and operated by the State military forces organized pursuant to section 61 of the National Defense Act, as amended.

3. In § 1394.7802 the last sentence is amended to read as follows:

The owner or person entitled to the use of a motor vehicle which is owned or leased by and operated by the State military forces organized pursuant to section 61 of the National Defense Act, as amended, may obtain a transport ration authorizing the acquisition of the number of gallons of gasoline required for the operation of such vehicle during the quarterly period for which the ration is to be used.

4. In § 1394.7803 (a) the first sentence is amended to read as follows:

Class T coupons, and, in the case of motorcycles owned or leased by and operated by the State military forces organized pursuant to section 61 of the National Defense Act, as amended, Class D books marked "Transport" shall be issued as transport rations.

5. Section 1394.7804(c) is amended to read as follows:

(c) In the event application is made for a transport ration for use with a motor vehicle owned or leased by and operated by the State military forces organized pursuant to section 61 of the National Defense Act, as amended, the application shall state the number of gallons required during the quarterly period for which the ration is sought for all operations of the vehicle, or in the case of a fleet, for all of the vehicles for which a ration is sought.

6. In section 1394.7805 (c) the first sentence is amended to read as follows:

When an application is made for a ration for use with a motor vehicle which is owned or leased by and operated by the State military forces organized pursuant to section 61 of the National Defense Act, as amended, no Certificate of War Necessity is required.

7. Section 1394.7851(b) (3) (v) is added to read as follows:

(v) To operate a motor vehicle purchased or leased by the military or naval forces of the United States or State military forces organized pursuant to section 61 of the National Defense Act, as amended, from the place of purchase or lease to a place designated by such military or naval forces.

8. Section 1394.7851(b) (3) (vi) is added to read as follows:

(vi) To move a motor vehicle owned or leased by the military or naval forces of the United States or State military forces organized pursuant to section 61 of the National Defense Act, as amended, from one military or naval facility to another military or naval facility when such movement is under the control and supervision of a private contractor.

9. Section 1394.8183(b) (8) is added to read as follows:

(8) Any movement of a motor vehicle purchased or leased by the military or naval forces of the United States or State military forces organized pursuant to section 61 of the National Defense Act, as amended, from the place of such purchase or lease, to a place designated by such military or naval forces.

This amendment shall become effective July 25, 1944.

(Pub. Law 671, 76th Cong.; as amended by Pub. Laws 89, 421 and 507, 77th Cong.; WPB Dir. No. 1, Supp. Dir. No. 1Q, 7 F.R. 562, 9121, E.O. 9125, 7 F.R. 2719)

Issued this 21st day of July 1944.

JAMES G. ROGERS, Jr.,
Acting Administrator.

[F. R. Doc. 44-10907; Filed, July 21, 1944; 11:31 a. m.]

PART 1404—RATIONING OF FOOTWEAR

[RO 17,[2] Amdt. 63]

SHOES

A rationale accompanying this amendment, issued simultaneously herewith, has been filed with the Division of the Federal Register.*

Section 2.3 (e) is added to read as follows:

(e) Each establishment shall file the third inventory with the Inventory and Control Branch of the Office of Price Administration, Empire State Building, New York 1, New York, on or before August 5, 1944. (An inventory shall be deemed "filed" on time if the envelope in which it is enclosed is postmarked not later than midnite, August 5, 1944.) The inventory shall be taken as of the close of business on July 31, 1944, and all information required by the form (OPA Form R-1701B) must be furnished.

This amendment shall become effective July 25, 1944.

NOTE: The reporting provisions and record-keeping requirements of this amend-

*Copies may be obtained from the Office of Price Administration.

[1] 8 F.R. 15937.

[2] 8 F.R. 15839, 16805, 16936; 9 F.R. 92, 573, 764, 2232, 2656, 2947, 2829, 3340, 3944, 4591, 5254, 5905, 6233, 6947, 6455, 7030.

ment have been approved by the Bureau of Budget in accordance with the Federal Reports Act of 1942.

Issued this 21st day of July 1944.

JAMES G. ROGERS, Jr.
Acting Administrator.

[F. R. Doc. 44-10908; Filed, July 21, 1944; 11:33 a. m.]

PART 1404—RATIONING OF FOOTWEAR

[RO 17,[1] Amdt. 69]

SHOES

A rationale accompanying this amendment, issued simultaneously herewith, has been filed with the Division of the Federal Register.*

Section 2.7 (g) is added to read as follows:

(g) Nothing in this order shall be construed to prohibit the surrender of ration currency, in exchange for a transfer of shoes, subsequent to the time at which ration currency is required to be surrendered. However, such late surrender shall not relieve the transferor or the transferee of the consequences of the failure to receive or surrender ration currency at the time required.

This amendment shall become effective July 25, 1944.

Issued this 21st day of July 1944.

JAMES G. ROGERS, Jr.,
Acting Administrator.

[F. R. Doc. 44-10909; Filed, July 21, 1944; 11:32 a. m.]

PART 1439—UNPROCESSED AGRICULTURAL COMMODITIES

[RMPR 471]

LEGUME AND GRASS SEEDS

Maximum Price Regulation 471 is redesignated Revised Maximum Price Regulation 471 and is revised and amended to read as set forth herein. In the judgment of the Price Administrator, the maximum prices established by this regulation are generally fair and equitable and comply with all the provisions and will effectuate the purposes of the Emergency Price Control Act of 1942, as amended, and of Executive Orders 9250 and 9328.

Such specifications and standards as are used in this regulation were, prior to such use, in general use in the trade or industry affected.

A statement of the considerations involved in the issuance of this regulation, issued simultaneously herewith, has been filed with the Division of the Federal Register.*

REVISED MAXIMUM PRICE REGULATION NO. 471—LEGUME AND GRASS SEEDS

Sec.
1. Applicability.
2. Sales at other than maximum prices.
3. Evasion.
4. Enforcement.
5. Licensing.
6. Records and reports.
7. Protests and petitions for amendment.
8. Definitions.
9. Certain maximum service charges.
10. Maximum prices for sales of thresher run seeds.
11. Maximum prices for sales of rough cleaned seeds.
12. Maximum prices for sales of quality cleaned and processed seeds.
13. Base prices applicable to quality cleaned and processed legume and grass seeds.

AUTHORITY: (Secs. 1 to 13, inclusive, § 1439.6) issued under 56 Stat. 23, 765; 57 Stat. 566; Pub. Law 383, 78th Cong.; E.O. 9250, 7 F.R. 7871; E.O. 9328, 8 F.R.4681.

SECTION 1. *Applicability.* (a) Except as provided in paragraph (b) of this section, this regulation shall apply to all sales within the 48 states and the District of Columbia of the following domestic and imported legume and grass seeds, viz: alfalfa, medium red and mammoth red clover, alsike clover, sweet clover and timothy; and certain processed seed mixtures.

(b) *Sales excepted.* This regulation shall not apply to:

(1) State Certified seed of the following improved alfalfa varieties: Atlantic, Buffalo, Nemestan and Ranger;

(2) State Certified seed of the following improved red clover strains: Emerson, Kentucky 215, Kirsh, Letcher, Otten, Rahn, Sanford, Tennessee Anthracnose Resistant and Van Fossen;

(3) State Certified seed of the following improved timothy varieties: Cornell 1777, Cornell 4059, Lorain, Marietta and Milton;

(4) Any export sale of any legume and grass seeds. The maximum price for such sale shall be determined in accordance with the provisions of the Second Revised Maximum Export Price Regulation;[2]

(5) Sales of legume and grass seeds when sold to planters in quantities of 5 pounds or less;

(6) Any legume and grass seeds purchased by the United States or any of its agencies under such circumstances of emergency as to make delivery imperative and as to render it impossible to secure or unfair to require immediate delivery at the maximum price which would otherwise be applicable, if such purchases and deliveries are made pursuant to the provisions of section 4.3 (f) of Revised Supplementary Regulation No. 1 to the General Maximum Price Regulation, as amended: *Provided, however,* That the Administrator may, by order, waive the reporting of any part of the information required by section 4.3 (f) in connection with a particular purchase or group of purchases upon determining that such information may not reasonably be required under all the circumstances, and he may, in lieu thereof, require the reporting of other information more suited to the circumstances.

SEC. 2. *Sales at other than maximum prices.* (a) Regardless of any contract or obligation, no person shall sell or deliver, and no person shall, in the course of trade or business, buy or receive any of the commodities covered by this regulation at a price above the maximum price established by this regulation, nor shall any person agree, solicit, offer, or attempt to do any of the foregoing: *Provided, however,* That this prohibition is subject to the exception provided for in subparagraph (1) of this paragraph.

(1) Any person may agree to sell at a price which can be increased up to the maximum price in effect at the time of delivery, but no person may, unless authorized by the Office of Price Administration, deliver or agree to deliver at prices to be adjusted upward in accordance with action taken by the Office of Price Administration after delivery. Such authorization may be given when a request for a change in the applicable maximum price is pending, but only if the authorization is necessary to promote distribution or production and if it will not interfere with the purposes of the Emergency Price Control Act of 1942, as amended. The authorization may be given by an order of the Administrator or of any official of the Office of Price Administration having authority to act upon the pending request for a change in price or to give the authorization.

(b) Prices lower than the maximum prices established by this regulation may be charged or paid.

SEC. 3. *Evasion.* (a) Any method whereby a seller obtains greater consideration than the maximum price, or whereby he gives less than the consideration due the buyer for the maximum price, is an evasion of this regulation, and therefore prohibited, and any offer or agreement which accomplishes or attempts to accomplish such result is equally prohibited. Without limiting the general prohibitions of this section, the following practices are specifically prohibited.

(1) Requiring payment of any commission, service, transportation or other charge not specifically provided for in the regulation;

(2) Receiving any premium not provided for in the regulation;

(3) Changing a normal business practice for no other reason than to obtain a price higher than the maximum price;

(4) Requiring the purchase of any commodity or service as a condition of the sale of another commodity;

(5) Requiring the sale of one commodity as a condition of the sale of another commodity;

(6) Any other method which, in effect, gives the seller a higher price than he is entitled to.

SEC. 4. *Enforcement.* Persons violating any provision of this regulation are subject to the license revocation or suspension provisions, civil enforcement actions, suits for treble damages, and criminal penalties, as provided in the Emergency Price Control Act of 1942, as amended.

SEC. 5. *Licensing.* The provisions of Licensing Order No. 1[3] licensing all persons who make sales under price control, are applicable to all sellers subject to this regulation. A seller's license may be sus-

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*Copies may be obtained from the Office of Price Administration.

[1] 8 F.R. 15839, 16605, 16996; 9 F.R. 92, 573, 764, 2232, 2656, 2947, 2829, 3340, 3944, 4391, 5254, 5805, 6233, 6647, 6455, 7080.

[2] 8 F.R. 4132, 5987, 7662, 9998, 15193; 9 F.R. 1036, 5435, 5923, 7201.

[3] 8 F.R. 13240.

pended for violations of the license or of one or more applicable price schedules or regulations. A person whose license is suspended may not, during the period of suspension, make any sale for which his license has been suspended.

SEC. 6. *Records and reports.* (a) Every seller subject to this regulation shall keep for inspection by the Office of Price Administration for so long as the Emergency Price Control Act of 1942, as amended, remains in effect his customary records including all bills, invoices and other documents relating to every sale or delivery of commodities subject to this regulation and documents necessary to the determination of purity and germination, after the effective date of this regulation.[3]

(b) Upon demand every such seller shall submit such records to the Office of Price Administration and keep such further records as the Office of Price Administration may from time to time require.[4]

SEC. 7. *Protests and petitions for amendment.* Any person desiring to file a protest against or seeking an amendment of any provisions of this regulation may do so in accordance with Revised Procedural Regulation No. 1,[5] issued by the Office of Price Administration.

SEC. 8. *Definitions.* (a) As used in this regulation the following terms shall have the following meanings:

(1) "Legume and grass seeds" means alfalfa, medium red clover, mammoth red clover, alsike clover, sweet clover and timothy seeds.

(2) "Northern alfalfa seed" means alfalfa seed produced in the following places: In the States of Washington, Oregon, Idaho, Montana, Wyoming, North Dakota, South Dakota, Nebraska, Iowa, Minnesota, Wisconsin and Michigan, and in the counties of any state east of Nebraska which are north of or intersected by the 40th parallel; and in Canada.

(3) "Central alfalfa seed" means alfalfa seed produced in the following places: In the counties of the State of California north of the 40th parallel, and in the counties of Tehama and Plumas; in the States of Nevada, Utah, Colorado, Kansas, and Oklahoma (and labelled "Oklahoma approved origin seed"); in the counties of Missouri, Illinois, Indiana, Ohio, and New Jersey which lie entirely south of the 40th parallel; and in the States of Kentucky, West Virginia, Virginia, Maryland, Delaware and the District of Columbia.

(4) "Southern alfalfa seed" is alfalfa seed produced in places in the United States south of the places where central alfalfa seed is produced; and in Central and South America.

(5) "Thresher-run seeds" means legume and grass seeds in the condition in which they come from a thresher or harvesting machine.

(6) "Rough cleaned seeds" means legume and grass seeds which have been partially cleaned by a cleaning machine separate from and not attached to a thresher or harvesting machine.

(7) "Quality cleaned seeds" means legume and grass seeds which have been thoroughly cleaned, sacked, tested in a laboratory (on the basis of a representative sample) for purity, germination, weed seed content and rate of occurrence of noxious weed seeds, and labelled in compliance with the applicable seed laws.

(8) "Processed seeds" means seeds of uniform quality which a commercial processor has cleaned and purified (with or without blending), sacked, tested in a laboratory for purity, germination, weed seed content and rate of occurrence of noxious weed seeds and labelled pursuant to the applicable state and federal seed laws.

(9) "Processed seed mixture" means any mixture of processed seeds in which at least two kinds of seeds (exclusive of weed seeds and noxious weed seeds) are present in excess of 5% of the whole.

(10) "Weed seeds" means weed seeds as defined in the Federal Seed Act or any applicable State Seed Law.

(11) "Noxious weed seeds" for which discounts must be made in this regulation are seeds of *Lepidium draba, Lepidium repens* (Schrank) *Boiss, Hymenophysa Pubescens C. A., Mey.,* white top; *Cirsium arvense Scop.,* Canada thistle; *Cuscuta spp.,* dodder; *Agropyron, repens Beauv.,* quackgrass; *Sorghum halepense Pers.,* Johnson grass; *Convolvulus arvensis,* bindweed; *Centaurea picris Pall.,* Russian Knapweed; *Sonchus arvensis,* perennial sowthistle; *Eurphorbia esula,* leafy spurge: *Provided,* That these weed seeds are considered noxious and their rate of occurrence is such that labelling to show their presence is required by the laws and regulations of the State in which the legume or grass seeds in question are delivered (or by the Federal Seed Act, if delivered in the District of Columbia).

(12) "Dockage" means inert matter, weed seeds and other crop seeds in thresher-run seeds or rough cleaned seeds. The determination of dockage shall be made from a representative sample drawn from each bag or container, removing as much dockage as possible therefrom by the use of one of the following combinations of hand-screens:

Seed	Combination of screen sizes		
	Top	Middle	Bottom
Alfalfa	11/64" or 3/64" x 5/16"	1/4"	4 x 24.
Medium and Mammoth Red Clover	11/64" or 3/64" x 5/16"	1/4"	6 x 24.
Alsike Clover	11/64"		6 x 32.
White Blossom Sweet Clover	11/64" or 3/64" x 5/16"	1/4"	6 x 24.
Yellow Blossom Sweet Clover	11/64" or 3/64" x 5/16"	1/4"	4 x 26.
Timothy	1/4"		6 x 24.

and, thereafter removing the remaining dockage in said representative sample by the hand separation method as prescribed by the regulations issued under and for the enforcement of the Federal Seed Act.

(13) "Your transportation cost" means:

(i) If you employ a common carrier, contract carrier, or other carrier for hire or compensation, the charge which you actually incur for the transportation service; or

(ii) If you do your own hauling by truck, automobile or wagon, the following scale of charges:

If the total haul does not exceed 100 miles—3 cents per 100 pounds for the first five miles or fraction thereof plus 1 cent per 100 pounds for each additional five miles or fraction thereof;

If the haul exceeds 100 miles the lowest carload rail rate from the rail point nearest the point of origin to the rail point nearest the point of destination plus 8 cents per 100 pounds, but not to exceed 22 cents per 100 pounds plus 1/4 cent per 100 pounds for each five miles or fraction thereof over 100 miles.

In applying the above mileage scale all distances shall be determined via the shortest route between point of origin and point of destination reasonably suitable for truck movement.

(iii) When any movement involves a combination of the above types of transportation the transportation cost for such movement shall be the sum of the amounts computed separately for each part of the movement.

(iv) If you bulk two or more lots of legume and grass seeds, on which you have paid varying transportation costs, into a single lot, you may use a weighted average of such transportation costs for the entire quantity.

(14) "Person" means an individual, corporation, partnership, association or other organized group of persons or the legal successor or representative of any of the foregoing, and includes the United States or any other Government or any political subdivision or agency of any of the foregoing.

(15) "Producer" means with respect to a particular lot of thresher-run or rough cleaned legume and grass seeds, a person who produced or harvested such lot.

(16) "Country dealer" means with respect to a particular lot of legume and grass seeds, a person other than a commercial processor who:

(i) Thoroughly cleans thresher-run seeds or rough cleaned seeds in a seed cleaning plant maintained and operated by him; and

(ii) Has a representative sample of such seeds tested in a laboratory for

[3] The record keeping provisions of this regulation have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

[4] Subject to the approval of the Bureau of the Budget pursuant to the Federal Reports Act of 1942.

[5] 7 F.R. 9861.

purity, germination, weed seed content and rate of occurrence of noxious weed seeds; and

(iii) Sells such seeds properly labelled in compliance with the applicable seed laws.

(17) "Commercial processor" means, with respect to a particular lot of legume and grass seeds, a person who performs the following functions, and who performed the same prior to September 29, 1943, in a seed processing plant equipped with specialized seed processing machinery in addition to fanning and screening mills, which plant he maintains and operates:

(i) Blends and bulks thresher-run seeds and rough cleaned seeds;

(ii) Refines and purifies thresher-run seed and rough cleaned seed through the use of specialized processing machinery designed to remove weed seeds and noxious weed seeds;

(iii) Blends and bulks processed legume and grass seeds into lots of uniform quality;

(iv) Tests or has tested such seeds to determine uniformity of quality and to determine purity, germination, weed seed content and rate of occurrence of noxious weed seeds; and

(v) Sells such seeds properly labelled in compliance with the applicable seed laws.

A processor must file a reference sample of each lot of seed he processes and keep the same available for inspection by the Office of Price Administration.

(18) "Wholesaler" means, with respect to a particular lot of legume and grass seeds, a person who buys quality cleaned or processed legume and grass seeds, unloads them into a warehouse and resells the same to retailers.

(19) "Retailer" is any person who sells quality cleaned or processed legume and grass seeds to planters.

(20) "His supplier" or "your supplier" means, as to any seller, the person from whom he or you purchased the seeds involved.

(21) "His customer" or "your customer" means, as to any seller, the person to whom he sells or you sell the lot of seeds involved.

(22) "Base price" means the price computed in accordance with section 13 hereof. These are merely basic prices from which the maximum price for every sale by every seller is calculated under the provisions of section 13 hereof. These base prices shall not be used independently as a maximum price for any sale.

(b) The foregoing definitions have like meaning in this regulation whether referring to the class as a whole (e. g. legume and grass seeds) or to a specific kind or variety comprised therein (e. g. alfalfa, Northern, Central or Southern).

SEC. 9. *Certain maximum service charges.* The maximum charges which may be made per 100 pounds for the services of assembling, rough cleaning, and quality cleaning legume and grass seeds are set forth below. These are maximum service charges regardless of whether the legume and grass seeds are sold at their maximum price.

(a) *Assembling:*

Kind of seed:	*Maximum service charge (to be reduced by the percentage of dockage in the lot)*
Alfalfa:	
Northern, Central and Southern	$1.00
Clover:	
Medium Red, Mammoth Red and Alsike	1.00
Sweet	.35
Timothy	.30

(b) *Rough cleaning:*

Kind of seed:	*Maximum service charge (to be reduced by the percentage of dockage in the lot)*
Alfalfa:	
Northern, Central and Southern	$1.00
Clover:	
Medium Red, Mammoth Red and Alsike	1.00
Sweet	.50
Timothy	.40

(c) *Quality cleaning:*

Kind of seed:	*Maximum service charge*
Alfalfa:	
Northern and Central	$3.50
Southern	3.00
Clover:	
Medium Red, Mammoth Red and Alsike	3.10
Sweet	2.00
Timothy	1.30

SEC. 10. *Maximum prices for sales of thresher-run seeds.* (a) If you are a producer your maximum price, per 100 pounds, for the sale or delivery of thresher-run seeds shall be as follows:

Kind of seed:	*Maximum price (To be reduced by the percentage of dockage in the lot)*
Alfalfa:	
Northern	$35.00
Central	32.00
Southern (except when grown, sold and delivered for planting in the State of Arizona or in the State of California south of the 40th parallel)	28.00
Southern (when grown, sold and delivered for planting in the State of Arizona or in the State of California south of the 40th parallel)	32.00
Clover:	
Medium Red and Mammoth Red	30.00
Alsike	27.00
Sweet	10.00
Hubam (Annual white blossom sweet clover variety)	15.00
Timothy	7.30

plus transportation cost from your farm to your customer's receiving point.

(b) If you are any person other than a producer, and purchased from a producer for your own account, your maximum price, per 100 pounds, for the sale or delivery of thresher-run seeds shall be the maximum price of the producer who grew the lot of seed in question plus your transportation cost from your place of business to your customer's receiving point, and plus the applicable markup shown below:

Kind of seed:	*Maximum mark-up (to be reduced by the percentage of dockage in the lot)*
Alfalfa:	
Northern, Central and Southern	$1.50
Clover:	
Medium Red, Mammoth Red and Alsike	1.50
Sweet	.40
Timothy	.35

(c) If your purchased thresher-run seed from a person other than a producer, your maximum price per 100 pounds, shall be your supplier's maximum price, plus your transportation cost.

(d) If you are a seller under paragraph (a), (b), or (c), you may increase your maximum price by the reasonable value (not exceeding any maximum price thereon) of the sacks actually furnished by you.

SEC. 11. *Maximum prices for sales of rough cleaned seeds.* (a) If you are a seller of rough cleaned seeds your maximum price, per 100 pounds, for the sale or delivery of such seeds shall be the maximum price at which you could have sold or delivered such seeds as thresher-run seeds, plus your transportation cost and plus the applicable mark-up shown below:

Kind of seed:	*Maximum mark-up (to be reduced by the percentage of dockage in the lot)*
Alfalfa:	
Northern, Central and Southern	$1.00
Clover:	
Medium Red, Mammoth Red and Alsike	1.00
Sweet	.50
Timothy	.40

(b) You may increase your maximum price under paragraph (a) by the reasonable value (not exceeding any maximum price thereon) of the sacks actually furnished by you.

SEC. 12. *Maximum prices for sales of quality cleaned and processed seeds.* Maximum prices for all sales of quality cleaned and processed seeds are found in this section. Maximum prices of such seeds vary according to quality, type of seller and according to whether they are sold by a seller who has customarily sold seeds on a basis of uniform quality. Differences in degree of purity and germination are adjusted in the tables of base prices which are found in section 13. You may take the applicable premiums provided in section 13, but you must give the applicable discounts provided therein. Whenever reference is made to a base price, refer to that section. In section 13 you will find that the particular quality of the seed you are selling has its own base price, without reference to the type of seller you may happen to be.

Once a base price has been determined, this section will explain how you determine your own maximum price. You

must consult the definitions to determine your class of seller on the particular sale, as we have defined your status according to the particular sale you are making. You may be one class of seller on one sale and another class of seller on a different sale.

If you are a producer selling seeds which have been quality cleaned from seeds produced by you, your maximum price will be found in paragraph (a). If you meet the requirements of the definition of a Commercial Processor, as we have defined him, your maximum price is provided in paragraph (b). If you are a wholesaler, as we define him, your maximum price is found in paragraph (c) or if a retailer in paragraph (d). All other sellers find their maximum prices in paragraph (e).

(a) *Maximum prices for a producer.* If you are a producer selling seeds which have been quality cleaned from seeds produced by you, your maximum price will depend on the party to whom you sell the seed. In all cases your maximum price will be the appropriate base price for the kind and quality of seed you are selling, plus your transportation cost, and plus the applicable markup shown in subparagraphs (1) and (2) below.

(1) If your customer is any person other than a planter your maximum markup shall be:

Kind of seed:	*Maximum markup per 100 pounds*
Alfalfa:	
Northern and Central	$3.50
Southern	3.00
Clover:	
Medium Red, Mammoth Red and Alsike	3.10
Sweet	2.00
Timothy	1.30

(2) If your customer is a planter your maximum markup shall be:

Kind of seed:	*Maximum markup per 100 pounds*
Alfalfa:	
Northern and Central	$8.00
Southern (except when grown, sold and delivered for planting in the State of Arizona or in the State of California south of the 40th parallel)	8.00
Southern (when grown, sold and delivered for planting in the State of Arizona or in the State of California south of the 40th parallel)	6.50
Clover:	
Medium Red, Mammoth Red and Alsike	6.95
Sweet	5.00
Timothy	3.50

(b) *Maximum prices for a commercial processor.* If you are a commercial processor, your maximum price will depend on the party to whom you sell the seed. In all cases your maximum price will be the appropriate base price for the kind and quality of seed you are selling, plus your transportation cost, and plus the applicable markup shown in subparagraphs (1), (2) or (3) below.

(1) If your customer is a commercial processor, wholesaler or any other person (except a retailer or planter) your maximum markup shall be:

Kind of seed:	*Maximum markup per 100 pounds*
Alfalfa:	
Northern and Central	$9.50
Southern (except when grown, sold and delivered for planting in the State of Arizona or in the State of California south of the 40th parallel)	6.00
Southern (when grown, sold and delivered for planting in the State of California south of the 40th parallel)	4.00
Clover:	
Medium Red, Mammoth Red and Alsike	6.85
Sweet	3.75
Timothy	2.15

(2) If your customer is a retailer your maximum markup shall be:

Kind of seed:	*Maximum markup per 100 pounds*
Alfalfa:	
Northern and Central	$10.40
Southern (except when grown, sold and delivered for planting in the State of Arizona or in the State of California south of the 40th parallel)	9.80
Southern (when grown, sold and delivered for planting in the State of Arizona or in the State of California south of the 40th parallel)	7.40
Clover:	
Medium Red, Mammoth Red and Alsike	9.65
Sweet	6.00
Timothy	3.55

(3) (i) If your customer is a planter and you are selling from your processing plant your maximum markup shall be:

Kind of seed:	*Maximum markup per 100 pounds*
Alfalfa:	
Northern and Central	$11.00
Southern (except when grown, sold and delivered for planting in the State of Arizona or in the State of California south of the 40th parallel)	11.00
Southern (when grown, sold and delivered for planting in the State of Arizona or in the State of California south of the 40th parallel)	7.50
Clover:	
Medium Red, Mammoth Red and Alsike	9.70
Sweet	6.75
Timothy	4.35

(ii) If your customer is a planter and you are selling from a retail store or from a retail mail order house in connection with which you publish a retail mail order seed catalogue and said store or mail order house is owned or leased by you and located on premises not adjacent to your processing plant your maximum markup shall be:

Kind of seed:	*Maximum mark-up per 100 pounds*
Alfalfa:	
Northern and Central	$14.90
Southern (except when grown, sold and delivered for planting in the State of Arizona or in the State of California south of the 40th parallel)	14.90
Southern (when grown, sold and delivered for planting in the State of Arizona or in the State of California south of the 40th parallel)	10.90
Clover:	
Medium Red, Mammoth Red and Alsike	13.50
Sweet	9.00
Timothy	5.75

(c) *Maximum prices for a wholesaler.* (1) If you are a wholesaler who does not maintain and operate a retail store or a retail mail order house in connection with which you publish a retail mail order seed catalogue your maximum price shall be your supplier's maximum price on the sale and delivery to you, plus your transportation cost, and plus the applicable mark-up shown below:

Kind of seed:	*Maximum mark-up per 100 pounds*
Alfalfa:	
Northern and Central	$3.90
Southern (except when grown, sold and delivered for planting in the State of Arizona or in the State of California south of the 40th parallel)	3.90
Southern (when grown, sold and delivered for planting in the State of Arizona or in the State of California south of the 40th parallel)	3.40
Clover:	
Medium Red, Mammoth Red and Alsike	3.80
Sweet	2.25
Timothy	1.40

(2) If you are a wholesaler who maintains and operates a retail store or a retail mail order house in connection with which you publish a seed catalogue and sell to planters, your maximum price shall be your supplier's maximum price on the sale and delivery to you, plus your transportation cost, and plus the applicable mark-up shown below:

Kind of seed:	*Maximum mark-up per 100 pounds*
Alfalfa:	
Northern and Central	$3.40
Southern (except when grown, sold and delivered for planting in the State of Arizona or in the State of California south of the 40th parallel)	8.90
Southern (when grown, sold and delivered for planting in the State of Arizona or in the State of California south of the 40th parallel)	6.90
Clover:	
Medium Red, Mammoth Red and Alsike	7.65
Sweet	5.25
Timothy	3.60

(d) *Maximum prices for a retailer.* (1) If you are a retailer, other than a country dealer selling seeds which have been quality cleaned by you, your maximum price shall be your supplier's maximum price on the sale and delivery to you, plus your transportation cost, and plus the applicable mark-up shown below:

Kind of seed:	*Maximum mark-up per 100 pounds*
Alfalfa:	
Northern and Central	$4.50
Southern (except when grown, sold and delivered for planting in the State of Arizona or in the State of California south of the 40th parallel)	5.00
Southern (when grown, sold and delivered for planting in the State of Arizona or in the State of California south of the 40th parallel)	3.50
Clover:	
Medium Red, Mammoth Red and Alsike	3.85
Sweet	3.00
Timothy	2.20

(2) If you are a country dealer selling seeds which have been quality cleaned

by you, your maximum price shall be the appropriate base price in section 14, plus your transportation cost, and plus the applicable mark-up shown below:

Kind of seed:	*Maximum mark-up per 100 pounds*
Alfalfa:	
Northern and Central	$8.00
Southern (except when grown, sold and delivered for planting in the State of Arizona or in the State of California south of the 40th parallel)	8.00
Southern (when grown, sold and delivered for planting in the State of Arizona or in the State of California south of the 40th parallel)	6.50
Clover:	
Medium Red, Mammoth Red and Alsike	6.95
Sweet	5.00
Timothy	3.50

(3) If you are a retailer under subparagraphs (1) or (2) of this paragraph and make sales to planters in quantities of more than 5 pounds and less than 60 pounds, the maximum prices established in subparagraphs (1) and (2) may be increased by the reasonable value (not exceeding any maximum price thereon) of the sacks actually used, plus the applicable mark-up per pound shown below:

(i) In the States of Alabama, Connecticut, Delaware, Florida, Georgia, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia and in the District of Columbia:

Kind of seed:	*Maximum mark-up per pound*
Alfalfa:	
Northern, Central and Southern	$0.03
Clover:	
Medium Red, Mammoth Red and Alsike	.03
Sweet	.02
Timothy	.02

(ii) In any state not mentioned in subdivision (i):

Kind of seed:	*Maximum mark-up per pound*
Any legume and grass seeds	$0.01½

(e) *Maximum prices for any person other than a producer, commercial processor, wholesaler or retailer.* If you are any person other than a producer, commercial processor, wholesaler or retailer your maximum price for the sale or delivery of any lot of quality cleaned or processed legume and grass seeds shall be the appropriate base price plus your transportation cost and plus the applicable mark-up shown below:

Kind of seed:	*Maximum mark-up per 100 pounds*
Alfalfa:	
Northern and Central	$3.50
Southern	3.00
Clover:	
Medium Red, Mammoth Red and Alsike	3.10
Sweet	2.00
Timothy	1.30

(f) If you belong to one of the classes of sellers provided for in this section, your maximum mark-up for the sale or delivery of a processed seed mixture of seeds provided for in section 14 shall be the weighted average of your maximum mark-ups for the respective seeds in the mixture which are subject to this regulation.

SEC. 13. *Base prices applicable to quality cleaned and processed legume and grass seeds.* You have found in the maximum pricing provisions that base prices are provided in this section. These base prices are on a dollars and cents basis per 100 pounds, net weight, sacks free, and are so worked out that you can find a base price on the particular kind and quality of processed seed or processed seed mixture on which you are determining a maximum price. Base prices are not maximum prices and are to be used only as indicated in other provisions of the regulation. This section refers you to tables in the appendix where the base prices, discounts, and premiums are set forth in dollars and cents.

The base prices in dollars per 100 pounds, net weight, sacks free, on Alfalfa, Red Clover, Alsike Clover, Sweet Clover and Timothy seeds are those set forth in the appendix which also shows discounts for weed seed content, noxious weed seed content, and sweet clover seed content; premiums for extra high quality seed; and base prices for processed seed mixtures. All the applicable discounts must be taken, and the premiums may be taken with respect to each lot in which they appear.

You shall first determine the appropriate figure for the particular lot in question according to its pure seed percentage and its percentage of total germination and hard seed. Then you determine the weed seed content, noxious weed seed content and sweet clover seed content, and subtract the appropriate amounts to be deducted for these factors from the amount obtained in the previous sentence. If you have extra high quality seed you may add the applicable premiums. The amount which you obtain as a result of these calculations will be your pure seed base price. "Pure seed" means with respect to any kind of seed being considered, seed of that kind which meets the qualifications of purity and germination as set forth in the tables in the appendix.

Whenever processed legume and grass seeds or processed seed mixtures are sold in bulk or buyer's sacks, the maximum prices set forth in this section shall be decreased by the reasonable market value of the sacks used (not exceeding any maximum price established thereon).

APPENDIX—TABLES ON BASE PRICES

(a) *Alfalfa*—(1) *Base prices for Northern Alfalfa Seed:*

Pure seed percentage	Percentage of total germination and hard seed					
	90% or more	89% to 85%	84% to 80%	79% to 75%	74% to 70%	Below 70%
99% or more	35.00	33.25	31.50	29.75	28.00	25.00
98-98.9%	33.95	32.20	30.45	28.70	26.95	24.00
97-97.9%	32.90	31.15	29.40	27.65	25.90	23.00
96-96.9%	31.85	30.10	28.35	26.60	24.85	22.00
95-95.9%	30.80	29.05	27.30	25.55	23.80	21.00
94-94.9%	29.75	28.00	26.25	24.50	22.75	20.00
93-93.9%	28.70	26.95	25.20	23.45	21.70	19.00
92-92.9%	27.65	25.90	24.15	22.40	20.65	18.00
91-91.9%	26.60	24.85	23.10	21.35	19.60	17.00
90-90.9%	25.55	23.80	22.05	20.30	18.55	16.00
Below 90%	24.00	22.00	20.00	18.00	16.00	14.00

(2) *Base prices for Central Alfalfa Seed and for Alfalfa Seed grown in Arizona and California when sold and delivered for planting in Arizona and California:*

Pure seed percentage	Percentage of total germination and hard seed					
	90% or more	89% to 85%	84% to 80%	79% to 75%	74% to 70%	Below 70%
99% or more	32.00	30.40	28.80	27.20	25.60	23.00
98-98.9%	31.05	29.45	27.85	26.25	24.65	22.00
97-97.9%	30.10	28.50	26.90	25.30	23.70	21.00
96-96.9%	29.15	27.55	25.95	24.35	22.75	20.00
95-95.9%	28.20	26.60	25.00	23.40	21.80	19.00
94-94.9%	27.25	25.65	24.05	22.45	20.85	18.00
93-93.9%	26.30	24.70	23.10	21.50	19.90	17.00
92-92.9%	25.35	23.75	22.15	20.55	18.95	16.00
91-91.9%	24.40	22.80	21.20	19.60	18.00	15.00
90-90.9%	23.45	21.85	20.25	18.65	17.05	14.00
Below 90%	22.00	20.00	18.00	16.00	14.00	12.00

(3) *Base prices for Southern Alfalfa Seed (includes Alfalfa Seed grown in California south of the 40th parallel and in Arizona when sold and delivered for planting outside Arizona and California south of the 40th parallel):*

Pure seed percentage	Percentage of total germination and hard seed					
	90% or more	89% to 85%	84% to 80%	79% to 75%	74% to 70%	Below 70%
99% or more	28.00	26.60	25.20	23.80	22.40	20.00
98-98.9%	27.15	25.75	24.35	22.95	21.55	19.25
97-97.9%	26.30	24.90	23.50	22.10	20.70	18.50
96-96.9%	25.45	24.05	22.65	21.25	19.85	17.75
95-95.9%	24.60	23.20	21.80	20.40	19.00	17.00
94-94.9%	23.75	22.35	20.95	19.55	18.15	16.25
93-93.9%	22.90	21.50	20.10	18.70	17.30	15.50
92-92.9%	22.05	20.65	19.25	17.85	16.45	14.75
91-91.9%	21.20	19.80	18.40	17.00	15.60	14.00
90-90.9%	20.35	18.95	17.55	16.15	14.75	13.25
Below 90%	19.00	17.50	16.00	14.50	13.00	11.00

(b) *Discounts.* The prices in the foregoing tables shall be reduced per 100 pounds of seed as follows:

(1) *For weed seed content:*

Weed seed content	Amount to be deducted per 100 pounds of seed			
	Northern	Central	Arizona and California	Southern
Less than 0.50%	None	None	None	None
0.50-1.00%	$0.50	$0.45	$0.45	$0.40
1.01-1.50%	1.00	.90	.90	.80
1.51-2.00%	1.50	1.35	1.35	1.20
Above 2.00%	[1] 1.50	[1] 1.45	[1] 1.45	[1] 1.40

[1] For each additional one-half of one percent or fraction thereof above 2%.

(2) *For noxious weed seed content:*

Number of noxious weed seeds per pound of seed	Amount to be deducted per 100 pounds of seed			
	Northern	Central	Arizona and California	Southern
Less than 9 per pound	None	None	None	None
9-36 per pound	$0.50	$0.50	$0.50	$0.50
37-63 per pound	1.00	1.00	1.00	1.00
64-100 per pound	1.50	1.50	1.50	1.50
101-150 per pound	2.00	2.00	2.00	2.00
Above 150 per pound	2.50	2.50	2.50	2.50

(3) *For sweet clover seed content:*

Sweet clover seed content	Amount to be deducted per 100 pounds of seed			
	Northern	Central	Arizona and California	Southern
Less than 0.50%	None	None	None	None
0.50–1.00%	$1.05	$0.95	$0.95	$0.85
1.01–2.00%	2.10	1.90	1.90	1.70
2.01–3.00%	3.15	2.85	2.85	2.55
3.01–4.00%	4.20	3.80	3.80	3.40
4.01–5.00% and over	5.25	4.75	4.75	4.25

(c) *Premiums.* The prices in the foregoing tables may be increased per 100 pounds of seed as follows:

(1) $1.00 for premium grade, meeting all the following specifications:

More than 99.25% pure seed.

More than 90.00% germination and hard seed.

Less than 0.25% weed seed content.

Less than 9 noxious weed seeds per pound.

Less than 0.25% sweet clover seed content.

(2) (i) $7.00 for the following State Certified Improved Varieties: Baltic, Cossack, Grimm, Hardigan, Hardistan, Ladak, and Orestan.

(ii) You may add this premium to the base price of the alfalfa seed in the region in which your seed was produced, and you may add this premium to the base price for Northern Alfalfa Seed, when:

(*a*) You are selling the State Certified Improved variety of Baltic produced in the State of Colorado; or

(*b*) You are selling alfalfa seed produced in regions other than the Northern region from northern grown State Certified Alfalfa Seed of one of the above-named improved varieties and such seed is labelled "Northern adapted first generation increase" by the State Certifying Agency.

(3) $3.00 for the following State Certified Improved Varieties of:

(i) Central Alfalfa Seed: Kansas Common and Utah Pioneer;

(ii) Southern Alfalfa Seed: Hairy Peruvian, Arizona Chilean, Cimarron, New Mexico Common and Texas Southwestern Common.

(d) *Clover—(1) Base prices for medium red and mammoth red clover seeds:*

Pure seed percentage	Percentage of total germination and hard seed					
	90% or more	85% to 89%	80% to 84%	75% to 79%	70% to 74%	Below 70%
99% or more	$30.00	$28.50	$27.00	$25.50	$24.00	$21.00
98–98.9%	29.10	27.60	26.10	24.60	23.10	20.00
97–97.9%	28.20	26.70	25.20	23.70	22.20	19.00
96–96.9%	27.30	25.80	24.30	22.80	21.30	18.00
95–95.9%	26.40	24.90	23.40	21.90	20.40	17.00
94–94.9%	25.50	24.00	22.50	21.00	19.50	16.00
93–93.9%	24.60	23.10	21.60	20.10	18.60	15.00
92–92.9%	23.70	22.20	20.70	19.20	17.70	14.00
91–91.9%	22.80	21.30	19.80	18.30	16.80	13.00
90–90.9%	21.90	20.40	18.90	17.40	15.90	12.00
Below 90%	20.00	18.00	16.00	14.00	12.00	10.00

(2) *Base prices for alsike clover seed:*

Pure seed percentage	Percentage of total germination and hard seed					
	90% or more	85% to 89%	80% to 84%	75% to 79%	70% to 74%	Below 70%
98% or more	$27.00	$25.50	$24.00	$22.00	$21.00	$19.00
97–97.9%	26.20	24.85	23.40	22.15	20.80	18.00
96–96.9%	25.40	24.05	22.70	21.35	20.00	17.00
95–95.9%	24.60	23.25	21.90	20.75	19.20	16.00
94–94.9%	23.80	22.45	21.10	19.75	18.40	15.00
93–93.9%	23.00	21.65	20.20	18.95	17.60	14.00
92–92.9%	22.20	20.85	19.40	18.15	16.80	13.00
91–91.9%	21.40	20.05	18.70	17.35	16.00	12.00
90–90.9%	20.60	19.25	17.90	16.75	15.20	11.00
Below 90%	19.00	17.00	15.00	13.00	11.00	9.00

(3) *Base prices for sweet clover seed:*

Pure seed percentage	Percentage of total germination and hard seed				
	90% to 85%	84% to 80%	79% to 75%	74% to 70%	Below 70%
99% or more	$10.00	$9.50	$9.00	$8.50	$8.00
98–98.9%	9.50	9.00	8.50	8.00	7.50
97–97.9%	9.00	8.50	8.00	7.50	7.00
96–96.9%	8.50	8.00	7.50	7.00	6.50
95–95.9%	8.00	7.50	7.00	6.50	6.00
94–94.9%	7.50	7.00	6.50	6.00	5.50
93–93.9%	7.00	6.50	6.00	5.50	5.00
92–92.9%	6.50	6.00	5.50	5.00	4.50
91–91.9%	6.00	5.50	5.00	4.50	4.00
90–90.9%	5.50	5.00	4.50	4.00	3.50
Below 90%	5.00	4.50	4.00	3.50	3.00

(e) *Base prices for Timothy seed:*

Pure seed percentage	Percentage of total germination and hard seed				
	90% or more	85% to 89%	80% to 84%	75% to 79%	Below 75%
99.5% or more	$7.50	$7.25	$6.50	$6.25	$6.05
99–99.4%	7.05	6.80	6.25	6.20	5.80
98–98.9%	6.80	6.55	6.20	6.05	5.75
97–97.9%	6.55	6.30	6.05	5.80	5.20
96–96.9%	6.30	6.05	5.80	5.75	5.05
95–95.9%	6.05	5.80	5.75	5.20	4.80
94–94.9%	5.80	5.75	5.20	5.05	4.75
93–93.9%	5.55	5.20	5.05	4.80	4.20
92–92.9%	5.30	5.05	4.80	4.75	4.05
91–91.9%	5.05	4.80	4.75	4.20	3.80
90–90.9%	4.80	4.75	4.20	4.05	3.75
Below 90%	4.20	4.05	3.80	3.75	3.00

(f) *Discounts.* The prices in the tables in paragraphs (d) and (e) shall be reduced per 100 pounds of seed as follows:

(1) *For weed seed content:*

Weed seed content	Amount to be deducted per 100 pounds of seed			
	Red clover	Alsike clover	Sweet clover	Timothy
Less than 0.5%	None	None	None	None
0.50–1.00%	$0.45	$0.40	$0.20	$0.15
1.01–1.50%	.90	.80	.40	.30
1.51–2.00%	1.35	1.20	.60	.45
Above 2.00%	[1] 0.45	[1] 0.40	[1] .20	[1] .15

[1] For each additional one-half of one percent or fraction thereof above 2%.

(2) *For noxious weed seed content:*

Number of noxious weed seeds per pound of seed	Amount to be deducted per 100 pounds of seed			
	Red clover	Alsike clover	Sweet clover	Timothy
Less than 9 per pound	None	None	None	None
9–25 per pound	$0.10	$0.10	$0.25	$0.20
37–63 per pound	1.00	1.00	.50	.40
64–100 per pound	1.50	1.50	.75	.60
101–150 per pound	2.00	2.00	1.00	.80
Above 150 per pound	2.50	2.50	1.25	1.00

(3) *For sweet clover seed content:*

Sweet clover seed content:	*Amount to be deducted per 100 pounds of seed Red Clover only*
Less than 0.50%	None
0.50–1.00%	$0.75
1.01–2.00%	1.50
2.01–3.00%	2.25
3.01–4.00%	3.00
4.01–5.00% and over	3.75

(g) *Premiums.* The prices in the tables in paragraphs (d) and (e) may be increased per 100 pounds of seed as follows:

(1) *$1.00 for premium grade meeting all the following specifications:*

(i) For Red Clover Seed:
- More than 99.25% pure seed.
- More than 90.00% Germination and hard seed.
- Less than 0.25% weed seed content.
- Less than 9 noxious weed seeds per pound.
- Less than 0.25% sweet clover seed content.

(ii) For Alsike Clover Seed:
- More than 98.50% pure seed.
- More than 90.00% germination and hard seed.
- Less than 0.25% weed seed content.
- Less than 9 noxious weed seeds per pound.

(iii) For Sweet Clover Seed:
- More than 99.25% pure seed.
- More than 90.00% germination and hard seed.
- Less than 0.25% weed seed content.
- Less than 9 noxious weed seeds per pound.

(2) $6.00 for the following State Certified Improved Varieties of:

(i) Red Clover Seed: Cumberland and Midland.

(ii) Sweet Clover Seed: Evergreen, Madrid, Spanish and Willamette.

(3) $5.00 for the Hubam Variety of Sweet Clover Seed.

(4) $3.00 for the Common Biennial White State Certified Improved Variety of Sweet Clover Seed.

(h) *Processed seed mixtures.* (1) Processed seed mixture composed of alsike clover and white Dutch clover seeds. The base price per 100 pounds for the sale of a processed seed mixture composed of alsike clover and white Dutch clover seeds shall be the base price per 100 pounds of alsike clover seed, figuring the purity according to the combined purities of the two kinds of seeds and the germination and hard seed according to the weighted average of the percentages of germination and hard seed in said two kinds of seeds, plus an addition at the rate

of 35 cents per pound for each one pound or fraction thereof over 5 pounds of processed white Dutch clover seed per 100 pounds of the lot. This base price shall be reduced per 100 pounds of seed as follows:

(i) For weed seed content, by the same discount provided for alsike clover seed under paragraph (f) (1) of this section;

(ii) For noxious weed seed content, by the same discount provided for alsike clover seed under paragraph (f) (2) of this section.

(2) This paragraph establishes base prices for two classes of mixtures:—processed seed mixtures in which all of the seeds are subject to the regulation and processed seed mixtures composed of two or more seeds subject to the regulation and one or more seeds not subject to the regulation.

The base prices for such mixtures shall be determined by multiplying the percentage of each processed seed subject to the regulation in 100 pounds of the mixture by its base price per 100 pounds as shown in paragraphs (a) (d) and (e), whichever is applicable, of this section, taking the highest possible purity and the particular percentage of germination and hard seed for each kind of seed subject to the regulation in the mixture, and adding the results. This base price shall be reduced per 100 pounds of seed as follows:

(i) *For weed seed content:*

Weed seed content:	*Amount to be deducted per 100 pounds of seed*
Less than 0.50 percent	None
0.50–1.00 percent	$0.50
1.01–1.50 percent	1.00
1.51–2.00 percent	1.50
Above 2.00 percent[1]	1.50

[1] For each additional one-half of one percent or fraction thereof above 2%.

(ii) *For noxious weed seed content:*

Number of noxious weed seed per pound of seed:	*Amount to be deducted per 100 pounds of seed*
Less than 9 per pound	None
9–36 per pound	$0.50
37–63 per pound	1.00
64–100 per pound	1.50
101–150 per pound	2.00
Above 150 per pound	2.50

(3) Processed seed mixtures composed of one processed seed subject to the regulation and processed seeds not subject to the regulation, when the former is in excess of 75% of the whole.

The base price for the sale of any processed seed mixture, in which one of the seeds subject to the regulation is mixed with seeds not subject to the regulation, and the former is present in excess of 75% of the whole, shall be determined by multiplying the percentage of the principal component in 100 pounds of the mixture by its base price per 100 pounds, figured on the basis of its highest possible purity and its actual percentage of germination and hard seeds in the mixture, and the result shall be the base price for such mixture. This base price shall be reduced per 100 pounds of seed as follows:

(i) For weed seed content, by the same discounts for weed seeds that are provided for the principal component under paragraphs (b) (1) and (f) (1) of this section;

(ii) For noxious weed seed content, by the same discounts for noxious weed seeds that are provided for the principal component under paragraphs (b) (2) and (f) (2) of this section;

(iii) For sweet clover seed content, by the same discounts that are provided for the principal component under paragraphs (b) (3) and (f) (3) of this section.

This regulation shall become effective July 26, 1944.

Issued this 21st day of July 1944.

IVAN D. CARSON,
Acting Administrator.

Approved: July 11, 1944.

GROVER B. HILL,
Acting War Food Administrator.

[F. R. Doc. 44-10910; Filed, July 21, 1944; 11:33 a. m.]

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

Chapter II—Corps of Engineers, War Department

PART 204—DANGER ZONE REGULATIONS

SHEEPSCOT RIVER, MAINE, AREA

Pursuant to the provisions of section 7 of the River and Harbor Act of August 8, 1917 (40 Stat. 266; 33 U.S.C. 1), the following regulations are hereby prescribed to govern the use and navigation of waters of Sheepscot Bay, at the mouth of Sheepscot River, Maine, comprising an air to ground gunnery of the Naval Air Station, Brunswick, Maine:

§ 204.3 *Waters of Sheepscot Bay, at mouth of Sheepscot River, Maine; Air to Ground Gunnery Range, Naval Air Station, Brunswick, Maine*—(a) *The danger zone.* An area in Sheepscot Bay, at the mouth of Sheepscot River, Maine, bounded as follows: Beginning at the center of the mouth of Little River, approximately lat. 43°46'14" N., long. 69°44'30" W.; thence southeasterly, about 2.9 miles, to Tom Rock, approximately lat. 43°43'56" N., long. 69°43'00" W.; thence northeasterly, about 3.1 miles, to a spar buoy, painted in black and white horizontal bands, approximately lat. 43°45'25" N., long. 69°40'00" W.; thence northwesterly about 2.8 miles, to Griffith Head Ledge, approximately lat. 43°47'00" N., long. 69°42'31" W.; thence southwesterly, about 0.6 mile, to Griffiith Head, approximately lat. 43°46'56" N., long. 69°43'18" W.; thence southwesterly along the southeasterly shore line of Georgetown Island to the point of beginning.

(b) *The regulations.* (1) Navigation in the danger zone is prohibited at all times.

(2) These regulations shall be enforced by the Commandant, First Naval District, and such agencies as he may designate.

(Sec. 7, River and Harbor Act, Aug. 8, 1917; 40 Stat. 266; 33 U. S. C. 1) [Regs. 15 July 1944 (CE 800.2121 (Sheepscot Bay, Maine)—SPEWR)]

[SEAL] J. A. ULIO,
Major General,
The Adjutant General.

[F. R. Doc. 44-10872; Filed, July 21, 1944; 9:34 a. m.]

TITLE 41—PUBLIC CONTRACTS

Chapter I—Procurement Division, Department of the Treasury

PART 11—STANDARD CONTRACT PROCEDURE

ESCALATION PROVISION IN PROCUREMENT OF COAL

The regulations in this part are hereby amended by the addition of the following subpart:

§ 11.200 *Coal; escalation provision.* Only the following escalation provision may be used by all departments and establishments in the Executive Branch of the Government in contracts for the procurement of coal where it is deemed necessary to provide for escalation by reason of changes in applicable maximum price ceilings established by the Office of Price Administration or other authorized Federal agency:

The contractor represents and warrants that the prices shown herein are not in excess of the maximum prices established by the Office of Price Administration, or other authorized Government agency, and in effect upon the date hereof for the supplies to be furnished hereunder. In the event such maximum price applicable to any item is increased, or decreased, the price payable for any subsequent delivery of such item, made in accordance with the provisions of the contract, shall be increased, or decreased, by the same number of cents, or fractions thereof, per unit, that such maximum price may be increased, or decreased, up to and including the date of delivery.

(Sec. 1 E.O. 6166, June 10, 1933, subdivision D, Regulations Governing the Operation of the Branch of Supply, Procurement Division, Treasury Department, approved by the President April 12, 1935 (41 CFR 1.2, 11.1, 11.3))

[SEAL] CLIFTON E. MACK,
Director of Procurement.

Approved: July 17, 1944.

JOHN L. SULLIVAN,
Acting Secretary of the Treasury.

[F. R. Doc. 44-10881; Filed, July 21, 1944; 10:51 a. m.]

Chapter II—Division of Public Contracts

PART 201—PROCEDURE FOR THE STIPULATION OF CONDITIONS IN GOVERNMENT PURCHASE CONTRACTS

STATUTORY EXEMPTIONS

Amendment to regulations for administration of the Act of June 30, 1936, Public No. 846, 74th Congress.

By virtue of the authority vested in me by Section 4 of the Act approved June 30, 1936, 49 Stat. 2036, 41 U.S.C., secs. 35–45, and in order to clarify the meaning of paragraph (a), Article 2, of Regulations, No. 504 (41 CFR 201.2), prescribed by me under Public Act No. 846, 74th Congress (Series A), I hereby amend the paragraph to read as follows:

§ 201.2 *Statutory exemptions.* * * *

(a) Where the contracting officer is authorized by the express language of a statute to purchase "in the open market", or where a purchase of articles, supplies, materials or equipment, either in being or virtually so, is made without advertising for bids under circumstances bringing such purchase within the exception to the General Purchase Statute, R.S. 3709, that is, where immediate delivery is required by the public exigency.

Dated: July 5, 1944.

FRANCES PERKINS,
Secretary of Labor.

[F. R. Doc. 44-10860; Filed, July 20, 1944; 2:52 p. m.]

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—General Land Office

[Circular 1580]

PART 250—PUBLIC SALES

MISCELLANEOUS AMENDMENTS

Sections 250.7, 250.17 and 250.20 are amended to read as follows:

§ 250.7 *Effect of application.* The filing of an application under section 2455 of the Revised Statutes as amended (43 U.S.C. 1171) in conformity with the regulations in this part will segregate the lands applied for from other disposition under the public land laws, subject to any prior valid right which has attached under any pending entry or location. However, until the issuance of a certificate of sale, the Secretary may at any time determine that the lands should not be sold, the applicant or any bidder has no contractual or other rights as against the United States, and no action taken prior to the issuance of the certificate will create any contractual or other obligation of the United States.

§ 250.17 *Preference right of owner of contiguous lands; failure to exercise right.* Where lands have been authorized to be sold under the body of section 2455 of the Revised Statutes, as amended (43 U.S.C. 1171), and the highest bidder has been named, if the amount of his bid is paid immediately to the register, he will then declare the bidding closed subject to the preference right of purchase by owners of contiguous land. The amount tendered will be held in the unearned account of the register, and the register will notify the bidder that if within 30 days from the date of his bid no owner or owners of contiguous lands shall apply to purchase the lands at such highest bid price, but at not more than three times the appraised price if such highest bid be more than three times such appraised price, he may be declared the purchaser.

§ 250.20 *Award to preference right claimant or to highest bidder, where preference right is not asserted.* The preference right granted by the first proviso of section 2455 of the Revised Statutes, as amended (43 U.S.C. 1171), is limited to owners of contiguous lands. Applicants for such preference right must be supported by proof of the applicant's ownership of the whole title of the contiguous lands; that is, he must show by affidavit that he has the title in fee. If a preference right is asserted or if conflicting preference rights are asserted, and there is an amicable agreement between the parties, and all other necessary evidence and money has been tendered by the respective parties, the register will make the award; at the same time returning the amount on deposit to the credit of the highest bidder with notice that the land has been sold to the preference right claimant. In no event can the land be sold until the end of the 30 days preference right period.

If, at the end of the 30 days preference right period, no assertion of preference right is made, the sale will be declared closed and the highest bidder may be declared the purchaser.

FRED W. JOHNSON,
Commissioner.

Approved: July 1, 1944.

OSCAR L. CHAPMAN,
Assistant Secretary.

[F. R. Doc. 44-10873; Filed, July 21, 1944; 9:33 a. m.]

TITLE 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

PART 52—CLASSIFICATION OF WIRE-TELEGRAPH EMPLOYEES[1]

The Commission on July 11, 1944, effective immediately, adopted the following new Part 52:

DEFINITIONS

Sec.
52.1 Employees.

COUNTING EMPLOYEES

52.11 Method; time at which counted.

INFORMATION REQUIRED

52.21 Scheduled weekly hours.
52.22 Scheduled weekly compensation.
52.23 Hourly rate of pay.

CLASSIFICATION ON BASIS OF CHARACTER OF SERVICE

52.31 Basis of classification.
52.32 Officials and managerial assistants.
52.33 Professional and semi-professional employees.
52.34 Telegraph office superintendents and managers.
52.35 Sales employees.
52.36 Clerical employees.
52.37 Telegraph operators.
52.38 Messengers.
52.39 Construction, installation and maintenance employees.
52.40 Building service employees.
52.41 All other employees, not elsewhere classified.
52.42 Employees outside of the United States.

AUTHORITY: §§ 52.1 to 52.42, inclusive, issued under sec. 4 (i), 48 Stat. 1068; 47 U.S.C. 154 (i); sec. 219 (a), 48 Stat. 1077; 47 U.S.C. 219 (a); sec. 220 (a), 48 Stat. 1078; 47 U.S.C. 220 (a).

DEFINITIONS

§ 52.1 *Employees.* (a) For the purpose of statistical count and classification the word employees, as used in this part, is intended to include all persons in the service of the reporting company subject to its continuing authority to supervise and direct the manner of rendition of their service.

(b) All persons employed by the company as agents and paid exclusively on a commission basis should not be reported as employees of the company.

(c) Temporary, occasional, extra and similar employees should be included in the count of employees.

(d) Employees who are on paid vacations during the period for which information is required, should be reported as regular employees.

(e) Employees on leave of absence or furloughs not paid for by the company should not be included in the statistical count and classification.

(f) Employees temporarily on leave on account of disability due to accident or sickness should be included in the statistical count and classification.

(g) Pensioners not required to render service should not be included as employees of the company. Pensioners recalled to service should be counted as regular employees and should be counted and classified in the occupational group in which they are employed.

(h) Employees of the company working in the United States should be classified according to §§ 52.21 to 52.41, inclusive. Employees of the company working outside of the United States are subject only to § 52.42.

COUNTING EMPLOYEES

§ 52.11 *Method; time at which counted.* Wire-telegraph companies are required to classify and count their employees, male and female separately, at two different times each year; viz., as of the end of each of the months of June and October. The last day of the month shall be considered the end of the month, except when it falls on a Sunday or a holiday, in which case the count shall be made as of the last preceding business day. Every person sustaining to the telegraph company the relation of employee, as defined in § 52.1 shall be included in the count.

INFORMATION REQUIRED

§ 52.21 *Scheduled weekly hours.* (a) The total number of weekly hours scheduled for employees at the end of October in each classification set forth in §§ 52.32 to 52.41, inclusive, shall be reported.

(b) Scheduled weekly hours are defined as an employee's regular daily tour of duty multiplied by the number of days, or fraction of days, scheduled to be worked during a week.

(c) For each occupational classification the total number of weekly hours scheduled shall include the hours of work of part-time and full-time employees.

(d) Full-time employees are those regularly assigned full time. Part-time employees are those regularly assigned shorter hours than a full-time schedule.

[1] Schedule 408B filed as a part of the original document.

(e) Scheduled hours should include paid vacation and holiday hours.

(f) The hours of work of employees temporarily on leave on account of disability due to accident or sickness should be reported as the regularly scheduled hours of these employees.

§ 52.22 *Scheduled weekly compensation.* (a) The total amount of weekly compensation scheduled for employees at the end of October in each classification set forth in §§ 52.32 to 52.41, inclusive, shall be reported.

(b) Scheduled weekly compensation is defined as the wages scheduled to be paid for scheduled weekly hours as defined above in § 52.21 (b). This should include employee contributions for old age benefits, unemployment insurance and similar deductions, paid vacation and holiday hours, the regularly scheduled weekly compensation of employees temporarily on leave due to disability or sickness, and the scheduled weekly compensation of both full- and part-time employees.

(c) Payments scheduled to pensioners should not be included.

§ 52.23 *Hourly rate of pay.* (a) Persons in the employ of the company at the end of October in occupational groups outlined below in §§ 52.33 to 52.41 inclusive, shall be classified according to their hourly rate of pay.

(b) The hourly rate of pay is defined as the scheduled weekly compensation, as described in § 52.22, divided by the scheduled weekly hours, as defined in § 52.21.

CLASSIFICATION ON BASIS OF CHARACTER OF SERVICE

§ 52.31 *Basis of classification.* Employees working for the company in the United States shall be classified with respect to character of service rendered in accordance with definitions of classes given below. Where an employee's duties are such as to make him includible in two or more classes he shall be counted under that classification most representative of his work on in which he regularly spends the greater part of his time.

§ 52.32 *Officials and managerial assistants.* Include in this group employees in occupations that are primarily concerned with responsible policy-making, planning, supervising, coordinating or guiding the work activity of others, usually through intermediate supervisors or foremen. Employees reported in this group should be subdivided and reported separately as indicated in (a) and (b) below.

NOTE: Employees in occupations that embrace supervisory functions of the character of foremen, but that involve limited aspects of policy-making and management, should not be reported in § 52.32 but should be included in §§ 52.36, 52.37 or 52.39, whichever is applicable. Telegraph office superintendents and managers should be included in § 52.34.

(a) *General and assistant general officers.* Include under this head employees engaged in the general supervision of the affairs of the company as a whole or of a general department of the company such as president, vice-presidents, secretary, treasurer, comptroller, general solicitor, chief engineer, assistants to the president, assistant secretaries, etc.

(b) *Other officials and assistants.* Include under this head all other officials and assistants engaged in and responsible for the administration of a division, city, or other operating subdivision of the company.

§ 52.33 *Professional and semi-professional employees.* Include in this group employees in such occupations that require for the proper performance of the work either extensive and comprehensive academic study or experience of such extent and character as to provide an equivalent background, or a combination of such education and experience. Some of the occupations within this group may require similar backgrounds with respect to education, training and experience as professional occupations but call for a lower level of initiative or judgment. Employees in such semi-professional occupations deal with less complicated work situations than those in fields which are considered professional. This group should also include employees who provide staff assistance which is based on their extensive training and experience in specialized types of work involved in the telegraph industry. Employees reported in this group should be subdivided and reported separately as indicated in (a) and (b) below.

(a) *Engineers and engineering assistants.* Include under this head employees not reported in § 52,32 such as automatic, central office, transmission, electronics, plant, design and civil engineers and engineering assistants and surveyors and draftsmen.

(b) *Other professional and semiprofessional employees.* Include under this head all other professional and semi-professional employees such as statisticians, accountants, auditors, attorneys, laboratory technicians, nurses, physicians, dietitians and telegraph staff specialists.

§ 52.34 *Telegraph office superintendents and managers.* Include in this group all managers of offices where messages are filed by the public. In offices where only one employee is engaged and works both as an operator and office manager, the employee should be reported in this group and should not be included in § 52.37.

§ 52.35 *Sales employees.* Include in this group employees concerned with the sale of commodities, investments, real estate and services, and employees in occupations that are closely identified with sales transactions such as canvassers, solicitors, collectors, commercial representatives and contract agents working for the company on a salary basis.

NOTE: Clerical employees who assist in the work of sales employees should not be reported in this group but should be classified in § 52.36.

§ 52.36 *Clerical employees.* Include in this group all employees and supervisors of employees who primarily prepare, transcribe, transfer, systematize or preserve written communications and records. These employees include clerks engaged in the handling of public messages as well as clerks employed in the administrative work of the company. Most of these occupations may be performed by manual processes but some may include in part or in whole the operation of such machines as bookkeeping machines, typewriters, and calculating machines. Employees included in this group should be subdivided and reported separately as indicated in (a), (b) and (c) below.

(a) *Supervisors of clerical employees.* Include under this head all supervisors of clerical employees.

(b) *Route aides.* Include under this head all employees exclusive of supervisors engaged as route aides.

(c) *Clerical employees.* Include under this head all clerical employees, exclusive of supervisors and route aides. Employees classified under (c) should be subdivided according to the location of their employment, in the Commercial Department, Traffic Department, or all other departments of the company. Clerical employees include such employees as secretaries, stenographers, typists, bookkeepers, bookkeeping machine operators, cashiers, paymasters, timekeepers, checkers, office messengers, file clerks, accounting and auditing clerks, time clerks, etc.

§ 52.37 *Telegraph operators.* Include in this group all employees and supervisors of employees who operate telegraphic and telephone equipment including radiotelegraph and radiotelephone operators. Employees included in this group should be subdivided and reported separately as indicated in (a), (b), (c), (d) and (e) below.

(a) *Traffic managers, chief operators, supervisors and instructors.* Include under this head all traffic managers, chief operators, supervisors of operators and instructors. Instructors engaged in teaching employees on the job as well as those employed in schools operated by the company, should be reported under this head.

(b) *Experienced telegraph operators (excluding Morse operators).* Include under this head telegraph operators who have completed school and on-the-job training and who are engaged as automatic or multiplex operators, teleprinter operators, teletype operators and operators of other types of telegraphic equipment. Experienced telegraph operators classified under (b) should be subdivided and reported according to their location in the Commercial or Traffic Departments of the company. Morse operators should not be included under this head but should be reported under paragraph (e). Switching clerks should be classified separately under paragraph (c).

(c) *Switching clerks.* Include under this head all employees who operate reperforating-switching equipment.

(d) *Operators in training.* Include under this head all employees who are receiving operator training either on the job or in company schools and who will be or are now regularly employed by the company.

NOTE: Apprentices in other occupations should be classified in the occupation for which they are being trained. For example, apprentice clerks should be reported in § 52.36.

(e) *All other operators.* Report separately under this head all Morse operators, telephone operators and all other operators. Morse operators include Morse and Morse-automatic operators. Telephone operators are defined as operators who receive and transmit telegraph messages by means of the telephone. All other operators are defined as all telegraph and telephone operators not elsewhere classified, such as radiotelegraph and radiotelephone operators.

§ 52.38 *Messengers.* Include in this group all employees who deliver messages to and receive messages from customers, or who perform other messenger services. Employees reported in this group should be subdivided and reported separately as indicated in (a) and (b) below.

(a) *Foot and bicycle messengers.* Include under this head all messengers who either walk or use bicycles in the performance of their work.

(b) *Motor messengers.* Include under this head all messengers who either use motorcycles or automobiles in the performance of their work.

§ 52.39 *Construction, installation and maintenance employees.* Include in this group all employees engaged in the construction, installation, inspection and testing and repair of telegraphic equipment. Employees reported in this group should be subdivided and reported separately as indicated in (a), (b) and (c) below.

(a) *Traffic testing and regulating employees.* Include under this head all traffic employees engaged in the maintenance and repair or equipment such as wire chiefs and assistants, repeater chiefs and assistants, and automatic chiefs and assistants.

(b) *Contruction, installation and maintenance employees.* Include under this head all employees and supervisors and foremen of employees, not counted in (a) above, who construct, install and maintain telegraphic equipment on customers' premises and on the premises of the company. Employees reported under (b) should be further subdivided as indicated below under (1), (2), (3), and (4).

NOTE: Unskilled laborers should not be included under (b) which is limited to employees doing skilled or semi-skilled work. Laborers should be counted separately under (c).

(1) *Foremen.* Include under this head all foremen and supervisors, not reported in (a) above, who immediately direct the work of construction, installation and maintenance employees. This group should also include foremen of linemen and cablemen.

(2) *Subscribers' equipment maintainers.* Include under this head all employees who maintain and repair equipment on customers' premises. Do not include in this subsection traffic testing and regulating employees who should be classified in (a) above.

(3) *Linemen and cablemen.* Include under this head such employees as city, section and gang linemen, cable splicers and conduit men.

(4) *Other installation and maintenance employees.* Include under this head all construction, installation and maintenance employees not counted in (1), (2) and (3) above. Employees receiving training as apprentices in construction, installation and maintenance work should be reported in this group. Employees classified in this subsection should be engaged in skilled or semi-skilled work such as ticker, telegraph-repeater and plant installers, shopmen, toolmen, inspectors, powermen and electrical repairmen.

(c) *Laborers.* Include in this group all unskilled laborers engaged in construction, installation and maintenance work whose activity is predominantly of an unskilled nature.

§ 52.40 *Building service employees.* Include in this group all employees who maintain and care for buildings, offices and warehouses as well as those who render personal services. Employees reported in this group should be subdivided and reported separately as indicated in (a) and (b) below.

(a) *Mechanics.* Include under this head all skilled employees engaged in the maintenance of buildings, offices and warehouses such as stationary engineers, carpenters, painters, firemen, building electricians, plumbers and garage mechanics.

(b) *Other building service employees.* Include under this head all building, office and warehouse service employees exclusive of mechanics, such as janitors, porters, watchmen, elevator operators, window washers, cafeteria and restaurant employees and matrons.

§ 52.41 *All other employees, not elsewhere classified.* Include in this group all employees not reported under §§ 52.32 to 52.40 inclusive.

§ 52.42 *Employees outside of the United States.* Include in this group all employees, irrespective of occupation, who are engaged by the company outside of the United States.

By the Commission.

[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 44-10382; Filed, July 21, 1944; 11:00 a. m.]

TITLE 50—WILDLIFE

Chapter I—Fish and Wildlife Service

Subchapter C—National Wildlife Refuges: Individual Regulations

PART 22—MOUNTAIN REGION NATIONAL WILDLIFE REFUGES

FISHING IN MEDICINE LAKE NATIONAL WILDLIFE REFUGE, MONT.

Under authority of section 10 of the Migratory Bird Conservation Act of February 18, 1929 (45 Stat. 1222; 16 U.S.C. 715i), as amended, and in extension of § 12.3 of the Regulations for the Administration of National Wildlife Refuges under the Jurisdiction of the Fish and Wildlife Service, dated December 19, 1940, as amended, the following is hereby ordered:

§ 22.631 *Medicine Lake National Wildlife Refuge, Montana; fishing.* Fishing is permitted in the waters hereinafter specified of the Medicine Lake National Wildlife Refuge, Montana, when and as permitted by the laws and regulations of the State of Montana, in accordance with the provisions of the Regulations for the Administration of National Wildlife Refuges under the Jurisdiction of the Fish and Wildlife Service, dated December 19, 1940,[1] as amended, and subject to the following conditions, restrictions, and requirements:

(a) *Waters open to fishing.* The waters of the refuge in sections 5 and 6, SW¼ section 4, and NW¼ section 9, all west of Young Island and south of Bryces Island and the unnamed islands west thereof T. 31 N., R. 56 E., as indicated by suitable posting, Montana Principal Meridian, shall be open to fishing.

(b) *State fishing laws.* Any person who fishes within the refuge must comply with the applicable fishing laws and regulations of the State of Montana.

(c) *Fishing licenses and permits.* Any person who fishes within the refuge shall be in possession of a valid fishing license issued by the Montana State Fish and Game Commission, if such license is required. This license shall serve as a Federal permit for fishing in the specified waters of the refuge and must be carried on the person of the licensee while so fishing. The license must be exhibited upon the request of any representative of the Montana State Fish and Game Commission or of the Fish and Wildlife Service.

(d) *Routes of travel.* Entrance to the fishing area shall be made only from or through the recreational area adjacent to State Highway No. 16 in section 6. Travel over the truck trail south of the waters open to fishing will be permitted as designated by suitable posting by the officer in charge of the refuge.

(e) *Use of boats.* The use of boats will be permitted on the waters of the refuge, open to fishing as designated by the officer in charge.

(f) *Temporary restrictions.* During periods of waterfowl concentrations on the refuge, fishing will not be permitted in such areas of the refuge as, in the judgment of the officer in charge, should be closed to fishing in order to provide adequate protection for such waterfowl concentrations and are suitably posted by such officer.

The order of the Secretary of Agriculture dated August 19, 1936, is hereby revoked.

OSCAR L. CHAPMAN,
Assistant Secretary.

JULY 14, 1944.

[F. R. Doc. 44-10383; Filed, July 19, 1944; 11:23 a. m.]

[1] 5 F.R. 5234.

Notices

DEPARTMENT OF JUSTICE.

Office of the Attorney General.

[Order 3732, Supp. 5]

ASSISTANT ATTORNEY GENERAL IN CHARGE OF WAR DIVISION

DELEGATION OF AUTHORITY

JULY 17, 1944.

I hereby assign to the Assistant Attorney General in charge of the War Division the functions, powers and duties vested in the Attorney General by section 4 A of Executive Order No. 8389 (5 F.R. 1400) of April 10, 1940, as amended by Executive Order No. 8785 (6 F.R. 2897) of June 14, 1941, which reads as follows:

SECTION 4. A. The Secretary of the Treasury and/or the Attorney General may require, by means of regulations, rulings, instructions, or otherwise, any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, from time to time and at any time or times, complete information relative to, any transaction referred to in section 5 (b) of the Act of October 6, 1917 (40 Stat. 415), as amended, or relative to any property in which any foreign country or any national thereof has any interest of any nature whatsoever, direct or indirect, including the production of any books of account, contracts, letters, or other papers, in connection therewith, in the custody or control of such person, either before or after such transaction is completed; and the Secretary of the Treasury and/or the Attorney General may, through any agency, investigate any such transaction or act, or any violation of the provisions of this Order.

[SEAL] FRANCIS BIDDLE,
Attorney General.

[F. R. Doc. 44-10861; Filed, July 20, 1944; 2:26 p. m.]

FEDERAL COMMUNICATIONS COMMISSION.

[Docket No. 6636]

COMMERCIAL CABLE CO., ET AL.

ORDER INSTITUTING INVESTIGATION

In the matter of limitation of liability of The Commercial Cable Company, Commercial Pacific Cable Company, Mackay Radio and Telegraph Company, Inc. For mistakes or delays in transmission or delivery of messages.

At a session of the Federal Communications Commission, held at its offices in Washington, D. C., on the 18th day of July 1944;

It appearing that The Commercial Cable Company, Commercial Pacific Cable Company and Mackay Radio and Telegraph Company, Inc., respectively, have on file with the Commission tariff schedules purporting to limit the liability of each such carrier, for mistakes or delays in the transmission or delivery, or for non-delivery or mis-delivery of, any messages received for transmission, in a sum not to exceed $5000 and providing that such carriers will not accept any message valued at more than $5000; said tariff schedules being designated as follows:

The Commercial Cable Company, FCC No. 2, 9th Revised Page 5A.

Commercial Pacific Cable Co., FCC No. 2 5th Revised Page 5AA.

Mackay Radio and Telegraph Company, Inc., FCC No. 2, 5th Revised Page 54A.

It further appearing that the provisions of the above-mentioned tariffs may be unjust or unreasonable, unjustly or unreasonably discriminatory, or may subject particular persons to undue or unreasonable prejudice or disadvantages or may otherwise be unlawful;

It is ordered, That an investigation be and it is hereby instituted by the Commission, upon its own motion without formal pleading, concerning the lawfulness of the above-mentioned provisions of the tariff schedules of The Commercial Cable Company, Commercial Pacific Cable Company, and Mackay Radio and Telegraph Company, Inc.;

It is further ordered, That The Commercial Cable Company, Commercial Pacific Cable Company and Mackay Radio and Telegraph Company, Inc., be, and they are hereby, each made a party respondent to this proceeding:

It is further ordered, That each respondent shall appear and show cause, under oath, why the Commission should not find the provisions in their tariff schedules hereinabove referred to, unjust and unreasonable, unjustly or unreasonably discriminatory, or unduly or unreasonably preferential, advantageous, prejudicial, or disadvantageous, or otherwise violative of the Communications Act of 1934, as amended;

It is further ordered, That this proceeding be, and the same is hereby, assigned for hearing beginning at 10 a. m. on the 7th day of September 1944, at the offices of the Federal Communications Commission in Washington, D. C.

By the Commission.

[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 44-10880; Filed, July 21, 1944; 11:00 a. m.]

FEDERAL POWER COMMISSION.

[Docket Nos. G-428 and G-497]

NORTHERN NATURAL GAS CO.

ORDER DISMISSING APPLICATIONS FOR CONTINUANCE

JULY 18, 1944.

Upon consideration of the applications filed July 15, 1944, and July 17, 1944, respectively, by the St. Paul Industrial Union Council, C. I. O., and the General Drivers, Helpers, and Truck Terminal Employees Union, Local 120, A. F. of L., for a continuance of the hearing in the above-entitled matters for a period of 90 days beyond July 26, 1944, the date now fixed; and

It appearing to the Commission that:

(a) The application in Docket No. G-428 was filed on November 16, 1942, and notice thereof was given, including publication in the FEDERAL REGISTER on December 29, 1942, at Volume 7, page 11032;

(b) The application in Docket No. G-497 was filed on September 4, 1943, and notice thereof was given, including publication in the FEDERAL REGISTER on September 14, 1943, at Volume 8, page 12579;

(c) By order dated June 16, 1944, the Commission consolidated the proceedings on the aforesaid applications for purposes of a hearing to be held in St. Paul, Minnesota, commencing July 26, 1944, and notice of such order was given, including publication in the FEDERAL REGISTER on June 22, 1944, at Volume 9, page 6918.

The Commission finds that: No good cause has been shown for granting at this time the applications for continuance;

The Commission orders that: The aforesaid applications for a continuance of the hearing in the above-entitled matters be and the same are hereby dismissed without prejudice to the renewal of such applications at the hearing upon the conclusion of the direct case of Northern Natural Gas Company.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 44-10869; Filed, July 21, 1944; 9:32 a. m.]

[Project No. 346]

MINNESOTA POWER & LIGHT CO.

ORDER FIXING DATE OF HEARING

JULY 21, 1944.

It appearing to the Commission that:

(a) A hearing has heretofore been held with respect to the determination of the actual legitimate original cost, as of May 31, 1927, of the Blanchard Project No. 346, Minnesota Power & Light Company, Licensee, at which there was reserved for further consideration Electric Bond and Share Company charges and Phoenix Utility Company fees as well as costs of strengthening the piers supporting the Soo Line Bridge, and related items:

(b) A copy of the opinion of the United States Circuit Court of Appeals for the Eighth Circuit dated November 4, 1938, in *The Pike Rapids Power Company* v. *Minneapolis, St. Paul & Sault Ste. Marie Railway Company,* and a copy of judgment and decree entered by the United States District Court, District of Minnesota, Fifth Division, in *The Pike Rapids Power Company* v. *Minneapolis, St. Paul & Sault Ste. Marie Railway Company* pursuant to the mandate of the Circuit Court of Appeals have been made a part of the record in this proceeding and are to be considered as the basis for the disposition of such reserved items by stipulation of counsel;

(c) The remaining reserved matters involved in the determination of the actual legitimate original cost of the initial project, as of May 31, 1927, Blanchard Project No. 346, Minnesota Power & Light Company, Licensee, are now at issue;

The Commission orders that:

The record in this case be reopened and a further public hearing be held commencing at 9:30 a. m., August 5, 1944, in the Hearing Room of the Commission, Hurley-Wright Building, 1800 Pennsylvania Avenue, N. W., Washington, D. C., respecting the matters involved and the issues presented in the determination of the actual legitimate original cost of the initial project, as of May 31, 1927, and the accounting to be prescribed therefor, including the disposition on the books of account of said Licensee of such amounts as may be disallowed as not part of such actual legitimate original cost.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 44-10890; Filed, July 21, 1944; 11:29 a. m.]

[Project No. 469]

MINNESOTA POWER & LIGHT CO.

ORDER FIXING DATE OF HEARING

JULY 21, 1944.

It appearing to the Commission that:

The matters involved in the determination of the actual legitimate original cost of the initial project, as of July 31, 1924, Winton Project No. 469, Minnesota Power & Light Company, Licensee, are now at issue;

The Commission orders that:

A public hearing be held commencing at 9:45 a. m., August 5, 1944, in the Hearing Room of the Commission, Hurley-Wright Building, 1800 Pennsylvania Avenue, N. W., Washington, D. C., respecting the matters involved and the issues presented in the determination of the actual legitimate original cost of the initial project, as of July 31, 1924, and the accounting to be prescribed therefor, including the disposition on the books of account of said Licensee of such amounts as may be disallowed as not part of such actual legitimate original cost.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 44-10891; Filed, July 21, 1944; 11:29 a. m.]

[Docket No. G-534]

KANSAS POWER AND LIGHT CO.

NOTICE OF AMENDMENT TO APPLICATION

JULY 20, 1944.

On June 27, 1944, a hearing was held in the above-entitled matter in Kansas City, Missouri, concerning the application of The Kansas Power & Light Company for a certificate of public convenience and necessity to authorize the construction and operation of approximately 38,000 feet of 8-inch pipe line extending in a southwesterly direction from the Cities Service Gas Company's Breitenbach No. 1 and English No. 1 gas wells in Edwards County, Kansas, and connecting with the Applicant's existing 8-inch pipe line at a point in the southeast corner of Sec. 3, T. 26 S., 17 W., in Edwards County, Kansas. No protest to the application was received by the Commission.

The evidence adduced at the hearing showed that the proposed line is to be constructed from pipe obtained from two lines abandoned and removed by the applicant without first having obtained authorization from this Commission for such abandonment under section 7 (b) of the Natural Gas Act. On July 11, 1944, the applicant filed an amendment to conform its application to the evidence presented at the hearing with respect to the abandoned lines and requested authority from the Commission for such abandonment.

Applicant abandoned and removed 25,000 feet of 8-inch pipe from its Burton line, which pipe was formerly used in the transportation of sour gas from the Goering Field in Reno County, Kansas, to the Applicant's Hutchinson power plant. This line could no longer be operated economically because of the depletion of the field. No customers were served from the portion of the line removed.

The applicant also abandoned and removed 10,690 feet of 8-inch line extending from the Galva Field to the McPherson Gasoline Plant, located in McPherson County, Kansas. The line removed was one of three parallel lines between those points, and was no longer required in its former location because of the depletion of the Galva Field. Service to no customer was affected by the removal of this line.

Any person desiring to be heard or to make any protest with respect to the removal and abandonment of the aforesaid pipe lines should, on or before the 5th day of August, 1944, file with the Federal Power Commission a petition or protest in accordance with the Commission's rules of practice and regulations under the Natural Gas Act.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 44-10889; Filed, July 21, 1944; 11:29 a. m.]

INTERSTATE COMMERCE COMMISSION.

[S. O. 70-A, Special Permit 390]

RECONSIGNMENT OF ORANGES AT MINNEAPOLIS, MINN.

Pursuant to the authority vested in me by paragraph (f) of the first ordering paragraph (§ 95.35, 8 F.R. 14624) of Service Order No. 70-A of October 22, 1943, permission is granted for any common carrier by railroad subject to the Interstate Commerce Act:

To disregard entirely the provisions of Service Order No. 70-A insofar as it applies to the reconsignment at Minneapolis, Minnesota, July 18, 1944, by C. H. Robinson and Company of car SFRD 18261, oranges, now on the C. St. P. M. & O. Railroad (C. & N. W.), to Nash Finch Company, Grand Forks, North Dakota (G. N.).

The waybill shall show reference to this special permit.

A copy of this special permit has been served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and per diem agreement under the terms of that agreement; and notice of this permit shall be given to the general public by depositing a copy in the office of the Secretary of the Commission at Washington, D. C., and by filing it with the Director, Division of the Federal Register.

Issued at Washington, D. C., this 18th day of July 1944.

V. C. CLINGER,
Director,
Bureau of Service.

[F. D. Doc. 44-10885; Filed, July 21, 1944; 11:14 a. m.]

[S. O. 70-A, Special Permit 391]

RECONSIGNMENT OF POTATOES AT KANSAS CITY, MO.-KANS.

Pursuant to the authority vested in me by paragraph (f) of the first ordering paragraph (§ 95.35, 8 F.R. 14624) of Service Order No. 70-A of October 22, 1943, permission is granted for any common carrier by railroad subject to the Interstate Commerce Act:

To disregard entirely the provisions of Service Order No. 70-A insofar as it applies to the reconsignment at Kansas City, Missouri-Kansas, July 17, 1944, by Cochrane Brokerage Company of cars SFRD 19395 and MDT 16988, potatoes, now on the A. T. & S. F. Railway, to unnamed destinations account lost in Belen yards.

The waybills shall show reference to this special permit.

A copy of this special permit has been served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and per diem agreement under the terms of that agreement; and notice of this permit shall be given to the general public by depositing a copy in the office of the Secretary of the Commission at Washington, D. C., and by filing it with the Director, Division of the Federal Register.

Issued at Washington, D. C., this 18th day of July 1944.

V. C. CLINGER,
Director,
Bureau of Service.

[F. R. Doc. 44-10886; Filed, July 21, 1944; 11:14 a. m.]

[S. O. 70-A, Special Permit 392]

RECONSIGNMENT OF PEACHES AT CHICAGO, ILL.

Pursuant to the authority vested in me by paragraph (f) of the first ordering paragraph (§ 95.35, 8 F.R. 14624) of Service Order No. 70-A of October 22, 1943, permission is granted for any common carrier by railroad subject to the Interstate Commerce Act:

To disregard entirely the provisions of Service Order No. 70-A insofar as it applies to

the reconsignment at Chicago, Illinois, July 18, 1944, by La Mantia Brothers Arrigo of car FGE 15630, peaches, now on the Chicago Produce Terminal to Janesville, Wisconsin, via CMStP&P Railway.

The waybills shall show reference to this special permit.

A copy of this special permit has been served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and per diem agreement under the terms of that agreement; and notice of this permit shall be given to the general public by depositing a copy in the office of the Secretary of the Commission at Washington, D. C., and by filing it with the Director, Division of the Federal Register.

Issued at Washington, D. C., this 18th day of July 1944.

V. C. CLINGER,
Director,
Bureau of Service.

[F. R. Doc. 44-10887; Filed, July 21, 1944; 11:14 a. m.]

[S. O. 200, Special Permit 144]

REICING OF POTATOES AT DENISON, TEX.

Pursuant to the authority vested in me by paragraph (e) of the first ordering paragraph (§ 95.237, 9 F.R. 4402) of Service Order No. 200 of April 22, 1944, permission is granted for any common carrier by railroad subject to the Interstate Commerce Act:

To reice in transit, one time only, at Denison, Texas, as ordered by U. S. Army Quarter Master Corps, cars of potatoes, moving July 17, 1944, from Stillwell Cold Storage Company, Hannibal, Missouri, ART 16155 to Fort Sam Houston, Texas (Wab.-MKT), ART 15095 to Naval Air Station, Flourbluff, Corpus Christi, Texas (Wab.-MKT-SP-TM), ART 20307 to Randolph Field, Texas (Wab.-MKT-T&NO).

The waybills shall show reference to this special permit.

A copy of this special permit has been served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and per diem agreement under the terms of that agreement; and notice of this permit shall be given to the general public by depositing a copy in the office of the Secretary of the Commission at Washington, D. C., and by filing it with the Director, Division of the Federal Register.

Issued at Washington, D. C., this 18th day of July 1944.

V. C. CLINGER,
Director,
Bureau of Service.

[F. R. Doc. 44-10888; Filed, July 21, 1944; 11:14 a. m.]

OFFICE OF PRICE ADMINISTRATION.

[MPR 154, Order 6]

ARMAND MONTZ

ADJUSTMENT OF MAXIMUM PRICES

Order No. 6 under Maximum Price Regulation No. 154, as amended. Ice. Adjustment of maximum prices for artificial ice manufactured and sold by Armand Montz, La Place, Louisiana.

For the reasons set forth in an opinion issued simultaneously herewith, *It is ordered:*

(a) Armand Montz, La Place, Louisiana, may sell and deliver artificial ice at retail and wholesale, both at the platform and on a delivered basis, to peddlers and to purchasers in La Place, Louisiana and in Pascagoula, Mississippi; and such persons may buy and receive artificial ice from Armand Montz at the appropriate maximum prices set forth below:

PLATFORM PRICES

Peddlers ..... $4.50 per ton.
Retail ..... $0.40 per 100 lbs.
Quantities above 500# ..... $0.35 per 100 lbs.

DELIVERED PRICES

Sales to persons in La Place, La.
Retail:
45 cents per cwt.
23 cents per 50 lbs.
11 cents per 25 lbs.
6 cents per 12½ lbs.
$1.05 per 300 lb. block lots.
Sales to persons in Pascagoula, Miss., $6.00 per ton.

(b) Any peddler who buys artificial ice from Armand Montz may resell such ice at retail, delivered to his purchasers, at the appropriate maximum price established by this order for retail delivered sales by Armand Montz.

(c) All prayers of the application not granted herein are denied.

(d) The order of the Regional Office of the Office of Price Administration at Dallas, Texas, issued September 27, 1943, denying in part and granting in part price increases requested by applicant in his petition to that Office dated August 10, 1943, is hereby revoked.

(e) This order may be revoked or amended by the Price Administrator at any time.

(f) This order shall become effective July 21, 1944.

Issued this 20th day of July 1944.

JAMES G. ROGERS, Jr.,
Acting Administrator.

[F. R. Doc. 44-10867; Filed, July 20, 1944; 5:04 p. m.]

[MPR 188, Order 1899]

LEE BARTLEY & SONS MACHINE CO.

ADJUSTMENT OF MAXIMUM PRICES

Order No. 1899 under § 1499.158 of Maximum Price Regulation No. 188. Manufacturers' maximum prices for specified building materials and consumers' goods other than apparel. Approval of maximum prices for sales of a folding gate manufactured by Lee Bartley & Sons Machine Company.

For the reasons set forth in an opinion issued simultaneously herewith and filed with the Division of the Federal Register, and pursuant to the authority vested in the Price Administrator by the Emergency Price Control Act, as amended, the Stabilization Act of 1942, as amended, and Executive Orders Nos. 9250 and 9328. *It is ordered:*

(a) This order establishes maximum prices for sales and deliveries, since the effective date of Maximum Price Regulation No. 188, of a folding gate manufactured by Lee Bartley & Sons Machine Co., 2304 Lincoln Avenue, Granite City, Illinois.

(1) (i) For all sales and deliveries by the manufacturer to retailers, and by the manufacturer to persons, other than retailers, who resell the article from the manufacturer's stock, the maximum prices are those set forth below:

Article	Model No.	Maximum price to persons, other than retailers, who resell from manufacturer's stock (per unit)	Maximum price to retailers (per unit)
Folding gate	----------	$0.85	$1.00

These prices are net f. o. b. factory.

(ii) For all sales and deliveries by the manufacturer to any other class of purchaser or on other terms and conditions of sale, the maximum prices shall be those determined by applying to the prices specified in subparagraph (1) (i) of this paragraph (a), the discounts, allowances, and other price differentials made by the manufacturer, during March 1942, on sales of the same type of article to the same class of purchaser and on the same terms and conditions. If the manufacturer did not make such sales during March 1942 he must apply to the Office of Price Administration, Washington, D. C., under the fourth pricing method, § 1499.158, of Maximum Price Regulation No. 188, for the establishment of maximum prices for those sales, and no sales or deliveries may be made until authorized by the Office of Price Administration.

(2) (i) For all sales and deliveries to retailers by persons who sell from the manufacturer's stock, the maximum price is that set forth below, f. o. b. factory:

Article and Model No.:	*Maximum price to retailers*
Folding gate, ----------	$1.00 per unit

(ii) For all sales and deliveries by persons who sell from the manufacturer's stock, to any other class of purchaser or on other terms and conditions of sale, the maximum prices shall be those determined under the applicable provisions of the General Maximum Price Regulation.

(b) At the time of or prior to the first invoice to each purchaser, other than a retailer, who resells from the manufacturer's stock, the manufacturer shall notify the purchaser for resale of the maximum prices and conditions established by paragraph (a) (2) of this order for such resales. This notice may be given in any convenient form.

(c) This order may be revoked or amended by the Price Administrator at any time.

This order shall become effective on the 22d day of July 1944.

Issued this 21st day of July 1944.

JAMES G. ROGERS, Jr.,
Acting Administrator.

[F. R. Doc. 44-10303; Filed, July 21, 1944; 11:32 a. m.]

[MPR 188, Order 1900]

HAMMARY MFG. CO.

ADJUSTMENT OF MAXIMUM PRICES

Order No. 1900 under § 1499.158 of Maximum Price Regulation No. 188. Manufacturers' maximum prices for specified building materials and consumers' goods other than apparel. Approval of maximum prices for sales of a folding lawn chair manufactured by Hammary Manufacturing Company.

For the reasons set forth in an opinion issued simultaneously herewith and filed with the Division of the Federal Register, and pursuant to the authority vested in the Price Administrator by the Emergency Price Control Act, as amended, the Stabilization Act of 1942, as amended, and Executive Orders Nos. 9250 and 9328, *It is ordered:*

(a) This order establishes maximum prices for sales and deliveries, since the effective date of Maximum Price Regulation No. 188, of a folding lawn chair manufactured by Hammary Manufacturing Company, 209 East Harper Avenue, Lenoir, North Carolina.

(1) (i) For all sales and deliveries by the manufacturer to retailers, and by the manufacturer to persons, other than retailers, who resell the article from the manufacturer's stock, the maximum prices are those set forth below:

Article	Model No.	Maximum price to persons, other than retailers, who resell from manufacturer's stock (per unit)	Maximum price to retailers (per unit)
Folding lawn chair	----------	$2.00	$2.35

These prices are net f. o. b. factory.

(ii) For all sales and deliveries by the manufacturer to any other class of purchaser or on other terms and conditions of sale, the maximum prices shall be those determined by applying to the prices specified in subparagraph (1) (i) of this paragraph (a), the discounts, allowances, and other price differentials made by the manufacturer, during March 1942, on sales of the same type of article to the same class of purchaser and on the same terms and conditions. If the manufacturer did not make such sales during March 1942 he must apply to the Office of Price Administration, Washington, D. C., under the fourth pricing method, § 1499.158, of Maximum Price Regulation No. 188, for the establishment of maximum prices for those sales, and no sales or deliveries may be made until authorized by the Office of Price Administration.

(2) (i) For all sales and deliveries to retailers by persons who sell from the manufacturer's stock, the maximum price is that set forth below, f. o. b. factory:

Article and Model No.:	*Maximum price to retailers*
Folding lawn chair, ————	$2.35 per unit

(ii) For all sales and deliveries by persons who sell from the manufacturer's stock, to any other class of purchaser or on other terms and conditions of sale, the maximum prices shall be those determined under the applicable provisions of the General Maximum Price Regulation.

(b) At the time of or prior to the first invoice to each purchaser, other than a retailer, who resells from the manufacturer's stock, the manufacturer shall notify the purchaser for resale of the maximum prices and conditions established by paragraph (a) (2) of this order for such resales. This notice may be given in any convenient form.

(c) This order may be revoked or amended by the Price Administrator at any time.

This order shall become effective on the 22d day of July 1944.

Issued this 21st day of July 1944.

JAMES G. ROGERS, Jr.,
Acting Administrator.

[F. R. Doc. 44-10904; Filed, July 21, 1944; 11:32 a. m.]

[MPR 188, Order 1901]

NATIONAL ALUMINUM MFG. CO.

ADJUSTMENT OF MAXIMUM PRICES

Order No. 1901 under § 1499.158 of Maximum Price Regulation No. 188. Manufacturers' maximum prices for specified building materials and consumers' goods other than apparel. Approval of maximum prices for sales of three new pressure canners and one pan set by the National Aluminum Manufacturing Company.

For the reasons set forth in an opinion issued simultaneously herewith and filed with the Division of the Federal Register, and pursuant to the authority vested in the Price Administrator by the Emergency Price Control Act of 1942, as amended, the Stabilization Act of 1942, as amended, and Executive Order Nos. 9250 and 9328, *It is ordered:*

(a) This order establishes maximum prices for sales of three new pressure canners and one pan set, manufactured by the National Aluminum Manufacturing Company, 720 Park Avenue, Peoria, Illinois, and described in its application as Model No. 22, 22X, 22-2 and cooking pan set.

(1) For all sales and deliveries by the manufacturer, since such articles became subject to Maximum Price Regulation No. 188, the maximum prices are those set forth below:

	Model #22 pressure canner with complete pan set and cook book	Model #22X pressure canner with canning basket and cook book	Model #22-2 pressure canner with 2 canning baskets and cook book	Cooking pan set consisting of 2 duplicate pans, collander, pan, cross bars, lifting hooks, trivet with 2 sets of legs
To jobbers	$9.95	$9.20	$11.45	$0.75
To retailers:				
In Eastern Zone	13.27	12.27	15.27	1.00
In Western Zone	13.93	12.93	15.93	1.00

These prices are subject to terms, discounts and allowances no less favorable than those customarily granted by the manufacturer.

(2) For all sales and deliveries by jobbers to all purchasers for resale, on and after the effective date of this order, the maximum prices are those set forth below:

	Model #22 pressure canner with complete pan set and cook book	Model #22X pressure canner with canning basket and cook book	Model #22-2 pressure canner with 2 canning baskets and cook book	Cooking pan set consisting of 2 duplicate pans, collander, pan, cross bars, lifting hooks, trivet with 2 sets of legs
In Eastern Zone	$13.27	$12.27	$15.27	$1.00
In Western Zone	13.93	12.93	15.93	1.00

These prices are f. o. b. seller's city, and are subject to terms, discounts and allowances no less favorable than those customarily granted by the seller.

(3) For all sales and deliveries at retail by any person on and after the effective date of this order, the maximum prices are those set forth below:

	Model #22 pressure canner with complete pan set and cook book	Model #22X pressure canner with canning basket and cook book	Model #22-2 pressure canner with 2 canning baskets and cook book	Cooking pan set consisting of 2 duplicate pans, collander, pan, cross bars, lifting hooks, trivet with 2 sets of legs
In Eastern Zone	$19.00	$18.40	$22.00	$1.50
In Western Zone	20.00	19.40	23.00	1.50

(b) The manufacturer shall attach a tag or label to every pressure canner for which a maximum price is established by this order, which is shipped to a purchaser for resale on and after the effective date of this order. That tag or label must contain the following statement with the blanks properly filled in:

Eastern Zone OPA Ceiling Price_____ $_____
Western Zone OPA Ceiling Price_____ $_____

This tag may not be removed until after delivery to the consumer.

(c) At the time of or prior to the first invoice to a purchaser for resale on and after the effective date of this order, the manufacturer and every jobber shall notify the purchaser in writing of the maximum prices and conditions established by this order for resales by the purchaser. This notice may be given in any convenient form.

(d) For purposes of this order the Western Zone includes the states of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming, and the following counties in Texas: El Paso, Hudspeth, Culberson, Jeff Davis, Presidio, Brewster, Terrell, Pecos and Reeves. The rest of

the United States and the District of Columbia are in the Eastern Zone.

(e) Unless the context otherwise requires, the definitions set forth in § 1499.20 of the General Maximum Price Regulation shall apply to the terms used herein.

(f) This order may be revoked or amended by the Price Administrator at any time.

This Order No. 1901 shall become effective on the 22d day of July 1944.

Issued this 21st day of July 1944.

JAMES G. ROGERS, Jr.,
Acting Administrator.

[F. R. Doc. 44-10905; Filed, July 21, 1944; 11:31 a. m.]

Regional and District Office Orders.

[Scranton District Order G-1 Under MPR 426]

FRESH FRUITS AND VEGETABLES IN DESIGNATED COUNTIES IN PENNSYLVANIA

Order No. G-1 under section 8 (a) of Maximum Price Regulation No. 426. Fresh fruits and vegetables for table use, sales except at retail.

Amount of freight from basing point to wholesale receiving point allowed for determining maximum prices of certain fresh fruits and vegetables in certain Counties of the Commonwealth of Pennsylvania.

For the reasons stated in an opinion issued simultaneously herewith and pursuant to the authority contained in section 8 (a) (7) of Maximum Price Regulation No. 426, this order is hereby issued.

SECTION 1. *What this order does.* This order establishes the amount of freight from basing point to wholesale receiving point which may be added to the maximum basing point price for the purpose of determining maximum selling prices for certain fresh fruits and vegetables at all wholesale receiving points in the area described in section 2.

SEC. 2. *Where this order applies.* This order applies in the counties of Carbon, Lackawanna, Luzerne, Monroe and Schuylkill in the Commonwealth of Pennsylvania.

SEC. 3. *Determination of the amount of freight allowed in establishing maximum selling price.* The amount of freight from basing point to wholesale receiving point which may be added to the maximum basing point price for the purpose of determining maximum selling prices of the items covered by this regulation at all wholesale receiving points in the area described above and in the markets they serve shall be the amount set forth in the appendices attached hereto.

This amount includes all allowances, if any, for protective and other accessorial services and all taxes on transportation costs.

The amount of freight from basing point to any wholesale receiving point in the area above described is determined by adding the appropriate amount listed in Appendix B to the appropriate amount for the item in Appendix A.

SEC. 4. *Effective date.* This order shall become effective at 12:01 A. M. on July 17, 1944.

(56 Stat. 23, 765; Pub. Law 151, 78th Cong.; E.O. 9250, 7 F.R. 7871, E.O. 9328, 8 F. R. 4651; MPR 426, 9 F.R. 16409)

Issued this 12th day of July 1944.

WALTER C. YOUNG,
Acting District Director.

APPENDIX A—FREIGHT FROM BASING POINT TO NEW YORK CITY

Commodity	Standard container and minimum contents	Basing point	Date	Freight allowance
Apricots, California	Brentwood lug, 24 pounds	Sacramento, Calif.	All year	$0.57
Apricots, all others	Northwest lug, 13 pounds	Yakima, Wash.	do	.39
Carrots, bunched	LA crate, 72 bunches, each bunch 1 pound.	El Centro, Calif.	Jan. 10-Mar. 31	1.49
		do	Apr. 1-May 31	1.59
		Salinas, Calif.	June 1-Nov. 30	1.63
		do	Dec. 1-Jan. 15	1.53
Cucumbers, except hothouse	Bushel, 48 pounds	Wachula, Fla.	Jan. 1-May 31	.74
	do	Ponchatoula, La.	June 1-June 30	.79
	Lug box, 28 pounds	Wachula, Fla.	Jan. 1-May 31	.42
	Lug box	Ponchatoula, La.	June 1-June 30	.44
Cucumbers, hothouse	Per pound	Davenport, Iowa	All year	.02½
Eggplant	1½ bushel crate, 45 pounds	Fort Myers, Fla.	do	.76
	Bushel, 30 pounds	do	do	.52
Grapefruit, pink California and Arizona.	1⅗ bushels	Los Angeles, Calif.	Nov. 16-Apr. 30	1.20
			May 1-Oct. 31	1.27
Grapefruit, pink all other States.	1⅗ bushels	Weslaco, Tex.	All year	1.14
Grapefruit, white California and Arizona.	1⅗ bushels	Los Angeles, Calif.	Nov. 16-Apr. 30	1.20
			May 1-Oct. 31	1.27
Grapefruit, white all other States, including "Indian River."	1⅗ bushels	Homestead, Fla.	All year	.90
Lemons, all States	1⅗ bushels	Los Angeles, Calif.	Nov. 1-Apr. 30	1.24
			May 1-Oct. 30	1.38
Green peas	Bushel, 28 pounds	Calipatria, Calif.	Sept. 1-Mar. 31	.73
		Santa Barbara, Calif.	Apr. 1-Aug. 31	.81
Lettuce, iceberg	LA or Salinas, crate 60 pounds and 48 heads.	Salinas, Calif.	All year	1.44
Oranges, California and Arizona.	1⅗ bushels	Los Angeles, Calif.	Nov. 16-Apr. 30	1.33
			May 1-Nov. 15	1.40
Oranges, all other, including "Indian River."	1⅗ bushels	Homestead, Fla.	All year	.90
Plums:				
(3 x 4) (3 x 4 x 4)	4-basket crate	Sacramento, Calif.	do	.69
(4 x 4)	do	do	do	.66
(3 x 4 x 5) (4 x 5)	do	do	do	.60
(5 x 5) (5 x 6) (6 x 6)	do	do	do	.57
Snap beans	Bushel, 28 pounds	Pompano, Fla.	do	.50
Spinach	Bushel, 18 pounds	Crystal City, Tex.	do	.42
Sweet peppers	1½ bushel crate 37 pounds	Pompano, Fla.	do	.63
	Bushel, 25 pounds	do	do	.42
Tangerines, all States, except California and Arizona.	1⅗ bushel	Homestead, Fla.	do	.90

APPENDIX B—FREIGHT TO ALL WHOLESALE RECEIVING POINTS IN AREA

For any wholesale receiving point in the counties of Carbon, Monroe, Lackawanna, Luzerne, and Schuylkill

[Commodity in standard containers as in Appendix A]

Apricots:	
Brentwood lug	$0.22
Northwest lug	.15
Carrots, bunched	.48
Citrus fruits, all standard containers (1⅘ or 1⅗ bushel)	.52
Cucumbers, bushel	.45
Eggplant:	
Bushel, 30 pounds	.31
1½ crate, 45 pounds	.46
Green peas, bushel, 28 pounds	.25
Lettuce, iceberg, LA crate, 60 pounds	.56
Plums:	
(3 x 4) (3 x 4 x 4)	.26
(4 x 4)	.25
(3 x 4 x 5) (4 x 5)	.24
(5 x 5) (5 x 6) (6 x 6)	.21
Snap beans, bushel, 28 pounds	.25
Spinach, bushel, 18 pounds	.16
Sweet peppers:	
Bushel, 25 pounds	.38
1½ bushel, 37 pounds	.45

[F. R. Doc. 44-10779; Filed, July 19, 1944; 3:03 p. m.]

[Boise Order G-1 Under MPR 154, Amdt. 1]

ICE IN IDAHO FALLS, IDAHO

Amendment No. 1 to Order No. G-1 under Maximum Price Regulation No. 154. Ice. Establishment of specific maximum prices for dealers in Idaho Falls, Idaho.

Pursuant to the Emergency Price Control Act of 1942, as amended, the Stabilization Act of 1942, as amended, Executive Orders 9250 and 9328, § 1393.8 (e), (f) and (g) of Maximum Price Regulation No. 154, as amended, and Region VII Delegation Order No. 38, and for the reasons set forth in the accompanying opinion, this Amendment No. 1 is issued.

1. Section (b) of Order No. G-1 under Maximum Price Regulation 154 is amended to read as follows:

(b) *Specific maximum prices for ice sold by dealers.* On and after the effective date of this Amendment No. 1, the maximum prices for "ice" sold by dealers and delivered at any place in the City of Idaho Falls, Idaho or its environs to which the seller heretofore customarily made free delivery, shall be as follows:

1. *Commercial and industrial users, block or cake ice, delivered.*

	Cents per cwt.
Less than 100 lbs	60
Over 100 lbs	50

Minimum charge for delivery to commercial and industrial users shall be 25¢.

2. *Domestic users, delivered.*

25 lbs.	35 lbs.	40 lbs.	50 lbs.	60 lbs.	70 lbs.	80 lbs.	90 lbs.	100 lbs.
20¢	25¢	30¢	35¢	40¢	45¢	55¢	65¢	70¢

Over 100 lbs. the price shall be 70¢ per cwt.
Minimum charge for delivery to domestic users shall be 20¢.

Effective date. This amendment shall become effective July 10, 1944.

(56 Stat. 23, 765., 57 Stat. 566., Pub. Law 383, 78th Cong., E.O. 9250, 7 F.R. 7871, E.O. 9328, 8 F.R. 4681)

Issued this 10th day of July 1944.

C. C. ANDERSON,
District Director.

[F. R. Doc. 44-10791; Filed, July 19, 1944; 3:14 p. m.]

[Region VII 2d Rev. Order G-7 Under SR 15, Amdt. 6]

FLUID MILK IN COLORADO

Second Revised Order No. G-7 under Supplementary Regulation No. 15 of the General Maximum Price Regulation, Amendment No. 6. Adjusted maximum prices for fluid milk sold at wholesale and at retail in certain areas in the State of Colorado.

Pursuant to the Emergency Price Control Act of 1942, as amended, the Stabilization Act of 1942, as amended, and § 1499.75 (a) (9) (i) (*a*) (*1*) (ii) (a) of Supplementary Regulation No. 15 to the General Maximum Price Regulation, and for the reasons set forth in the accompanying opinion, this Amendment No. 6 is issued.

1. Paragraph (b) is hereby further amended by adding thereto a new area, designated Area 11, and specific maximum prices are established therefor as follows:

AREA 11

Size of glass or paper container	Wholesale delivered	Retail out of store
	Cents	*Cents*
Quart	11	13

2. Paragraph (c) (2) is hereby further amended by inserting immediately after the word "Crowley" in the third line thereof the following: "(except the Town of Ordway, and a distance of three miles beyond the corporate limits thereof at all points)".

3. Paragraph (c), as amended by Amendments No. 2, No. 3, No. 4, and No. 5, is hereby further amended by designating the last subparagraph thereof (12) and by adding a new subparagraph designated (11), to follow immediately after subparagraph (10), and reading as follows:

(11) "Area 11" means all that area contained within the Town of Ordway, and a distance of three miles beyond the corporate limits thereof at all points.

4. This Amendment No. 6 shall become effective on the 6th day of July, 1944.

(56 Stat. 23, 765; 57 Stat. 566; Pub. Law 383, 78th Cong.; E.O. 9250, 7 F.R. 7871, and E.O. 9328, 8 F.R. 4681)

Issued this 6th day of July 1944.

RICHARD Y. BATTERTON,
Regional Administrator.

[F. R. Doc. 44-10792; Filed, July 19, 1944; 3:05 p. m.]

[Region VI Order G-5 Under RMPR 122, Amdt. 9]

SOLID FUELS IN TWIN CITIES, MINN., AREA

Amendment No. 9 to Order No. G-5 under Revised Maximum Price Regulation No. 122. Solid fuels sold and delivered by dealers. Maximum prices for solid fuels sold in the Twin Cities area.

Pursuant to the authority vested in the Regional Administrator of Region VI by Section 1340.260 of Revised Maximum Price Regulation No. 122, and for reasons stated in the opinion issued simultaneously herewith: *It is ordered,* That Item XII of the price schedule set forth in paragraph (c) of Order No. G-5 be and it is hereby amended to read as follows:

SCHEDULE

1	2	3	4	5	6	7
Description	Domestic Coal		Steam coal		Dealer at yard	
	Delivered	Consumer at yard	Delivered	Consumer at yard	Domestic	Steam
•	•	•	•	•	•	•
XII Packaged Fuel:						
a. Sales up to ¼ ton:						
(1) 10-lb. packages	----------	11 for $1.00	----------	----------	----------	----------
(2) 15-lb. packages	----------	8 for $1.00	----------	----------	----------	----------
b. ½ ton	$5.15	$3.50	----------	----------	----------	----------
c. ½ ton	8.80	$7.25	----------	----------	----------	----------
d. 1 ton	10.19	$13.10	----------	----------	----------	----------

This Amendment No. 9 to Order No. G-5 shall be effective July 7, 1944.

(56 Stat. 23, 765, Pub. Laws 151, 78th Cong., E.O. 9250, 7 F.R. 7871, E.O. 9328, 8 F.R. 4681, 57 Stat. 566, Pub. Laws 383, 78th Cong.)

Issued this 7th day of July 1944.

RAE E. WALTERS,
Regional Administrator.

[F. R. Doc. 44-10789; Filed, July 19, 1944; 3:08 p. m.]

[Region III Order G-49 Under RMPR 122]

SPECIFIED SOLID FUELS IN CLEVELAND, OHIO, AREA

Order No. G-49 under Revised Maximum Price Regulation No. 122. Solid fuels sold and delivered by dealers. Maximum prices for specified solid fuels in the Cleveland, Ohio, Area.

For the reasons stated in an opinion issued simultaneously herewith and under the authority vested in the Regional Administrator of Region III of the Office of Price Administration by § 1340.260 of Revised Maximum Price Regulation No. 122, it is hereby ordered:

(a) *What this order does.* This order establishes maximum prices for sales of specified solid fuels made within the Cleveland, Ohio, area defined to include all of Cuyahoga County, with the exception of the municipalities of Bedford and Berea. These are the highest prices that any dealer may charge when he delivers such fuel at or to a point in such Cleveland, Ohio, area; they are also the highest prices that any buyer in the course of trade or business may pay for them.

(b) *What this order prohibits.* Regardless of any obligation, no person shall:

(1) Sell or, in the course of trade or business, buy solid fuels at prices higher than the maximum prices set by this Order No. G-49; but less than maximum prices may at any time be charged, paid or offered;

(2) Obtain a higher than ceiling price by

(i) Charging a price higher than the scheduled price for a service or making a charge for a service not authorized by this order,

(ii) Using any other device by which a higher than maximum price is obtained, directly or indirectly,

(iii) Using any tying agreement or requiring that the buyer purchase anything in addition to the fuel requested by him, except that a dealer may comply with requirements or standards with respect to deliveries which have been or may be issued by an agency of the United States Government.

(c) *Schedule for sales of coal*—(1) *Price schedule.* This schedule sets forth maximum prices for sales of specified sizes, kinds and quantities of solid fuels. Column I describes the coal for which prices are established; Column II shows maximum prices for credit sales on a "direct delivery" basis; Column III shows maximum prices for sales on a "direct delivery" basis where payment is made on or before the fifteenth day of the month that follows the date of delivery; Column IV shows maximum prices for credit "commercial sales" on a "direct delivery" basis.

RAIL SHIPMENTS

Column I	Column II	Column III	Column IV
I. High volatile bituminous coals from producing district No. 8 (eastern Kentucky, southwestern West Virginia, western Virginia, and northeastern Tennessee) excluding Mine Index Nos. 25, 481 and 459:[1]			
A. Lump—Size Group Nos. 1 and 2 (larger than 3"):			
1. Mine price classification A	$10.15	$9.90	$9.15
2. Mine price classifications D through K	9.80	9.55	8.80
3. Mine Price Classifications L through O	9.55	9.30	8.55
B. Stoker—Size group No. 10 (top size 1¼" and smaller x bottom size ⅛" and larger):			
1. Mine Price Classification A	9.90	9.65	8.90
2. Mine Price Classifications B through E	9.65	9.40	8.65
3. Mine Price Classifications F through H	9.20	8.95	8.20
C. To the prices stated in sections A and B above may be added $0.15 per ton provided the coal is mined in sub-district 6 of producing district 8 and provided it is separately weighed and billed. Sub-district 6 includes that portion of District 8 which is in northern Tennessee and the following counties in Kentucky: Bell, Clay, Clinton, Jackson, Laurel, Leslie, Madison, McCreary, Owsley, Pulaski, Rock Castle, Wayne and Whitley.			
II. High volatile bituminous coals from producing District No. 2 (western Pennsylvania):[1]			
A. *Lump and egg*—Size Group Nos. 1 and 2 (lump: larger than 2"; egg; bottom size larger than 2") Mine Price Classifications D through E	8.90	8.65	7.90
B. *Nut, pea and stoker*—Size group No. 5 (top size not exceeding 2") from Mine Index No. 224	8.95	8.70	7.95
III. High volatile bituminous coals from producing District No. 3 (northwestern West Virginia excluding Panhandle).[1]			
A. *Lump and egg*—Size Group No. 1 (lump and double screened coals bottom size larger than 2"):			
1. Mine Price Classification A	9.75	9.50	8.75
2. Mine Price Classification D through G	8.35	8.10	7.35
B. *Lump, egg, stoker*—Size Group No. 2 (lump and double screened coals bottom size 2" and smaller) Mine Price Classifications D through E	8.30	8.05	7.30
IV. High volatile bituminous coals from producing District No. 4 (Ohio):			
A. Lump—Size Group Nos. 1 and 2 (bottom size larger than 2") from the Ohio No. 8 and Middle Freight Origin Districts	8.40	8.15	7.40
B Egg—Size Group No. 3 (double screened bottom size larger than 1¼" but not exceeding 2") from the Ohio No. 8 and Middle Freight Origin Districts	7.95	7.70	6.95
C. Stoker—Size Group No. 5 (all double screened coals top size 2" and smaller) from the Ohio No. 8 Freight Origin District	8.20	7.95	7.20
V. Low volatile bituminous coals from producing District No. 7 (southeastern West Virginia and northwestern Virginia):[1]			
A. Lump—Size Group No. 1 (bottom size larger than screened Run of Mine):			
1. Mine Price Classification A:			
a. Mine Index No. 73	11.50	11.25	10.50
b. All other mines	10.95	10.70	9.95
2. Mine Price Classifications B and C	10.85	10.60	9.85
3. Mine Price Classifications D through F:			
a. Mine Index No. 37	10.65	10.40	9.65
b. All other mines	10.35	10.10	9.35
B. Egg—Size Group No. 2 (top size larger than 3" x bottom size no limit):			
1. Mine Price Classification A:			
a. Mine Index No. 73	11.50	11.25	10.50
b. All other mines	11.10	10.85	10.10
2. Mine Price Classifications B and C	11.00	10.75	10.00
3. Mine Price Classifications D through F:			
a. Mine Index No. 37	10.90	10.65	9.90
b. All other mines	10.65	10.40	9.65
C. Stove or dedusted screenings—Size Group No. 3 (top size larger than 1¼" but not exceeding 3" x bottom size smaller than 3") Mine Price Classification A:			
1. Forked or "screened"	10.95	10.70	9.95
2. Shoveled	10.70	10.45	9.70
D. Nut or dedusted screenings—Size Group No. 4 (top size larger than ¾" but not exceeding 1¼" x bottom size smaller than 1¼") Mine Price Classification A	9.90	9.65	8.90
E. Pea or dedusted screenings—Size Group No. 5 (top size not exceeding ¾" x bottom size smaller than ¾") Mine Price Classification A (excluding Mine Index Nos. 142, 143, 144, 145, 146 and 26)	9.55	9.30	8.55
F. Domestic run of mine—Mine Price Classifications A through D	9.90	9.65	8.90
VI. Low volatile bituminous coals from producing District No. 8 (eastern Kentucky, southwestern West Virginia, western Virginia and northeastern Tennessee):[1]			
A. *Lump*—Size Group No. 1 (bottom size larger than screened run of mine), Mine Price Classifications B and C	10.30	10.05	9.30
B. *Egg*—Size Group No. 2 (top size larger than 3" x bottom size no limit, Mine Price Classifications B and C	10.40	10.15	9.40
VII. Anthracite (Pennsylvania) egg, stove and chestnut sizes	15.35	15.10	14.35
VIII. Coke—egg, stove and nut sizes:			
A. Bee-hive oven coke	13.13	12.88	12.13
B. By-product coke	11.50	11.25	10.50

[1] In accordance with Regional Supplementary Order No. 3, $.10 per ton may be added to the prices of these coals if the coal has been subjected to an oil or calcium chloride treatment by the producer to allay dust or prevent freezing and if such charge is separately stated on the dealer's invoice.

(2) *Discounts.* (i) Discounts on "commercial sales" for payment within a specified period—All prices quoted in Column IV are credit prices and shall be subject to a discount of 2% where payment is made on or before the fifteenth of the month that follows the date of delivery.

(ii) Discounts for "yard sales"—All prices quoted in Column II or Column III shall be subject to a discount of $1.00 per net ton on "yard sales" of one or more tons to a consumer.—All prices quoted in Column II or Column III shall be subject to a discount of $1.55 per net ton on "yard sales" of one or more tons to a dealer purchasing for resale.

(3) *Descriptive terms.* All terms used herein to describe size, volatility and producing district are those that were established and defined by the Bituminous Coal Division and in effect as of midnight, August 23, 1943.

(d) The maximum prices for all sales by dealers of solid fuel not provided for by this Order No. G-49 shall be the maximum prices established by Revised Maximum Price Regulation No. 122.

(e) *Schedule of service charges.* This schedule sets forth maximum prices which a dealer may charge for special services rendered in connection with all sales under paragraph (c). These charges may be made only if the buyer requests such service of the dealer and only when the dealer renders the service. Every service charge shall be separately stated in the dealer's invoice.

Trimming in bin	$0.88 per hour.
Carry from curb	$1.00 per ton.
Wheel-in from curb	$0.75 per ton.
Service charge for deliveries in quantities of one-half ton	$0.65
Forking (limited to low volatile lump and egg coals from Districts 7 and 8, and Size Group No. 1, M. P. C. "A", from District 3)	$1.00 per ton.

(f) *The transportation tax.* The transportation tax imposed by section 620 of the Revenue Act of 1942 may be collected in addition to the maximum prices set by this order, provided the dealer states it separately from the price on his invoice or statement. However, such tax need not be so separately stated on sales to the United States or any agency thereof, the District of Columbia, any state government or any political subdivision thereof.

(g) *Addition of increase in suppliers prices prohibited.* The maximum prices set by this order may not be increased by a dealer to reflect increases in purchase costs or in supplier's maximum prices occurring after the effective date hereon; but increases in the maximum prices set hereby to reflect such increases are within the discretion of the Regional Administrator.

(h) *Petitions for amendment.* Any person seeking an amendment of any provision of this order may file a petition for amendment in accordance with the provisions of Revised Procedural Regulation No. 1, except that the petition shall be filed with the Regional Administrator and acted upon by him.

(i) *Applicability of other regulations.* Every dealer subject to this order is governed by the licensing provisions of Supplementary Order No. 72, effective October 1, 1943.

(j) *Right of amendment or revocation.* The Regional Administrator or Price Administrator may amend, revoke, or rescind this order, or any provision thereof, at any time.

(k) *Records.* Every person making a sale of solid fuel for which a maximum price is set by this order shall keep a record thereof showing: the date, the name and address of the buyer, if known, the per net ton price charged and the type and kind of solid fuel sold. The solid fuel shall be identified in the manner in which it is described in the order. The record shall also separately state

each service rendered and the charge made for it.

(l) *Posting of maximum prices; sales slips.* (1) Each dealer subject to this order shall post all the maximum prices set by it for all his types of sales. He shall post his prices in his place of business in a manner plainly visible to and understandable by the purchasing public. He shall also keep a copy of this order available for examination by any person inquiring as to his prices for solid fuel. No report of the maximum prices established by this order need be made by any dealer under § 1340.262 (c) of Regulation No. 122.

(2) Every dealer selling solid fuel for sales of which a maximum price is set by this order shall, within thirty days after the delivery of the fuel, give to the buyer a statement showing: the date of the sale, the name and address of the dealer and of the buyer, the kind, size and quantity of the solid fuel sold, the price charged and separately stating any item which is required to be separately stated by this order.

(m) *Enforcement.* (1) Persons violating any provision of this order are subject to civil and criminal penalties, including suits for treble damages, provided for by the Emergency Price Control Act of 1942, as amended.

(2) Persons who have any evidence of any violation of this order are urged to communicate with the Cleveland District Office of the Office of Price Administration.

(n) *Definitions and explanations.* (1) "Person" includes an individual, corporation, partnership, association, any other organized group of persons, legal successor or representative of any of the foregoing, and includes the United States, any agency thereof, any other government, or any of its political subdivisions, and any agency of any of the foregoing.

(2) "Sell" includes sell, supply, dispose, barter, exchange, lease, transfer and deliver and contracts and offers to do any of the foregoing. The terms "sale", "selling", "sold", "seller", "buy", "purchase", and "puchaser" shall be construed accordingly.

(3) "Dealer" means any person selling solid fuel except producers or distributors making sales at or from a mine, a preparation plant operated as an adjunct of any mine, a coke oven, or a briquette plant.

(4) "Direct delivery" means dumping, shoveling or chuting the fuel from the seller's truck directly into the buyer's bin or storage space; but, if this is physically impossible, the term means discharging the fuel directly from the seller's truck at a point where this can be done and at the point nearest and most accessible to the buyer's bin or storage space.

(5) "Yard sales" shall mean sales and deliveries made by the dealer in his customary manner at his yard.

(6) "Commercial sales" shall mean sales and deliveries made by the dealer to commercial or industrial consumers, and sales made by the dealer for delivery to a single location for the heating of four or more units from a central heating plant where the annual requirements amount to 75 or more tons and purchases are made from the same dealer.

(7) "Screened" means passing coal over screen of appropriate size at the dealer's yard.

(8) Except as otherwise provided herein or as the context may otherwise require, the definitions set forth in §§ 1340.-255 and 1340.266 of Revised Maximum Price Regulation No. 122, as amended, shall apply to terms used herein, and in full force and effect.

(o) *Applicability of this order.* To the extent applicable, the provisions of this order supersede Revised Maximum Price Regulation No. 122.

NOTE: The reporting and record keeping provisions of this order have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

This Order No. G-49 under Revised Maximum Price Regulation No. 122 shall become effective July 24, 1944.

(56 Stat. 23, 765; Pub. Laws 151, 78th Cong.; E.O. 9250, 7 F.R. 7871 and E.O. 9328, 8 F.R. 4681)

Issued: July 10, 1944.

BIRKETT L. WILLIAMS,
Regional Administrator.

[F. R. Doc. 44-10781; Filed, July 19, 1944; 3:11 p. m.]

[Region IV Order G-17 Under RMPR 122, Amdt. 24]

SOLID FUELS IN ASHEVILLE, N. C.

Amendment No. 24 to Order No. G-17 under Revised Maximum Price Regulation No. 122. Solid fuels sold and delivered by dealers. Appendix XIX, maximum prices for solid fuels in Asheville, North Carolina.

For the reasons set forth in an opinion issued simultaneously herewith and under the authority vested in the Regional Administrator of the Office of Price Administration by § 1340.260 of Revised Maximum Price Regulation No. 122 and by paragraph (e) of Order No. G-17, *It is hereby ordered,* That paragraph (m) of said Order No. G-17 be amended by adding a new subparagraph thereto, designated (m) (19), to read as set forth below:

(19) *Appendix XIX: Maximum prices for specified solid fuels in Asheville, North Carolina.* The maximum prices for specified solid fuels sold and delivered within the corporate limits of Asheville, North Carolina, and the area lying within fifteen miles of said corporate limits by the most direct highway route shall be as follows:

(i) *"Direct delivery or domestic" basis.*

HIGH VOLATILE BITUMINOUS COAL FROM DISTRICT NO. 8

Size	Per ton 2,000 lbs.	Per ½ ton 1,000 lbs.	Per ¼ ton 500 lbs.
Lump, chunk or block, bottom size larger than 5" (size group No. 1) in Price Classification A	$9.15	$4.83	$2.79
Lump or block, bottom size larger than 3"; Egg, top size larger than 6", bottom size 4" to larger than 3"; and all double screened coals, top size 5" and larger, bottom size larger than 4" (size groups No. 1 and 2) in Price Classifications E through S:			
a. From subdistrict No. 6 (Southern Appalachian)	9.05	4.73	2.76
b. From all subdistricts except subdistrict No. 6 (Southern Appalachian)	8.85	4.67	2.71
Egg, top size 6" to larger than 5", bottom size 3" to larger than 2", and top size larger than 6", bottom size 2" and smaller (size group No. 5) in Price Classifications B through E	8.95	4.73	2.74
a. From Mine Index No. 464, Rex No. 2 Mine of the Frances Rex Coal Company	9.49	4.95	2.85
Egg, top size 6" to larger than 5", bottom size 2" and smaller, and top size 3" and larger, but not exceeding 5", bottom size 3" to larger than 2" (Size Group No. 6):			
a. In Price Classifications B through K from Subdistrict No. 6 (Southern Appalachian)	8.95	4.73	2.74
b. In Price Classifications H from all Subdistricts except Subdistrict No. 6 (Southern Appalachian)	8.35	4.43	2.59
Stoker, top size not exceeding 1¼", bottom size less than 1¼" (Size group No. 10) in Price Classifications A (untreated)	8.65	4.58	2.66
In Price Classification B through E (untreated)	8.30	4.40	2.53
Steam Coal and Modified Stoker Screenings (Size Group No. 18) in Price Classifications C-J untreated	7.00	4.05	2.40
Nut and slack or screenings, 2" x 0 to larger than ¾" x 0 (size groups No. 20 and 21) in Price Classifications A through K untreated	7.00	3.75	2.25

(ii) *Special sales and services*—(a) *Carry or wheel service.* Only if the buyer requests such service, the dealer may charge not more than 50¢ per ton for such service.

(b) *Carry up or down stairs.* Only if the buyer requests such service, the dealer may charge not more than $1.00 per ton for such service.

(c) *Yard sales.* When the buyer picks up coal at the dealer's yard, the dealer must reduce the domestic price $1.00 per ton.

(d) *Sack coal.* The dealer may charge not more than 70¢ per 100 pounds delivered, and 50¢ per 100 pounds at the yard, for top price lump and egg coals, sacks not included. Lower priced lump and egg coals 5¢ per 100 pounds less.

(e) *Quantity discounts.* On sales of 20 tons up to a carload, the dealer must reduce the price 25¢ per ton. On sales of carload lots dealer must reduce the price 50¢ per ton.

Discounts do not apply to nut and slack or steam coal and modified stoker screenings.

(f) *Treated coals.* If the dealer has paid the supplier 10¢ per ton additional

for oil or chloride treatment at the mine, the dealer may add not more than 10¢ per ton on such coal.

(g) *Delivery zone.* For deliveries beyond the corporate limits of Asheville, North Carolina, and the area lying within fifteen miles of said corporate limits, the dealer may make an additional charge of not more than 10¢ per mile per ton for each mile beyond the limits of such city with a minimum charge of 50¢ for each such delivery, said mileage to be determined by the actual highway mileage from the said city limits to the point of delivery by the most direct highway route.

(h) *Sales tax.* The State sales tax of 3% may be added to the prices established by this order.

(i) *Credit.* No additional charge over the prices provided in this appendix may be made for credit.

This Amendment No. 24 to Order No. G–17 shall become effective July 12, 1944.

(56 Stat. 23, 765; Pub. Law 151, 78th Cong.; E.O. 9250, 7 F.R. 7871 and E.O. 9328, 8 F.R. 4681)

Issued July 7, 1944.

ALEXANDER HARRIS,
Regional Administrator.

[F. R. Doc. 44–10784; Filed, July 19, 1944; 3:12 p. m.]

[Region IV Order G–17 Under RMPR 122, Amdt. 25]

SOLID FUELS IN GOLDSBORO, N. C.

Amendment No. 25 to Order No. G–17 under Revised Maximum Price Regulation No. 122. Solid fuels sold and delivered by dealers. Appendix XX, maximum prices for solid fuels in Goldsboro, North Carolina.

For the reasons set forth in an opinion issued simultaneously herewith and under the authority vested in the Regional Administrator of the Office of Price Administration by § 1340.260 of Revised Maximum Price Regulation No. 122 and by paragraph (e) of Order No. G–17, *It is hereby ordered,* That paragraph (m) of said Order No. G–17 be amended by adding a new subparagraph thereto, designated (m) (20), to read as set forth below:

(20) *Appendix XX: Maximum prices for specified solid fuels in Goldsboro, North Carolina.* The maximum prices for specified solid fuels sold and delivered within the corporate limits of Goldsboro, North Carolina, and the area lying within fifteen miles of said corporate limits by the most direct highway route shall be as follows:

(i) *"Direct delivery or domestic" basis.*

LOW VOLATILE BITUMINOUS COAL FROM DISTRICT NO. 7

Size	Per ton 2,000 lbs.	Per ½ ton 1,000 lbs.	Per ¼ ton 500 lbs.
Egg, top size larger than 3", bottom size no limit in Price Classification A	$11.36	$5.80	$3.09
Stove, or dedusted screenings, top size larger than 1¼" but not exceeding 3", bottom size smaller than ¾" in Price Classification A	10.30	5.28	2.82
Stoker, pea, or dedusted screenings, top size not exceeding ¾", bottom size smaller than ¾" in Price Classification A	$9.20	$4.73	$2.55
Screened or domestic run-of-mine in Price Classification A	8.85	4.55	2.46
Briquettes	11.46	5.85	3.12
Block, lump and egg			
Top price, lump, bottom size larger than 2" but not exceeding 3"; egg, top size larger than 3" but not exceeding 6", bottom size larger than 3" but not exceeding 4", in Price Classification A	11.66	5.96	3.17
Middle price, block or lump, bottom size larger than 3", but not exceeding 5"	10.90	5.58	2.93
Egg, top size larger than 6", bottom size larger than 3", but not exceeding 4"; all double screened coals, top size 5" and larger, bottom size larger than 4" in Price Classifications E through O. Egg from Mine Index No. 439 Star Slope Mine of the Dixport Coal Company			
Low price			
Egg, top size larger than 5", but not exceeding 6", bottom size larger than 2" but not exceeding 3"; top size larger than 6", bottom size 2", and smaller in Price Classifications G through K	10.50	5.38	2.83
Egg, top size larger than 5" but not exceeding 6", bottom size 2" and smaller; top size 3" and larger, but not exceeding 5" in Price Classifications G through L—from Mine Index No. 370, Point Lick #4 Mine of the Hatfield-Campbell Creek Coal Company			
Stoker, top size not exceeding 1¼", bottom size less than 1¼", in Price Classifications B through E, and from Mine Index No. 439, the Star Slope Mine of the Dixport Coal Company	9.85	5.05	2.71
Yard slack from District Nos. 7 and 8			
Yard slack	$3.25	$4.25	$2.31

(ii) *Special sales and services*—(a) *Carry up or down stairs.* Only if the buyer requests such service, the dealer may charge not more than $1.00 per ton for such service.

(b) *Yard sales.* When the buyer picks up coal at the dealer's yard, the dealer must reduce the domestic price 50¢ per ton.

(c) *Sack coal.* The dealer may charge not more than 60¢ per 100 pounds of coal at the yard, plus 15¢ per sack, if the dealer furnishes the sack.

(d) *Quantity discounts.* On sales in carload lots, the dealer must reduce the price $1.50 per ton.

(e) *Treated coals.* If the dealer has paid the supplier 10¢ per ton additional for oil or chloride treatment at the mine, the dealer may add not more than 10¢ per ton on such coal.

(f) *Delivery zone.* For deliveries beyond the corporate limits of Goldsboro, North Carolina, and the area lying within fifteen miles of said corporate limits, the dealer may make an additional charge of not more than 10¢ per mile per ton for each mile beyond the limits of such city with a minimum charge of 50¢ for each such delivery, said mileage to be determined by the actual highway mileage from the said city limits to the point of delivery by the most direct highway route.

(g) *Sales tax.* The State sales tax of 3% may be added to the prices established by this Order.

(h) *Credit.* No additional charge over the prices provided in this appendix may be made for credit.

This Amendment No. 25 to Order No. G–17 shall become effective July 12, 1944.

(56 Stat. 23, 765; Pub. Law 151, 78th Cong.; E.O. 9250, 7 F.R. 7871 and E.O. 9328, 8 F.R. 4681)

Issued July 7, 1944.

ALEXANDER HARRIS,
Regional Administrator.

[F. R. Doc. 44–10785; Filed, July 19, 1944; 3:12 p. m.]

[Region V Order G–4 Under SR 14A]

FLUID MILK IN WILSON, ARK.

Order No. G–4 under § 1499.73a (a) (1) (vii) (d) of Supplementary Regulation No. 14A to the General Maximum Price Regulation. Adjustment of maximum prices for approved fluid milk in the City of Wilson, Arkansas.

For the reasons set forth in the opinion issued simultaneously herewith and under the authority vested in the Regional Administrator, Region V, of the Office of Price Administration by § 1499.73a (a) (1) (vii) (d) of Supplementary Regulation No. 14A and § 1499.75 (a) (9) of Supplementary Regulation No. 15 to the General Maximum Price Regulation: *It is hereby ordered:*

(a) The maximum prices established by § 1499.73a (a) (1) (vii) of Supplementary Regulation No. 14A to the General Maximum Price Regulation for fluid milk in the city of Wilson, Arkansas, are adjusted as follows:

(1) Sellers of milk in determining maximum prices for the sale of approved fluid milk in containers of one gallon or less shall determine such prices as though Wilson, Arkansas, were classified in the Appendix to § 1499.73a (a) (1) (vii) of Supplementary Regulation No. 14A to the General Maximum Price Regulation as being in Area 2a.

(b) This order may be revoked, amended or corrected at any time.

(c) Unless the context otherwise requires, the definitions set forth in § 1499.73a (a) (1) (vii) (b) of Supplementary Regulation No. 14A to the General Maximum Price Regulation shall apply to the terms used herein.

This order shall become effective July 15, 1944.

(56 Stat. 23, 765, 57 Stat. 566, Pub. Law 383, 78th Cong.; E.O. 9250, 7 F.R. 7871 E.O. 9328, 8 F.R. 4681)

Issued at Dallas, Texas, this the 12th day of July 1944

MAX MCCULLOUGH,
Regional Administrator.

[F. R. Doc. 44–10853; Filed, July 20, 1944; 12:51 p. m.]

[Region VI Order G–74 Under SR15, MPR 280 and 329]

FLUID MILK IN PAXTON, ILL.

Order No. G–74 under § 1499.75 (a) (9) of Supplementary Regulation No. 15 to the General Maximum Price Regulation under Maximum Price Regulation No. 280 and under Maximum Price Regulation No. 329. Adjustment of fluid milk prices for Paxton, Illinois.

For the reasons set forth in an opinion issued simultaneously herewith, and under the authority vested in the Regional Administrator of the Office of Price Administration by § 1499.75 (a) (9) of Supplementary Regulation No. 15 to the General Maximum Price Regulation, by § 1351.807 (a) to the Maximum Price Regulation No. 280 and § 1351.408 (a) of Maximum Price Regulation No. 329, it is ordered:

(a) *Maximum producer prices.* The maximum price which distributors may pay to producers for milk for human consumption in fluid form shall be $2.95 per cwt. for 4% milk, plus not more than 5¢ for each 1/10 of a pound of butterfat in excess of 4% and minus not less than 5¢ for each 1/10 of a pound of butterfat below 4%.

(b) *Applicability of producer prices.* Maximum prices established by paragraph (a) of this order shall apply to all purchases of fluid milk from producers for resale for human consumption in fluid form by distributors whose bottling plants are located within the corporate limits of Paxton, Illinois, or who sell within this community 50% or more of the milk sold by them. The maximum price provided in paragraph (a) of this order shall only apply to purchases from producers from whom distributors covered by this order purchased from August 1, 1943 to December 31, 1943, and are not applicable to purchases from producers who did not in that period sell to distributors located in Paxton, Illinois.

(c) *Maximum distributor prices for sales to civilian purchasers.* The maximum price for the sale and delivery of fluid milk at wholesale and retail in Paxton, Illinois, shall be the maximum price determined under the General Maximum Price Regulation, or Maximum Price Regulation No. 280, or the following prices, whichever shall be the higher:

STANDARD BUTTERFAT CONTENT, FLUID MILK

Container size	Wholesale	Retail
Gallon (in bulk)	$0.34	
Gallon	.34	$0.42
½ gallon	.18	.22
Quart	.10½	.12½
Pint	.05½	.06½
½ pint	.03¼	.04

CHOCOLATE MILK

Quart	$0.10½	$0.12½
½ pint	.03¼	.05

BUTTERMILK

Quart	$0.09	$0.11

Where the maximum price set forth is expressed in terms of ½ cent, the price charged for a single unit at retail may be increased to the next even cent. An opportunity must, however, be given to each buyer to purchase two units for which the maximum price will be twice the single unit price. All sales at wholesale and home delivery sales at retail shall be considered multiple unit sales unless separate collections are made for single units when delivered.

(d) *Maximum distributor prices for sales to the Army and Navy.* The maximum price for the sale and delivery of fluid milk to the Army and Navy shall be the price at wholesale computed under paragraph (c) of this order for the particular size and type of container, plus whichever of the following provisions is the higher:

(1) One-half cent per quart or a proportionate amount for a part of a quart.

(2) The actual transportation costs from the seller's plant to the point of delivery at the lowest common carrier rate.

(e) *Applicability of distributor prices.* For the purpose of paragraph (c) of this order, sales and deliveries within the Paxton, Illinois, area shall mean:

(1) All sales made within the city limits of Paxton, Illinois, and all sales at or from an establishment located in Paxton, Illinois.

(2) All sales of fluid milk by any seller at retail at or from an establishment obtaining the major portion of its supply of milk from a seller at wholesale located within Paxton, Illinois.

(f) *Definitions.* (1) Standard butterfat content milk shall mean cow's milk having a butterfat content of not less than 3.2% or the legal minimum established by statute or municipal ordinance and distributed and sold for consumption in fluid form as whole milk.

(2) Sales at wholesale shall include all sales to retail stores, restaurants, schools, hospitals, prisons and other institutions.

(3) Army or Navy means the War Department or the Department of the Navy of the United States, including such Departments' sales stores, commissaries, ships' stores, officers' messes, and stores operated as Army canteens or post exchanges.

(g) *Relation of this order to Office of Price Administration Regulations.* No purchaser shall pay a larger proportion of transportation costs incurred in the delivery or supply of milk from producers than he paid on deliveries during January 1942. Except as modified by this order, the provisions of Maximum Price Regulation No. 280, of Maximum Price Regulation No. 329, and of the General Maximum Price Regulation shall remain in full force and effect and shall not be evaded by any change in business or trade practices in effect during the applicable base period of such regulations.

(h) *Revocability.* This order may be revoked, amended or corrected at any time.

The portion of this order which applies to prices which may be paid to producers has been approved by the Administrator of the War Food Administration.

This order shall be effective July 3, 1944.

(56 Stat. 23,765; Pub. Law 151, 78th Cong.; E.O. 9250, 7 F.R. 7871; E.O. 9328, 8 F.R. 4681.)

Issued this 1st day of July 1944.

RAE E. WALTERS,
Regional Administrator.

[F. R. Doc. 44–10355; Filed, July 20, 1944; 12:52 p. m.]

[Region VII Order G–26 Under RMPR 122, Amdt. 7]

SOLID FUELS IN DENVER REGION

Order No. G–26 under Revised Maximum Price Regulation No. 122. Amendment No. 7. Solid fuels sold and delivered by dealers. Maximum prices for solid fuels when sold by dealers within specified trade areas in Region VII.

Pursuant to the Emergency Price Control Act of 1942, as amended, and §§ 1340.259 (a) and 1340.260 of Revised Maximum Price Regulation No. 122, and for the reasons set forth in the accompanying opinion, this Amendment No. 7 to Order No. G–26 is issued.

1. Paragraph (q) of Order No. G–26 under Revised Maximum Price Regulation No. 122 is hereby amended by adding thereto Appendix XXXVI, to read as follows:

APPENDIX XXXVI—LOWER ARKANSAS VALLEY TRADE AREA

(1) *To what sales this Appendix XXXVI applies.* This Appendix XXXVI applies only to sales made by dealers in the Lower Arkansas Valley Trade Area of the State of Colorado, which means all that area contained within and a distance of five miles beyond the corporate boundaries of the municipalities of La Junta, Las Animas, Lamar, Granada, and Holly, respectively.

(2) *La Junta maximum prices.* If you are a dealer and sell in the Lower Arkansas Valley Trade Area, either f. o. b. your yard or delivered by truck direct from the mine or from your yard in the municipality of La Junta, any one or more of the kinds and sizes of coal named in this Appendix XXXVI, your maximum prices therefor are those set forth in Parts 1 and 2 of the following

TABLE OF MAXIMUM PRICES

Kind and letter designation and size	Part 1 Delivered prices		Part 2 Yard prices per ton
	Per ton	Per ½-ton	
Bituminous coal produced in District 17:			
Sub-district 1, Walsenburg:			
(A1) #1—8" lump	$8.65	$4.60	$8.15
(B1) #2—6" lump	8.60	4.55	8.10
(C1) #2—3" lump	8.45	4.50	7.95
(D1) #4—8" x 3" grate	8.25	4.45	7.85
(E1) #5—6" x 3" grate	8.15	4.35	7.65
(F1) #3—3" x 1½" nut	7.80	3.90	7.30
(G1) #11—1¼" x ¾" pea	6.35	3.45	5.85
(H1) #13—1½" x 0" slack	6.75	3.15	5.25

TABLE OF MAXIMUM PRICES—Continued

Kind and letter designation and size	Part 1 Delivered prices		Part 2 Yard prices per ton
	Per ton	Per ½-ton	
Bituminous coal produced in District 17—Continued.			
Sub-district 2, Canon #1:			
(A2) #1—8" lump	$8.80	$4.65	$8.30
(B2) #2—6" lump	8.75	4.65	8.25
(C2) #3—3" lump	8.70	4.60	8.20
(D2) #4—8" x 3" grate	8.55	4.55	8.05
(E2) #5—6" x 3" grate	8.30	4.40	7.80
(F2) #9—3" x 1½" nut	7.95	4.25	7.45
(G2) #11—1¼" x ⅜" pea	6.55	3.55	6.05
(H2) #13—1½" x 0" slack	5.85	3.20	5.35
Sub-district 3, Canon #2:			
(A3) #1—8" lump	8.15	4.35	7.65
(B3) #2—6" lump	8.05	4.30	7.55
(C3) #3—3" lump	8.05	4.30	7.55
(D3) #4—8" x 3" grate	8.15	4.35	7.65
(E3) #5—6" x 3" grate	7.90	4.20	7.40
(F3) #9—3" x 1½" nut	7.70	4.10	7.20
(G3) #11—1¼" x ⅜" pea	6.35	3.45	5.85
(H3) #13—1½" x 0" slack	5.85	3.20	5.35
Sub-district 6, Aguilar:			
(A6) #1—8" lump	8.10	4.30	7.60
(B6) #2—6" lump	8.00	4.25	7.50
(C6) #3—3" lump	7.90	4.20	7.40
(D6) #4—8" x 3" grate	8.00	4.25	7.50
(E6) #5—6" x 3" grate	7.70	4.10	7.25
(F6) #9—3" x 1½" nut	7.60	4.05	7.10
(G6) #11—1¼" x ⅜" pea			
(H6) #13—1½" x 0" slack	5.85	3.20	5.35
Sub-district 7, Trinidad:			
(A7) #1—8" lump	7.75	4.15	7.25
(B7) #2—6" lump	7.65	4.10	7.40
(C7) #3—3" lump	7.65	4.10	7.40
(D7) #4—8" x 3" grate	7.75	4.15	7.25
(E7) #5—6" x 3" grate	7.05	3.80	6.55
(F7) #9—3" x 1½" nut	7.30	3.90	6.80
(G7) #11—1¼" x ⅜" pea			
(H7) #13—1½" x 0" slack	5.80	3.15	5.30
Sub-district 9, New Mexico:			
(A9) #1—8" lump	7.80	3.90	7.30
(B9) #2—6" lump	7.70	4.10	7.20
(C9) #3—3" lump	7.70	4.10	7.20
(D9) #4—8" x 3" grate	7.80	3.90	7.30
(E9) #5—6" x 3" grate	7.70	4.10	7.20
(F9) #9—3" x 1½" nut	7.60	4.05	7.10
(G9) #11—1¼" x ⅜" pea	6.15	3.35	5.65
(H9) #13—1½" x 0" slack	5.95	3.25	5.45

(3) *Las Animas maximum prices.* If you are a dealer and sell in the Lower Arkansas Valley Trade Area, either f. o. b. your yard or delivered by truck direct from the mine or from your yard in the municipality of Las Animas, any one or more of the kinds and sizes of coal named in this Appendix XXXVI, your maximum prices therefor are the same as those established for La Junta as above set forth in paragraph (2) of this Appendix XXXVI, plus the actual freight differential between La Junta and Las Animas, which is 10¢ per ton on all sizes except Sizes #11 and #13, as to which the freight differential is 15¢ per ton.

(4) *Lamar maximum prices.* If you are a dealer and sell in the Lower Arkansas Valley Trade Area, either f. o. b. your yard or delivered by truck direct from the mine or from your yard in the municipality of Lamar, any one or more of the kinds and sizes of coal named in this Appendix XXXVI, your maximum prices therefor are the same as those established for La Junta as above set forth in paragraph (2) of this Appendix XXXVI, plus the actual freight differential between La Junta and Lamar, which is 20¢ per ton on all sizes except Sizes #11 and #13, as to which the freight differential is 25¢ per ton.

(5) *Granada maximum prices.* If you are a dealer and sell in the Lower Arkansas Valley Trade Area, either f. o. b. your yard or delivered by truck direct from the mine or from your yard in the municipality of Granada, any one or more of the kinds and sizes of coal named in this Appendix XXXVI, your maximum prices therefor are the same as those established for La Junta as above set forth in paragraph (2) of this Appendix XXXVI, plus the actual freight differential between La Junta and Granada, which is 30¢ per ton on all sizes except Sizes #11 and #13, as to which the freight differential is 35¢ per ton.

(6) *Holly maximum prices.* If you are a dealer and sell in the lower Arkansas Valley Trade Area, either f. o. b. your yard or delivered by truck direct from the mine or from your yard in the municipality of Holly, any one or more of the kinds and sizes of coal named in this Appendix XXXVI, your maximum prices therefor are the same as those established for La Junta as above set forth in paragraph (2) of this Appendix XXXVI, plus the actual freight differential between La Junta and Holly, which is 40¢ per ton on all sizes except Sizes #11 and #13, as to which the freight differential is 45¢ per ton.

(7) *Letter designation.* For record-keeping purposes, the letter designation set forth in the Table of Maximum Prices for La Junta may be used by all dealers in the Lower Arkansas Valley Trade Area to show the kind of solid fuel sold.

(8) *Special service charges.* If, in connection with the sale and delivery of coal made by you at any place in the Lower Arkansas Valley Trade Area, you, at the request of the purchaser, perform any one or more of the special services set forth below, the maximum prices which you may charge for such services are as follows:

	Per ton	Per ½-ton
"Wheel-in"	$0.50	$0.35
"Pull-back or Trimming"	.25	.15
"Carrying up or down stairs"	1.00	.50
Oil or chemical treatment	.25	.15

2. This Amendment No. 7 shall become effective on the 12th day of July 1944.

(56 Stat. 23, 765; 57 Stat. 566; Pub. Law 383, 78th Cong.; E.O. 9250, 7 F.R. 7871, and E.O. 9328, 8 F.R. 4681)

Issued this 12th day of July 1944.

RICHARD Y. BATTERTON,
Regional Administrator.

[F. R. Doc. 44-10856; Filed, July 20, 1944; 12:51 p. m.]

[Region VII Order G-26 Under RMPR 122, Amdt. 8]

SOLID FUELS IN DENVER REGION

Order No. G-26 under Revised Maximum Price Regulation No. 122. Amendment No. 8, solid fuels sold and delivered by dealers. Maximum prices for solid fuels when sold by dealers within specified trade areas in Region VII.

Pursuant to the Emergency Price Control Act of 1942, as amended, the Stabilization Act of 1942, as amended, and §§ 1340.259 (a) and 1340.260 of Revised Maximum Price Regulation No. 122, and for the reasons set forth in the accompanying opinion, this Amendment No. 8 to Order No. G-26 is issued.

1. Paragraph (q) of Order No. G-26 under Revised Maximum Price Regulation No. 122 is hereby amended by adding thereto Appendix XXXVII, to read as follows:

APPENDIX XXXVII—MONTEZUMA TRADE AREA

(1) *To what sales this Appendix XXXVII applies.* This Appendix XXXVII applies only to sales made in the Montezuma Trade Area of the State of Colorado, which means the communities of Cortez, Dolores, Lewis, Yellow Jacket, Pleasant View, Cahone, and Dove Creek, each of which said communities comprises all that area contained within a radius of five miles from the business center of the town.

(2) *Cortez maximum prices.* If you are a dealer and sell in the community of Cortez in the Montezuma Trade Area and make delivery by truck direct from the mine or from your yard, wherever located, any one or more of the kinds and sizes of coal named in this Appendix XXXVII, your maximum prices therefor are those set forth in the following

TABLE OF MAXIMUM PRICES

Kind and letter designation and size	Delivered prices per ton
Bituminous coal produced in District 17—Subdistricts 19 and 20, Durango-Cortez #1 and #2:	
(A) #3—3" lump	$7.45
(B) #5—1½" lump	7.45
(C) #9—3" x 1¼" nut	7.45
(D) #11—1¼" x ⅜" pea	6.35
(E) #13—1½" x 0" slack	5.80
Bituminous coal produced in District 18—Subdistricts 8 and 10, San Juan and Hogback:	
(A) #3—1½" and up lump	8.50
(B) #8—1½" x 1" nut	7.25
(C) #11—1½" x 0" slack	6.25

(3) *Dolores maximum prices.* If you are a dealer and sell in the Dolores community of the Montezuma Trade Area and make delivery by truck direct from the mine or from your yard, wherever located, any one or more of the kinds and sizes of coal named in this Appendix XXXVII and produced in District 17, your maximum prices therefor are the same as those established for the community of Cortez as above set forth in paragraph (2); and as to coals produced in District 18, your maximum prices therefor are the same as those established for the community of Cortez as set forth in paragraph (2), plus 25¢ per ton, regardless of the kind or size of the coal sold.

(4) *Lewis maximum prices.* If you are a dealer and sell in the Lewis community of the Montezuma Trade Area and make delivery by truck direct from the mine or from your yard, wherever located, any one or more of the kinds and sizes of coal named in this Appendix XXXVII, your maximum prices therefor are the same as those established for the community of Cortez as above set forth in paragraph (2), plus 20¢ per ton, regardless of the kind or size of the coal sold.

(5) *Yellow Jacket maximum prices.* If you are a dealer and sell in the Yellow Jacket community of the Montezuma Trade Area and make delivery by truck direct from the mine or from your yard, wherever located, any one or more of the kind and sizes of coal named in this Appendix XXXVII, your maximum prices therefor are the same as those established for the community of Cortez as above set forth in paragraph (2), plus 25¢ per ton, regardless of the kind or size of the coal sold.

(6) *Pleasant View maximum prices.* If you are a dealer and sell in the Pleasant View community of the Montezuma Trade Area and make delivery by truck direct from the mine or from your yard, wherever located, any one or more of the kinds and sizes of coal named in this Appendix XXXVII, your maximum prices therefor are the same as those established for the community of Cortez as above set forth in paragraph (2), plus 50¢ per ton, regardless of the kind or size of the coal sold.

(7) *Cahone maximum prices.* If you are a dealer and sell in the Cahone community of the Montezuma Trade Area and make delivery by truck direct from the mine or from your yard, wherever located, any one or more of the kinds and sizes of coal named in this Appendix XXXVII, your maximum prices

therefor are the same as those established for the community of Cortez as above set forth in paragraph (2), plus 75¢ per ton, regardless of the kind or size of the coal sold.

(8) *Dove Creek maximum prices.* If you are a dealer and sell in the Dove Creek community of the Montezuma Trade Area and make delivery by truck direct from the mine or from your yard, wherever located, any one or more of the kinds and sizes of coal named in this Appendix XXXVII, your maximum prices therefor are the same as those established for the community of Cortez as above set forth in paragraph (2), plus $1.00 per ton, regardless of the kind or size of the coal sold.

(9) *Letter designation.* For record-keeping purposes, the letter designation set forth in the Table of Maximum Prices for Cortez may be used by all dealers in the Montezuma Trade Area to show the kind of solid fuel sold.

(10) *Special service charges.* If, in connection with the sale and delivery of coal made by you at any place in the Montezuma Trade Area, you, at the request of the purchaser, perform any one or more of the special services set forth below, the maximum prices which you may charge for such services are as follows:

	Per ton
"Wheel-in"	$0.50
"Pull-back"	.25
"Carrying up or down stairs"	1.00
Oil or chemical treatment	.25

2. This Amendment No. 8 shall become effective on the 12th day of July 1944.

(56 Stat. 23, 765; 57 Stat. 566; Pub. Law 383, 78th Cong.; E.O. 9250, 7 F.R. 7871, and E.O. 9328, 8 F.R. 4681)

Issued this 12th day of July 1944.

RICHARD Y. BATTERTON,
Regional Administrator.

[F. R. Doc. 44-10857; Filed, July 20, 1944; 12:51 a. m.]

[Region VI Order G-76 Under SR 15 and MPR 280]

FLUID MILK FOR TAYLORVILLE, ILL.

Order No. G-76 under § 1499.75 (a) (9) of Supplementary Regulation No. 15 to the General Maximum Price Regulation and under Maximum Price Regulation No. 280. Adjustment of fluid milk prices for Taylorville, Illinois.

For the reasons set forth in an opinion issued simultaneously herewith, and under the authority vested in the Regional Administrator of the Office of Price Administration by § 1499.75 (a) (9) of Supplementary Regulation No. 15 to the General Maximum Price Regulation, and by § 1351.807 (a) to the Maximum Price Regulation No. 280, it is ordered:

(a) *Maximum distributor prices for sales to civilian purchasers.* The maximum price for the sale and delivery of standard content butterfat fluid milk at wholesale and retail in Taylorville, Illinois, shall be the maximum price determined under the General Maximum Price Regulation, or Maximum Price Regulation No. 280, or the following prices, whichever shall be the higher:

Container size	Wholesale	Retail
Gallon (in bulk)	$0.43	
Gallon	.43	$0.52
½ gallon	.21½	.26
Quart	.11	.13
Pint	.06	.07
½ pint	.03½	.04

(b) *Maximum distributor prices for sales to the Army and Navy.* The maximum price for the sale and delivery of fluid milk to the Army and Navy shall be the price at wholesale computed under paragraph (a) of this order for the particular size and type of container, plus whichever of the following provisions is the higher:

(1) One-half cent per quart or a proportionate amount for a part of a quart.

(2) The actual transportation costs from the seller's plant to the point of delivery at the lowest common carrier rate.

(c) *Applicability of distributor prices.* For the purpose of paragraph (a) of this order, sales and deliveries within the Taylorville, Illinois, area shall mean:

(1) All sales made within the city limits of Taylorville, Illinois, and all sales at or from an establishment located in Taylorville, Illinois.

(2) All sales of fluid milk by any seller at retail at or from an establishment obtaining the major portion of its supply of milk from a seller at wholesale located within Taylorville, Illinois.

(d) *Definitions.* (1) Standard butterfat content milk shall mean cow's milk having a butterfat content of not less than 3.2% or the legal minimum established by statute or municipal ordinance and distributed and sold for consumption in fluid form as whole milk.

(2) Sales at wholesale shall include all sales to retail stores, restaurants, schools, hospitals, prisons and other institutions.

(3) Army or Navy means the War Department or the Department of the Navy of the United States, including such Departments' sales stores, commissaries, ships' stores, officers' messes, and stores operated as Army canteens or post exchanges.

(e) *Relation of this order to Office of Price Administration regulations.* Except as modified by this order, the provisions of Maximum Price Regulation No. 280 and of the General Maximum Price Regulation shall remain in full force and effect and shall not be evaded by any change in business or trade practices in effect during the applicable base period of such regulations.

(f) *Revocability.* This order may be revoked, amended or corrected at any time.

This order shall be effective July 3, 1944.

(56 Stat. 23, 765; Pub. Law 151, 78th Cong.; E.O. 9250, 7 F.R. 7871; E.O. 9328, 8 F.R. 4681)

Issued this 30th day of June 1944.

RAE E. WALTERS,
Regional Administrator.

[F. R. Doc. 44-10854; Filed, July 20, 1944; 12:51 p. m.]

LIST OF COMMUNITY CEILING PRICE ORDERS

The following orders under Rev. General Order 51 were filed with the Division of the Federal Register on July 19, 1944.

REGION II

Altoona Order 12, Amendment 1, covering community food prices in certain areas in the Altoona District, filed 3:44 p. m.

REGION III

Grand Rapids Rev. Order 5, covering dry groceries and perishables in the Grand Rapids, Mich. District, filed 3:46 p. m.

Lexington Order 12, Amendment 11, covering certain food items in designated counties of Kentucky, filed 3:44 p. m.

Saginaw Order 2-F, Amendment 26, covering fresh fruits and vegetables in designated counties in Michigan, filed 3:44 p. m.

Saginaw Order 2-F, Amendment 27, covering fresh fruits and vegetables in designated counties in Michigan, filed 3:44 p. m.

Saginaw Order 20, Amendment 2, covering community food prices in the Saginaw District, filed 3:45 p. m.

REGION V

Houston Order G-14, Amendment 1, covering poultry in certain areas in Texas, filed 3:37 p. m.

Houston Order G-15, Amendment 1, covering poultry in certain areas in Texas, filed 3:37 p. m.

Wichita Order G-19, Amendment 2, covering dry groceries and perishables in the Wichita, Kansas District, filed 3:43 p. m.

Wichita Order G-20, Amendment 1, covering dry groceries and perishables in the Wichita, Kansas District, filed 3:43 p. m.

Wichita Order G-21, Amendment 1, covering dry groceries and perishables in the Wichita, Kansas District, filed 3:42 p. m.

REGION VII

New Mexico Order 1-W, Amendment 3, covering community food prices in Albuquerque, filed 3:41 p. m.

New Mexico Order 12, Amendment 6, covering community food prices in certain areas in New Mexico, filed 3:42 p. m.

New Mexico Order 14, Amendment 6, covering community food prices in certain areas in New Mexico, filed 3:41 p. m.

New Mexico Order 16, Amendment 6, covering community food prices in Albuquerque, filed 3:40 p. m.

REGION VIII

Nevada Revised Order 2-W, covering dry groceries and perishables in Las Vegas, Nevada, filed 3:36 p. m.

San Francisco Order 1-F, Amendment 23, covering fresh fruits and vegetables in named areas in California, filed 3:38 p. m.

San Francisco Order 2-F, Amendment 16, covering fresh fruits and vegetables in San Jose, Santa Clara, Mayfair, & Burbank, filed 3:39 p. m.

San Francisco Order 3-F, Amendment 15, covering fresh fruits and vegetables in certain areas in the San Francisco District, filed 3:39 p. m.

San Francisco Order 4-F, Amendment 14, covering fresh fruits and vegetables in certain areas in the San Francisco District, filed 3:39 p. m.

San Francisco Order 5-F, Amendment 13, covering fresh fruits and vegetables in certain areas in the San Francisco District, filed 3:40 p. m.

San Francisco Order 6-F, Amendment 9, covering fresh fruits and vegetables in certain areas in the San Francisco District, filed 3:40 p. m.

San Francisco Order G-14, Amendment 1, covering poultry items in the San Francisco District, filed 3:38 p. m.

Copies of any of these orders may be obtained from the OPA Office in the designated city.

ERVIN H. POLLACK,
Secretary.

[F. R. Doc. 44-10366; Filed, July 20, 1944; 5:04 p. m.]

SECURITIES AND EXCHANGE COMMISSION.

[File No. 70-917]

NEW ORLEANS PUBLIC SERVICE INC., AND ELECTRIC POWER & LIGHT CORP.

ORDER GRANTING APPLICATION AND PERMITTING DECLARATION TO BECOME EFFECTIVE

At a regular session of the Securities and Exchange Commission, held at its office in the City of Philadelphia, Pennsylvania, on the 18th day of July, A. D., 1944.

Electric Power & Light Corporation, a registered holding company, and its subsidiary New Orleans Public Service Inc., a public utility company, having filed a joint application and declaration with amendments thereto, pursuant to sections 6 (b), 12 (c) and 12 (d) of the Public Utility Holding Company Act of 1935, with respect to the exemption from the provisions of sections 6 (a) and 7 of said act of the issue and sale, in accordance with Rule U-50 promulgated under said Act, by New Orleans Public Service Inc. of $34,500,000 principal amount of First Mortgage Bonds and 77,798 shares of $100 par value Cumulative Preferred Stock; and with respect to the use of the proceeds of the sale of said preferred stock for the redemption of New Orleans Public Service Inc. presently outstanding preferred stock, including 9,806 shares thereof held by Electric Power & Light Corporation; and

New Orleans Public Service Inc. having requested that the ten-day period for inviting bids, as provided by Rule U-50 (b), be shortened to a period of not less than six days; and

A public hearing having been held after appropriate notice and the Commission having considered the record and having made and filed its findings and opinion herein:

It is ordered, That, said application and declaration, as amended, be and the same hereby is granted and permitted to become effective, except, however, as to the prices to be paid for said bonds and preferred stock, the redemption prices thereof, the interest and dividend rates thereon, respectively, the underwriters' spreads and their allocation, and all legal fees to be paid in connection with the proposed transactions, as to which matters jurisdiction be and the same hereby is reserved.

It is further ordered, That the ten-day period for inviting bids, as provided by Rule U-50 (b), be and the same hereby is shortened to a period of not less than six days.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F. R. Doc. 44-10870; Filed, July 21, 1944; 9:32 a. m.]

FEDERAL REGISTER

VOLUME 9 NUMBER 146

Washington, Saturday, July 22, 1944

Regulations

TITLE 10—ARMY: WAR DEPARTMENT

Chapter VIII—Procurement and Disposal of Equipment and Supplies

WAR DEPARTMENT PROCUREMENT REGULATIONS

The following regulations in Parts 801 to 816 of this chapter comprise the complete War Department Procurement Regulations, 5 September 1942, as amended by changes issued subsequent to that date, including change 36 dated 7 June 1944, and change 37 dated 29 June 1944.

[SEAL] J. A. ULIO,
Major General,
The Adjutant General.

NOTE: In order to conform the Procurement Regulations to the numbering system used in the Code of Federal Regulations, the following changes have been made:

(1) Each procurement regulation has been assigned a part number in Chapter VIII of this title, but the last one or two digits in the part number correspond to the regulation number. Thus Procurement Regulation 1 appears as Part 801, Procurement Regulation 2 appears as Part 802, etc.

(2) Sections in the original regulations have been treated as subparts. Thus Section I of any regulation becomes Subpart A and Section II becomes Subpart B, etc. Paragraphs in the original regulations become sections, with the number to the right of the decimal point corresponding to the original paragraph number, except that paragraphs containing a decimal point appear as "a", "b", "c", etc., within the section.

Part
801 General instructions.
802 General purchase policies.
803 Contracts.
804 Bonds and insurance.
805 Foreign purchases.
806 Interbranch and interdepartmental purchases.
807 Disposition of surplus and unserviceable property.
808 Federal, States and local taxes.
809 Labor.
810 Plant facilities expansions.
811 Miscellaneous purchase instructions.
812 Renegotiation and price adjustment.
813 Forms and contracts.
814 Requisitioning of personal property.
815 Termination of contracts for the convenience of the Government.
816 Priorities.

AUTHORITY: Parts 801 to 816, inclusive, issued under sec. 5a, National Defence Act, as amended, 41 Stat. 764; 54 Stat. 1225; 10 U.S.C. 1193–1195, and the First War Powers Act 1941, 55 Stat. 838; 50 U.S.C. 601–622.

[Procurement Reg. 1]

PART 801—GENERAL INSTRUCTIONS

SUBPART A—INTRODUCTION

Sec.
801.101 Publication of procurement regulations.
801.102 Rescission of Army Regulations.
801.103 Rescission of Procurement Circulars.
801.103a Rescission of "T" series of procurement regulations.
801.104 Rescission of other instructions and directives.

SUBPART B—DISTRIBUTION OF PROCUREMENT REGULATIONS

801.106 Distribution of procurement regulations.

SUBPART C—APPLICABILITY OF REGULATIONS

801.107 Authority with respect to procurement.
801.108 Applicability of these procurement regulations.

SUBPART D—MISCELLANEOUS PROHIBITIONS

801.109 Prohibition against voluntary service.
801.110 Prohibition against use of troop labor.
801.111 Conflicts between outside interests or officers or civilian employees and their official duties.

SUBPART E—PROPOSALS FOR LEGISLATIVE ACTION AND FOR EXECUTIVE ORDERS AFFECTING PROCUREMENT

801.113 General.
801.114 Legislation includes Executive orders.
801.115 Legislative Division, Office of the Under Secretary of War.
801.116 Proposals for legislative action affecting procurement.
801.117 Action of Legislative Division.
801.118 Congressional hearings.
801.119 Reports on legislative proposals.

SUBPART A—INTRODUCTION

§ 801.101 *Publication of procurement regulation.* During the past few years it has been the practice of the War Department to publish procurement regulations in several different publications, viz: Army Regulations, War Department Procurement Circulars, etc. It has also been the practice to include in such regulations precise details of how purchases were to be effected. For reasons too obvious to mention, neither practice can be justifiably continued in view of the present war emergency. Accordingly, a new numbered series of procurement regulations has been prepared to replace all other procurement regulations outstanding as of this date. As changes in or additions to this new series of regulations become necessary, the same will be effected by the publication of corrected or supplemental sheets to the appropriate regulation.

§ 801.102 *Rescission of Army Regulations.* The following Army Regulations have been rescinded:

AR 5-5
AR 5-50
AR 5-100
AR 5-140
AR 5-160
AR 5-200
AR 5-220
AR 5-240
AR 5-260
AR 5-300
AR 5-320
AR 5-340
AR 5-360

§ 801.103 *Rescission of Procurement Circulars.* Effective July 1, 1942, all War Department Procurement Circulars which have not been rescinded heretofore are hereby rescinded.

§ 801.103a *Rescission of "T" Series of procurement regulations.* The temporary series of procurement regulations with numbers followed by "T", heretofore issued, is hereby rescinded.

§ 801.104 *Rescission of other instructions and directives.* All prior instructions and directives which are inconsistent with instructions contained in

these procurement regulations, as originally issued under date of July 1, 1942, or as the same shall be amended from time to time, shall be deemed rescinded as of July 1, 1942 or as of the date of any such amendment, as the case may be.

SUBPART B—DISTRIBUTION OF PROCUREMENT REGULATIONS

§ 801.106 *Distribution of procurement regulations.* All communications pertaining to the distribution of procurement regulations including:

(1) Requests for complete sets;

(2) Requests for increase or decrease in the number of copies of revisions to be furnished;

(3) Requests for copies of particular revisions;

(4) Requests for missing pages or tab cards;

(5) Requests for change of address to which revisions are to be forwarded;

should be sent to: Legal Branch, Office, Director of Matériel, Headquarters, Army Service Forces, Room 5C 659 The Pentagon, Washington 25, D. C.

Any request which involves any increase or decrease in the number of copies of revisions to be furnished should specify not only the new number of copies desired but also the number of copies currently being furnished. In addition, any such request and any request for a change of address should specify the mailing address (as appearing on the envelope or package in which revisions are received) to which revisions currently are being forwarded.

Communications (including requests mentioned in this section) pertaining to the distribution of procurement regulations may be by letter or memorandum. Such requests need not be in the form of formal requisitions.

SUBPART C—APPLICABILITY OF REGULATIONS

§ 801.107 *Authority with respect to procurement*—(a) *Basic statute.* Sec. 897 of the Military Laws (Supp. II, 1942) provides as follows:

Secretary of War, Under Secretary of War, and Assistant Secretary of War; duties in connection with procurement. Hereafter the Secretary of War, in addition to other duties imposed upon him by law, shall be charged with the supervision of the procurement of all military supplies and other business of the War Department pertaining thereto and the assurance of adequate provision for the mobilization of matériel and industrial organizations essential to wartime needs, and he may assign to the Under Secretary of War and The Assistant Secretary of War such duties in connection therewith as he may deem proper. * * * Sec. 5a, added to act of June 3, 1916, by sec. 5, act of June 4, 1920 (41 Stat. 761); sec. 2, act of Dec. 16, 1940 (54 Stat. 1224); 10 U.S.C. 1193.

(b) *Delegations from the Secretary of War to the Under Secretary of War.* (1) On April 21, 1941, the Secretary of War issued the following order:

Pursuant to authority contained in the Act of December 16, 1940 (Public No. 891—76th Congress):

a. The duties and responsibilities placed on the Secretary of War by Section 5a of the National Defense Act, as amended, are hereby assigned to the Under Secretary of War.

b. Chiefs of branches of the Army will report directly to the Under Secretary of War regarding all matters of procurement.

c. The Under Secretary of War will continue to perform the duties and discharge the responsibilities placed on the Assistant Secretary of War by Army Regulations No. 5–5, July 16, 1932, Orders E. War Department, November 28, 1933, and all other existing orders or instructions.

d. The office heretofore designated as the Office of The Assistant Secretary of War will hereafter be designated the Office of the Under Secretary of War. All officers and civilian employees now detailed to the Office of the Under Secretary of War or the Office of The Assistant Secretary of War from the branches engaged in procurement, and all other officers and employees now on duty in the Office of the Under Secretary of War or in the Office of The Assistant Secretary of War, shall continue on such detail and duty in the Office of the Under Secretary of War.

e. During the absence or disability of the Under Secretary of War, or in the event of a temporary vacancy in that office, the duties and responsibilities of the Under Secretary of War shall be performed and discharged by The Assistant Secretary of War, and in the case of the absence or disability of both the Under Secretary of War and The Assistant Secretary of War, or in the event of a temporary vacancy in both of said offices, the duties and responsibilities of the Under Secretary of War shall be performed and discharged by the Assistant Secretary of War for Air.

(2) Under date of December 30, 1941, the Secretary of War issued the following memorandum:

MEMORANDUM for the Under Secretary of War.

Subject: Delegation of Authority under Executive Order No. 9001.

The powers delegated to the War Department by Executive Order No. 9001, dated December 27, 1941, to enter into contracts and into amendments or modifications of contracts heretofore or hereafter made, and to make advance, progress, and other payments thereon, without regard to the provisions of law relating to the making, performance, amendment, or modification of contracts are hereby further delegated to the Under Secretary of War. He may, pursuant to Executive Order No. 9001, exercise such powers either personally or through such officer or officers or civilian officials of the War Department as he may direct, and he may confer upon such officers or civilian officials the power to make further delegations of such powers within the War Department.

HENRY L. STIMSON,
Secretary of War.

(3) War Department Circular 59, issued under date of March 2, 1942, provides in part as follows:

1. The President has approved a reorganization of the War Department and the Army, *effective March 9, 1942.* Pending the issuance of detailed instructions and changes in regulation, a summary description of the new organization is furnished for the information and guidance of all concerned.

* * * * *

e. Supply arms and services and War Department offices and agencies will come under the direct command of the Commanding General, Services of Supply as indicated below:

(1) Those parts of the office of the Under Secretary of War engaged in functions of procurement and industrial mobilization.

* * * * *

b. The mission of the Army Air Forces is to procure and maintain equipment peculiar to the Army Air Forces, and to provide air force units properly organized, trained, and equipped for combat operations. Procurement and related functions will be executed under the direction of the Under Secretary of War.

* * * * *

7. Services of Supply. a. The duties and responsibilities placed on the Secretary of War by Section 5a of the National Defense Act, as amended, shall continue to be performed by the Under Secretary of War. The Director of Production shall continue to perform his present services reporting direct to the Under Secretary of War.

b. The Commanding General, Services of Supply, shall, on procurement and related matters, act under the direction of the Under Secretary of War and shall, on military matters, report to the Chief of Staff. The Commanding General, Services of Supply, is charged in general with the functions, responsibilities, and authorities of command authorized by law, Army Regulations, and custom over individuals and units assigned to the Services of Supply.

c. The mission of the Services of Supply is to provide services and supplies to meet military requirements except those peculiar to the Army Air Forces. Procurement and related functions will be executed under the direction of the Under Secretary of War.

d. The Services of Supply consolidates under the jurisdiction of the Commanding General, Services of Supply, the supply arms and services, certain administrative services of the War Department, certain parts of the office of the Under Secretary of War, certain boards and committees, general depots, ports of embarkation and auxiliaries, and corps areas, with such amalgamation, reallocation of duties, and reorganization as is necessary or advisable.

e. The following duties are specifically assigned to the Services of Supply:

(1) The direction and supervision of engineering research, development, procurement, storage, and distribution of supplies and equipment, except those peculiar to the Army Air Forces.

(2) The establishment of purchasing and contractual policies and procedure.

(3) Transportation and traffic control.

(4) Construction for the Army.

(5) The consolidation of programs and requirements of the Army with the programs and requirements received from Defense Aid and the Navy and procured by the Army.

(c) *Responsibilities of the Under Secretary of War fixed by AR 5–5.* Although Army Regulation 5–5 is rescinded, the portion thereof relating to the responsibilities of The Assistant Secretary of War (now the Under Secretary of War) is incorporated by reference in paragraph c. of the above quoted order of the Secretary of War, dated April 21, 1941. The portion of said regulation which is thus continued in force reads as follows:

* * * * *

b. Definition. Under section 5a, national defense act, as amended, the Assistant Secretary of War, under the direction of the Secretary of War, is charged, among other duties, with the supervision of all administrative and operative functions and installations of the Military Establishment concerned in the acquisition or production of military supplies. The types of matériel desired having been specified by the proper agencies, the responsibilities of the Assistant Secretary of War, under the statute, begin with the necessary preliminary and preparatory measures for the procurement or production of such matériel, and end with its delivery to the proper supply arms and services for issue.

c. Supervision over procurement includes preparation of plans and policies and supervision of activities concerning—

(1) Research and development of substitutes for critical and strategic materials and of materials, methods or processes, and facilities for manufacturing purposes.

(2) The procurement of materials and facilities for manufacturing purposes.

(3) Preparation of United States Army manufacturing specifications and the commercial standardization activities of the supply arms and services. See AR 850-25.

(4) Procurement of all military supplies by purchase, production, or other means, whether obtained for experimental, service test, or issue purposes; inspection, test, acceptance, and storage of supplies incident to procurement; the procurement of real estate and the construction, operation, maintenance, repair, and inspection of all establishments and facilities for the foregoing purposes.

(5) Procurement of supplies for other Government departments or for foreign governments at their request.

(6) The acquisition and use of patent rights by the War Department and the Army.

(7) The transfer or exchange of military supplies in conformity with approved policies.

(8) The renovation of matériel on a production basis at an establishment functioning under the direct control of a chief of a supply arm or service in accordance with approved policies and projects.

(9) The collection of information and compilation of data pertaining to sources of supply.

(10) The assurance of adequate and timely provisions for the mobilization of the matériel and industrial organizations essential to war-time needs, including arrangements in the supply arms and services and arrangements with the agencies outside the War Department.

(11) The Army Industrial College, Washington, D. C.

(12) Instruction in business administration at civilian institutions.

(13) Fiscal matters pertinent to procurement in accordance with instructions contained in paragraph 1*b* (2) and (4) of orders E, War Department, October 29, 1925.

(14) Legislation relating to procurement.

(15) Civilian personnel engaged on procurement duties.

(16) Any other matters pertaining solely to the business activities of the War Department in the procurement of military supplies. The determining factor in all cases will be whether the aspect of the particular activity concerned in the given case is incident to *procurement*. If it is, the statute places it under the supervision of the Assistant Secretary of War.

d. The Assistant Secretary of War will represent the War Department—

(1) On all interdepartmental boards for the standardization of—

(*a*) Specifications.

(*b*) Procurement procedure.

(2) On the army and Navy Munitions Board.

(3) In dealing with any interdepartmental or superdepartmental agency that may be created in connection with the allocation of matériel or industrial facilities to various uses.

(4) In arranging necessary contacts with other standardization bodies such as the American Engineering Standards Committee and the Division of Simplified Practice, Department of Commerce.

(5) On the Patents and Design Board. Sec. 10 (r), act July 2, 1926. (44 Stat. 788; U.S.C. 10:310 (r); sec. 2041, M. L., 1929).

(6) On the Advisory Air Coordination Committee.

(7) In dealing with any interdepartmental or superdepartmental agency that may be created in connection with aeronautical matters.

e. Chiefs of supply arms and services will report directly to and will correspond directly with the Assistant Secretary of War on all matters covered above.

2. *Delegated duties.* The following duties are delegated to the Assistant Secretary of War and are classified as follows:

a. Military.

(1) (*a*) Matters pertaining to the Militia Bureau and the National Guard.

(*b*) Matters pertaining to the Officers' Reserve Corps and the Organized Reserves.

(*c*) Clemency cases in mitigation or remission of sentence by courts-martial.

(2) Correspondence on the matters in (1) above will follow the usual military channels.

b. Nonmilitary. (1) (*a*) The sale or disposal of surplus supplies, equipment, plants, land, or other facilities.

(*b*) Claims, foreign or domestic, by or against the War Department, including those resulting from the operation of aircraft.

(*c*) The purchase and sale of real estate; the lease of real estate for the use of the War Department; the granting of leases or licenses to individuals, corporations, or organizations for the temporary use of land, buildings, or other property under War Department control; and easements or rights of way across military reservations, in accordance with approved policies.

(*d*) The activities relating to the National Board for the Promotion of Rifle Practice and to civilian marksmanship.

(*e*) Approval of expenditures from funds allotted, and of public vouchers for expenditures by the disbursing clerk of the War Department; approval of the program of expenditures by the National Board for the Promotion of Rifle Practice; routine expenditures from the appropriation "Contingencies of the Army"; and expenditures from "Contingencies, Military Information Division," for extraordinary expenses of military attachés and observers abroad.

(*f*) Matters relating to national military parks and national monuments.

(*g*) Matters relating to national cemeteries in the United States and abroad.

(*h*) Authorization of advertising.

(*i*) Regulations for burial expenses of deceased military personnel [AR 30-1830].

(*j*) The use of patent rights by the War Department and the Army.

(*k*) Bridge permits and extensions of time for completion of bridges.

(*l*) Disposition of engineer property pertaining to rivers and harbors.

(*m*) Permits for laying submarine cable.

(2) Correspondence on the matters in (1) above will be direct between the office of the Assistant Secretary of War and the agency or office concerned unless otherwise directed.

(d) *Orders, directives, regulations, and instructions relating to procurement policy, organization or procedure.* Under date of 16 September 1943, the Under Secretary of War addressed the following memorandum to the Commanding General, Army Air Forces and the Commanding General, Army Service Forces:

MEMORANDUM for: The Commanding General, Army Air Forces; The Commanding General, Army Service Forces.

1. Until otherwise directed, existing orders, directives, regulations and instructions with reference to procurement policy, organization or procedure, which have heretofore been issued by the Under Secretary of War, or by The Commanding General, Army Service Forces (formerly Services of Supply), or by higher authority, are applicable to the Army Air Forces as well as the Army Service Forces, unless otherwise specifically indicated.

2. Uniformity of policies and procedures in procurement and related matters will be accomplished in so far as practicable. To achieve this objective the following procedure is prescribed:

a. Prior to their issuance, important orders, directives, regulations or instructions affecting major policies on procurement or related matters will be presented to the Under Secretary of War for his approval.

b. All other orders, directives, regulations or instructions to carry out approved policies will be processed and issued by the Commanding General, Army Service Forces, without reference to the Under Secretary of War.

c. Orders, directives, regulations and instructions indicated in paragraphs a. and b. above will be issued by the Commanding General, Army Service Forces. They will be applicable to the Army Air Forces unless otherwise specifically indicated. Where so applicable, they shall, prior to their issuance, be cleared in each case with the Commanding General, Army Air Forces, through an Army Air Forces Liaison Officer designated by him. The Director, Purchases Division, Army Service Forces, will be responsible for referring such orders, directives, regulations and instructions to the Army Air Forces Liaison Officer for clearance. If the Army Air Forces disagree with the proposal in so far as it would be applicable to them, the matter will be submitted to the Under Secretary of War for decision.

d. The Commanding General, Army Service Forces, will furnish the Commanding General, Army Air Forces, with such number of copies of said orders, directives, regulations and instructions as the latter desires for redistribution to agencies under his jurisdiction.

3. This memorandum will supersede my communication dated 9 April 1942 to The Commanding General, Matériel Command, Army Air Forces and The Commanding General, Services of Supply, on the same subject. [The superceded memorandum was formerly set forth in this section].

ROBERT P. PATTERSON,
Under Secretary of War.

(e) *Delegations from the Under Secretary of War*—(1) *To the Commanding General, Army Service Forces.* Under date of September 15, 1942, the following memorandum was issued by the Under Secretary of War:

MEMORANDUM for the Commanding General, Services of Supply.

Subject: Delegation of Authority.

1. In confirmation of and supplementing the memorandum of the undersigned to the Commanding General, Services of Supply dated June 23, 1942 on the above subject, authority is hereby delegated to the Commanding General, Services of Supply, to act for the Secretary of War or the Under Secretary of War in clearing, approving, and taking other action in respect to contracts, change orders, supplemental agreements, advance payments, awards, letters of intent, letter contracts, letter purchase orders, leases, amendments of contracts, and other contractual instruments; to make, authorize and approve sales or contracts for the sale of equipment, supplies and material; to prescribe and modify regulations in respect of procurement; and to approve new War Department contract forms and deviations from approved forms of contracts, including all authority heretofore delegated to the undersigned by the Secretary of War pursuant to Public Law 354, 77th Congress and Executive Order 9001.,

2. Without any limitation of the powers and authority hereinbefore granted, there is hereby vested in the Commanding General, Services of Supply, pursuant to and subject to the provisions of Title II of the First War Powers Act (Public Law 354, 77th Congress) and Executive Order 9001 the authority to take the following action:

a. He may enter into, amend or modify contracts, may make purchases, may place orders, and may make advance progress and other payments on such contracts, purchases and orders without regard to the provisions of law relating to the making, performance, amendment or modification of contracts.

b. The contracts hereby authorized to be made include agreements of all kinds (whether in the form of letters of intent, purchase orders, or otherwise) for all types and kinds of things and services necessary, appropriate or convenient for the prosecution of war, or for the invention, development, or production of, or research concerning any such things, including but not limited to, aircraft, buildings, vessels, arms, armament, equipment, or supplies of any kind, or any portion thereof, including plans, spare parts and equipment therefor, materials, supplies, facilities, utilities, machinery, machine tools, and any other equipment, without any restriction of any kind, either as to type, character, location or form.

c. Whenever, in the judgment of the Commanding General, Services of Supply (or of an officer or civilian employee of the War Department to whom authority has been delegated to exercise such powers), the prosecution of the war is thereby facilitated, he may amend or modify contracts heretofore or hereafter made for the purpose of (1) obtaining continued operations by contractors engaged in war production, (2) encouraging greater diligence on the part of contractors, (3) protecting contractors from the consequences of unforeseen or unexpected events, (4) adjusting contracts to new conditions and circumstances, including those created by the rules, orders, instructions and determinations of Government departments, or (5) for any other purposes for facilitating the prosecution of the war.

Such amendments and modifications of contracts may be without consideration, other than the determination that the prosecution of the war will thereby be facilitated, and may be utilized to accomplish the same things as any original contract could accomplish, irrespective of the time or circumstances of the making of or the form of the contract amended or modified, or of the amending or modifying contract, and irrespective of rights which may have accrued under the contract or the amendments or modifications thereof. The powers hereby delegated may be exercised by (1) supplemental agreements which modify or amend or settle claims by or against the United States arising under or with respect to any contracts heretofore or hereafter made; (2) agreements with contractors or obligors modifying or releasing accrued obligations of any sort, including accrued liquidated damages or liability under any surety or other bond; or (3) supplemental agreements and change orders suspending or modifying the operation of existing contracts as yet uncompleted, and providing for the payment by the Government of the damages incurred by a contractor by reason of such suspension or modification; *provided* in each instance that full performance by the contractor under such contract, or under a series of contracts between the United States and the same contractor for substantially the same goods, shall not have been completed and final payment made thereunder. The supplemental contracts hereby authorized to be made include agreements of all kinds for all types and kinds of things and services necessary, appropriate or convenient for the prosecution of the war, or for the invention, development or production of, or research concerning any such things.

d. He may waive bid, payment, performance, or other bonds, and dispense with advertising for bids and competitive bidding.

3. Nothing herein shall affect the existing authority of the Commanding General, Services of Supply, as to matters relating to the Army Air Forces, the extent of which is set forth in the letter of April 9, 1942, from the Under Secretary of War to the Commanding General, Matériel Command, Army Air Forces, and to the Commanding General, Services of Supply, or any authority in respect of Army Air Force contracts and other contractual instruments, delegated to Colonel Albert J. Browning, A. U. S., by memoranda of the undersigned dated June 1, 1942, and September 15, 1942, nor shall anything herein contained be construed to limit or affect the power and authority of any commander in any theatre of operation.

4. The Commanding General, Services of Supply, or any person acting by delegation from him in the exercise of the powers hereby granted, shall have power to ratify and approve any contractual documents entered into or action taken by others, which he himself might have entered into or taken by virtue of the powers hereby granted.

5. The powers, authority and discretion hereby conferred upon the Commanding General, Services of Supply, or any portion or portions thereof, may be redelegated by him to whomsoever he may designate, including without limitation the Director, Purchases Division, Services of Supply, with the power of redelegating such powers, in whole or in part, to any officer or officers or civilian official or officials of the War Department. In any delegation of power or authority hereunder there may be included such terms and conditions, if any, as the person making such delegation may deem appropriate to ensure proper exercise of such power and authority in the interest of the United States and of the prosecution of the war.

ROBERT P. PATTERSON,
Under Secretary of War.

The memorandum of the Under Secretary of War, dated June 29, 1942, referred to in above memorandum reads as follows:

MEMORANDUM for the Commanding General, Services of Supply.

Subject: Delegation of Authority.

1. Authority is hereby delegated to the Commanding General, Services of Supply, to act for the Secretary of War or the Under Secretary of War in clearing, approving, and taking other action in respect to contracts, change orders, supplemental agreements, advance payments, awards, letters of intent, letter contracts, letter purchase orders, leases, amendments of contracts, and other contractual instruments; to approve sales of equipment, supplies and material; and to approve new War Department contract forms and deviations from approved forms of contracts, including all authority heretofore delegated to the undersigned by the Secretary of War pursuant to Public Law 354, 77th Congress and Executive Order No. 9001.

2. The Commanding General, Services of Supply, is authorized further to delegate the above powers or any portion thereof to whomsoever he may designate, with the power of redelegation.

3. The following memoranda are each hereby revoked; viz: (1) Memorandum for Mr. Albert J. Browning, dated March 13, 1942, delegating certain authority to the Chief of the Purchase Branch, Procurement and Distribution Division, Services of Supply, and (2) Memorandum for Colonel Albert J. Browning, A. U. S., dated June 2, 1942, delegating certain authority to him, as Chief of the Purchases Branch, Procurement and Distribution Division, Services of Supply. Nothing herein contained shall be construed as revoking the delegation of authority to Chiefs of Supply Services contained in Procurement Circular No. 91, dated December 29, 1941, and Procurement Circular No. 17, dated February 24, 1942, nor any delegation of authority heretofore made by the Commanding General, Services of Supply, or the Chief, Purchases Branch, Procurement and Distribution Division.

4. Nothing herein shall affect the existing authority of the Commanding General, Services of Supply, as to matters relating to the Army Air Forces, the extent of which is set forth in the letter of April 9, 1942, from the Under Secretary of War to the Commanding General, Matériel Command, Army Air Forces, and to the Commanding General, Services of Supply, or any authority in respect of Army Air Force contracts and other contractual instruments, delegated to Colonel Albert J. Browning, A. U. S., by memorandum of the undersigned, dated June 1, 1942.

ROBERT P. PATTERSON,
Under Secretary of War.

(2) *To the Chief of Staff.* Under date of January 11, 1943, the following memorandum was issued by the Under Secretary of War:

MEMORANDUM for The Chief of Staff:

1. There is hereby delegated to the Chief of Staff full power, in connection with operations subject to his direction and control, to exercise any of the authority and powers pursuant to Executive Order No. 9001 delegated to the undersigned by the Secretary of War by instrument dated December 30, 1941 [see paragraph (b) of this section]. The Chief of Staff may, pursuant to Executive Order No. 9001, exercise such powers either personally or through such officer or officers or civilian officials of the War Department as he may direct and he may confer upon such officers or civilian officials the power to make further delegations of such powers within the War Department.

2. All action heretofore taken by the Chief of Staff or by the direction of the Chief of Staff, that would by this delegation be authorized, is hereby ratified and confirmed. There is hereby expressly conferred upon the Chief of Staff the power and authority to ratify and confirm any action heretofore taken by any person responsible directly or indirectly to the Chief of Staff that would by this delegation of authority be authorized.

Dated this 11th day of January, 1943.

ROBERT P. PATTERSON,
Under Secretary of War.

(f) *Delegations from the Commanding General, Services of Supply, to the Director, Purchases Division.* Under date of September 16, 1942, the following memorandum was issued by the Commanding General, Services of Supply:

MEMORANDUM for Director, Purchases Division.

Subject: Delegation of Authority.

In confirmation of and supplementing the memorandum of the undersigned, dated June 29, 1942, to the Chief, Purchases Branch, Procurement and Distribution Division, Services of Supply (now the Director, Purchases Division, Services of Supply), the authority delegated to the Commanding General, Services of Supply, by memorandum of the Under Secretary of War, dated September 15, 1942 to act for the Secretary of War or the Under Secretary of War in clearing, approving, and taking other action in respect to contracts, change orders, supplemental agreements, advance payments, awards, letters of intent, letter contracts, letter purchase orders, leases, amendments of contracts and other contractual instruments, to make, authorize and approve sales or contracts for the sale of equipment, supplies and material and to approve War Department contract forms and deviations from approved forms, including all authority heretofore delegated to the undersigned pursuant to Public Law 354, 77th Congress, and Executive Order 9001 (including without limitation all authority pur-

suant to Public Law 354 and Executive Order 9001 delegated to the undersigned by the Under Secretary of War by the memorandum dated September 15, 1942), is hereby delegated to the Director, Purchases Division, Services of Supply. The Director, Purchases Division, is authorized to delegate further the above powers, authority, and discretions or any portion thereof to any officer or officers, or civilian official or officials of the War Department he may designate, with the power of redelegation. In any delegation of power or authority hereunder there may be included such terms and conditions, if any, as the person making such delegation may deem appropriate to ensure proper exercise of such power and authority in the interest of the United States and of the prosecution of the War.

BREHON SOMERVELL,
Lieutenant General, Commanding.

The memorandum of the Commanding General dated June 29, 1942, referred to in the above memorandum reads as follows:

MEMORANDUM for Chief, Purchases Branch, Procurement and Distribution Division.

Subject: Delegation of Authority.

The authority delegated to the Commanding General, Services of Supply, by memorandum of the Under Secretary of War, dated June 29, 1942, to act for the Secretary of War or the Under Secretary of War in clearing, approving, and taking other action in respect to contracts, change orders, supplemental agreements, advance payments, awards, letters of intent, letter contracts, letter purchase orders, leases, amendments of contracts and other contractual instruments, to approve sales of equipment, supplies and material and to approve War Department contract forms and deviations from approved forms, including all authority heretofore delegated to the undersigned pursuant to Public Law 354, 77th Congress, and Executive Order 9001, is hereby delegated to the Chief, Purchases Branch, Procurement and Distribution Division, Services of Supply. The Chief, Purchases Branch, Procurement and Distribution Division, is authorized to delegate further the above powers or any portion thereof to whomsoever he may designate, with the power of redelegation.

BREHON SOMERVELL,
Lieutenant General, Commanding.

(g) *Delegations from the Under Secretary of War to the Special Representative of the Under Secretary of War for the Army Air Forces.* Under date of September 15, 1942, the following memorandum was issued by the Under Secretary of War:

MEMORANDUM for Colonel Albert J. Browning, A. U. S., Special Representative of the Under Secretary of War.

Subject: Delegation of Authority.

1. In confirmation of and supplementing the memorandum of the undersigned to Colonel Albert J. Browning, A. U. S., dated June 1, 1942, on the above subject, authority is hereby delegated to Colonel Browning to act for the Secretary of War or the Under Secretary of War, in clearing, approving, and taking other action in respect to Army Air Force contracts, change orders, supplemental agreements, advance payments, awards, letters of intent, letter contracts, letter purchase orders, leases, amendments of contracts, and other contractual instruments; to make, authorize and approve sales or contracts for the sale of Army Air Force equipment, supplies and material; and to approve new War Department Army Air Force contract forms and deviations from approved forms of contracts, including all authority with respect to Army Air Force contracts and agreements of all kinds heretofore delegated to the undersigned by the Secretary of War pursuant to Public Law 354, 77th Congress and Executive Order No. 9001. This memorandum, however, shall not affect the existing authority of the Commanding General, Services of Supply, as to matters relating to the Air Forces, the extent of which is set forth in the letter dated April 9, 1942 from the Under Secretary of War to the Commanding General, Matériel Command, Army Air Forces, and to the Commanding General, Services of Supply. Colonel Browning, and any person or persons designated by him as such, acting under the authority herein contained will act as "Special Representative of the Under Secretary of War."

2. Without any limitation of the powers and authority hereinbefore granted, there is hereby vested in Colonel Browning, pursuant to and subject to the provisions of Title II of the First War Powers Act (Public Law 354, 77th Congress) and Executive Order No. 9001 the authority to take the following action:

a. He may enter into, amend or modify contracts, may make purchases, may place orders, and may make advance progress and other payments on such contracts, purchases and orders without regard to the provisions of law relative to the making, performance, amendment, or modification of contracts.

b. The contracts hereby authorized to be made include agreements of all kinds (whether in the form of letters of intent, purchase orders, or otherwise) for all types and kinds of things and services necessary, appropriate or convenient for the prosecution of war, or for the invention, development, or production of, or research concerning any such things, including but not limited to, aircraft, buildings, vessels, arms, armament, equipment, or supplies of any kind, or any portion thereof, including plans, spare parts and equipment therefor, materials, supplies, facilities, utilities machinery, machine tools, and any other equipment, without any restriction of any kind, either as to type, character, location or form.

c. Whenever, in the judgment of Colonel Browning, (or of an officer or civilian employee of the War Department to whom authority has been delegated to exercise such powers), the prosecution of the war is thereby facilitated, he may amend or modify contracts heretofore or hereafter made for the purpose of (a) obtaining continued operations by contractors engaged in war production, (b) encouraging greater diligence on the part of contractors, (c) protecting contractors from the consequences of unforeseen or unexpected events, (d) adjusting contracts to new conditions and circumstances, including those created by the rules, orders, instructions and determinations of Government departments, or (e) for any other purposes for facilitating the prosecution of the war.

Such amendments and modifications of contracts may be made without consideration, other than the determination that the prosecution of the war will thereby be facilitated, and may be utilized to accomplish the same things as any original contract could accomplish, irrespective of the time or circumstances of the making of or the form of the contract amended or modified, or of the amending or modifying contract, and irrespective of rights which may have accrued under the contract or the amendments or modifications thereof. The powers hereby delegated may be exercised by (a) supplemental agreements which modify or amend or settle claims by or against the United States arising under or with respect to any contacts heretofore or hereafter made; (b) agreements with contractors or obligors modifying or releasing accrued obligations of any sort, including accrued liquidated damages or liability under any surety or other bond; or (c) supplemental agreements and change orders suspending or modifying the operation of existing contracts as yet uncompleted, and providing for the payment by the Government of the damages incurred by a contractor by reason of such suspension or modification; *provided* in each instance that full performance by the contractor under such contract, or under a series of contracts between the United States and the same contractor for substantially the same goods, shall not have been completed and final payment made thereunder. The supplemental contracts hereby authorized to be made include agreements of all kinds for all types and kinds of things and services necessary, appropriate or convenient for the prosecution of the war, or for the invention, development or production of, or research concerning any such things.

d. He may waive bid, payment, performance, or other bonds, and dispense with advertising for bids and competitive bidding.

4. Colonel Browning, or any person acting by delegation from him in the exercise of the powers hereby granted, shall have power to ratify and approve any contractual documents entered into or action taken by others, which he himself might have entered into or taken by virtue of the powers hereby granted.

5. The powers, authority and discretion hereby conferred upon Colonel Browning, or any portion or portions thereof, may be redelegated by him to whomsoever he may designate, with the power of redelegating such powers, in whole or in part, to any officer or officers or civilian official or officials of the War Department. In any delegation of power or authority hereunder there may be included such terms and conditions, if any, as the person making such delegation may deem appropriate to ensure proper exercise of such power and authority in the interest of the United States and of the prosecution of the war.

ROBERT P. PATTERSON,
Under Secretary of War.

The memorandum of the Under Secretary of War, dated June 1, 1942, referred to in the above memorandum, reads as follows:

MEMORANDUM for Colonel Albert J. Browning, A. U. S.

Authority is hereby delegated to Colonel Albert J. Browning, A. U. S. to act for the Secretary of War and/or the Under Secretary of War in clearing, approving and taking other action in respect to Army Air Force contracts, change orders, supplemental agreements, advance payments, awards, letters of intent, letter contracts, letter purchase orders, leases, amendments of contracts and other contractual instruments; to approve sales of Army Air Force equipment, supplies and materials; and to approve new War Department Army Air Force contract forms and deviations from approved forms of Army Air Force contracts.

The foregoing authority, or any portion thereof, is likewise delegated to such person or persons as may be designated in writing by Colonel Albert J. Browning, A. U. S.

The individual acting under the foregoing authority will so act as "Special Representative of the Under Secretary of War."

The foregoing authority shall remain in full force and effect until revoked by this office.

By direction of the Secretary of War:

ROBERT P. PATTERSON,
Under Secretary of War.

(h) *Delegation of authority to Legal Assistant to Director of Matériel and to Chief, Legal Branch to approve contract forms.* Under date of 12 November 1943 the following memorandum was issued:

MEMORANDUM for Legal Assistant to the Director of Matériel and to the Chief, Legal Branch, Director of Matériel.

Subject: Delegation of Authority to Approve Contract Forms and Deviations from Approved Forms.

The authority delegated to the Director, Purchases Division, by the Commanding General, Services of Supply, dated September 15, 1942 and the authority delegated to me by the Under Secretary of War, dated September 15, 1942 (in respect of matters relating to the Army Air Forces) to act for the Secretary of War or the Under Secretary of War in approving War Department contract forms and deviations from approved forms is hereby further delegated to the Legal Assistant to the Director of Matériel, and to the Chief, Legal Branch, Director of Matériel, Army Service Forces, or either of them, and to any person who for the time being may be acting in either capacity.

ALBERT J. BROWNING,
Brigadier General, General Staff Corps,
Director, Purchases Division.

(i) *Authority delegated by these procurement regulations.* These regulations to the extent, and only to the extent, that they actually confer authority upon the chiefs of the technical services and other officers or civilian officials of the War Department to exercise power to enter into contracts and into amendments or modifications of contracts heretofore or hereafter made and to make advance, progress and other payments thereon shall constitute a redelegation by the Commanding General, Army Service Forces of the authority delegated to him as set forth in paragraph (e) of this section, and by the Special Representative of the Under Secretary of War of the authority delegated to him, as set forth in paragraph (g). The authority granted as provided in the preceding sentence, of course, does not dispense with the necessity of obtaining any approval expressly specified in any paragraph of these procurement regulations (see e. g. § 803.315 (a)). Authority conferred upon the chiefs of the technical services under any paragraph of these procurement regulations may be redelegated (with or without power of further redelegation) to such officer or officers or civilian official or officials as the chiefs of the technical services severally may direct, whether or not express mention of the powers of redelegation is made in any such paragraph, unless it is expressly provided in the paragraph that the power shall not be redelegated. The exercise prior to the date of these regulations of any such authority by any such officer or officers or civilian official or officials is hereby ratified and confirmed in all respects.

(j) Since the regulations are generally declaratory of policy only, it will be necessary for the chief of each technical service to publish appropriate instructions on procedure.

§ 801.108 *Applicability of these procurement regulations*—(a) *Preliminary definitions.* (1) The term "procurement activities", as used in paragraph (b) of this section, includes all such activities except the acquisition and disposal of real estate so far as the latter are governed and regulated by AR 100-60, 100-61, 100-62 and 100-63. The term comprises, but is not necessarily limited to, the procurement of supplies, material and equipment and the procurement of construction work, including that on rivers and harbors.

(2) The term "Army agencies", as used in paragraph (b) of this section, includes all personnel of the Army, except as indicated in paragraph (f). In particular, it includes the agencies referred to in paragraphs (d) and (e).

(3) The term "appropriated funds", as used in paragraph (b) of this section, comprises all such funds, including such funds allocated to, as distinguished from appropriated to, the War Department; but does not include organizational, unit or similar funds.

(b) These procurement regulations are applicable to all procurement activities carried on by Army agencies with appropriated funds. If a project involves both a procurement activity and acquisition or disposal of real estate governed and regulated by the Army Regulations referred to in paragraph (a) of this section, these procurement regulations are applicable so far as the procurement activity is concerned and are inapplicable so far as the acquisition or disposal of real estate is concerned.

(c) *Technical services and supply services.* Pursuant to Circular No. 30, Headquarters Army Service Forces, 15 May 1943, the designation of "supply services" is changed to "technical services". This change is being made in the procurement regulations as occasion arises to reprint pages for other reasons. In the meantime, the term "supply services" should be read as "technical services".

(d) *Army Air Forces.* (1) The regulations have been issued with the approval of the Army Air Forces, and shall, unless otherwise specifically indicated, apply to the Army Air Forces.

(2) Whenever used herein, unless otherwise specifically indicated, the term "technical services" shall be deemed to include the Army Air Forces, and the term "chiefs of the technical services" shall be deemed to include the Commanding General, Army Air Forces. Likewise, the terms "Director, Purchases Division, Headquarters, Army Service Forces" and "Director, Readjustment Division, Headquarters, Army Service Forces", when used in connection with action to be taken in respect of the Army Air Forces, shall, unless otherwise specifically indicated, be deemed to refer to the Special Representative of the Under Secretary of War designated for that purpose.

(3) Except as specifically otherwise provided, all communications to the Army Air Forces or to the Commanding General, Army Air Forces, relating to procurement, should be addressed to the attention of the Procurement Branch, Matériel Division, Office of the Assistant Chief of Air Staff, Matériel, Maintenance and Distribution.

(e) *Service commands.* These regulations are applicable to the procurement activities of the service commands. Where procurement is accomplished by a service command at the direction of the chief of a technical service or his duly authorized representative, the directions will contain references to the applicable paragraphs of the procurement regulations and will also contain supplementary instructions where appropriate. In such a case, for the purposes of these regulations, the procurement shall be regarded as procurement by the technical service concerned and the contract will be regarded as a contract of that technical service. In all other cases, the service command accomplishing the procurement shall act independently of any technical service and the term "technical service" and the term "service", as used in these regulations, shall be deemed to refer to the service commands and the term "chiefs of technical services" and "chiefs of services" shall be deemed to refer to the Commanding Generals of the service commands. In connection with this paragraph see (c) above.

(f) *Procurement and contracting authority of commanding officers outside continental United States.* In general, Commanding Officers in charge of United States armed forces outside the continental United States and its territories and possessions including Alaska are not required, in connection with the procurement of supplies necessary to accomplish the mission confided in them, to comply with the procurement regulations or any other regulations, circulars or instructions or with any provisions or restrictions of the laws of the United States which may be applicable within the United States or any territory or possession thereof. This matter is more fully treated in section I of Circular No. 21, War Department, 1943. Likewise, Commanding Officers in charge of United States Armed Forces outside the continental United States but within the territories or possessions of the United States including Alaska, who are responsible directly to the War Department (that is, the chief of staff), in connection with the procurement of supplies necessary to the accomplishment of the mission confided in them are authorized to disregard procurement regulations and other War Department regulations, restrictions, circulars and instructions, and when they find that to do so will facilitate the prosecution of the war, they are authorized to disregard the provisions of law relating to procurement; all subject however to (1) Title II of the First War Powers Act, 1941, (2) the restrictive provisions contained in Executive Order No. 9001 and (3) any law approved after December 18, 1941. This matter is more fully set forth in section II of Circular No. 21, War Department, 1943.

(g) *Procurement within the United States for armed forces abroad.* It is to be noted that the provisions of Circular No. 21, War Department, 1943, referred to in (f) of this section have no application to procurement within the United States for armed forces abroad.

SUBPART D—MISCELLANEOUS PROHIBITIONS

§ 801.109 *Prohibition against voluntary service.* (a) No department or officer of the Government may accept voluntary service for the Government except in cases of sudden emergency involving the loss of human life or the destruction of property, or when a written statement is obtained that the service

rendered will not be made the basis of a future claim against the Government for compensation.

§ 801.110 *Prohibition against use of troop labor.* (a) Except in cases of manifest necessity or when authorized by the Secretary of War, the labor of troops will not be used to enable the contractors to fulfill contracts.

(b) Whenever troop labor has been used:

(1) Authority therefor will be given in writing.

(2) A report enumerating in detail the service rendered will be forwarded to the Commanding General, Army Service Forces, Attention of Industrial Personnel Division.

(3) Full deduction will be made for the value of the service rendered.

§ 801.111 *Conflicts between outside interests of officers or civilian employees and their official duties.* (a) *Basic statute.* Section 41 of the United States Criminal Code (18 U.S.C. 93) provides as follows:

> No officer or agent of any corporation, joint-stock company, or association, and no member or agent of any firm, or person directly or indirectly interested in the pecuniary profits or contracts of such corporation, joint-stock company, association, or firm, shall be employed or shall act as an officer or agent of the United States for the transaction of business with such corporation, joint-stock company, association, or firm. Whoever shall violate the provisions of this section shall be fined not more than $2,000 and imprisoned not more than two years.

(b) *Construction of basic statute.* The general language of section 41 of the United States Criminal Code has been the subject of interpretation from time to time by The Judge Advocate General and by the Attorney General. The Judge Advocate General has been careful to point out that the question of construction presented "involves the construction and application of criminal statutes concerning which the Federal courts alone can speak with final authority." However, the substance of certain of those opinions is set forth as an aid in the construction of the statute:

(1) In Vol. 40, Op. No. 42, March 31, 1942, the Attorney General rendered an opinion concerning the use of a certain Army officer as a Liaison officer between a corporation and the War Department. It appeared that the officer was also an officer and stockholder in the corporation. In holding that the basic statute would be violated if the officer acted in that capacity, the Attorney General stated in part:

> No man can serve two masters. The statute in question is clearly grounded on this assumption. Its manifest purpose is such that any attempt to reconcile it with the proposed employment runs into difficulties. Some of these difficulties are pointed out by The Judge Advocate General of the Army in his opinion on the question. Others are equally apparent.
>
> No matter how high are the motives of the Army Officer who advises, he is likely as a realistic matter to be consciously or unconsciously influenced by the fact that his actions may benefit the corporation of which he is an officer and a stockholder. To a degree his salary as an officer of the corporation would be affected by whether his advice leads the War Department to enter into a procurement contract with his company. To a larger degree his share in the earnings of the corporation as a stockholder would be affected by his advice.

(2) In two recent opinions (SPJGA 210.4 and SPJGA 250.7) rendered respectively on May 22, 1942 and March 28, 1942 The Judge Advocate General concluded that a person holding stock in a corporation may be a "person directly or indirectly interested in the pecuniary costs or contracts of such corporation," within the meaning of the statute. It is to be emphasized, however, that these two opinions relate solely to that issue and do not constitute opinions on what constitutes the "transaction of business" with the corporation within the meaning of the statute. The construction of these words, as contained in the statute, was the subject of an opinion discussed in subparagraph (3) below.

(3) Under date of December 3, 1942 (SPJGA 1942/5702) the opinion of The Judge Advocate General was requested with respect to the employment of a person as head of an agency which would have complete charge of all phases of production of certain items which were purchased by the War and Navy Departments. The prospective head of the agency had been for some years an officer of a corporation which was one of the largest producers of the items with which the agency would be concerned, but at the time of the opinion was on leave of absence without pay. It appeared, however, that under a retirement system established by the corporation he would, if he lived to a specified age, become entitled to certain annual payments. It further appeared that there was an understanding that if the agency were called upon to transact business with the corporation in question, such transactions would be conducted by other officers or employees of the agency and that if questions were presented not capable of final decision by such other officers or employees, such questions would be referred to higher authority for decision. However, it also appeared that the head of the agency would be called upon to determine questions of general policy which would affect the corporation of which he was formerly an officer along with other producers. The Judge Advocate General concluded that section 41 of the Criminal Code would not be violated by the employment of such an individual as head of the agency.

(4) In an opinion dated February 3, 1923, the Acting Judge Advocate General throws further light on what constitutes transacting business within the meaning of section 41 of the Criminal Code. He had been requested to review the law in relation to the interest of the agents or officers of the United States in contracts with the United States with a view to the submission of proposed amendments thereto so as to permit the utilization of leading men in industry in an advisory capacity in connection with the planning and supervision of the procurement of war necessities. The opinion in part reads as follows:

> The statute is to be strictly construed and criminality attaches only when an individual, being an officer, or member of a business concern or directly or indirectly interested in the profits of the concern is employed or acts as agent of the United States for the transaction of business with that concern. The Act contemplates the actual transaction of business. The negotiation of a tentative contract by an agent of the Government with a business concern in which that agent is an officer, member, or in which he is interested, although not binding upon either party until executed, in accordance with statutory authority and an appropriation sufficient for the fulfillment thereof, would probably be considered a violation of the statute if the performance of the contract was thereafter entered upon. For this reason, in the preparation of procurement plans, no person should be permitted to have a part as agent for the United States in the negotiation of tentative contracts with a concern of which he is an officer, agent or member, or in which he is pecuniarily interested. * * * it is considered that acting in a solely advisory capacity without actual participation in the negotiation or awarding of a contract or directing the awarding of a contract would not be a violation of Section 41 of the Federal Criminal Code.

(c) *Regulations supplementary to basic statute.* The following regulations supplementary to the statute set forth in paragraph (a) of this section are prescribed:

(1) No officer or employee of the War Department may act as an agent of the United States in advising, recommending, making or approving the purchase of supplies or other property, or in contracting therefor, if he would be admitted to share or receive directly or indirectly any pecuniary profit or benefit from such purchase or contract.

(2) No officer or civilian employee of the War Department shall be in direct charge of the negotiation of, or exercise authority for the final approval of, any contract with any corporation, joint-stock company, association or firm, if at any time during the period subsequent to December 7, 1936, such officer or civilian employee was employed by or engaged in a course of substantial non-Governmental business dealings with such corporation, joint-stock company, association or firm.

The Under Secretary of War is authorized to make exceptions to the regulation contained in subparagraph (2) above. In cases where the chief of a technical service feels that the application of the regulations contained in such subparagraph is impracticable, he should forward to the Director, Purchases Division, Headquarters, Army Service Forces, a request for an exemption. Such request should be accompanied by a full statement of the circumstances which are believed to make such exemption necessary. No exemption may be made from the provisions of the statute referred to in paragraph (a) of this section or from subparagraph (1) of this paragraph.

SUBPART E—PROPOSALS FOR LEGISLATIVE ACTION AND FOR EXECUTIVE ORDERS AFFECTING PROCUREMENT

§ 801.113 *General.* By Circular No. 59, War Department, 1942, the Legislative and Liaison Division, War Depart-

ment, is charged with supervising the preparation of legislation requested by the War Department, with preparing reports to Committees of Congress and with the maintenance of liaison necessary thereto. Said Circular No. 59 further provides that the preparation of reports on legislation affecting the Army Ground Forces, the Army Air Forces or the Army Service Forces may be assigned to the command concerned.

§ 801.114 *Legislation includes Executive orders.* The terms "legislation" and "legislative", as hereinafter used in this subpart refer to action taken or to be taken by Congress, other than the enactment of strictly appropriation items, and to all Executive orders.

§ 801.115 *Legislative Division, Office of the Under Secretary of War.* With the approval and by the authority of the Under Secretary of War, the Legislative Division, Office of the Under Secretary of War, is designated as the agency charged with the coordination within that Office, the Army Service Forces and the Army Air Forces, of all legislative matters affecting procurement or related functions.

§ 801.116 *Proposals for legislative action affecting procurement.* (a) Except as specifically otherwise provided in paragraph (b) of this section, all proposals for legislative action affecting procurement or related functions, originating from any source whatsoever, will be referred to the Legislative Division, Office of the Under Secretary of War, for coordination.

(b) All such proposals, other than proposals for Executive orders, originating from sources outside the Office of the Under Secretary of War, the Army Service Forces or the Army Air Forces, will be referred to the Legal Branch, Purchases Division, Headquarters, Army Service Forces. The Legislative Section of that Branch will promptly review such proposals to determine which are of sufficient importance to the Office of the Under Secretary of War, the Army Service Forces, Army Air Forces, or any of them to warrant further consideration. Such of the proposals as warrant such consideration will be referred directly to the Legislative Division, Office of the Under Secretary of War, for coordination.

§ 801.117 *Action of Legislative Division.* The Legislative Division, Office of the Under Secretary of War, will, with respect to such proposals originating within the Office of the Under Secretary of War, the Army Service Forces, or the Army Air Forces:

(a) Take all necessary action to secure the views of those individuals and elements within the Office of the Under Secretary of War, the Army Service Forces and the Army Air Forces, whose responsibilities would be affected by such legislative action.

(b) Refer any questions regarding the form of the proposed legislative action to the Legal Branch, Purchases Division, Headquarters, Army Service Forces, for consideration and report.

(c) Make all necessary arrangements for proper coordination with other Government departments and agencies whose functions would be affected.

(d) If it is determined by proper authority to initiate such legislative action, coordinate the matter with the Legislative and Liaison Division, War Department.

(e) Take any other necessary or appropriate action in connection therewith.

With respect to such proposal originating from sources outside the Office of the Under Secretary of War, the Army Service Forces or the Army Air Forces, Legislative Division, Office of the Under Secretary of War will, upon receipt of such proposals, take the action described in paragraphs (a), (c) and (e) above.

§ 801.118 *Congressional hearings.* Arrangements for appropriate representation from the Office of the Under Secretary of War, the Army Service Forces and the Army Air Forces, at Congressional hearings on legislative proposals affecting procurement or related functions will be made through the Legislative Division, Office of the Under Secretary of War.

§ 801.119 *Reports on legislative proposals.* All requests from official sources, within or without the War Department, for reports on legislative proposals affecting procurement or related functions will, upon receipt by the Office of the Under Secretary of War, the Army Service Forces or the Army Air Forces, be referred to the Legislative Division, Office of the Under Secretary of War, which will secure reports from the appropriate sources within the aforesaid elements of the War Department and will forward such reports, after approval thereof by proper authority, through established channels to the sources of the requests.

[Procurement Reg. 2]

PART 802—GENERAL PURCHASE POLICIES

SUBPART A—GENERAL

Sec.
802.201 Rescission of regulations.
802.202 Compliance with this part.
802.203 Definitions.
802.204 Contracting authority.
802.205 Purpose of regulations.

SUBPART B—CONTRACT PLACEMENT

802.220 Scope of subpart.
802.221 Purchase of used or second-hand materials.
802.222 Time for placing contracts and scheduling of deliveries.
802.223 Factors governing placement of contracts.
802.224 Contracts for newly developed articles.
802.225 Smaller War Plants policy.
802.226 Debarred bidders.
802.227 Policies governing allocation of cutbacks.
802.228 Exceptions.

SUBPART C—CONTRACT PRICE POLICIES

802.230 Basic objections.
802.231 General policy.
802.232 Cost-plus-a-fixed-fee contracts.
802.232a Time and material or labor-hour contracts.
802.233 Fixed-price contracts.
802.234 Termination article.
802.234a Unusual circumstances.
802.235 Financing provision.
802.236 Price adjustment provisions.
802.237 Adjustments without contract provisions.
802.238 Policies on certain special items of cost.

SUBPART D—NEGOTIATION OF CONTRACTS

802.240 Method of contracting.
802.241 Methods of negotiation.
802.242 Use of informal bids.
802.243 Contractors' proposals.
802.244 Purchase analysis.
802.245 Special clauses.
802.246 Compulsory purchases.
802.247 Assistance by Headquarters, S. O. S.
802.248 Purchasing by prime contractors.

SUBPART E—PRICE SUPERVISION

802.250 General policy.
802.251 Price analysis.
802.252 Profit analysis.
802.253 Cost analysis.
802.254 Supervision of subcontracts and purchases.
802.255 Sanctions.
802.256 Coordination.

SUBPART F—CONTRACTING POLICY REGARDING CONSTRUCTION AND MAINTENANCE WORK

802.260 General.

SUBPART I—PURCHASE ACTION REPORTS

802.291 General.
802.292 Reports required to be filed.
802.293 Original reports of purchase actions exceeding $10,000.
802.294 Monthly Summary Report of Purchase Actions.
802.295 Quarterly Report on Procurement.
802.296 Stations required to report.
802.297 Signing of reports.
802.298 Responsibility to the chiefs of the technical services and the commanding generals of the service commands.
802.299 Authority of Purchases Division as to reporting.

SUBPART A—GENERAL

§ 802.201 *Rescission of regulations.* Army Regulations 5–140, May 22, 1940, as amended; Army Regulations 5–160, October 24, 1941, as amended; Army Regulations 5–240, February 11, 1936, as amended; and all other prior directives and instructions of whatsoever nature relating to negotiated purchases, open market purchases, procurement without advertising, and other purchasing methods are hereby rescinded.

§ 802.202. *Compliance with this part.* Unless otherwise specifically provided, compliance with any provision of this part or of any amendment thereto which requires a change in contract procedure or in any contract provision shall not be mandatory until thirty days after the issuance of such regulation or amendment.

§ 802.203 *Definitions.* (a) The term "negotiation" as used in these procurement regulations includes any method of contracting or purchasing, except the formal advertising and sealed bid procedure prescribed by section 3709, Revised Statutes.

(b) The term "negotiated purchases" includes all purchases made by negotiation as so defined. (See § 802.241).

§ 802.204 *Contracting authority*—(a) *Basis.* War Department contracting and purchasing are now based primarily on the authority contained in the act of December 18, 1941 (Public No. 354, 77th Congress) referred to as the First War Powers Act, 1941, and Executive Order No. 9001, December 27, 1941. The earlier authority contained in sections 1 (a) and (b) of the act of July 2, 1940 (Public No. 703, 76th Congress) has also been extended, however, by section 9 of the act of June 30, 1941 (Public No. 139, 77th Congress) and by section 13 of the act of June 5, 1942 (Public No. 580, 77th Congress). (See § 802.240).

(b) *First War Powers Act.* Title II of the First War Powers Act, 1941, reads as follows:

SEC. 201. The President may authorize any department or agency of the Government exercising functions in connection with the prosecution of the war effort, in accordance with regulations prescribed by the President for the protection of the interests of the Government, to enter into contracts and into amendments or modifications of contracts heretofore or hereafter made and to make advance, progress and other payments thereon, without regard to the provisions of law relating to the making, performance, amendment, or modification of contracts whenever he deems such action would facilitate the prosecution of the war: *Provided,* That nothing herein shall be construed to authorize the use of the cost-plus-a-percentage-of-cost system of contracting: *Provided further,* That nothing herein shall be construed to authorize any contracts in violation of existing law relating to limitation of profits: *Provided further,* That all acts under the authority of this section shall be made a matter of public record under regulations prescribed by the President and when deemed by him not to be incompatible with the public interest.

(c) *Authority conferred.* Title I of Executive Order No. 9001 confers authority on the War Department under The First War Powers Act, 1941, as follows:

(1) Section 1 of the Executive order authorizes the Secretary of War "within the limits of the amounts appropriated therefor, to enter into contracts and into amendments or modifications of contracts heretofore or hereafter made, and to make advance, progress, and other payments thereon, without regard to the provisions of law relating to the making, performance, amendment, or modification of contracts" and to delegate these powers with authority to redelegate them. With respect to such delegations, see § 801.107 and following of this chapter, and especially § 801.107 (i).

(2) "The contracts hereby authorized to be made include agreements of all kinds (whether in the form of letters of intent, purchase orders, or otherwise) for all types and kinds of things and services necessary, appropriate or convenient for the prosecution of war, or for the invention, development, or production of, or research concerning any such things, including but not limited to, aircraft, buildings, vessels, arms, armament, equipment, or supplies of any kind, or any portion thereof, including plans, spare parts and equipment therefor, materials, supplies, facilities, utilities, machinery, machine tools, and any other equipment, without any restriction of any kind, either as to type, character, location or form."

(3) "The War Department, the Navy Department, and the United States Maritime Commission may by agreement modify or amend or settle claims under contracts heretofore or hereafter made, may make advance, progress and other payments upon such contracts of any percentum of the contract price, and may enter into agreements with contractors and/or obligors, modifying or releasing accrued obligations of any sort, including accrued liquidated damages or liability under surety or other bonds, whenever, in the judgment of the War Department, the Navy Department, or the United States Maritime Commission respectively the prosecution of the war is thereby facilitated. Amendments and modifications of contracts may be with or without consideration and may be utilized to accomplish the same things as any original contract could have accomplished hereunder, irrespective of the time or circumstances of the making of or the form of the contract amended or modified, or of the amending or modifying contract, and irrespective of rights which may have accrued under the contract, or the amendments or modifications thereof."

(4) "Advertising, competitive bidding and bid, payment, performance, or other bonds or other forms of security, need not be required." (See Part 804 of this chapter.)

(d) *Restrictions on powers.* Title II of Executive Order No. 9001 prescribes the following regulations for the exercise of the authority thereby conferred.

(1) "Complete data shall be maintained by the War Department, the Navy Department, and the United States Maritime Commission as to all contracts and purchases which they respectively make pursuant to the act and this Executive order. The Secretary of War, the Secretary of the Navy, and the Chairman of the United States Maritime Commission shall make available for public inspection, as they may respectively deem compatible with the public interest, so much of such data as does not cover restricted, confidential, or secret contracts or purchases." (As amended by E.O. 9296, January 30, 1943. See Subpart I of this part.)

(2) Notwithstanding anything in the act or Executive order, the War Department, the Navy Department, and the United States Maritime Commission shall not discriminate in any act performed thereunder against any person on the ground of race, creed, color or national origin, and all contracts shall be deemed to incorporate by reference a provision that the contractor and any subcontractors thereunder shall not so discriminate. (See § 803.325.)

(3) No claim against the United States arising under any purchase or contract made under the authority of the Act shall be assigned except in accordance with the Assignment of Claims Act, 1940 (Public No. 811, 76th Congress, approved October 9, 1940). (See § 803.390.)

(4) Advance payments shall be made hereunder only after careful scrutiny to determine that such payments will promote the national interest and under such regulations to that end as the Secretary of War, the Secretary of the Navy, or the United States Maritime Commission may prescribe. (See § 803.321.)

(5) Every contract entered into pursuant to the act and Executive order must contain the warranty by the contractor against payment of commissions and contingent fees set out in § 803.323 or § 807.726 (see § 811.1181).

(6) The cost-plus-a-percentage-of-cost system of contracting shall not be used.

(7) Provisions of law limiting profits under contracts or fixed-fees continue in effect and in no case shall the fixed fee under a cost-plus-a-fixed-fee contract exceed 7% of the estimated cost exclusive of the fee.

(8) No contract or modification or amendment thereof shall be exempt from the provisions of the Walsh-Healey Act (49 Stat. 2036) because of being entered into without advertising or competitive bidding, and the provisions of that act, the Davis-Bacon Act, as amended (49 Stat. 1011), the Copeland Act, as amended (48 Stat. 948) and the Eight Hour Law, as amended by the act of September 9, 1940 (Public No. 781, 76th Congress) if otherwise applicable apply to contracts made and performed under the authority of the act and Executive order. (See Part 809 of this chapter.)

(e) *Extent of authority.* By an opinion dated August 29, 1942, the Attorney General of the United States has construed the power conferred by the First War Powers Act, 1941, and Executive Order No. 9001. This opinion ruled that a proposed delegation of authority from the Under Secretary of War to the Commanding General, Army Service Forces, substantially similar to the delegation contained in § 801.107 (e) was within the authority of the act and Executive order.

§ 802.205 *Purpose of regulations.* In conferring the powers under the First War Powers Act, Executive Order No. 9001 directed the war agencies to work with the War Production Board "to bring about the conversion of manufacturing industries to war production, including the surveying of the war potential of industries, plant by plant; the spreading of war orders; the conversion of facilities; the assurance of efficient and speedy production; the development and use of subcontracting to the fullest extent and conservation of strategic materials." The policies and procedures designed to carry out these procurement objectives are stated in this and the following regulations. This regulation discusses the basic principles underlying the policies and methods elaborated in the subsequent regulations, and the relation of these various policies to the procurement program as a whole.

SUBPART B—CONTRACT PLACEMENT

§ 802.220 *Scope of subpart.* (a) Attainment of the essential procurement objectives with the minimum disruption of the nation's economic system, and effective use of available labor, materials and facilities, depend to a large extent on sound contract placement. This section states the policies to be fol-

lowed and the factors to be considered in placing contracts, in selecting contractors, in scheduling deliveries and in revising delivery schedules.

(b) *Related regulations.* Further policies governing placement of contracts for plant facilities expansion are treated in Part 810 of this chapter. Policies governing purchasing through other services and other departments are discussed in Part 806 of this chapter, and foreign purchases are treated in Part 805. Policies governing cutbacks and curtailment of production are stated in Part 815.

§ 802.221 *Purchase of used or second-hand materials*—(a) *Policy.* In view of the prevalent shortages of raw materials, manufacturing facilities and labor, second-hand or used articles will be procured instead of new articles whenever (1) they are suitable in quality and design for the particular purpose involved, and (2) they can be obtained at reasonable cost with reasonable effort at the time required, unless any agency allocating such articles (such as the Machine Tool Section of the Production Division) orders otherwise.

(b) *Exeution.* The chief of each technical service will make adequate provision to insure that all procurement officers and agencies under his direction comply with the policy stated in paragraph (a) of this section, and will place responsibility upon a designated member of his staff for requiring compliance with that policy to the greatest extent practicable.

(c) *Obstacles.* Whenever a statute, order or regulation prevents the effective procurement of suitable used articles or other articles already available instead of new articles, the chief of the technical service concerned will notify the Director, Purchases Division, Headquarters, Army Service Forces, of this fact so that appropriate action may be taken pursuant to the First War Powers Act, 1941 and Executive Order 9001, or otherwise, to remove any obstruction to such procurement.

(d) *Purchases through Procurement Division, Treasury Department.* In connection with the use of used or second hand materials, it is of the utmost importance that all procurement offices and agencies avail themselves of the facilities of the Procurement Division, Treasury Department as more fully set forth in § 806.613. That division makes available to the War Department property which is surplus to the need of other Government agencies. Chiefs of technical services should see that all procurement offices and agencies under their direction obtain the catalog of available property referred to in § 806 613 (f), and that they keep in touch with the Regional Property Officers of the Procurement Division referred to in § 806.613 (e). In this way much used and second hand material can be obtained.

§ 802.222 *Time for placing contracts and scheduling deliveries*—(a) *General policies.* (1) At an earlier stage in the war program, procuring agencies were encouraged to place contracts at the earliest possible time and to require contractors to commence production or to place subcontracts immediately. That policy was desirable as long as Army procurement was directed primarily to the task of providing the initial equipment for the rapidly expanding requirements of the Army and of the United Nations. However, that phase of procurement is now approaching completion. Except for comparatively few items, procurement for the future is designed to meet estimated replacements and operational requirements. The paramount and governing policy is still to place contracts sufficiently in advance of the actual need for the supplies to assure that deliveries will be made on time and in the proper quantities. Subject to this guiding principle, conditions now make it advisable that in the placement of contracts consideration also be given (i) to restricting contract commitments to the practicable minimum both as to time and quantity, and (ii) to the use of contract forms which will provide for the maximum flexibility in production rates while at the same time assuring the availability of the production facilities needed to produce all known requirements. This change of emphasis is essential if useless surpluses and costly cancellation and termination changes are to be avoided.

(2) The schedule of deliveries to correspond more closely with actual requirements is likewise essential in the present stage of the war program. Close scheduling tends to prevent the building up of surpluses and to diminish termination claims. It is also vital to the most efficient use of available industrial capacity. If manufacturers are required to produce and deliver items long before they will actually be needed, they may be forced to increase the number of their employees abnormally or be unable to produce other items which will be needed sooner, and scarce materials may be tied in inventory not currently needed. Thus the failure to schedule deliveries properly tends to disrupt the Army supply program and prevents industrial capacity from being used in the production of items as they are needed. Accordingly future contracts will be scheduled so that supplies will be delivered to synchronize with actual requirements, unless in a particular case efficient production requires otherwise. Existing contracts will also be reviewed with a view to rescheduling deliveries on the same basis.

(b) *Suggested methods for minimizing contract commitments or increasing flexibility of production rates.* In succeeding paragraphs, certain contract procedures are outlined by which in particular cases flexibility of production rates of may be attained or contract commitments reduced in time and amount. These procedures are suggestive only; they are not all-inclusive. It is recognized that variations of these procedures and the adoption of wholly different procedures may be required in many cases. It is emphasized, however, that it is a condition to the effective use of any such procedures that procuring agencies know, well in advance, the total procurement program with which they are charged; appraise the availability of production facilities in relation to that program; and understand the production problems of their contractors.

(c) *Avoiding excessive "lead time"*—(1) *Withholding contract placement.* Where it is known that production facilities will be available and adequate for a given period, it will often be possible and prudent to withhold the placement of contracts (or of some portion of the total contracts to be placed) until shortly before the start of the actual "lead time" which is required for the particular procurement.

(2) *Controlling rate of performance.* In other instances, where it is necessary to obtain more definite assurance of the availability of production facilities, it will be feasible to place contracts well in advance of the actually required "lead time," but to provide expressly, by contract, that acquisition of materials, placement of subcontracts, or manufacture shall not commence until an agreed date, or shall proceed at a rate of speed not in excess of an agreed rate.

(d) *Short term contracts.* For a variety of reasons, some of which were related only to administrative convenience, procuring agencies have in the past tended to enter upon long term commitments covering all the supplies believed to be needed over a lengthy period of time. Long term commitments may be necessary where, for example, the supplies to be procured are distinctively war items and involve long range development. Long term commitments, however, are often not essential where the supplies to be procured are standard commercial items, especially if any excess production, not absorbed by the Army, is needed or may readily be absorbed by the civilian economy. In such cases commitments may well be short term and for relatively small amounts. Besides reducing outstanding commitments, this procedure will tend to bring about lower prices because allowances for contingencies are reduced when the contract period is short. It will also tend to effect savings when engineering changes are ordered.

(e) *Short term commitments with options of renewal.* In some cases it will be found advisable to enter into a short term initial commitment with an option or a number of successive options in the Government to extend or renew the commitment, exercisable by giving notice an agreed period of time in advance of completion of the initial commitment, sufficient for the contractor to procure the necessary materials to assure continuity of production if the option is exercised by the Government. Prices for option periods extending over any long period of time should not be made final at the time the original commitment is made. The techniques of price redetermination and price revision (see Part 812, Subparts B, C, and D, of this chapter) should be availed of where possible.

(f) *Cancelling future deliveries by advance notice.* Particularly in the procurement of standard commercial items, it will often be possible without hardship

on contractors to provide that the Government may cancel future deliveries without liability, upon giving notice to the contractor an agreed period of time in advance. This period of advance notice should be fixed with due regard to the contractor's problems in scheduling raw materials and component parts and avoiding excessive inventories at the effective date of cancellation. Experience has shown that many contractors will readily acquiesce in this procedure and will not claim increased prices to compensate for the contingency of cancellation. However, in some cases where the procedure here described is availed of, it may be proper to provide for a sliding scale of prices with higher prices for early than for later deliveries, in order that starting load costs may be covered if future deliveries are cancelled. As an alternative, it may be advisable to provide that prices for all or for the later deliveries shall be subject to an appropriate type of price redetermination or price revision. The contract should provide that in case the contract is cancelled for the convenience of the Government without the agreed advance notice, settlement will be made under the uniform termination article (§ 803.324 (g)) as though the contract called only for the deliveries scheduled up to the date upon which the agreed period of notice would have expired.

(g) *Use of "Letter of Commitment" for controlled materials or critical components.* (1) Especially in the procurement of items other than standard commercial items, the tendency to make a long term commitment has frequently been based upon the fact that the contractor must have a binding contract well in advance in order to place his orders for CMP materials, or for critical components which require a long period of manufacture. In many of these cases the time required by the prime contractor to manufacture the end item, after the CMP materials or critical components have been delivered, is relatively short, and there would be no occasion for a long term commitment were it not for the time required for the procurement of the controlled materials or the critical components. Under such circumstances it is proper to make an early commitment with a prime contractor which will empower him to purchase the controlled materials or to acquire the critical components, but to withhold placing the contract for the end item until shortly before the "lead time" actually required for the production of the end item. This plan is considered particularly effective where a surplus of facilities exists and competition is present.

(2) A form of "Letter of Commitment (Raw Materials Under CMP)" has been published as a standard form (§ 813.1328). Under this form the contractor is authorized to purchase controlled materials. The Government does not commit itself to place a production contract for the end item with the contractor who received the letter of commitment. If the letter of commitment is terminated, or a production contract is not placed with the contractor who has received the letter of commitment, the contractor is assured reimbursement of his costs upon transfer of the materials to the Government or its designee (who may be another contractor to whom a production contract is awarded). To the extent that a production contract is awarded to the contractor requiring the use of the controlled materials, the Government's obligation under the letter of commitment is correspondingly reduced.

(3) The form of letter of commitment may be accommodated by proper amendments to cases where it is desired that critical components be acquired, or critical components plus controlled materials.

(4) The form of letter of commitment here discussed is not to be considered a letter of intent or letter order within the meaning of § 803.303a, which deals with temporary or preliminary contract instruments (see §§ 813.1307, 813.1308, 813.1309, 813.1310) calling upon the contractor to commence production of an item, rather than merely to acquire raw materials or critical components. While the use of letters of intent or letter orders of the former type is discouraged, and the technical services are urged to supersede such instruments by definitive contacts at the earliest feasible time, the letter of commitment will be used wherever feasible in accordance with the foregoing provisions of this paragraph, and it will not be supplanted by definitive production contracts until shortly before the commencement of the required "lead time" for production. The form of letter of commitment published at § 813.1328 includes no provision for the allowance of a profit in case of termination. Provision for a profit in such contingency may, however, be included with the prior approval of the Director, Purchases Division, Headquarters, Army Service Forces.

(h) *Use of special "changes" article (§ 803.329a).* The special "changes" article set forth at § 803.329a authorizes, within agreed limits, and on certain conditions, the increase or decrease of the quantity of supplies to be delivered under a contract, and the extension or acceleration of delivery schedules. This article affords a ready means of adjusting quantities and deliveries to meet actual requirements, especially in the purchase of items which do not involve a long "lead time". It is not, however, intended that the special "changes" article shall be used as a means of avoiding the regular termination procedure for large scale terminations.

(i) *Illustrative contract provisions.* Two sets of contract provisions are here reproduced, exemplifying certain of the techniques discussed above.

(1) *"Short term supply contract with Government options."* Under this form of contract, the Government contracts for a quantity of supplies to be delivered over a period of three months, reserving options of renewal for three successive quarterly periods. Prices for each option period are to be negotiated, and, failing agreement, are to be fixed by the contracting officer at an amount representing fair and just compensation (with a right of review under the Disputes article). The contractor is obligated to procure necessary raw materials including packing supplies during an agreed "lead time" preceding the exercise of each option and is to be paid his applicable costs plus 2% in case the Government fails to exercise the option. W. D. Contract Form No. 1 (§ 813.1301) is used with the following additional provisions:

(a) The three months for which a delivery schedule is set forth herein is hereafter referred to as the "base period" and the amount to be delivered during such period is hereafter referred to as the "base period amount."

(b) The Government further authorizes the Contractor and the Contractor agrees to take as promptly as necessary all steps required in accordance with good business practice to have available all raw materials including packing supplies so as to be able to deliver during the three months succeeding the base period a quantity of the articles contracted for equal to the base period amount.

(c) Contractor agrees that the Government shall have the option to purchase a quantity of the articles contracted for, equal to the base period amount, to be delivered F. O. B. _____ in accordance with the delivery schedule determined by the Government, within a period of three months from the last delivery date immediately preceding the said option period. Such option shall be exercised by the delivery to the Contractor by the Contracting Officer of a notice to that effect thirty days prior to said delivery date. Upon receipt of said notice, the Contractor further agrees to take as promptly as necessary all steps required in accordance with good business practice to have available all raw materials, including packing supplies, so as to be able to deliver during the three months succeeding the said option period a second additional quantity of the articles covered by this contract equal to the base period amount.

(d) The parties agree that the price for the quantity covered by such option to be delivered in accordance with the delivery schedule determined by the Government shall be agreed upon at least fifteen days prior to the last delivery date immediately preceding the said option period, or within such further period as may be agreed upon by the Contractor and the Contracting Officer, and, when agreed upon, shall be evidenced by supplemental agreement hereto.

(e) In the event that the parties fail to agree, within the time specified, as to the price of the articles so to be delivered during such three months option period, the price payable therefor shall be determined at an amount constituting fair and just compensation for such articles. Such determination shall be made by the Contracting Officer and shall be subject to review in the manner provided in Article —— (Disputes).

(f) Negotiations for the fixing of the price for the quantities to be delivered during the three month option period shall be conducted on the same basis and shall employ the same types of data as in the case of a negotiation of a price under a new contract. The Contracting Officer may request and the Contractor shall supply the same types of information as in the case of a new contract including, without limiting the foregoing, the information developed and the additional experience gained in the performance of this contract.

(g) The Contractor agrees that if the Government shall exercise the option above provided for, it shall have two additional successive options to purchase additional quantities of the articles contracted for, each equal to the base period amount, and each such quantity to be delivered F. O. B. _____ within periods of three months each immediately succeeding the preceding option periods. The manner in which these additional successive options shall be exercised and the method of determining the prices

for the quantities to be delivered during such additional option periods respectively shall be as set forth with respect to the first option except that as to the last three month option, the Contractor is not authorized to incur any costs for any raw material or packing supplies for any deliveries beyond said last option period. If the Government fails to exercise any one of the aforesaid options it may not exercise any successive option.

(h) In the event the Government does not exercise any one of the options herein granted to it the Government agrees to reimburse the Contractor for all costs incurred by it in connection with having available raw materials and packing supplies as provided herein, and in addition a sum equal to 2% of such costs, and the Contractor agrees that it shall transfer title to and deliver such supplies and raw materials to or upon the order of the Government in the manner, to the extent and at the times directed by the Contracting Officer, or in the absence of such directions, shall retain such raw materials and packing supplies at prices to be agreed upon.

(i) The fixing of the contract price for any period as hereinbefore provided shall be without prejudice to the determination of any excessive profits of the Contractor upon subsequent renegotiation under the Renegotiation Act, as amended, or any contract article inserted pursuant to that Act or providing for renegotiation of the contract price to eliminate excessive profits.

(2) *"Supply contract with short term limitations."* Under this form of contract, the Government contracts for a year's quantity, but the price and delivery schedule are established in the contract for the first three month period only. Prices for the quantities directed by the Government to be delivered during each ensuing quarterly period are to be negotiated in advance of the commencement of each period, and, failing agreement, are to be fixed by the contracting officer at an amount representing fair and just compensation (with a right of review under the Disputes article). The contractor is obligated, during certain "lead" times, to procure raw materials including packing supplies and perform processing and manufacturing operations adequate to meet deliveries during the period succeeding the period for which prices are agreed to or fixed. Appropriate amendment is made of the uniform termination article (§ 803.324 (g)) restricting in certain respects the rights of the Contractor in the event of termination of the contract for the convenience of the Government. W. D. Contract Form No. 1 is used, with the following additional provisions:

(a) The three months for which delivery schedule is set forth herein is hereafter referred to as the "base period."

(b) The unit price or prices for the quantities directed by the Government to be delivered in each three month period subsequent to the expiration of the base period in accordance with the delivery schedule determined by the Government shall be fixed by agreement between the parties within 30 days but not less than 15 days immediately preceding the commencement of each subsequent period or such other time as may be agreed upon by the Contractor and the Contracting Officer, and when agreed upon shall be evidenced by Supplemental Agreement hereto. In the event that the parties fail to agree, within the specified time, upon the price of the articles so to be delivered during any such subsequent three-month period, the price payable therefor shall be determined at an amount constituting fair and just compensation for such articles. Such determination shall be made by the Contracting Officer and shall be subject to review in the manner provided in Article —— (Disputes).

(c) Negotiations for the fixing of the price for the quantities to be delivered during any three month period succeeding the base period shall be conducted on the same basis and shall employ the same types of data as in the case of a negotiation of a price under a new contract. The Contracting Officer may request and the Contractor shall supply the same types of information as in the case of a new contract including, without limiting the foregoing, the information developed and the additional experience gained in the performance of this contract.

(d) The Contractor agrees to take, and to continue to take from time to time as prices are fixed for periods succeeding the base period, as promptly as necessary all steps required in accordance with good business practice (i) to have available all raw materials including packing supplies so as to be able to deliver during the three month period succeeding the date for which unit prices shall last have been fixed, quantities equal to those for which unit prices shall last have been fixed, but not in excess thereof, and (ii) to perform processing or manufacturing operations with respect to said quantities so as to be able to deliver them during such succeeding period but not to begin such operations prior to 30 days immediately preceding the commencement of such subsequent period without the approval in advance of the Contracting Officer, and, in such event, only to the extent to which the Contracing Officer shall approve in advance.

(e) In the event that this contract shall be terminated pursuant to the provisions of Article — ("Termination at the Option of the Government") the rights of the parties as respects that portion of the contract for which unit prices shall not have been fixed shall be determined in accordance with the provisions of Article —: *Provided, however,*

(i) That the Government shall reimburse the Contractor in connection with such portion of this contract for which unit prices shall not have then been agreed upon for costs which were incurred only in connection with (a) raw materials and packing supplies for quantities to be delivered during a period of three months succeeding the period for which unit prices shall have last then been fixed and (b) the processing and manufacturing operations performed with respect to such quantities in accordance with the aforesaid provisions. If as a result of such operations the Contractor shall have completed supplies called for herein in excess of the quantity for which unit prices shall have been agreed upon, the Contractor may, but is not obligated to, transfer title and deliver such completed supplies to or upon the order of the Government in the manner, to the extent and at the times directed by the Contracting Officer. If the Contractor transfers such title and makes such delivery of completed supplies, the Government will pay therefor, but without duplication of any amounts agreed upon in accordance with this paragraph, the unit price last fixed under this contract or by Supplemental Agreement thereto; if the Contractor does not transfer title or deliver such supplies as herein set forth the Government shall not reimburse the Contractor for any costs incurred in connection therewith.

(ii) For the purposes of paragraph (d) Article — ("Termination at the Option of the Government") the contract price of all units of supplies called for by this contract, the price of which shall not have been fixed, shall be deemed to be the unit price last fixed under this contract or by Supplemental Agreement thereto.

(f) The fixing of the contract price for any period as hereinbefore provided shall be without prejudice to the determination of any excessive profits of the Contractor upon subsequent renegotiation under the Renegotiation Act, as amended, or any contract article inserted pursuant to that Act or providing for renegotiation of the contract price to eliminate excessive profits.

(j) *Technical services urged to devise contract provisions and procedures to carry out the foregoing program.* Subject to any approvals of higher authority required to be obtained in particular cases under Parts 801 to 816 of this chapter (see especially § 803.306), the technical services are urged to devise and employ contract provisions and procedures along the lines discussed above.

§ 802.223 *Factors governing placement of contracts.* The selection of a contractor for a particular contract from among the available qualified producers depends on a number of factors. In making such selections effect must be given to various policies expressed by the Office of War Mobilization, by the War Production Board (see Directive No. 2, 18 September 1943; 8 F.R. 12968), by the War Manpower Commission in its directives, and by Congress, as in the Smaller War Plants Act. These policies, their relation and relative importance are discussed in the following paragraphs, which are applicable both to the placement of new business and to the revision or reduction of existing programs:

(a) *Ability to perform.* Primary emphasis shall be placed upon securing performance or deliveries at the time, in the quantity, and of the quality required by the war program. As indicated in § 802.222 (a), the objective is to insure delivery in time to avoid delays in the war program, but to avoid creation of unnecessary inventories.

(b) *War Manpower Commission labor area.* The War Manpower Commission has divided the country into twelve Regions and from time to time classifies localities in each Region according to their labor supply conditions and on this basis designates them as:

Group I: Areas of current acute labor shortage.

Group II: Areas of labor stringency and those anticipating a labor shortage within six months.

Group III: Areas in which a slight labor reserve will remain after six months.

Group IV: Areas in which a substantial labor reserve will remain after six months.

The Industrial Personnel Division, Headquarters, Army Service Forces, will advise the technical services monthly, or more often if conditions warrant, of the designations of the War Manpower Commission.

(c) *Area Production Urgency Committee areas.* Effective 15 September 1943 the Office of War Mobilization announced a program for dealing with the acute labor shortage problem in certain localities of the West Coast. On 5 October 1943 the War Production Board announced a program for the placement of contracts in the States of Washington, Oregon and California. The War Production Board announced a similar program for the Hartford, Connecticut, Ak-

ron, Ohio, and Detroit, Michigan areas, on 15 October 1943; for the Cleveland, Ohio, and Buffalo, New York areas on 14 December 1943; and for the Chicago, Illinois, area on 29 March 1944. Area Production Urgency Committees have been appointed for and are functioning in respect of these unusually critical labor areas. Similar programs may be adopted for other such labor areas, in which event any necessary directives will be issued prescribing the procedures to be followed for complying therewith. The policies stated in the remaining paragraphs of this section will be subject to the requirements of such directives.

(d) *Policy with respect to placing of contracts in labor shortage areas.* The following policies will be observed with respect to the placing of contracts in the labor shortage areas:

(d–1) *Group I areas for which Area Production Urgency Committees have been appointed*—(i) *Contracts not requiring clearance of Committee; reporting as to intended placement.* (i) Except to the extent provided in any directive issued after 1 February 1944 as to any Group I Area for which an Area Production Committee has been appointed, the provisions of which directive will control as to the placement of contracts in that area until revoked,[1] the following types of contracts may be placed in these areas without clearance with, or approval of, the appropriate Committee:

(*a*) New and continuation contracts which cannot be placed elsewhere with adequate assurance of obtaining satisfactory performance and timely deliveries and which will not increase employment in the contractor's plant; and

(*b*) New and continuation contracts with independent contractors (those not subsidiaries of larger concerns) that employ no more than 100 persons (excluding office and sales personnel) which will result in no increase whatsoever in the number of persons so employed; for example, an independent concern employing 30 persons, if performance of the contract will not require it to increase the number above 30; *Provided,* That, such contracts may be placed with independent contractors in the States of Washington, Oregon or California only if they employ no more than 50 such persons.

(ii) Although such contracts may be placed in any such area without approval of the appropriate Committee, nevertheless before such placement of an unclassified contract of a total value in excess of $50,000, there will be transmitted to the Appropriate Committee four copies of form GA–861, duly completed, which will have endorsed thereon the proposed contract number and the legend "For Information Only". These will be transmitted through the Army representative on the Committee, or in the case of the Army Air Forces the Army Air Forces representative on the Committee, at least seven days before placement of the contract, unless this will unduly delay production, in which case they will be transmitted as far before placement as is practicable.

(2) *Contracts requiring clearance of Committee; application for such clearance.* (i) The following types of contracts must be cleared with the appropriate Area Production Urgency Committee before placement in any Group I area for which a Committee has been appointed and may be placed in these areas only if such placement has been approved by the Committee:

(*a*) New and continuation contracts which cannot be placed elsewhere with adequate assurance of obtaining satisfactory performance and timely deliveries but which will increase employment in the contractor's plant;

(*b*) New contracts which can be placed elsewhere with adequate assurance of obtaining satisfactory performance and timely deliveries but which the technical service believes should be placed in the area, as, for example, to effect a substantial saving in transportation;

(*c*) Continuation contracts which can be placed elsewhere with adequate assurance of obtaining satisfactory performance and timely deliveries but which the technical service desires to continue in the area, as, for example, to prevent an undue hardship to the contractor which might result from withholding continuation orders.

(ii) Since the Committee areas are the most critical of all the Group I areas, the technical services will not request Committee approval under subdivisions (*b*) or (*c*) above for any contract which the technical services are not authorized to place in non-Committee Group I areas under paragraph (d–2) of this section.

(iii) Applications for clearance by the Committee will be made to the Committee for the area in which the facilities of the contractor at which the work, or a major part of the work, will be done are situated. Applications, which may seek approval of a single contract or an entire program, will be submitted in four copies on form GA–861 and will be transmitted through the Army or, in the case of the Army Air Forces, the Army Air Forces representative on the Committee.

(d–2) *Group I areas for which no Area Production Committee has been appointed.* It is the intent to avoid so far as possible the placement of contracts in these areas. The only contracts which may be placed in these areas are those:

(1) Which cannot be placed elsewhere with adequate assurance of obtaining satisfactory performance and timely deliveries; or

(2) For which established special facilities exist and for which labor has been specially trained; or

(3) Which, in the considered judgment of the chief of the technical service concerned, or of any person or persons to whom he may delegate his authority in this respect, it is impracticable to place elsewhere.

(d–3) *Group II areas.* The following types of contracts may be placed in Group II areas:

(1) Continuation contracts which will require no labor in addition to that currently employed by the contractor and

(2) New and continuation contracts which cannot be placed in a Group III, IV or an unclassified area with adequate assurance of satisfactory performance and timely deliveries.

(d–4) *Exceptions as to restrictions applying to Group I and Group II areas.* (1) The foregoing restrictions upon the placement of contracts contained in paragraphs (d–1) to (d–4) do not apply to contracts with originating manufacturers for newly developed articles placed in accordance with § 802.224. The provisions of paragraph (d–1) (i) (ii), with respect to reporting placement to the Area Production Urgency Committee, however, apply in the event such contracts are placed in a Group I area for which a Committee has been appointed.

(2) The restrictions contained in paragraphs (d–2) and (d–3) do not apply with respect to contracts with firms which currently employ less than 100 wage earners and which will not employ more than 100 wage earners during the performance of the contract.

(d–5) *Group III and unclassified areas.* There are no restrictions upon the placement of contracts in Group III and unclassified areas.

(e) *Policy with respect to placing of contracts in labor surplus areas.* It is the policy of the War Department to make every effort to place a substantial amount of its business with concerns located in Group IV areas, to the extent placement there is consistent with other procurement objectives and satisfactory performance and timely deliveries can be assured.

(f) *Subcontracting in labor shortage areas.* (1) Prime contractors holding the bulk of War Department contracts have received a request from the Under Secretary of War to apply principles similar to those described in paragraphs (d) and (e) of this section in placing their subcontracts for the fabrication of products required by their prime contracts. When new prime contracts which may involve subcontracting are made, the prime contractors will be advised of these principles by contracting officers and will be strongly urged to apply them in placing subcontracts.

(2) Where to give effect to changes in the classification of labor supply areas occurring after the execution of a particular prime contract would decrease the efficiency or increase the cost of placing recurring subcontracts thereunder, the chief of a technical service or his duly authorized representative is authorized, pursuant to the First War Powers Act, 1941, to enter into and approve supplemental agreements to provide for the payment of any increased price to the prime contractor to cover increased costs resulting from such changes in subcontracting, in the same manner as provided in § 802.225 (f) (3). It is hereby determined that supplemental agreements entered into for this purpose will facilitate the prosecution of the war.

(3) Many prime contractors are regularly receiving the monthly classification

[1] Special restrictions upon the placement and continuation of contracts in the Hartford, Connecticut area are stated in Army Service Forces Circular No. 38 of 3 February 1944, to which reference is made for the policy governing placement in that area so long as the provisions of such Circular are in effect.

of labor market areas issued by the War Manpower Commission. Arrangements may be made to have additional prime contractors supplied with them by communicating directly with the Division of Procurement Policy, War Production Board, Washington, D. C.

(g) *Other factors.* When policies relating to ability to perform and labor supply have been met, contracts will be placed so as to give due weight in each instance to the following objectives:

(1) *Cost and efficiency.* Placements of contracts so as to use the minimum number of man-hours and the minimum quantity of material to make the supplies needed. In the long run this will result in the lowest cost to the Government. In the absence of actual data as to the relative efficiency of producers in utilizing manpower and material, their comparative prices are normally the best test of their relative efficiency in these respects, unless other differences between them (such as differences in their cost of transportation or in their expenditures for facilities) distort the comparison. Whenever such information is needed producers will be required to furnish actual or estimated cost data covering their production. In so far as possible contracts should provide the maximum incentive to the producer for the reduction of his costs.

(2) *Small business concerns.* Placement of contracts so as to make the most effective utilization of the small plants of the nation. To this end, as large a proportion of awards as practicable will be made to qualified small concerns, directly if feasible and, if not, through awards to larger firms which will subcontract to small concerns. To achieve these objectives, payment of a reasonable premium is authorized where necessary, in accordance with directives from time to time in effect.

(3) *Conservation of special abilities.* Conservation for the more difficult war production problems of the resources of concerns best able, by reason of engineering, managerial and physical resources, to handle them, through placement of contracts for items which involve relatively simple production problems with concerns, normally the smaller ones, which are less able to handle the more difficult problems.

(4) *New facilities.* Avoidance, so far as possible, of the creation of additional new (as distinguished from existing) machinery, equipment or facilities.

(5) *Transportation.* Conservation of transportation facilities by avoiding unnecessary crosshauling of raw, semi-finished or finished material from the point of origin to the point of consumption and by avoiding long hauling when such materials are available at a shorter distance.

(6) *More than one source of supply.* Placement of contracts, whenever practicable, so as to have for each item of supply and equipment at least two producers so located as not to be subject to the same hazard. Determination of whether it is practicable so to do shall be made by the chief of the technical service concerned.

No one of the six objectives stated in this paragraph should alone be regarded as controlling. The placement or revision of contracts should reflect an evaluation of all these objectives which are applicable to the particular case.

(h) *Price.* (1) The application of the principles stated in paragraphs (a) to (g), inclusive, will in some instances require the payment of prices higher than those of the lowest bidder. The technical services are hereby authorized and directed to pay higher prices than would otherwise be required to the extent that such action is necessary to carry out the foregoing policies.

(2) When the foregoing policies have been met and selection among available contractors is still possible, contracts will be so placed as to obtain the lowest price for the Government.

§ 802.224 *Contracts for newly developed articles.* In placing contracts for new articles developed by a manufacturer for War Department use, the following principles will be observed:

(a) In general a substantial proportion of the initial orders for a new article should be placed with the manufacturer who developed it. Unless the chief of the technical service concerned deems it impracticable so to do, effort should be made to place enough of the volume with other qualified producers to develop at least one other experienced source; except in unusual cases this should be a going production order and not a limited quantity educational order.

(b) When the originating manufacturer demands a price for the item substantially higher than the price for which it can be secured elsewhere, or will require substantially more facilities or tools than some other producer in order to get into production, or is already heavily loaded with orders, and the article can readily be made by one or more other producers, the contracts for the article should be placed with such producers. In such cases the originating manufacturer should be fairly paid for his developmental work as such.

§ 802.225 *Smaller War Plants policy—*(a) *Smaller War Plants Act.* (1) Public Law 603—77th Congress (approved June 11, 1942) creates the "Smaller War Plants Corporation" (hereinafter referred to as "SWPC") and gives the Chairman of the War Production Board certain powers and responsibilities incident to placement of Government contracts with smaller plants. The majority of such powers have been delegated by the Chairman of the War Production Board to the Chairman of SWPC.

(2) The act gives SWPC power to enter into prime contracts with the War Department for articles, equipment, supplies or materials, or parts thereof, or work in connection therewith, and to subcontract the production of these items to small business concerns. If the Chairman of the War Production Board certifies that SWPC is competent to perform any specific Government procurement contract, the contract must be let to it on such terms and conditions as the Chairman may specify.

(3) The act also authorizes SWPC, by delegation from the Chairman of the War Production Board, to certify small business concerns or groups of such concerns to the Secretary of War with respect to capacity and credit as to a specific Government procurement contract. The War Department is directed to accept such certification as conclusive and is authorized to place the contract with the concern or group of concerns without requiring the meeting of any other requirements with respect to capacity and credit.

(4) The act recognizes that small plants are frequently unable to produce at as low a per unit cost as larger plants and that, as a consequence, it may be necessary for the Government to pay a higher per unit price for articles when obtaining them from small plants than it pays to business concerns operating large plants. War Department policy in respect to this will be prescribed by further instructions from time to time.

(b) *General policy.* (1) The established policy of the War Department is to place the greatest practicable volume of prime contracts and to encourage subcontracts with small business concerns or groups of such concerns without the necessity of plant certification or the taking of prime contracts by SWPC. To implement this policy, the basic program covered in paragraphs (c) to (i) of this section is established in order to assist the smaller plants to participate to the greatest practicable extent in War Department contracts.

(2) It is recognized that procurement procedures vary as between technical services, and it is the policy of the War Department that procedures to be established between each technical service and SWPC will coordinate closely with the normal operations of the technical service. It is the responsibility of the chief of each technical service to establish operating procedures within his technical service with SWPC in conformity with the policies stated in this section. Such procedures shall be established by mutual agreement between SWPC and each technical service, and shall be in writing. A copy of such agreement shall be provided the Small War Plants Branch, Purchases Division, Army Service Forces, which office is available for any assistance requested in connection with preparing the agreement.

(c) *Designations by, and representatives of, SWPC.* (1) To date no certifications as referred to in pargraph (a) (3) have been made to the Secretary of War by SWPC. However, a program has been and will continue to be in effect whereby small concerns are recommended by SWPC to each contracting office of the War Department as being capable of performing contracts under particular procurements. Such recommendations are called designations, and firms so designated are known as SWPC designees.

(2) SWPC has appointed a representative to each contracting office of the War Department. Such representative is known as a SWPC Procurement Specialist, and one of his duties is to present designations to the contracting office as set forth in paragraph (f).

(3) SWPC has appointed a representative to the office of each technical service issuing procurement directives, and this representative is also known as a SWPC Procurement Specialist. Among his duties are those set forth in paragraph (e).

(d) *Basic program.* (1) The following points of policy are established with respect to actions by the War Department in connection with SWPC, and have been agreed upon between SWPC and the War Department:

(i) This program will be undertaken on all procurements, except that procurements of secret or confidential items and those of an emergency nature may be excluded at the discretion of the chief of a technical service. "Emergency nature" relates to those situations where military necessity will not permit the processing of the procurements as outlined herein.

(ii) The War Department's general definition of a small concern is an independently-owned concern employing less than 500 wage earners. Nevertheless, it is within the discretion of a contracting office, independently or upon the request of SWPC, to consider the relative size of a firm within its industry and treat it as large or small accordingly.

(iii) All decisions with respect to the degree of participation of and the desired geographical location of small concerns, and to the choice of particular small concerns to participate in War Department procurements, will be reached at the contracting offices of each technical service, (or at whatever office in the technical service decisions are reached regarding the use of specific facilities).

(iv) Since small concerns considered by the contracting office as suitable to bid for a procurement will normally be reviewed by SWPC to determine whether or not such firms will become SWPC designees for such procurement, it is anticipated that the final list of concerns so designated by SWPC will include many of the small concerns acceptable to the contracting office.

(2) Chiefs of technical services will designate Small War Plants officers at the contracting offices, and also at either the headquarters of the technical services or at the offices issuing procurement directives. Such officers will be charged with administering War Department policy in respect to small concerns, with working in cooperation with SWPC Procurement Specialists at such offices and with acting as specific contacts for representatives of small concerns calling at such offices. Each technical service will conduct staff supervision of contracting office procedures in connection with the small plant program.

(e) *Action at the office issuing procurement directives.* Opportunity will be afforded the SWPC Procurement Specialist at the office issuing procurement directives (1) to review with the proper personnel of the technical service the related parts of the Army Supply Program for the purpose of selecting products which will be generally suitable for small concerns, and (2) to examine all procurement directives (except those for secret and confidential items and those of an emergency nature, unless authorized to do so by the chief of the technical service). Where a technical service buys through district offices whose purchasing responsibility is confined to limited geographical areas, suggestions from the SWPC Procurement Specialist as to distribution to districts will be received and considered. When the SWPC Procurement Specialist indicates an interest in further action by SWPC on a procurement, this interest will be noted on the procurement directive that is sent to the contracting office. Lack of such notation of interest will not eliminate a procurement from further consideration under paragraph (f) (1) of this section. Copies of procurement directives which have been examined (except those for secret and confidential items) will be supplied by the office issuing them to the SWPC Procurement Specialist at that office, to the extent desired by SWPC.

(f) *Action at the contracting office.* (1) The contracting office and the SWPC Procurement Specialist at that office will mutually decide, on all procurements (secret and confidential procurements are excluded, except where specifically authorized under paragraph (e) (2) of this section:

(i) Whether a particular procurement is suitable for manufacture by small concerns.

(ii) The minimum portions of procurements found suitable under (i) which the contracting office will endeavor to place with designees of SWPC in compliance with paragraphs (a) to (g) of § 802.223.

(iii) In cases found suitable under (i) and (ii), how many SWPC designations will be sought, from which SWPC regions they will be sought, and by what date such designations will be submitted to the contracting office.

(iv) While emergency procurements are normally excluded under paragraph (d) (1) (i) from further processing through SWPC, the contracting office may in its discretion allow the SWPC Procurement Specialist, if time permits, to suggest sources, when such action does not delay the procurement.

(2) Other action to be taken by the contracting office includes:

(i) A set of drawings, specifications and prints will be made available to the SWPC Procurement Specialist as soon as practicable after the SWPC Procurement Specialist requests them in connection with a particular procurement. Additional sets will be furnished, if available; and if not available, full descriptive information to the extent available will be given the SWPC Procurement Specialist.

(ii) The contracting office will make available to the SWPC Procurement Specialist the names of small plant sources considered suitable by the contracting office for a particular procurement. SWPC will, under its procedures, designate or indicate reasons for refusing to designate such sources.

(iii) Small concerns designated by SWPC in accordance with (1) (iii) above will normally be given an opportunity to bid or negotiate. If a contracting office does not consider that a SWPC designee should receive this opportunity, the SWPC Procurement Specialist shall be given the reasons therefor.

(iv) On the date established under (1) (iii) the contracting office will consider not only SWPC designations that have been submitted for the particular procurement by that date but also any other sources of the contracting office's choice, and will determine which of such firms will be given an opportunity to bid or negotiate.

(v) Opportunity will be given the SWPC Procurement Specialist to make representations to the contracting office in behalf of concerns designated by SWPC for the procurement involved after final bid prices have been received but before final choice of contract placement is made. Copies of abstracts of bids, if available, on procurements in which SWPC participates under (1) (iii) will be furnished at this time to the SWPC Procurement Specialist; if a copy is not available, information will be made available so that the SWPC Procurement Specialist may make his own copy.

(vi) Negotiation and placement of awards will be governed by the factors enumerated in paragraphs (a) to (g) of § 802.223. While the contracting office will endeavor to fulfill the percentage allotment for SWPC designees, and to place contracts with such designees for as great a percentage as is practicable, first consideration shall be, in all cases, that of securing performance or deliveries at the time, in the quantity, and of the quality required by the war program, and nothing in this section shall detract from that consideration. In considering the factor referred to in § 802.223 (g) with respect to small business concerns, the contracting office may determine that the "most effective utilization of the small plants of the nation" will be accomplished, in a particular instance, by the payment of a higher price (when such price is proved to result from a justifiably higher cost) to a capable small plant in need of business as against a lower price bid by another small plant with an ample work-load.

(vii) The SWPC copy of the abstract or information indicated in (v) will be noted as to awards made and signed by the contracting office.

(3) In the event the SWPC Procurement Specialist does not agree with the position taken by a contracting officer on the points enumerated in (1) and (2), or if small firms chosen by the contracting office to receive awards are considered by SWPC as not suitable to receive award under the procurement and the reasons given by SWPC for this decision are not acceptable to the contracting office, reasonable opportunity will be given SWPC, if military urgency permits, to submit the difference of opinion to the chief of procurement of the contracting office for final decision.

(g) *Encouraging subcontracting to small concerns.* (1) In order to promote subcontracting to small concerns, the chief of each technical service will instruct contracting personnel at all levels to bring to the attention of prospective

contractors the policy of the War Department to encourage subcontracting to the greatest practicable degree. The attention of such prospective contractors will be called to the contract clauses set forth in §§ 803.367 to 803.368 of this chapter.

(2) Additional subcontracting to small concerns by existing contractors will be fostered to the degree practicable. When the chief of a technical service or his duly authorized representative determines that increased costs under such additional subcontracts are justifiable, he is authorized to enter into and approve supplemental agreements amending or modifying such existing contracts to provide for the payment of an increased price to the prime contractor to cover the increased costs of such subcontracting. Any such agreement will be made pursuant to the First War Powers Act, 1941, and Executive Order 9001, and may be made without consideration to the Government other than the promotion of the policies stated in Public Law 603, 77th Congress and in subparagraphs (2) and (3) of this paragraph.

(3) The procedures described in subparagraph (2) above will be applied to subcontracts where it appears to be practicable to get a subcontractor to spread his load among more subcontractors.

(h) *Limitations*—(1) *Standardization.* While the SWPC Procurement Specialists will be afforded every practicable assistance in bringing about the further spread of work to smaller plants, consistent with the factors enumerated in paragraphs (a) to (g) of § 802.223, inclusive, standardization programs on items where a flow of replacement parts is a factor will also be taken into account in connection with applying the Small War Plants policy.

(2) *Preventing abuses.* In carrying out the policy of spreading the work to smaller war plants, contracting officers must take precautions to prevent abuse of the preferred position of such plants. For instance, a smaller war plant contractor should not be allowed to subcontract substantially the entire work to a large plant at a lower price and thereby to operate virtually as a contract broker.

(i) *Policy matters in connection with the Smaller War Plants Acts.* Matters of procedural disagreement will be referred to the headquarters of the technical service involved for settlement with the SWPC Procurement Specialist at that headquarters. If such disagreements cannot be settled at that level, reference will be made by the technical service to the Small War Plants Branch, Purchases Division, Headquarters, Army Service Forces. All matters of basic policy relating to prime contracting and subcontracting with smaller plants will be dealt with for SWPC by its Washington headquarters and for the War Department by the Small War Plants Branch, Purchases Division, Headquarters, Army Service Forces. On such matters, contact will be between these offices.

§ 802.226 *Debarred bidders*—(a) *Persons disqualified.* Contracts will not be placed with persons who are on any of the following lists of debarred bidders.

(1) List of bidders debarred from bidding on War Department contracts by reason of violations of the Walsh-Healey Act. (See § 809.916 and following).

(2) List of bidders debarred from bidding on War Department contracts by reason of violations of the Davis-Bacon Act. (See § 809.910 and following.)

(3) War Department confidential list of bidders to whom awards will not be made.

(4) The proclaimed list of blocked nationals which the Secretary of State from time to time publishes listing persons and organizations deemed to be acting directly or indirectly for the benefit of the enemy. (See § 811.1185.)

(b) *Distribution of lists.* The Adjutant General will distribute to the technical services lists of bidders debarred by the Comptroller General by reason of violations of the Walsh-Healey Act or the Davis-Bacon Act and copies of the War Department confidential list of debarred bidders. Copies of the proclaimed list of blocked nationals will also be made available to the chiefs of the technical services.

(c) *Procedures for placing bidders on confidential list*—(1) *Authority.* The Adjutant General will place a bidder upon the confidential list of bidders to whom awards will not be made (i) where the Director, Purchases Division, Headquarters, Army Service Forces, determines that the bidder has been guilty of fraud or attempted fraud against the United States, or (ii) for the duration of the present war, in any instance where the Director, Purchases Division, determines that the best interests of the United States require that contracts be not awarded to the bidder. In recommending that a bidder's name be placed on the list, the chief of a technical service will submit to the Director, Purchases Division, a full report of the specific instances of the bidder's alleged dereliction together with any available evidence relating to the contract concerned and the complaint against the bidder.

(2) *Notice.* If such action has not already been taken, the Director, Purchases Division, will send to the bidder by registered mail, a notice stating (i) that a recommendation has been made that the bidder's name be placed on the War Department's confidential list of bidders to whom awards will not be made, (ii) the specific contract, bid, or action of the bidder as to which complaint is made, and the specific nature of the complaint in reasonable detail, and (iii) that the bidder may make a statement in writing with respect to the complaint on or before a date fixed in the notice. The bidder will not be given access to any evidence in the hands of the War Department, except in the notice and statement required by this subparagraph (2).

(3) *Direction.* The Director may make such investigations and study of the complaint, either directly or through The Judge Advocate General or The Inspector General, as he deems proper. If the Director determines that the bidder's name should be placed on the confidential list, he will transmit to The Adjutant General (i) the complete file, including any statement filed by the bidder, together with the direction to place the bidder's name on this list, and (ii) drafts of notices of the action taken to be sent by The Adjutant General to the bidder, the technical services and the Comptroller General.

§ 802.227 *Policies governing allocation of cutbacks.* The policies set forth in §§ 802.220 to 802.226 will be observed to such extent as may be practicable in connection with adjustments of supply contracts growing out of reductions in the Army supply program (see also §§ 815.103, 815.302).

§ 802.228 *Exceptions.* Upon specific request the Director, Purchases Division, Headquarters, Army Service Forces may grant authority to depart from the policies stated in this subpart. Requests for such authority stating the reasons therefor will be forwarded to the Purchases Division, Headquarters, Army Service Forces. One such specific exemption granted to The Quartermaster General is referred to in QMS paragraph 2-2-3d (29 June, 43).

SUBPART C—CONTRACT PRICE POLICIES

§ 802.230 *Basic objectives.* Policies regarding contract prices have three main objectives: to maintain incentives for efficiency, reductions in costs and maximum production; to obtain fair prices and prevent excessive profits; and to contribute to the control of inflation.

(a) *Incentives.* Increasing shortages in materials and manpower imperatively require that all producers be encouraged to operate at their highest attainable efficiency with the minimum waste or misuse of materials and labor, if maximum production of war equipment is to be reached and maintained. Increased efficiency, improved methods, and lower costs mean better use of available resources and savings in labor, materials and facilities and can be encouraged by making profits depend on efficiency. This requires careful purchasing and contracting to keep prices close enough to costs so that producers must exercise careful management and ingenuity to increase production and decrease costs in order to earn a reasonable profit.

(b) *Profit control.* In spending public money the War Department has the duty to see that its purchases are made at fair prices. In addition, by section 403 of Public Law 528—77th Congress, approved April 28, 1942, and amended October 21, 1942, the War Department is directly charged with the responsibility for preventing and eliminating excessive profits on its contracts and on subcontracts thereunder. In many cases, skillful and careful negotiation of contracts will prevent excessive profits from accruing and make their renegotiation unnecessary.

(c) *Inflation.* For many types of military commodities ordinary methods of price control by maximum price regulations, formulas and ceilings become extremely complex and difficult to administer, and divide procurement responsibility. At the request of the War

and Navy Departments the Office of Price Administration has agreed to refrain from further extending its price control over strictly military items, and in return the War and Navy Departments have undertaken the responsibility for maintaining control of prices in this limited exempted area. (See § 811.1131 (c)).

§ 802.231 *General policy*—(a) *Sound pricing.* The three objectives stated in § 802.230 are all closely related and must be handled accordingly. In order to promote efficiency and prevent inflation, it is vitally necessary to obtain sound contract prices reasonably close to costs, since recapture of profits for past periods on renegotiation will not operate to control costs or inflationary tendencies. This requires effective purchasing and price supervision to obtain well-negotiated original contracts. The chief of each technical service will see that this policy is implemented and followed in his service. This will require the use of appropriate contracts and contract provisions (discussed in this subpart), adequate methods of negotiation (discussed in Subpart D of this part) and effective price supervision (discussed in Subpart E of this part).

(b) *Relation to contract placement policies.* This basic policy of emphasizing the price element in negotiating contracts, stated in the preceding paragraph, is not inconsistent with the relatively minor importance of price in selecting contractors, stated in § 802.223 (g). The selection of a contractor for a particular contract from among the qualified producers is based primarily on policies regarding speed and quality in performance and efficient use of manpower, materials and facilities. (See § 802.223 (a) to (g).) In making this choice among producers the price of a particular producer as compared to other available producers is considered as less important than these other policies. When these other policies are satisfied by several producers, however, choice is based on comparative price. Moreover, the price to be fixed in the contract with the producer selected on these bases is vitally important. The fact that the war program requires that contractors be selected on bases other than comparative prices, makes it especially necessary to have sound methods of negotiation and price supervision to ensure that the contract prices agreed upon with such contractors will be close enough to their costs to encourage efficient operations, to prevent excessive profits and to restrain inflationary influences.

§ 802.232 *Cost-plus-a-fixed-fee contracts*—(a) *Disadvantages.* Fixed-fee contracts have the following disadvantages:

(1) The fixed-fee contract does not encourage efficiency to the same extent as the well-negotiated fixed price contract. While the fixed-fee contractor is obligated to perform in an efficient manner, he does not have the same direct financial inducement to economize in the use of materials, machinery or manpower, or to keep down material and labor costs, or to use ingenuity and inventiveness in finding substitutes and improvements.

(2) Such contracts require uneconomical use of executive, auditing and administrative personnel, both by the Government and the contractor, in checking and rechecking vouchers, in auditing and allocating costs and in adjusting accounting questions.

(3) The financial pressures which restrain a fixed price contractor in competing for labor and accumulating inventories do not apply to the same extent to the fixed-fee contractor.

(b) *Use discouraged.* For the foregoing reasons supply contracts will be made on a cost-plus-a-fixed-fee basis only if no practicable alternative exists. Difficulties in estimating costs with reasonable accuracy because of possible future fluctuations in material or labor costs should not be regarded as an adequate reason for using this type of contract. Even the unfamiliarity of the contractor with the manufacturing process involved, as in the case of new, experimental or developmental articles, does not necessarily justify the use of the fixed-fee contract. For instance, the experience of other manufacturers may often provide sufficient basis for estimating costs and fixing the price, or a fixed price contract may be used with provision for redetermination or for upward or downward price revision, as soon as costs become known and reasonably stable.

(c) *Conditions on use.* In the exceptional cases where the cost-plus-a-fixed-fee form is used for a supply contract the following conditions will be met:

(1) When the contractor is to be reimbursed for substantially all its costs, the fixed fee represents essentially profit without risk. It should be determined not by the amount of the estimated cost but by the extent and nature of the work supervised or the services to be performed by the contractor. Thus in fixing the fee consideration should be given, among other things, to whether the work or production involved is complicated or simple, the turnover slow or rapid, how much or little of the work will be subcontracted, and how extensive or difficult the duties of the prime contractor will be in supervising the subcontracted work.

(2) Whenever feasible, the contract will include a provision for conversion of the contract as soon as practicable to a fixed price basis related to the costs during the early part of the contract. (See § 812.1225).

(3) If conversion to a fixed price basis is not feasible, consideration will be given to inclusion of a provision for upward or downward adjustments in the fee based on efficiency after a test period. (See § 812.1226).

(4) The article for statutory renegotiation of the fixed-fee will be included in accordance with § 812.1208 (b).

(5) In no case will the fixed-fee exceed the statutory maximum of 7% for supply contracts.

(d) *Construction contracts.* Whenever feasible, construction contracts will be made on a fixed price rather than a fixed-fee basis.

(e) *Existing contracts.* (1) Whenever feasible, existing cost-plus-a-fixed-fee contracts will be amended to convert them or provide for converting them to a fixed price basis as soon as practicable. Special effort to obtain such conversions will be made because the change offers an opportunity to obtain more efficient production or appears otherwise to be of special advantage to the Government. Ordinarily, such conversion will take place by supplemental agreement substituting for the cost-plus-a-fixed-fee contract a fixed price contract covering the whole performance of the contract, effective retroactively to the beginning of the performance. Such a retroactive conversion will assist in avoiding complicated and time consuming allocations of costs, inventory and preparatory expense. However, in appropriate cases conversions may be made effective from some stated point in the performance of the cost-plus-a-fixed-fee contract.

(2) One purpose of the War Department in converting cost-plus-a-fixed-fee contracts to a fixed price basis is to develop lower prices and costs and greater efficiency in the utilization of manpower and capacity, not only under the contract which is being converted but also under future contracts for similar products. The policy of pressing for conversions is based upon the premise that a fixed price contract gives the contractor maximum incentive to achieve more efficient operations during the balance of the contract. Consequently, such conversions will be made only where a substantial portion of the contract remains to be performed, unless the prior approval of the Director, Purchases Division, Headquarters, Army Service Forces, has been obtained in the particular case.

(3) The circumstances of such conversions will obviously vary and accordingly the considerations to be taken into account in determining a fixed price at which the contract is to be performed cannot be prescribed in specific terms applicable to each case. Essentially, however, the problem of converting the cost-plus-a-fixed-fee contract to a fixed price basis is no different from the original fixing of price and terms under any fixed price contract and Government representatives, in determining a fixed price, will be expected to give weight to the general factors relating to pricing ordinarily employed in connection with a fixed price contract as discussed in Army Service Forces Manual M-601, "Pricing in War Contracts."

(4) Although the probability is that a fixed price, properly determined, will result in lower expenditure by the Government than on the cost-plus-a-fixed-fee basis, in some instances it may be to the interest of the Government, to press for the conversion of cost-plus-a-fixed-fee contracts for various reasons other than expected monetary saving. Indeed, in view of the present shortages of manpower and of some material, in some cases the amount of the proposed fixed price may not be the principal factor to be taken into account.

(5) Among the considerations that obviously must be given weight in determining the fixed price arrangement in connection with a conversion are the following:

(i) In cases where the supplemental agreement provides one fixed price for all the deliveries under the contract, retroactive to the beginning of the contract, the analysis of the fixed price, should include a consideration (together with all other relevant factors) of the estimated average costs over the life of the contract, giving due weight to past costs and to estimated future costs. In determining estimated average costs full weight will be given to the decline in costs normally to be expected as production experience is gained (see subdivision (vi) below).

(ii) In cases where the supplemental agreement provides a schedule of different prices for various sections or periods of deliveries, the objective should be to include in the price set for any past period an amount not in excess of a reasonable estimate of the allowable costs and fee properly to be allocated to the units completed or services rendered in that past period. It is recognized that a precise allocation of costs and fee in this connection may not be practicable without an unreasonable amount of accounting and auditing which is not necessary in view of the conversion to a fixed price basis. Accordingly, the objective above mentioned must be attained in many cases on the basis of reasonable approximations and estimates and no physical inventory or audit need be made for the purpose of achieving a precise allocation.

(iii) Any schedule contained in the supplemental agreement providing for different fixed prices for various sections or periods of deliveries should give due consideration to the variations in cost which are expected to take place during the life of the contract. Such schedules should also reflect the decline in costs normally to be anticipated as experience in production is gained. If, in fixing such a schedule of prices, starting and learning costs are allocated to the earlier periods of the contract, such costs obviously should not be taken into account in fixing the prices which the schedule provides will be paid for later periods of production.

(iv) The prices set under any supplemental agreement for converting to a fixed price basis should be fair and reasonable in the light of all the circumstances. It must be borne in mind that prior to the conversion the contractor's costs in substance have been guaranteed by the Government and that under the fixed price contract the contractor assumes additional risks which may properly be given consideration in fixing the price under the converted contract. Any weight given to such additional risks should not be greater than is warranted by the additional risks in fact assumed by the contractor. Also, full recognition should be given to the probability that operations on a fixed price basis will be conducted on a more efficient basis, with consequent lower costs to the contractor. For example, most manufacturers recognize that their labor may become more efficient under a fixed price contract than when operating under a cost-plus-a-fixed-fee contract.

(v) Various contract provisions, frequently included in fixed price contracts, tend to reduce the additional risks assumed by the contractor upon converting to a fixed price basis as, for example, where a periodic pricing article or other price adjustment provision is used. In determining the fixed price, due consideration will be given to the effect of any such contract provisions, if included in the converted contract, as well as to the various pricing factors mentioned at page 7 of Army Service Forces Manual 601, "Pricing in War Contracts."

(vi) Assistance should be obtained from such evidence as may be available as to the historical costs on the cost-plus-a-fixed-fee contract prior to the date of the proposed conversion. However, such costs are frequently misleading (*a*) because of distortion by high starting and learning expenses and, in any event, are difficult to translate into unit costs without careful analysis, and (*b*) in view of the general tendency of costs to decline sharply with the greater efficiency obtained in the later stages of a contract. On this account greater weight should be given to the historical cost experience, most recent at the time of the conversion, than to the costs for earlier periods of the contract. In any instance, historical costs should be regarded only as a starting point in predicting the future costs under the contract and in the problem of price analysis.

(vii) In all cases where such data can be obtained, consideration should be given to prices paid to the same contractor and to others for comparable supplies under other fixed price contracts. Such data frequently provide a safer basis for price analysis than the historical costs of the particular contractor.

(viii) Where conversions are to be effective only with respect to deliveries after a stated date, care should be taken to fix the price on deliveries after that date on a basis which will not tend to duplicate payments for work in process the cost of which has been or will be reimbursed on the cost-plus-a-fixed-fee basis. Attention is directed to the fact that this type of conversion will ordinarily require fixing of a price upon materials on hand at the time of the conversion for transfer to the contractor.

(6) To ensure adequate analysis of such conversions the procedure set out in § 803.306 (e) will be followed.

(7) Where a conversion takes place by an agreement fixing a price retroactive to the beginning of the performance, action taken by the contractor in conformity with the cost-plus-a-fixed-fee contract as in force prior to the conversion (and proper when taken) need not be revised in the supplemental agreement to make it consistent with the fixed price basis; as, for example, purchases and dispositions of property for Government account, shipments of property on Government bill of lading, etc. All such actions, however, will be given consideration in determining the appropriate fixed prices to be set.

§ 802.232a *Time and material or labor-hour contracts.* The buying of articles or services on the basis of (1) direct labor at specified hourly rates, which rates are intended to include wages, overhead and profit, and (2) material at cost, is usually referred to as the time and material or labor-hour system of purchasing. The system was developed primarily for use in those situations where it was not possible at the time of placing the order or contract to estimate accurately the amount or duration of the work or to anticipate costs with any substantial accuracy, and has been employed to some extent in the procurement by the Army or by cost-plus-a-fixed-fee contractors of (i) engineering and design services in connection with production of supplies, (ii) the engineering, design and manufacture of dies, jigs, fixtures, gauges and special machine tools, (iii) repair work of various kinds, and (iv) outside work on regular production in emergency cases.

(a) *Use discouraged.* In the light of present procurement conditions and the cost experience now accumulated the necessity for the use of this system either in direct procurement or in purchases by cost-plus-a-fixed-fee contractors has been greatly reduced. The chiefs of the services will cause the use of this system of purchasing to be restricted to those situations where no practicable alternative exists.

(b) *Conditions on use.* In the restricted situations where this system is permitted to be used, the chiefs of the services will assure that reasonable precautions are taken to prevent the abuses to which it is susceptible. In this connection it is important that particular care be exercised to select firms of known integrity and efficiency and that the use of complete, clear and definite orders or contracts be insisted upon. Adequate control will also require that all time and material or labor-hour purchase orders or contracts issued by a cost-plus-a-fixed-fee prime contractor be approved or ratified by the contracting officer.

(c) *Adequacy of contract provisions.* In determining the adequacy of the provisions of any such orders or contracts where their use is permitted, consideration of the following basic elements will be helpful:

(1) *Labor.* Only direct labor should be included in the billing and the types of labor or work to be included in the category of direct labor should be specified. It should also be specified that the time of non-productive personnel will not be included in direct labor. The time of partners, officers, supervisors, foremen, clerks, typists, timekeepers, material handlers, stockroom employees, tool crib attendants, cleaners, janitors, maintenance men, packers, watchmen, truck drivers, and receiving and shipping employees, would normally be considered as non-productive work.

(2) *Hourly rate.* Separate rates should be specified for (i) engineering and design, and (ii) manufacturing and construction work. Separate rates should

also be quoted for normal time, overtime and double time work where overtime and double time are necessary.

(3) *Costs of materials.* The materials for which reimbursement is to be made should be adequately specified and should be billed at cost and without the addition of any so-called handling charge or profit. For example, it may be specified that material cost will include only raw materials and fabricated parts entering directly into the products; that purchases made specifically for the contract may be charged at their actual price; that materials withdrawn from stores may be charged at cost under any recognized method of pricing conforming to sound accounting practices and consistently followed; and that incoming transportation charges may be included. Provision should be made for a reduction in cost of materials for cash and trade discounts, rebates and allowances and the value of resulting scrap, where the amount of such scrap is appreciable.

(4) *Overtime.* In order to prevent excessive overtime and double time a provision having substantially the effect of one of the following should be employed:

(i) Vendor (the person or firm with whom the time and material or labor-hour order is placed) should covenant that the amount of overtime and double time used on the work will be fair and reasonable and will be in accordance with the exigencies of the particular job. (This will support any claims on account of excess overtime developed by an audit.)

(ii) The vendor should specify the maximum amount of overtime and double time, if any, which he anticipates will be required for the job and should agree that this amount cannot be exceeded without the prior written approval of the contracting officer or contractor, as the case may be, placing the order.

(iii) The vendor should agree that no overtime or double time may be used on the work without the prior written approval of the contracting officer or contractor, as the case may be, placing the order.

(5) *Subcontracting by the vendor.* The vendor will not be permitted to derive any profit on account of subcontracting a portion of the work. Where subcontracting is contemplated or is to be permitted, it should be provided that the amount billed on account of such work will neither exceed the amount charged therefor by the subcontractor nor the rates for such work regularly agreed upon between the vendor and the subcontractor. In order to control the amount of subcontracting, provision may be made that the vendor cannot subcontract any portion of the work in excess of a stated percentage without the prior written approval of the contracting officer or contractor, as the case may be, placing the order. Provisions should be made that there can be no subcontracting by a vendor at an hourly rate which exceeds the vendor's hourly rate, without the prior written approval of the contracting officer.

(6) *Records.* Provision will be made that the vendor will maintain detailed, complete and accurate accounting records on a job order basis; that the hours of labor will be supported by individual daily job time cards preferably signed by the workers performing the services and in all cases by evidence of actual payment; that material charges will be supported by paid invoices or storeroom requisitions; and that the records will be preserved for a period of at least three years.

(7) *Invoices.* A contractor placing a time and material or labor-hour order should require the vendor to support all invoices by a certificate that the amount billed is correct and just. In this connection, a contractor placing such an order may be required to furnish a supporting certificate that the prices stated in the invoice are fair and reasonable, or are not excessive.

(8) *Audit.* Provision should be made that the representatives of the Government and the contractor placing the order, or either of them, will be permitted to inspect and audit the books and records of the vendor and will have the right to determine the correctness and propriety of the costs charged. Provision should also be made that any overcharge found will be promptly refunded.

(9) *Excessive use of unskilled labor.* The vendor may be required to covenant that employees used on the work will be on the average be as efficient as the average for the departments of his plant concerned.

(d) *Ceiling price.* In any case or class of cases where the chief of the service is of the opinion that the use of a ceiling price will be effective and practicable in reducing costs, a provision should be incorporated in such contracts or orders that payment will be made on a time and material basis but not in excess of a stated maximum figure.

(e) *Definite hourly rate.* A definite hourly labor rate must be stated at the time of issuance in all orders intended to be priced on a time and material or labor-hour basis. In the exceptional emergency cases where work must be started before the rate is agreed upon, the complete confirming order must be issued as soon as possible and in any event prior to completion of a substantial portion of the work.

(f) *Audit manual.* Reference to the Manual for Administrative Audit of Time and Material Vendors' Charges, prepared by the Office of the Fiscal Director, will be helpful in the consideration of effective control measures in particular cases. Copies of this Manual may be obtained by addressing a request to the Publication Section, Administrative Division, Office of the Fiscal Director, Headquarters, Army Service Forces, Washington 25, D. C.

§ 802.233 *Fixed price contracts*—(a) *Advantages.* The ordinary fixed price contract without provisions for adjustment gives a contractor maximum incentives for efficiency if the original price is well negotiated. It is generally suitable for contracts of reasonable duration for standard articles made by an experienced producer. It should be used wherever conditions permit.

(b) *Limitations.* Under war conditions, however, the ordinary fixed price contract is not practicable for certain types of cases:

(1) When the articles required are new, experimental or developmental, or unfamiliar to the contractor, the lack of cost experience may prevent the setting of a fair price when the contract is made.

(2) Even where cost experience exists, shortages of materials, priorities and allocations and changes in the quantities and rates of delivery may seriously affect the costs during performance of the contract.

(c) *Adaptation to war conditions.* To meet these and other situations and to facilitate the use of the fixed price contract, various provisions and policies have been developed, including the following:

(1) Termination articles.

(2) Financing provisions.

(3) Price adjustment based on production experience.

(4) Provisions to assume specific risks and for short-term pricing.

(5) Periodic adjustment of price and exemption from renegotiation.

(6) Adjustments and relief, without contract provisions, under the First War Powers Act.

These provisions and policies are intended to adapt the fixed price contract to war conditions, to minimize the risks of the contractor from unpredictable contingencies, and to facilitate obtaining contract prices close to costs. To the extent that the risks of unpredictable contingencies are reduced, the contractor does not need reserves or allowances against them in his price.

§ 802.234 *Termination article.* The risk of loss from termination of the contract, either for a change in the procurement program or upon cessation of hostilities, would deter contractors from making fixed price contracts or would require large allowances in the price to protect against this risk. The termination article is designed to remove this risk of loss by guaranteeing the contractor payment for all proper expenditures and costs in connection with the contract and an appropriate allowance for profit on the unfinished work in process, and by providing for expeditious settlement and payment of the amounts due. (See § 803.324). These provisions reduce to the minimum any hardships on contractors resulting from necessary adjustments and reductions in the supply program.

§ 802.234a *Unusual circumstances.* On rare occasions, in connection with an initial contract with a contractor for a particular product or type of construction, involving a long period of preparation for the performance of the contract or unusually large development and planning costs, unusual circumstances may give rise to the request that the contractor be given special protection against loss through termination for the convenience of the Government at an early stage of the performance of the contract. In such cases, a full statement of the facts and a draft of any special contract

provisions recommended will be submitted through the chief of the technical service negotiating the contract, to the Director, Purchases Division, Headquarters, Army Service Forces, for approval.

§ 802.235 *Financing provisions.* Lack of working capital or difficulties in financing would discourage contractors from undertaking fixed price contracts and necessitate the use of cost-plus-a-fixed-fee contracts. To overcome this, the War Department has arranged various methods of assisting contractors and subcontractors in financing war business. Three of these are (1) partial payments, (2) advance payments, and (3) guaranteed loans. The principles and purposes governing the use of these financing methods are discussed in §§ 803.319 to 803.321, 803.330 and 803.331 of this chapter. Other arrangements have been provided to assist with the financing and construction of plant facilities expansion. These are discussed in Part 310 of this chapter. Finally, the right to assign government contracts as security for financing is dealt with in § 803.390.

§ 802.236 *Price adjustment provisions*—(a) *Price adjustment based on production experience.* To adapt the fixed price contract to cases where the lack of experience with production of a new or unfamiliar article makes dependable estimates of costs and prices impracticable, several types of clauses have been developed to permit the fixing of a tentative price with provision for adjusting or fixing the price after part performance has supplied the necessary cost data. These clauses, discussed in Subpart B of Part 812, make the use of the cost-plus-a-fixed-fee contract unnecessary in such situations. For cases where the fixed-fee contract cannot be avoided, clauses are provided for converting it to a fixed price basis after part performance or for relating the fee to efficiency in production in order to minimize the disadvantages of this form of contract. (See Subpart B, Part 812).

(b) *Provisions against specific risks.* Normally contractors attempt to protect themselves against risks which will increase the cost of performance by allowances in their prices. Under war conditions, certain risks affecting the costs of performing war contracts, especially those of long duration, are particularly difficult to predict. If contingency allowances to cover them were permitted, it would make prices unreasonably high and reduce the incentives for efficient operation. Accordingly, it is the policy of the War Department to reduce the necessity for such contingency allowances in fixed price contracts as much as possible by contract provisions assuming certain unpredictable risks not subject to the contractor's control. Various contract articles of this type are discussed in Subpart C of Part 812. In return for the benefits of these provisions, the contractor will be required to eliminate from his price the allowances or reserves which would otherwise be needed to protect against these risks.

(c) *Short-term pricing.* These uncertainties as to future conditions can also be minimized by fixing prices for limited periods only. For commodities which do not involve a long period of production or planning, this can be done merely by making short-term contracts. Where longer contracts are necessary for production or other reasons, similar benefits can be obtained by providing for revising the price for future deliveries after a reasonable period. Such articles are discussed in Subpart C of Part 812.

(d) *Periodic adjustment of price and exemption from renegotiation.* The accumulation of more experience and data covering production and costs has made feasible a new type of contract combining (1) periodic adjustment of price at regular intervals during the life of the contract (compare paragraph (c) of this section) with (2) provision for exemption from renegotiation if the adjusted price is sufficiently low. It is designed to unite maximum incentives for efficient production with adequate control of profits and prices, by giving the contractor firm prices without commitments of too long duration. This type of contract is discussed in Subpart D of Part 812.

§ 802.237 *Adjustments without contract provisions.* Paralleling the contract provisions for price revision discussed under § 802.236, and necessary to complete the price program, are the policies regarding price adjustments and other relief under Title II of the First War Powers Act and Executive Order No. 9001 in the absence of contract provisions. Thus where a contractor, who has kept down the contingency allowances in his price, suffers some unexpected risk or event, it may often be equitable and in the interests of the Government for it to adjust the contract price or other terms by supplemental agreement so as to assume some or all of any resulting increases in costs. By granting such relief to contractors in appropriate cases, either with or without consideration, the Government will reduce the necessity for large allowances in prices and encourage greater cooperation by contractors. The application of these policies is discussed in Subpart E of Part 812.

§ 802.238 *Policies on certain special items of cost*—(a) *Amortization.* Under section 124 of the Internal Revenue Code, contractors who construct or acquire facilities necessary for the war effort are allowed under certain conditions to amortize the cost of them for tax purposes over a period of sixty months instead of the longer period of normal depreciation. This special tax credit was provided by Congress in order to encourage contractors to provide such facilities from their own funds rather than at Government expense. In view of this purpose, it is essential that in negotiating contracts involving the use of such facilities, the expense of such facilities be not passed on to the Government and that the price be fixed on the basis of only normal depreciation on the facilities and not at the accelerated rate of amortization permitted for tax purposes by section 124. In other words, the contractor may not treat the amortization at the accelerated rate as a cost against war contracts, but must provide for the excess over normal depreciation from his normal profit; this the tax credit greatly facilitates by leaving a larger net profit after taxes available for this purpose. Where the contractor desires the contract price to provide for a larger amount of the cost of such facilities, the Government is in effect paying for the facilities to the extent of the additional amount included in the contract. In such cases the contract must state the amount so included in the price and must contain suitable provisions to protect the interests of the Government in the facilities in accordance with § 810.1007 and following.

(b) *Reconversion and storage.* (1) In appropriate cases, the cost of converting plants to war production, including the removal of existing equipment and incidental building alterations, may be included in cost and therefore in the contract price and the contract may provide for payment, on termination of production for the Government, of the costs of removing Government-financed machinery and equipment, and of preparing it for storage and shipment.

(2) The Government will not bear either directly or indirectly, however, any part of the cost of reconverting the contractor's plant to commercial production (including installation of privately-owned machinery and equipment) or the cost of storing such machinery and equipment during the period between conversion and reconversion. This policy applies to all types of contracts, whether facilities contracts, cost-plus-a-fixed-fee contracts or fixed price contracts. It does not, however, prevent giving a contractor, in exceptional cases where fairness so requires, special protection against loss through early termination of the contract in accordance with § 802.234a.

SUBPART D—NEGOTIATION OF CONTRACTS

§ 802.240 *Method of contracting*—(a) *By negotiation.* Except as provided in paragraph (b), all contracts and purchases made by the War Department will be made by negotiation under authority of the First War Powers Act, 1941, and Executive Order No. 9001, and in accordance with these procurement regulations. While this act and Executive order are construed to embody all the authority conferred by sections 1 (a) and (b) of the act of July 2, 1940 (Public Law No. 703, 76th Congress), as extended, the earlier act may also be cited as authority for contracting in appropriate cases if desired (see § 802.204 (a)).

(b) *By formal advertising.* When authorized by the Director, Purchases Division, Headquarters, Army Service Forces, contracts may be placed by formal advertising instead of by negotiations if deemed necessary in the interests of the Government.

(c) *Aids to negotiation.* Sound purchase control requires that the original contract be well negotiated on the basis

of reliable cost experience and close estimates. To do this, all available information and aids to negotiation must be used as effectively as possible. This section deals with some of the methods and data which will assist such sound negotiation of contracts.

§ 802.241 *Methods of negotiation*—(a) *General rule.* Subject to specific provisions of these regulations, the chief of each technical service may determine the methods of negotiation to be followed by his service. Any method which, in the judgment of the chief of the technical service concerned, will result in the most efficient award of contracts and will protect the interests of the Government, is hereby authorized. Such methods may include not only face to face dealing but also informal written bids or telephone quotations, but the request for any such bids or quotations will clearly indicate that it is made undr the authority of the First War Powers Act, 1941.

(b) *Decentralization.* The chiefs of the technical services will decentralize to their field agencies the actual work of negotiating contracts to the greatest extent consistent with efficiency and proper safeguarding of the public interest.

§ 802.242 *Use of informal bids.* Where consistent with the required speed of war procurement, notification of the proposed procurement will be given to a reasonable number of qualified producers and suppliers, and quotations secured from them.

§ 802.243 *Contractors' proposals*—(a) *Information to be furnished by contractors; methods of obtaining it.* (1) In simple procurements for small amounts where effective competition exists and where it is, accordingly, expected that awards will be made to the lowest bidders (subject to the principles set forth in Subpart B of this part), information to be obtained from contractors may ordinarily be confined to quotations of prices. These quotations are frequently invited on W. D. Contract Form No. 5, § 813.1317d.

(2) In other cases—where the procurements are complex, or are for large amounts, or are to be carried out in the absence of effective competition—additional information is ordinarily required in order to base a judgment as to the awards. Detailed contractors' proposals are an important method of obtaining such information. As a general rule, such proposals should contain the following types of data:

(i) Separate quotations for the basic (or major) item, essential extra parts and assemblies, initial and extra equipment, and the costs of additional facilities required by the contractor.

(ii) Proposed delivery schedule.

(iii) Summary of the approximate number, amount and extent of completion of other outstanding Government contracts.

(iv) Itemized estimate of costs of production with adequate explanation of the basis used for allocating overhead, etc.

(v) Statement showing the cost experience for the same or similar items under other recent contracts.

(vi) Statement as to labor needs and supply, contemplated hours of work and number of shifts.

(vii) Contemplated method of financing the contract.

(viii) Statement of material to be furnished by the Government and disposition of scrap therefrom.

(ix) Summary of types and extent of subcontracting.

(x) Requirements for additional equipment and facilities.

(xi) Statement of any optional clauses desired in the contract.

(xii) Statement in detail of taxes included in the price and their estimated amount, and of any taxes to be excluded from the price for which contractor will claim reimbursement or a tax exemption certificate.

(3) Contractors' proposals are particularly useful when presented on standardized proposal forms. These proposal forms assist in obtaining all necessary information from the contractor at the same time, and facilitate the comparison and evaluation of proposals from several producers by insuring a uniform basis of statement. They facilitate selection of the appropriate contractor in accordance with Subpart B of this part and provide a basis for negotiation with the contractor in accordance with this Subpart.

(b) *Standard proposal forms prescribed for use in certain cases.* (1) In conformity with subparagraphs (2) and (3) of paragraph (a) above, certain standard proposal forms have been prepared in collaboration with the technical services and published as War Department Standard Procurement Forms (No. 1—Request for Proposal, No. 2—Contractor's Proposal, and Instructions for Filling Out Standard Procurement Form No. 2, § 813.1327).

(2) Whenever, in the opinion of the technical service involved, detailed cost or price information is necessary or desirable as an aid to the adequate negotiation of contracts for supplies (other than construction), the technical service will use the Standard Procurement Forms for this purpose. Except as permitted under subparagraph (3) below, the Standard Procurement Forms will be used in all such cases without deviation or addition, and no substitute or supplementary proposal forms will be used. Where necessary, however, information obtained through use of the Standard Procurement Forms may be clarified or amplified through correspondence or personal negotiation.

(3) Upon request and justification by the technical service involved, the Director, Purchases Division, Headquarters, Army Service Forces, may, in particular cases or classes of cases, permit deviations from or additions to the Standard Procurement Forms, or otherwise grant partial or complete exemptions from the requirements of subparagraph (2) above.

(4) The Standard Procurement Forms have considerable internal flexibility. The procurement office is required, by the terms of Form No. 1, to select and specify (within established limits) the data which the prospective contractor is requested to furnish on Form No. 2. Thus the procurement office has latitude to accommodate the Forms to the necessities of particular procurements; for example, it may relieve the contractor of the task of compiling data which are not pertinent to the procurement, or which are already known to the procurement office.

§ 802.244 *Purchase analysis*—(a) *Price comparison.* Comparative prices for similar items compiled in accordance with § 802.251 will be made available to contracting officers for use in negotiating new contracts. The prices offered for new contracts should be carefully compared with previous prices for similar items, making allowance for improved methods, rates of production, type of facilities and other factors. Where proposals are obtained from several producers they should be similarly compared with each other.

(b) *Renegotiation information.* The chief of each technical service will insure that contracting officers make regular use of studies and other information compiled by the price adjustment and cost analysis sections and useful in negotiating with contractors, such as data on volume of business, the policies regarding overhead and reserves, rates of profit and other material. (See § 802.252.)

(c) *Cost analysis.* When the prices or cost estimates submitted by a producer are out of line with previous experience or other proposals and use of his facilities is necessary or desirable in accordance with the policies stated in Subpart B of this Part, an analysis of the contractor's costs should ordinarily be made in order to find the causes of the higher costs or prices. Likewise where prices or cost estimates of a producer for an unfamiliar item are so low as to indicate mistakes in the estimates, a similar study should be made. Such study and analysis should be limited to the minimum necessary to obtain the required information and should be made with the least possible inconvenience to the producer (see § 802.253).

(d) *Check lists.* Orderly and speedy negotiations are facilitated by the use of standard negotiation check lists. Such forms should be designed to indicate the information to be obtained from the contractor and from other sources and the methods to be used in evaluating this material and in arriving at the final contract terms.

§ 802.245 *Special clauses.* The contracting officer should consider in each case whether use of any of the various articles for price adjustment discussed in Subpart C of this part and in Part 812 of this chapter is desirable. When such articles are used, the contracting officer will satisfy himself that the original price is sufficiently reduced, by eliminating or reducing contingency reserves and by lower profit margins, to justify the Government in agreeing to such adjustment provisions in favor of the contractor.

§ 802.246 *Compulsory purchases.* Where a fair contract cannot be obtained by voluntary negotiation, it may be necessary to resort to compulsory methods.

(a) *Mandatory orders.* Under section 9 of the Selective Training and Service Act of 1940 a mandatory order may be placed with any producer to require him to supply any item of the nature and kind

usually produced or readily capable of being produced by him, for a fair and just compensation. While the general use of such orders is not favored, they should be resorted to where necessary after patient negotiations have failed. Thus where a qualified producer refuses to make a contract upon terms which in the opinion of the contracting officer are fair, the chief of the technical service may request the issuance of a mandatory order to the producer. Such requests will be forwarded to the Director, Purchases Division, Headquarters, Army Service Forces, and will state the reasons for the request.

(b) *Requisitioning.* When needed articles are already in existence, but cannot be bought after reasonable negotiations, they may be obtained by requisition in accordance with Part 814 of this chapter.

§ 802.247 *Assistance by Headquarters, Army Service Forces.* The Purchase Pricing Methods Branch, Purchases Division, Headquarters, Army Service Forces, will assist any service in preparing standard forms for proposals by contractors, evaluation sheets or check lists and other aids to effective negotiation.

§ 802.248 *Purchasing by prime contractors*—(a) *Purchasing methods of cost-plus-a-fixed-fee contractors.* Cost-plus-a-fixed-fee contractors should ordinarily make their subcontracts and purchases by negotiation rather than by formal advertising. In connection with such negotiations, they will obtain informal quotations from qualified suppliers whenever feasible, but evidence of formal competition will not be required in connection with such agreements unless the contracting officer directs otherwise.

(b) *Adjustment of prices and terms of subcontracts and purchase orders under cost-plus-a-fixed-fee contracts.* (1) The cost-plus-a-fixed-fee contractor is obligated to procure materials and services at the most advantageous prices possible, with due regard to securing prompt delivery and satisfactory performance. Under some circumstances, commercial concerns find it necessary or desirable and advantageous to adjust the price or terms of an outstanding subcontract or purchase order, without legal consideration, for the benefit of the supplier. By permitting cost-plus-a-fixed-fee contractors to make similar adjustments in appropriate cases in accordance with this regulation, it is believed that they will be able to buy from their suppliers at closer prices in the first instance and that the maximum use of available facilities through subcontracting will be maintained.

(2) In order expressly to authorize such adjustments in accordance with this regulation, the chief of a technical service may include in any cost-plus-a-fixed-fee contract substantially the following provision:

> With the approval of the Contracting Officer, the Contractor may modify a subcontract or purchase order under this contract to increase the price or extend more favorable terms to the subcontractor.

The chief of a technical service may amend any existing cost-plus-a-fixed-fee contract to include this provision whenever in his opinion such action will be advantageous to the Government and will facilitate the prosecution of the war.

(3) It has been determined that it will facilitate the prosecution of the war to permit cost-plus-a-fixed-fee contractors to increase the price or to make other adjustments in the terms of a subcontract or purchase order, without legal consideration therefor, pursuant to the contract provision authorized by subparagraph (2) above, whenever the contracting officer specifically determines:

(i) That the price increase or other adjustment is necessary or desirable in order to continue or increase satisfactory production of essential supplies or to ensure their timely delivery; or

(ii) That fair and equitable dealing with the subcontractor or supplier in accordance with sound business practice requires such price increase or other adjustment; or

(iii) That the maximum use of available facilities through subcontracting will be thereby facilitated or encouraged; or

(iv) That the contractor through following such a policy will be enabled to buy from its suppliers and subcontractors at closer prices in the first instance.

(4) The contracting officer may approve any such increase in price or other adjustment in the terms of a subcontract or purchase order without legal consideration only if, in the light of all the facts and circumstances in the particular case, he makes the determination required by subparagraph (3) above. Whenever any such adjustment is approved, the contracting officer shall prepare and file a brief memorandum of the circumstances involved in the reasons for his approval, and shall forward a copy of this memorandum to the chief of the technical service concerned. Upon any such adjustment in the price or terms of a subcontract or purchase order, the contractor shall be reimbursed on the basis of the adjusted price or terms.

(5) As used herein the term "cost-plus-a-fixed-fee contract" includes a provision in a fixed-price contract for procuring facilities for the account of the Government at cost (see § 803.332), and the term "contractor" includes the contractor operating under such a provision.

SUBPART E—PRICE SUPERVISION

§ 802.250 *General policy.* For the reasons stated in § 802.230, the War Department is responsible for supervising and controlling the prices of all supplies and equipment procured and of the various items and services entering into the costs of these supplies and equipment to insure that such prices are reasonable and not excessive. This subpart deals with the performance of this responsibility by the services.

§ 802.251 *Price analysis*—(a) *Functions.* The chief of each technical service will maintain within his service appropriate agencies to perform the following price analysis functions:

(1) To assemble, analyze, interpret and disseminate price data for all important items procured by the technical services and for important component items entering into the costs of such items;

(2) To prepare special price analysis reports for procurement officers; and

(3) To compile and maintain comparative price records and indices for such items and their important components.

(b) *Sources of data.* In performing their functions, price analysis agencies will make use of the following types of information:

(1) Contract prices for similar items, which will be compiled on a comparable basis with respect to the basic (or major) item, essential extra parts and assemblies, initial and extra equipment, Government furnished equipment and scrap salvage.

(2) Cost estimates and other relevant data from proposals submitted by contractors.

(3) Analyses of the effect of major production and engineering problems on prices and costs.

(4) Prices paid for important subcontracted items. (See § 802.254.)

(5) Breakdowns of costs of subcontractors and sub-subcontractors based on production experience.

(6) Balance sheets and operating statements and similar data for contractors and subcontractors from price adjustment sections and financial services.

(7) Information from other Government agencies such as the Office of Price Administration. (See §§ 811.1130 to 811.1135.)

(8) Where necessary, audits of costs of contractors and subcontractors made by the cost analysis sections.

(c) *Use of price data.* (1) The price analysis agencies will prepare full analyses and reports on the comparative prices paid for important items and their components, making proper allowance for differences in the size of the contract, in design, local wage scales, type of facilities, contract terms and other factors. These reports will be in a form usable by procurement officers and price adjustment sections and will contain any recommendations for necessary or desirable action by them.

(2) In making or revising contracts, procurement officers will consult with the appropriate price analysis section and make use of all pertinent price analyses and reports then available.

(3) The price analysis agency will cooperate closely with the price adjustment sections and will make available to them price analyses and reports for use in renegotiation. When renegotiation reveals excessive profits the price analysis agency should immediately make studies of the prices of such contractors.

(4) Price records on items procured by the technical service and important components will be kept in such manner as to be readily available for reporting to higher authority or to the Office of Price Administration as requested.

(d) *Corrective action.* When price analysis reveals that the prices of comparable items are out of line, the procurement officer directly concerned will immediately initiate measures to discover the reasons. The appropriate measures will depend upon the particular situation. The contractor or his important subcontractors may be required to furnish a breakdown of actual costs based on production experience. When these are inadequate, cost audits or spot checks may be undertaken through the financial analysis section, and studies of purchasing methods may be made in accordance with § 802.254. Unless the facts disclosed that differences in price are justified by higher costs and by the policies stated in Subpart B of this part, negotiations will be initiated for appropriate adjustments in contract or subcontract prices.

§ 802.252 *Profit analysis.* The studies, by the price adjustment sections of each technical service, of the overall costs, profits and financial position of contractors and subcontractors provide valuable data to assist contract negotiation, such as information regarding overhead, reserves, profit margins, volume of business and similar matters. The chief of each technical service will make arrangements to insure that such information is made readily available in useful form for procurement officers in conducting negotiations with such contractors and for price analysis agencies in performing their functions.

§ 802.253 *Financial analysis*—(a) *Organization.* Each technical service will maintain appropriate agencies to perform financial analysis functions and to act as fact finding units with respect to costs and profits on its contracts and subcontracts for use in negotiations by contracting officers as well as in renegotiation by price adjustment sections. The chief of each technical service may assign the financial analysis functions to such place in the organization of the service as seems most appropriate to him to permit their effective performance; they need not be placed in the fiscal section of the technical service unless the chief of the service so decides.

(b) *Functions.* When a financial analysis study of any contractor is made to prepare reports for the price adjustment section, there will also be made such study as seems appropriate in each case to aid procurement officers in future contract negotiations with the contractor. In addition, whenever price analysis indicates that prices or costs of a particular contractor or subcontractor are out of line and the procurement officer so requests, the financial analysis agency will make necessary studies of any contractor or subcontractor. Such studies will be limited to the extent necessary to obtain the desired information.

§ 802.254 *Supervision of subcontracts and purchases*—(a) *Policy.* The Government is vitally interested in the prices of component parts and materials of the items which it procures. The prices for such component articles are reflected in prices under fixed price prime contracts and are directly reimbursed under fixed-fee contracts. If excessive, such prices encourage inefficiency, inflationary expenditures and excessive profits in the same manner as excessive prime contract prices. Accordingly, the War Department and technical services must also supervise these prices. Because the Government could not attempt to inspect or approve individual purchases under all fixed price and fixed-fee contracts, they must be supervised by more selective methods adapted to varying circumstances.

(b) *Methods of supervising purchases under cost-plus-a-fixed-fee contracts.* While the cost-plus-a-fixed-fee contractor is responsible for efficient buying, the lack of direct financial incentives for economy makes it essential to supervise its purchasing with respect to prices, quantities and capacity of suppliers. Experience has shown that detailed prior approval of all purchase orders and subcontracts under fixed-fee supply contracts is less efficient for this purpose than more selective methods. Accordingly the following procedure for supervision will be adopted in the case of supply contracts.

(1) The purchasing policies and methods of the cost-plus-a-fixed-fee contractor should be carefully analyzed to determine their adequacy for sound purchasing. This analysis should ascertain (i) whether prices paid are reasonable; (ii) whether quantities purchased are proper; (iii) whether suppliers and subcontractors are reasonably qualified; (iv) whether the purchasing personnel are well-qualified; and (v) whether purchasing procedures are sound and adequate.

(2) If the purchasing policies and methods are adequate with respect to prices, quantities and suppliers and are consistently followed, prior approval of subcontracts and purchase orders by the representatives of the contracting officer need not be required, or may be limited to those of substantial amounts, if regular selective checking is maintained instead.

(3) If the purchasing methods are inadequate in any respect, steps should be taken immediately to require the contractor to correct the deficiency, and if necessary, prior approval of subcontracts and purchase orders by the representative of the contracting officer to check on the propriety of the prices and other terms should be required until the deficiency is corrected.

(4) Periodically a report should be prepared with respect to each important contractor, stating the results of the inspection of the purchases and examination during the preceding period.

(5) If at any time the chief of a technical service finds that the selective method of supervision is inadequate, he may require such further supervision, including prior approval of purchase orders and subcontracts, as he deems necessary.

(c) *Methods of supervising purchasing by fixed price contractors.* (1) In the case of fixed price contracts, the contractor ordinarily has strong incentives to purchase at low prices in order to enhance the profit, but with high excess profits taxes and renegotiation, this incentive can be fully maintained only by keeping the prices under prime contracts close to minimum costs. For this purpose procurement officers must have adequate information on what component parts and materials should cost if well purchased and must know whether the contractor is equipped to obtain the best prices available.

(2) Price analyses in accordance with § 802.251 will supply necessary information. In that connection, the purchasing policies and methods of important fixed price contractors should be analyzed in the manner described in paragraph (b). When such analysis or the study of the prices paid by different contractors for important component parts and materials reveals deficiencies, they should be called to the attention of the contractor with recommendations for their correction.

(d) *Personnel.* A selective method of control requires the use of well trained and experienced personnel with a knowledge of purchasing methods and industrial costs and prices. Each service should obtain an adequate number of qualified officers or employees to perform these functions.

§ 802.255 *Sanctions.* Whenever study or analysis reveals that the prices of a contractor or subcontractor are excessive, and he refuses to make appropriate adjustments, the facts should be reported through the chief of the technical service to the Purchases Division, Headquarters, Army Service Forces. In appropriate cases the Director may then authorize action to correct the situation by the use of compulsory orders, renegotiation, or other means.

§ 802.256 *Coordination.* Each technical service may determine the form of organization necessary to perform the foregoing functions within its service and to obtain their essential coordination and their integration with procurement. Thus, in its discretion, a technical service may combine these functions in a single agency or assign them to several separate agencies. Because these various price functions are so closely related, however, it is recommended that even where they are performed by several agencies in any service, all of them should be coordinated and integrated under a single head. Such an agency should supervise within the service all functions relating to contract clearance, negotiation aids, price analysis and supervision, liaison with the Office of Price Administration, renegotiation and price adjustment, and price research. This policy has been followed in Headquarters, Army Service Forces, by the creation within the Purchases Division of an Assistant Director for Price responsible for supervising all of these functions. Creation of a similar agency in each service will facilitate coordination and cooperation between Headquarters and the services.

SUBPART F—CONTRACTING POLICY REGARDING CONSTRUCTION AND MAINTENANCE WORK

§ 802.260 *General.* Wherever possible all construction work will be performed on a contract basis, and barring that possibility for practical reasons such construction work will be performed on a hired labor basis.

(a) *Same; new construction.* Job construction refers to work of a type generally performed by a construction contractor, which is non-recurrent and temporary in the sense that it terminates on the completion of a specific project. In general, this includes such work as the construction of new structures or alterations of like nature to existing structures.

(1) All such new work within the meaning of the above definition will be prosecuted under contract whenever possible.

(2) When such work does not adapt itself to contracting procedure for practical reasons, it will be done by the officer in charge on a hired labor basis.

(b) *Same; maintenance work.* Maintenance work refers to work which is regular and recurring, and which is continuous in the sense that it is not terminable on the completion of a specific project. This includes such work as repair, adjustment, overhauling, and upkeep of existing structures or installations. The term also includes, as specified in § 809.911 (e), the movement of machinery and installation of equipment, and alteration work incident thereto, performed as an incident of a supply contract. However, in making the determination required by § 809.911 (g), as applied to particular machinery movement or installation work, each contracting officer concerned will give careful consideration to the desirable objective sought in the overall policy statement outlined above.

(c) *Same; construction or repair in restricted areas.* It is recognized that in restricted areas, because of the various factors involved, it is not often feasible to prosecute the work either under contract or on a hired labor basis. In such instances the work may be done by maintenance forces. However, every effort will be made to insure that this practice is not abused.

(d) *Same; termination of construction contracts.* The completion of specific construction projects, including original installation of equipment, will be made whenever possible under construction contracts.

(1) When this procedure is not practical, resort will then be made to hired labor.

(2) Completion of specific construction projects by the maintenance forces will be adopted as a last resort, and only when to do otherwise would result in interference or interruption of production, or would demand wasteful retention of a construction supervisory overhead organization.

SUBPART I—PURCHASE ACTION REPORTS

§ 802.291 *General.* Compliance is required, effective 1 July 1944, with the revised procedures provided in this subpart with respect to purchase action reporting. Such procedures, however, may be followed prior to that date.

(a) *Transfer of purchase action reporting from Statistics and Progress Branch, Control Division, to Purchases Division.* Effective 15 March 1944 the responsibility formerly assigned to the Statistics and Progress Branch, Control Division, Headquarters, Army Service Forces, in connection with purchase action reporting, is transferred to the Purchases Division, Headquarters, Army Service Forces, Room 5D 674, The Pentagon, Washington, D. C. Purchases Division is responsible for supervision, preparation and submission of all Purchase Action Reports required by law to be submitted by the War Department to The Congress, as well as to other Federal agencies authorized to receive such reports.

(b) *Definitions*—(1) *Technical service.* Notwithstanding the provisions of § 801.108 (e), the term "technical service" when used in this subpart shall be deemed to include the Army Air Forces but shall not be deemed to include the service commands. The term "chief of a technical service" shall be deemed to include the Commanding General, Army Air Forces.

(2) *Service command.* The term "service command" shall be deemed to include the Military District of Washington.

(3) *Purchase action.* A purchase action is any transaction whatsoever (including all types of awards) with any individual, firm, corporation, or Governmental agency not under the jurisdiction of the War Department, involving the purchase or lease of goods, real estate or services of every character and description and usually obligating Government funds. The execution of a preliminary contractual agreement is to be regarded as a purchase action unless the dollar amount of the undertaking contained therein cannot be determined or estimated in advance or unless the undertaking contained therein is conditioned upon funds becoming available and hence does not obligate Government funds. (See, for example, the Letter of Intent which was the subject of the decision of the Comptroller General, issued under the date of 22 December 1941; B-21873; 21 Comp. Gen. 605.)

(4) *Preliminary contractual agreements.* The term "preliminary contractual agreements" as used in this subpart refers to all written agreements which do not obligate War Department funds to the full amount which it is anticipated will be obligated finally, (see War Department Contract Form No. 7, § 813.1307, as one type of such agreement) or to those which obligate no funds whatsoever. In the former case all such contracts exceeding $10,000 are to be reported at time of execution with a supplemental report for the difference between the amount originally reported and the actual dollar amount to be submitted upon execution of a formal contract or completion of the preliminary contractual agreement. In cases where no funds are obligated but the undertaking is not conditioned upon funds becoming available, such contracts are to be reported at time of award only if the dollar amount of the contract can be estimated and the estimate exceeds $10,000. A supplemental report adjusting the estimated figure and the actual expenditure will be submitted as described above. In cases where the undertaking is conditioned upon funds becoming available, the contract will be reported when it becomes final—that is, when total amount can be estimated or a final definitive contract has been issued; however, if expenditures under the preliminary agreement reach a sum in excess of $10,000, it will then be reported on the basis of such expenditures, and a supplemental report will be rendered when the contract becomes final.

(5) *Open end contracts.* An "open end contract" may be defined as one in which no final completiton date is set and one which usually involves recurring charges for goods and services. (Contracts for gas, electricity or water may be cited as examples.) Such contracts will be reported on a contract year basis. The original Purchase Action Report will be submitted within 5 days of the date of the contract and will include the full amount estimated to be expended for the first contract year. At the end of the contract year a supplementary report will be filed reconciling the difference between the estimated and actual expenditures and at the same time reporting the estimated expenditure for the second contract year. These will be shown as separate items. Similar supplements will be reported at the end of each succeeding contract year during the life of the contract. As of the termination date a final supplementary report clearly marked "Final Report", will be submitted adjusting any unreported quantity and figures, whether it be an increase or a decrease. Where the amount to be spent under the contract cannot be estimated, a Purchase Action Report will be filed on the basis of actual expenditures when the aggregate expenditures thereunder exceed $10,000. Supplements will be reported from time to time as additional expenditures aggregating in excess of $1,000 are incurred. Open end contracts, which are subject to open allotment as enumerated in Circular No. 149, War Department 1943, are not to be reported. All other open end contracts will be reported as above.

(6) *Indefinite quantity contracts.* For the purposes of this Subpart indefinite quantity contracts are considered to include those contracts which permit deliveries to be made in larger or smaller quantities than stated in the contract, either at the option of the contractor or the contracting officer, and with or without a written change order modifying the contract. They fall into three broad classes, as follows:

(i) Those containing the standard clause entitled "Variation in Quantities" (§ 803.329) which permits the contractor to deliver 10% over or under the quantity specified in the contract. In reporting this type of contract only the original quantity and value need be stated, and upon completion of deliveries no supple-

mental report is required even though deliveries may fall short or exceed the amount originally reported. However, any changes in the contract affecting the value by more than $1,000 by way of amendment, change order, etc., must be reported with a supplemental Purchase Action Report.

(ii) Those containing a clause (see § 803.329a) giving the contracting officer a power by change order to increase or decrease within stated percentage limits the quantity of articles called for by the contract. This type of contract will be reported originally at the quantity and value set forth in the contract, and change orders having a value of $1,000 (plus or minus) will be reported on a supplemental Purchase Action Report.

(iii) Any other type of indefinite quantity contract. For the purposes of this Subpart indefinite quantity contracts not falling within (i) or (ii) above will be considered to be and reported as open end contracts. (See § 802.291 (e).)

(c) *Matters not to be reported.* Pay of individuals, shipping and travelling expenses, etc., are not to be included in the reports required to be filed in this subpart. The items involved in this category are stated in Circular 149, War Department 1943.

§ 802.292 *Reports required to be filed.* Field installations will submit the reports set forth in §§ 802.293 and 802.294 either to the chief of the appropriate technical service or to the commanding general of the appropriate service command, depending upon whether the contract obligates technical service or service command funds. In general, this will be determined by the number of the contract. A contract bearing a technical service number in accordance with § 803.309 (b) will be reported to the chief of that technical service. A contract bearing a service command number in accordance with § 803.318b (e) will be reported to the commanding general of that service command.

§ 802.293 *Original reports of purchase actions exceeding $10,000.* A report of every original purchase action which exceeds $10,000 in amount (actual or estimated) will be made on W. D., A. G. O. Form No. 496. The original and five copies (or more if directed by appropriate authority) will be forwarded to the chief of the appropriate technical service or commanding general of the appropriate service command no later than the 5th calendar day following the purchase action. Reports will be made with respect to orders placed against indefinite quantity contracts executed by a technical service but will not be made with respect to orders placed against contracts executed by other departments of the Government, such as the contracts executed by the Procurement Division, Treasury Department. The standard form (W. D., A. G. O. Form No. 496) for reporting original purchase actions (Control Approval Symbol No. ICY 33) is set forth below. It is available on requisition at Adjutant General depots in the service commands, excepting Army Air Forces activities which will requisition upon the appropriate Area Air Service Command, Publication and Distribution Depot. W. D., A. G. O. Form No. 496 is printed on white paper. A form (W. D., A. G. O. Form No. 495) printed on blue paper is available for use in reporting supplemental action. (See paragraph (c).)

Control Approval Symbol ICY-33

WAR DEPARTMENT

Date.....

.....Station

.....Address

(1) Purchase Action Report Serial No.....

(3).....Station No.

Subject: Report of negotiated purchase in excess of $10,000.

Station, Technical Service, Number, Date of Award (or Service Command).

(6) Contract.....

Contracting as

(4) Contractor.....Mfg ☐ Dealer ☐

Address.....

(5) Work Performed at.....

(Name and location)

Type of	(8) Delivery to start	To be completed
(7) Purchase Action.....		

(9 & 11) Description of item	Number of units	Unit cost	Total cost (if estimated so indicate)

(10) Preference Rating.....Identification Symbol.....

(12) If Escalator Clause is included in Contract, state whether such clause is for Labor, Materials, or both.....

(13) Check if this Contract is subject to Walsh-Healey Public Contracts Act ☐

The.....Industry Minimum Wage Determination of The Secretary of Labor is applicable to this Purchase Action (Indicate industry by title)

Date Poster (PO 13) sent to Contractor.....

* * * * *

If the estimated initial value of the contract is in excess of $100,000 the following information must also be submitted:

(14) (a) Negotiators for Government.....

(b) Negotiators for Contractor.....

(c) Reasons for selecting Contractor.....

(if no competition was obtained).....

(d) Name of Person approving specification.....

(Where Federal, Army, Technical Service, Navy or other bureau specification is used, a statement to that effect is sufficient.)

(e) In reporting purchase of land, the following information must be submitted:

(1) Location.....

(2) Area.....

(3) Intended Use.....

(4) Price.....

(5) Assessed Value.....

Signature.....

Name.....

Rank.....

Copy Distribution
1 Chief, Responsible Service
1 Your File

(a) *Explanation of Purchase Action Report form.* The following notes apply to the report form above. The report form contains cross references to these notes.

(1) Serial number. This was established to enable the contracting station and the controlling service to reconcile their records. As many stations may originate purchase actions for various services, a separate series of serial numbers may be used for each service (see §§ 803.309 and 803.318b (e) for types of contract symbols for the various services). Each series of serial numbers will begin with serial No. 1 for the new fiscal year and continue in exact sequence (based on the date of award as established in subparagraph (6) to the end of the fiscal year. No service symbol need appear as part of the serial number as it will be identical with the symbol shown in the contract number. Purchase Action Reports made in the new fiscal year for awards made in the previous fiscal year should have a serial number in the series of the previous fiscal year.

(2) This note has been deleted.

(3) Include name of station, location and station number.

(4) Name and address of contractor. If more than one, list each one as a split award on separate Purchase Action Reports.

(5) Name and location of establishment or plant or location where work will be performed. If more than one, list each one and where possible indicate the approximate percentage of work to be performed at each location. If this is same as contractor, so indicate. Show the street address as well as the city when such is shown on the face of the contract.

(6) Under the headings "Station", "Technical Service" and "Number" indicate the contract (purchase action) number in accordance with the system specified in §§ 803.309 (b) or 803.318b (e). When purchase orders are required to be reported, the number thereof will be shown under this item of the form. The date shown will be the date shown on the original agreement as established by the transmission of the document from the contracting officer to the contractor. It will be the date of the award of the agreement and not necessarily the date of the acceptance. If a purchase order is the original purchase action, use the symbol "P. O." and its serial number (rather than the contract number) followed by a symbol in parentheses indicating the technical service or service command.

(7) Indicate whether lump sum, unit price cost-plus-a-fixed-fee etc. If the transaction being reported is evidenced by a preliminary agreement (as defined in § 802.291 (d) indicate this also by word "preliminary".

(8) For construction, this means the date work is to begin. For real estate this means date of possession. The starting date may be the same as the completion date; and the starting date or both the starting date and completion date may be the same as the date of award. Where dates are dependent upon receipt of material, estimated dates are permissible but will be so indicated.

(9) Complete description of product, service, facilities, project or property. Long lists of items attached to Purchase Action Reports are not required for centralized reporting unless specifically directed by the chief of the technical service or the commanding general of the service command responsible for procurement of the item involved. Where assorted items of like nature are reported, indicate group headings such as various tank engine parts, various knit clothing, etc. Such headings must briefly but specifically state the type of article purchased to enable proper classification by end product. Do not indicate only "Spare parts"; instead, state for example, "Spare parts for trucks, except engine parts". If item or service is classified, state description but so label whole report, and transmit according to regulations covering classified information. If the purchase transaction being reported is the execution of a cost-plus-a-fixed-fee contract, indicate the full estimated cost (not including the fixed-fee) in the description column. If the purchase transaction being reported is evidenced by a preliminary agreement under which the Government only obligates itself for a percentage of the anticipated total contract price, the anticipated full contract price should be shown under the heading "Description of Item".

(10) For the preference rating, the WPB priority rating (AAA, AA-1, A-1-a, AA-2x, etc.) will be shown.

(11) Number of units, unit cost and total cost. If cost is estimated, write "estimated" after amount. For purchase actions involving architect-engineer, management or similar services only, indicate as the total cost, the amount payable to the contractor and chargeable against a War Department appropriation. This applies primarily to cost-plus-a-fixed-fee contracts. If under such a contract the contractor is to receive payment of an architect-engineer, management, or similar fee, and in addition is to receive payment for work performed or supplies furnished, each such payment will be shown separately. The total obligated amount will also be shown for this purchase action. In cases where land acquisition, plant expansion, tool expansion and supply items are involved on a single purchase action, a distribution by these groups and a total cost will be shown. If the purchase action is a preliminary contractual agreement, (see § 802.291 (d)) the amount for which the War Department is obligated will be shown as the total cost. In cases where a varied group of items are shown in the description section of the report and not detailed, indicate various unit prices in the same manner. Indicate this assortment either as a price range, i. e., $4.37 to $4.69 ea., or show the word "various" for a wide range of unit prices such as on tools. In all cases a total cost (actual or estimated) will be shown. This includes purchase actions for utilities or other open end contracts.

(12) State when an escalator clause is included in the contract and whether such clause is for labor, materials or both.

(13) Reporting provisions of the Walsh-Healey Act (Act of June 30, 1936; 41 Stat. 2036; 41 U. S. C. 35–45) will, after May 1, 1943, be fulfilled by the submission of the report called for under paragraph 292. If any provision of that Act is applicable to the purchase action, the box should be checked as indicated. If the purchase action comes under any industry minimum wage determination, the industry involved should be indicated on the second line of this item. On the third line there should be indicated the date on which the poster (P. C. 13) was sent to the contractor and to the plant locations.

(14) Where total value of purchase action is in excess of $150,000.00 additional data are required as shown on form. As this additional information is required for the annual report to Congress, it must be complete.

(b) *Reports of increased purchase actions not originally reported.* When a purchase action, which originally was not reported because it involved a total cost of not more than $10,000 is increased to an amount in excess of $10,000, an original Purchase Action Report will be made on W. D., A. G. O. Form 496 set forth in § 802.293 showing the new net value of the purchase action and the date on which the agreement exceeded $10,000. Original and five copies will be forwarded to the chief of the technical service or commanding general of the service command not later than five days from date of change order. See item (5a) of § 802.294 (a) for method of treating such purchase actions in Monthly Summary Reports.

(c) *Cancellations and Supplemental Reports.* (1) A Supplemental Purchase Action Report (W. D., A. G. O. Form No. 495) will be used to report cancellations and supplemental actions as stated below. This form is printed on blue paper and is identical with W. D., A. G. O. Form No. 496 (this section), except that the words "Net change" should be substituted for the words "Total cost" on lines 9 and 11. If W. D., A. G. O. Form No. 495 (blue) is not available, W. D., A. G. O. Form No. 496 (white) may be used, in which event the substitution above mentioned should be made and the words "Supplemental Report" typed in the top and bottom margins. Supplemental Reports (whether on Form 495 or 496 and whether or not photostated) will have a one inch diagonal cut made from the bottom left corner. For supplemental purchase actions reportable to a technical service, the original and two copies of such reports will be submitted, no later than 5 calendar days after the action, to the chief of the appropriate technical service. For supplemental purchase actions reportable to a service command, the original and one copy of such reports will be submitted, no later than 5 calendar days after the action, to the commanding general of the appropriate service command. For supplemental agreements, the date shown as the award date will be that on which the supplement or cancellation was made and not the award date of the original action. The supplemental report will contain the same serial number as the original Purchase Action Report followed by a letter of the alphabet in parentheses, the first such change using the letter (a); the second (b); etc. In all cases the nature of the change will be indicated—viz.: quantity increase or decrease; price increases or decreases, etc. Where quantities have been changed show the number of units added or deleted; the unit price; the initial delivery date (if increased quantity) and the scheduled completion date; also indicate whether a decreased quantity represents a partial or complete termination for convenience of the Government, or a partial or complete termination by default of contractor. Where price changes have occurred indicate if this is due to a change in specifications or in costs. If prices have been affected by partial termination so indicate. Where a preliminary contractual agreement has been superseded by a definitive—or formal—contract, report this fact if a supplemental report is being issued to record a concurrent change in value.

(2) If a Purchase Action Report has been submitted under this section, and subsequently cancelled, completely cancelling the value of the purchase action, the action will be reported as stated in subparagraph (1) and the cancellation value shall equal the previously reported contract value (including supplements, if any).

(3) In case a previously reported individual purchase action has been decreased so that the net value is below $10,000, a supplemental report will be submitted showing a net change figure equal to the previously reported figures, not merely the amount of the decrease. For the purposes of this subpart, changes of this type will be considered as cancellations because only purchase actions having a net value in excess of $10,000 are reportable. Cancellations that do not reduce the contract to $10,000 or less will not be reported as cancellations even though the quantity of the item on contract may have been reduced to zero. Such cancellations will be reported merely as decreases and the new net value shall be shown.

(4) Changes—increase or decrease—of a previously reported purchase action will be reported as above when the change is in excess of $1,000. Changes resulting from renegotiation will be included. The report will be on the basis of the net increase or decrease (state which) and not the revised total cost of the purchase. However, the latter amount will always be shown thus:

Previously reported value (including supplements, if any)_____
Increase (or decrease) this supplement_____
New value of contract_____

(5) Changes—increase or decrease—of $1,000 or less on purchase actions previously reported, which had a value in excess of $10,000, will not be reported in the manner set forth in subparagraph (4) above. Instead, a summary of such smaller changes (including changes resulting from renegotiation) will be included in the Monthly Summary Report required to be submitted on all purchase actions reportable to technical services. The net change figure reported for cancellations, as stated above, will include any of these smaller changes applying to the purchase action being cancelled.

§ 802.294 *Monthly Summary Report of Purchase Actions.* A summary of all purchase actions in excess of $10,000 will be rendered for each calendar month as of the last day thereof and submitted on an 8 inch by 10½ inch sheet to the chiefs of the various technical services within 5 calendar days after the close of the month. The report will be rendered on the basis of net obligations undertaken during the month and not appropriations authorized. The form set forth below will be used for all reports submitted. Only one copy is required, unless otherwise directed by appropriate authority.

CONTROL APPROVAL SYMBOL IOY—94

(1) Station _____
(2) Date of Submittal_____, 19____
(3) Transactions not previously reported for month of_____
(4) Reported through_____
Subject: Summary Report of Purchase Actions in Excess of $10,000
(5) Value of Negotiated Purchase Actions
a. Original awards_____
b. Cancellations _____ (decrease)
c. Changes and Supplements Reported on Blue Purchase Action Reports_____
d. Changes and Supplements Not Reported on Blue Purchase Action Reports_____
e. Net Total
(6) Number of Negotiated Purchase Actions
a. Original awards_____
b. Cancellations_____ (decrease)
c. Net Total _____
(7) Signature_____
Name_____
Rank: Service_____

(a) *Explanation of Monthly Summary Report form.* The following notes apply to the report form:

(1) Indicate station name, number and location.

(2) Record date submitted.

(3) The month in which the action took place will be shown. A separate monthly summary will be required for each month in which purchase actions, that have not been previously reported, were awarded. In the case of a supplement, cancellation or change, the award date of the supplement, cancellation or change is the determining month and not the date of the original award.

(4) Where a particular post, camp or station has purchases during a period coming under the jurisdiction of more than one technical service, a separate monthly summary report will be submitted to each technical service according to instructions included in § 802.292. Each monthly summary report submitted to a technical service should indicate on line (4) the technical service to which it is submitted and should contain entries only with respect to purchase actions reportable to that technical service. (See § 802.292.)

(5a) Include all original negotiated awards in excess of $10,000 let during the month shown in item (3). Include the cumulative value of awards that originally were let for $10,000 or less, but which by supplements or changes let this month are now in excess of $10,000.

(5b) Include all purchase action previously reported whose value (not quantity) was cancelled in their entirety during the month shown in item (3) as well as the full previously reported value (including all previous changes) of purchase actions that have been reported as being in excess of $10,000 and which by this change during the month shown in item (3) decreases the net value of $10,000 or less.

(5c) Include value of supplements or changes made during the month shown in item (3) and which had a value in excess of $1,000 and were reported on supplemental reports. (See § 802.293 (d).)

(5d) Include value of supplements or changes made during month shown in item (3) and which had a value of $1,000 or less and were not reported on supplemental reports as described in § 802.293 (c) (5).

(5e) Show the net total of items 5a, 5b, 5c, and 5d. (5c, 5d or 5e may be an increase or decrease. Indicate which.)

(6a) Show the number of purchase actions represented by the dollar value shown in item (5a).

(6b) Show the number of purchase actions represented by the dollar value shown in item (5b).

(6c) Show the net total of item 6a and 6b. (The number of purchase actions to be shown is only for original awards reported (5a) and cancellations (5b). The counts of purchase actions whose value is shown as items 5c and 5d will never be included.)

(7) Fill in signatures, name, rank and service.

(b) *Service commands are not required to submit Monthly Summary Reports of Purchase Actions.* The offices of the commanding generals of the service commands are not required to submit Monthly Summary Reports of Purchase Actions or recapitulations thereof. Installations under the jurisdiction of service commands are required to submit all Purchase Action Reports, including Monthly Summary Reports of Purchase Actions, to the appropriate chief of the technical service where the contract is numbered as a technical service contract in accordance with § 803.309 (b). (See § 802.292.) Such installations, unless so required by the commanding general of the appropriate service command, are not required to submit Monthly Summary Reports to the commanding general of the service command.

§ 802.295 *Quarterly Report on Procurement.* Pursuant to Public Law 528, 77th Congress, the chiefs of the technical services and the commanding generals of the service commands will submit to the Purchases Division, Headquarters, Army Service Forces, within 20 days from the close of each quarter of each fiscal year, the report designated "Quarterly Report on Procurement," Control Approval Symbol No. ICY-35. This report will be typed on individual strips arranged in alphabetical order by the contractor's name, into pages which shall have no more than 10 inches of printed and typed matter including the header strip showing. Header strips for each quarterly report will be furnished in advance by the Purchases Division. The headers and individual strips will be assembled into pages by use of crinkly "draftsman's type" Scotch tape. The pages will not be numbered. Total dollar value will be shown at the bottom of the last page submitted for each headquarters. This total will include only the total of the individual figures reported. No contract will be included in this report the original value of which does not exceed $150,000. Supplements, including increases, decreases or cancellations, will not be reported. No contract will be reported which had an original value of $150,000 or less but which, by reason of supplements, has been increased to a figure in excess of $150,000. Purchases Division will assemble the various reports submitted by the technical services and the service commands into one report which will be submitted to Congress. Subsequent to the preparation of this completed report by the Purchases Division the pages will be returned to the submitted headquarters for dis-assembly and filing of the individual strips for future reference. If no contract in excess of $150,000 has been let during the period a negative report will be submitted.

§ 802.296 *Stations required to report.* (1) Except as noted below, it is the responsibility of every station to which a reallocation, allotment, or suballotment has been made and which is located within the continental limits of the United States or in the Northwest Service Command to make reports of purchase actions. Stations under the jurisdiction of the commanding generals of the Army Ground Forces and the Defense Commands and all stations outside the continental limits of the United tates (except those in the Northwest Service Command) are not required to make such reports.

(2) Reports by exempted and non-exempted stations: Both individual Purchase Action Reports and Monthly Summary Reports will be submitted to the chiefs of the various technical services, for all contracts numbered as technical service contracts in accordance with § 803.309 (b). This will apply to all types of installations, whether Class I, II, III or IV. No stations are to submit any Purchase Action Reports whatsoever direct to the Purchases Division, Headquarters, Army Service Forces.

(3) Transmission of reports by functional staff divisions: Functional staff divisions, Army Service Forces, and stations under their jurisdiction will submit Purchase Action Reports in the same manner as chiefs of technical services and stations under the jurisdiction of the chiefs of technical services; provided, however, that one copy of each report forwarded will be retained by the office of the functional staff division involved, and the original and 5 copies will be forwarded from the office of such division to the Commanding General, Army Service Forces, attention Purchases Division, with 5 days from the date of action. The chiefs of the functional staff divisions will be responsible for complete, accurate, proper and timely submission of such reports. Nothing contained in this subpart, however, shall require the preparation or submission of any individual or summary reports from or with respect to purchase actions of Army Exchange Service.

(4) Reports not to be duplicated: When a formal contract is executed covering a previously reported purchase action (such as a preliminary contractual agreement) no additional purchase action will be filed. Likewise, a purchase order is to be reported only when it is the original purchase action on the item in question. A delivery order is not to be reported when it is an order placed against an existing transaction previously reported as a purchase action.

§ 802.297 *Signing of reports.* Reports should be signed by some responsible officer. Those required by § 802.293 should normally be signed by the contracting officer, and those required by § 802.294, by the officer in charge of the procurement covered by the report. If this is not practicable some other responsible officer may sign.

§ 802.298 *Responsibility of the chiefs of the technical services and the commanding generals of the service commands.* The chiefs of the technical services and the commanding generals of the service commands are charged with the following responsibilities:

(1) Responsibility for assuring that all reports required by this subpart are prepared by the stations under their jurisdiction and forwarded to them in accordance with §§ 802.293 and 802.294. This responsibility includes:

(i) Responsibility for controlling by means of the serial numbering system (see § 802.293 (a) (1)) the submission of Purchase Action Reports.

(ii) Responsibility for requiring the submission of the proper number of copies of Purchase Action Reports.

(iii) Responsibility for checking by contract number to assure that duplicate reports are not received, including the checking of terminations and cancellations.

(iv) Responsibility for reconciling individual Purchase Action Reports submitted by each station with the Monthly

Summary Reports submitted by such station. (Does not apply to commanding generals of service commands.)

(2) Responsibility for the preparation and submission of the Quarterly Report on Procurement.

(3) Responsibility for submission to Purchase Division, Headquarters, Army Service Forces within ten days after the close of each month a Monthly Summary Report of Purchase Actions which will include all purchase actions reported to them during such month. The form established in § 802.294 will be used. The purpose of this report is to enable Headquarters, Army Service Forces to control purchase action reporting and to post to a master record the totals of all purchase actions as of the months in which the actions took place regardless of the month they are reported. It is essential therefor, that the chief of each technical service (this section does not apply to commanding generals of service commands) classify the Purchase Action Reports submitted to him by date of award, or in the case of supplemental reports, by the date of action, and render to Purchases Division separate Monthly Summary Reports of Purchase Actions for each month in which an action took place. All such separate Monthly Summary Reports submitted each month will be recapitulated and reconciled with the total, separately accumulated, for all W. D., A. G. O. Forms No. 496 and No. 495 submitted that month to Purchases Division by each chief of a technical service. The following form will be used and submitted attached to the Monthly Summary Reports of Purchase Actions, Control Approval Symbol ICY-34. One copy only of such summaries and reconciliation will be submitted to Purchases Division. A transmittal letter is not required.

Control Approval Symbol PDS–14

RECONCILIATION OF PURCHASE ACTIONS

Reported by_____
Purchase Actions submitted during month of _____

	Month of Award	*Value*	*Number*
(1) Original awards:			
		_____	_____
(2) Sub total			═══
(3) Changes (increase or decrease)		_____	
(4) Total		═══	
(5) Total of all W.D. A.G.O. Form No. 496			
(6) Total of all W.D. A.G.O. Form No. 495		_____	_____
(7) Total		═══	═══

Entries on line (1) will be taken directly from line 5a of each separate Monthly Summary Report of Purchase Actions submitted. Line (2) will be the sum of all entries under line (1). Line (3) will be the mathematical sum (indicate whether increase or decrease) of all entries in lines 5b and 5c of the separate Monthly Summary reports. Line (4) is the total of lines (2) and (3). Line (5) is the total of all W.D. A.G.O. Forms No. 496 submitted by the chief of the technical service to Purchases Division during the month (regardless of the month of award) and line (6) is the total of all W.D. A.G.O. Forms No. 495 submitted during the month without regard to the month the action took place. Line (7) is the total of Lines (5) and (6) and should, in all cases equal Line (4).

(4) Responsibility for obtaining detailed information on specific transactions when the same is deemed necessary and for promptly submitting this to Purchases Division.

(5) Responsibility for the reproduction (where field installations do not have adequate reproduction facilities) and the distribution of the individual Purchase Action Reports (W.D. A.G.O. Forms 495 and 496, bearing Control Approval Symbol ICY–33) as follows:

Form 496:	*No. of Copies To Be Submitted By*	
To Be Submitted To:	*Technical Services*	*Service Command*
Department of Labor	4 copies	4 copies
War Production Board	1 copy	1 copy
Purchases Division	1 copy	None
Form 495:		
Department of Labor	1 copy	1 copy
War Production Board	1 copy	1 copy
Purchases Division	1 copy	None

The above reports should be addressed as follows:

Department of Labor:
Mr. William R. McComb, Deputy Administrator, Room 1114, Department of Labor Building, Washington 25, D. C., Attention: Mr. A. L. Triolo.

War Production Board:
War Production Board, Bureau of Planning and Statistics, Room 525, Standard Oil Building, 3rd and Constitution Avenues, NW., Washington 25, D. C.

Purchases Division, Headquarters, Army Service Forces:
Director, Purchases Division, Headquarters, Army Service Forces, Room 5D–721, The Pentagon, Washington 25, D. C.

§ 802.299 *Authority of Purchases Division as to reporting.* The Purchases Division, Headquarters, Army Service Forces, retains full authority pertaining to purchase action reporting requirements established by this subpart despite the decentralization of some of the operating functions.

[Procurement Reg. 3]

PART 803—CONTRACTS

SUBPART A—GENERAL

Sec.
803.301 Rescission of regulations.
803.302 Definitions.
803.303 General requirements for contracts.
803.303a Letters of Intent and Letter Orders.

SUBPART B—AUTHORITY TO MAKE AWARDS, CONTRACTS, AND MODIFICATIONS THEREOF; REQUIRED APPROVALS

803.304 Definitions.
803.305 Making and approval of awards of contracts, supplemental agreements and change orders.
803.306 Making and approval of contracts, supplemental agreements and change orders.
803.307 Authority of technical service to reallocate awards and contracts.
803.308 Supplemental agreements and clauses prescribed by Subpart H.
803.308a Supplemental agreements and change orders not involving receipt of consideration.
803.308b Correction of mistakes.
803.308c Contracts or supplemental agreements providing for advance payments.
803.308d Ratification of prior action.
803.308e Extension of time for performance.
803.308f Amendment of contracts after final administrative determination of amount due.
803.308g Supplements and change orders dealing with or directly affecting matters pending before the General Accounting Office in respect of the amended contract.

SUBPART C—FORMALITIES IN CONNECTION WITH EXECUTION OF CONTRACTS AND MODIFICATIONS THEREOF

803.309 Numbering contracts.
803.310 Fiscal procedures.
803.311 Execution of contracts.
803.312 Statement and Certificate of Award (Standard Form No. 1036).
803.313 Form of supplemental agreements and change orders.
803.314 Consent of sureties to modifications.

SUBPART D—DISTRIBUTION OF CONTRACTS AND ORDERS THEREUNDER

803.315 General.
803.316 Numbered contracts.
803.317 Unnumbered contracts.
803.317a Supplemental agreements and change orders.
803.317b Army Audit Branches of the General Accounting Office.
803.318 Special cases.

SUBPART E—CONTRACT PROCEDURE WITHIN THE SERVICE COMMANDS

803.318a Organization of service commands.
803.318b Contract procedure.

SUBPART F—CONTRACT APPEALS

803.318d War Department Board.
803.318e Rules and regulations of Board.
803.318f Appeals boards within the supply services.

SUBPART G—GUARANTEES, LOANS AND COMMITMENTS, AND ADVANCE PAYMENTS

803.319 General.
803.320 Guarantees, loans and commitments under Executive Order No. 9112.
803.321 Advance payments.

SUBPART H—MANDATORY AND OPTIONAL CONTRACT PROVISIONS

803.322 Officials not to benefit clause.
803.323 Covenant against contingent fees.
803.324 Termination article for use in lump sum supply contracts.
803.325 Anti-discrimination clause.
803.326 Disputes concerning questions of fact.
803.327 Domestic articles clause.
803.328 Notice of shipments clause.
803.329 Variation in quantities.
803.329a "Changes" article for supply contracts.
803.330 Partial payments in amount not to exceed 75 percent of cost to contractor.
803.331 Partial payments in amount not to exceed 90 percent of direct labor and material cost to contractor.
803.331a Amendment of contracts containing partial payments article to include substance of paragraph (d) of § 803.330 or 803.331.
803.332 Government owned facilities.
803.334 Records of Government-owned property.
803.335 Patents clause.
803.336 Disclosure of information.
803.337 Employment of aliens.
803.338 Plant protection clause.
803.339 Price adjustment for increase of freight rates.

Sec.
803.340 Clauses for rental of gas cylinders.
803.341 Price adjustment based on production experience.
803.342 Articles governing statutory renegotiation.
803.342a Price revision by mutual agreement.
803.343 Rate of wages clause.
803.344 Nonrebate of wages clause.
803.345 Convict labor.
803.346 Eight-hour law.
803.347 Advance payments with interest.
803.348 Advance payments without interest.
803.348a Advance payments; cost-plus-fixed-fee contracts; with interest.
803.348b Advance payments; cost-plus-fixed-fee contracts; without interest.
803.349 Advance payments; additional provision.
803.349a Advance payments; optional amendment to clause in § 803.348a.
803.350 Termination clause.
803.351 Price-adjustment articles.
803.352 Delays-damages clause.
803.352a Provision for liquidated damages.
803.353 Walsh-Healey Act; representations and stipulations.
803.354 Notice to Government of labor disputes.
803.355 Assignment of rights; unclassified contracts.
803.356 Assignment of rights; secret, confidential and restricted contracts.
803.357 Tax articles in fixed price (lump sum) contracts.
803.358 Specification of taxes included or excluded; information to bidders.
803.359 Deleted.
803.360 Periodic adjustment of price and exemption from renegotiation.
803.360a Price adjustment article based on optional periodic adjustment of price; where contractor has had previous experience in production of item.
803.360b Retroactive changes in wages, salaries, or other terms or conditions of employment.
803.361 Short term pricing.
803.362 Accident prevention.
803.363 Disposition of Government-owned property by contractors.
803.364 Marking of shipping containers.
803.365 Contract clauses in connection with bonds and insurance.
803.366 Offers of prompt payment of cash discounts.
803.367 Subcontracting clause; fixed price supply contracts.
803.368 Subcontracting; cost-plus-a-fixed fee supply contracts.

SUBPART I—TERMINATION OF FIXED PRICE (LUMP SUM) CONTRACTS UPON DEFAULT OF CONTRACTOR

803.379 Steps to be taken in event of default.
803.380 Steps to be taken in event of termination because of default.
803.380a Procedure to be followed when remedies under delays-damages article are pursued.

SUBPART L—MISCELLANEOUS

803.390 Assignments.
803.391 Charges for telegraph, cable, and radio messages in cost-plus-a-fixed-fee contracts.
803.392 Handling defaults and threatened defaults by suppliers and subcontractors under cost-plus-a-fixed-fee contracts.
803.393 Disclosure of information in connection with completing Selective Service affidavit.
803.394 Contracts for electric power.
803.395 Contracts within section 9, Military Appropriation Act, 1944.

SUBPART A—GENERAL

§ 803.301 *Rescission of regulations.* Army Regulations 5–200, dated January 2, 1940, as amended, and all other prior directives and instructions of whatsoever nature relating to the making of contracts are hereby rescinded.

(a) *Compliance with this part.* Unless otherwise specifically provided, compliance with any provision of this part or of any amendment thereto which requires a change in contract procedure or in any contract provision shall not be mandatory until thirty days after the issuance of such regulation or amendment.

§ 803.302 *Definitions.* As used in this part the following terms will have the meanings assigned to them in the following paragraphs:

(a) *United States and Government.* These terms are synonymous and include the War Department.

(b) *Contractor.* A contractor is any person, partnership, company, or corporation (or any combination of these) which is a party to a contract with the United States.

(c) *Contracting officer.* (1) A contracting officer is an officer or civilian official of the War Department who has been appointed by any one of the following persons, or by their direction, or in accordance with such orders and regulations as they may prescribe for their respective commands, to execute contracts on behalf of the United States:

(i) The Secretary of War;

(ii) The Under Secretary of War;

(iii) The Commanding General in a Theatre of Operations;

(iv) The Commanding General, Army Air Forces;

(v) The Director, Purchases Division, Army Service Forces;

(vi) The Chief of any Technical Service.

(2) Unless otherwise specifically provided, the words "the contracting officer," when used in this chapter or in any existing or future contract, supplemental agreement or change order, are construed to include:

(i) His duly appointed successor or authorized representative;

(ii) Any and all contracting officers, acting within the scope of the orders respectively appointing them contracting officers.

(3) Representatives may be designated as follows:

(i) The Chief of a Technical Service may designate any officer or civilian official to act as representative of the contracting officer or his duly appointed successor;

(ii) A commanding officer may designate any contracting officer assigned to his command or station to act as representative of any other contracting officer assigned to the same command or station, or of a contracting officer's duly appointed successor so assigned;

(iii) A contracting officer, his duly appointed successor, and any representative designated pursuant to (i) or (ii) of this subparagraph (3), may respectively designate any officers or civilian officials to act as their representatives.

(4) A designation authorized by subparagraph (3) may be made by instructions referring to particular contractual instruments or classes of instruments, and may, to the extent not specifically prohibited by the terms of the contractual instrument involved, empower the representative to take any or all action thereunder which could lawfully be taken by the contracting officer. In no event, however, shall a representative, by virtue only of his designation as such, be empowered to execute any contract or supplemental agreement (as distinguished from change order). Of course, if the representative is a contracting officer, he may, pursuant to the order appointing him a contracting officer, execute contracts or supplemental agreements.

(5) Any person duly appointed a contracting officer in accordance with subparagraph (1) above, with authority to execute contracts on behalf of a particular technical service, service command or the Army Air Forces may execute contracts on behalf of any other service when the necessary funds, if any, have been made available.

(6) All action heretofore taken which would have been valid if this paragraph had then been in effect, is hereby ratified and confirmed.

(d) *Disbursing officer.* A disbursing officer is the officer who has been designated to mak payments under a contract.

(e) The following are terms used in connection with contracts:

(1) Signed number. A signed number means the instrument with the required signatures.

(2) Authenticated copy. An authenticated copy means a copy of the instrument shown to be authentic by either:

(i) Certification as a true copy,

(ii) Official seal, or

(iii) Photostatic process.

The signatures on such copies may be either facsimile, stamped, or typed.

(3) Copy. A copy means a copy of the instrument, including the names of the contracting parties, but lacking authentication.

(f) *Default.* Default is the refusal or the failure of a contractor to carry out the terms of a contract.

§ 803.303 *General requirements for contracts.* (1) Every purchase transaction except those where payment is made coincidentally with receipt of supplies will be evidenced by a written contract.

(2) Where it has been administratively determined by the commanding officer as more economical and advantageous in the interest of the war effort, Class B agent officers may be appointed in procurement installations under the provisions of AR 35–320 for the purpose of making cash payments for emergency purchases and nonpersonal services not exceeding $100. The use of War Department Form No. 332 (Public Voucher—Emergency Purchases and Nonpersonal Services Not Exceeding $100), properly executed and supported by certified invoices, will be used for this purpose. War Department Form No. 332 may be closed periodically to suit local conditions and submitted to the disbursing officer for credit in the agent officers' accounts as prescribed by AR 35–320.

(3) War Department Form No. 332, when used as authorized in subparagraph

(2) above, will be prepared in quadruplicate (original and three memorandum copies) and distributed as follows:

(i) Original and duplicate to accountable disbursing officer, supported by certified invoices.

(ii) Triplicate to accountable property officer, supported by certified invoices and the following certificate:

I certify that the supplies enumerated hereon were received by me and that payment therefor has been made by me as agent officer in cash this _____ day of _____ 19____, from funds intrusted to me by_____ _____, finance officer at _____ _____, that the nonexpendable property listed hereon (if any) will be accounted for by the _____ property officer at _____, and that the expendable items hereon designated thus (x) are for immediate consumption in current service in _____ _____

(State purpose for which the expendable supplies are to be immediately used. For example: "Operation of motor trucks or airplanes," "troops on the march," etc.)

Allotment No. _____

_____
(Name, grade, and organization)
Agent Officer

(iii) Quadruplicate, without attachments, to Fiscal Officer, Service Command Headquarters, for property audit files. This copy will be stamped with stamp of agent officer to indicate payment in cash or by check.

(4) When funds are expended in accordance with the procedure outlined in subparagraphs (2) and (3) above, the transaction need not be evidenced by any written contract or purchase order, since payment will be made coincidentally with receipt of supplies.

(a) Contracts may be either formal or informal.

(b) A formal contract is one which is contained in one instrument executed by both parties. An illustration is War Department Contract Form No. 1 (see § 813.1301). Formal contracts may be used for any purchase transaction, regardless of amount and will be used for all purchase transactions, the contract price of which exceeds $500,000.

(c) For any purchase transaction, the contract price of which does not exceed $500,000, an informal contract consisting of two separate instruments, one signed by the contractor and the other signed by the contracting officer on behalf of the United States, may be used.

(d) (1) When a purchase order is preceded by a written quotation or is followed by a written evidence of acceptance executed by the contractor, it is to be regarded as an informal contract consisting of two instruments; and accordingly, may be used, in accordance with paragraph (c) of this section, for any purchase transaction the contract price of which does not exceed $500,000. If the contractor's assent is not evidenced either by a written quotation or by acceptance of the purchase order in writing, the purchase order may nevertheless be used for any purchase transaction the contract price of which does not exceed $500,000 provided that the purchase order is preceded by an oral quotation or is based upon a price list.

(2) When the contractor furnishes no evidence of his assent either (i) by a written or oral quotation, (ii) by a written acceptance or (iii) by the publication of a price list, the purchase order may not be used for any transaction the contract price of which exceeds $5,000; but may be used for any transaction the contract price of which does not exceed $5,000.

(3) The provisions of this paragraph and of paragraphs (b) and (c) are not applicable to interbranch or interdepartmental purchases (see § 806.605a and Subpart C of Part 806). Regardless of the amount involved, such purchases need not be evidenced by formal contracts. They should be evidenced by a delivery order (for suggested form see § 813.1317, Form No. 19).

(e) *Numbering and distribution of contracts.* (1) The numbering of contracts is discussed in §§ 803.309 and 803.318b (e) and the distribution of contracts is discussed in Subpart D of this part.

(2) Distribution of purchase orders. As pointed out in subparagraph (2) of paragraph (d), it is not necessary that a purchase order which does not exceed $5,000 in amount be preceded by a quotation. If the contract price exceeds $5,000, however, the following rules shall apply:

(i) If the purchase order was preceded by a written quotation signed by the contractor, or if the contractor delivered some written instrument evidencing the contractor's assent, the original of such written quotation or instrument should be forwarded to the appropriate Army Audit Branch of the General Accounting Office and a copy thereof attached to the copy of the purchase order furnished the disbursing officer.

(ii) If the contractor did not furnish a written quotation or written evidence of its assent and the purchase order merely accepted an oral quotation or was based on a price list, the purchase order, as forwarded to the Army Audit Branch of the General Accounting Office, should contain a reference to the oral quotation or price list. This may consist of a simple statement such as "Pursuant to oral quotation of even date" or "Pursuant to oral quotation of _____, 194__" or "Pursuant to _____
(Name of contractor or other
_____ price list, dated _____,
identification)
194__".

(f) *Partial payments.* It is to be noted that any type of contract, including the purchase order, may provide for partial payments upon completion of the delivery of one or more complete units called for under the contract, or upon the completion of one or more distinct items of service called for thereunder. Any existing contracts which provide for a single payment may be amended to provide for such partial payments. Likewise, prior to delivery, payments may be made on work in progress for the Government, *Provided,* That the contract contains a clause similar to one of the contract clauses set forth in §§ 803.330 and 803.331. Contracts (including purchase orders) under which it is contemplated that more than one payment will be involved must, of course, be numbered as required by § 803.309 (a) and distributed in accordance with § 803.316.

§ 803.303a *Letters of intent and letter orders.* The use of letters of intent and letter orders (see §§ 815.105 (c) and 815.107 (b) (1)) was frequently necessary in the earlier stages of the war procurement program to enable contractors to start work immediately upon war contracts prior to the time when the information was available upon which a definitive contract could be negotiated and without the delay incident to contract negotiations. At the present stage of the procurement program, such temporary contractual instruments will be used only for the most cogent reasons and will be superseded at the earliest possible moment by definitive contracts. In general, such instruments should be used only (1) where it is essential to give the contractor a binding commitment to permit of preparatory work immediately and without any delay, or (2) where because of the experimental nature of the work involved or the lack of definite information as to the volume of supplies to be ordered, the amount of work to be done, or detailed specifications, it is impossible to negotiate a definitive contract. Such instruments should not be used as a method of delaying the making of a definitive contract until a substantial portion of the contractor's performance of the contract has been completed. The standard termination provisions for inclusion in letter orders and letters of intent (see §§ 815.105 (c) and 815.107 (b) (1)) leave room for the insertion of a date by which the definitive contract is to be executed, and also permit postponement of such date by mutual consent (see paragraph 6 (a) of contracts in §§ 813.1307 to 813.1310, inclusive). The date inserted should be the earliest date feasible under the circumstances, and postponement should not be consented to except for good cause.

On or before the tenth of each month the chief of each technical service will file with the Director, Purchases Division, Headquarters, Army Service Forces, a report of each letter of intent or letter order which on the last day of the preceding month had been outstanding more than sixty days without the execution of a definitive contract. Such report shall set forth the following information:

(i) Contract number.
(ii) Name of contractor.
(iii) Amount of expenditures authorized under the letter order or letter of intent.
(iv) Date of letter order or letter of intent.
(v) A very brief statement of the reasons why a definitive contract has not been executed.

(a) *Use of provisions for allowance of profit in standard termination provisions.* (1) The standard termination provisions (see §§ 815.105 (c) and 815.107 (b) (1)) permit of an allowance for profit in the event of termination of a letter of intent or letter order for the convenience of the Government. Such provisions may be omitted in the discretion of the chief of the technical service. However, the chiefs of the technical

services will normally include such provisions for a profit allowance (i) in letter orders and letters of intent which, because of inability on the part of the Government to furnish full specifications or essential information or other similar reason, will necessarily remain in effect for a considerable period before they can be superseded by definitive contract, and (ii) in cases where the contractor is required to proceed under a letter of intent or letter order, although willing to quote a reasonable fixed price, solely because the Government for its own interest is unwilling immediately to negotiate a definitive contract.

(2) Prior to, but not after, the giving of notice of termination, letter orders and letters of intent may be amended, with the approval of the chief of the technical service, to include substantially the standard termination provisions, including the provisions permitting an allowance of profit for work actually done, where the chief of the technical service determines that all of the following conditions exist:

(i) That there has been a prolonged delay in entering into definitive contract during which time the contractor has incurred substantial expense pursuant to the letter order or letter contract.

(ii) That all the delays in entering into a definitive contract have been without fault on the part of the contractor and the contractor has been ready and willing to cooperate in entering into a definitive contract.

(iii) That a settlement of the contract, in the event of its termination for the convenience of the Government, will be unfair to the contractor if an allowance of profit for work done by the contractor pursuant to the letter contract cannot be made.

(3) Letters of intent and letter orders may be amended to insert therein the standard termination provisions other than those portions of such provisions which permit an allowance of profit, in accordance with § 815.107 (b) (2).

(4) Each amendment of the type mentioned in subparagraphs (2) and (3) above shall be made pursuant to the First War Powers Act and Executive Order No. 9001 and shall be based upon a finding by or in behalf of the chief of the technical service that such amendment will facilitate the prosecution of the war. The authority to approve amendments made pursuant to subparagraph (2) shall be delegated by the chief of the technical service only to officers or employees of the War Department within the Headquarters Office of the chief of the technical service, except that the Commanding General, Army Air Forces, may delegate such authority within the Headquarters Offices of any of the component commands of the Army Air Forces.

(5) Amendments of the termination provisions of letter orders and letters of intent in any other manner, or at any other time, than is authorized by the provisions of subparagraphs (2) and (3) above shall be made only with the written approval of the Director, Purchases Division, Headquarters, Army Service Forces, but no such amendments to include provisions permitting an allowance of profit (not theretofore provided by such order) shall be made after the giving of notice of termination.

SUBPART B—AUTHORITY TO MAKE AWARDS, CONTRACTS, AND MODIFICATIONS THEREOF; REQUIRED APPROVALS

§ 803.304 *Definitions*—(a) *Standard forms of contract.* The phrase "standard forms of contract", as used in this subpart, includes:

(1) Forms of contract which may from time to time be approved for the general use of all technical services by the Legal Assistant to the Director of Matériel or the Chief, Legal Branch, Director of Matériel, Headquarters, Army Service Forces. The following contract forms are hereby approved for such use:

(i) United States Standard forms of contract, provided they comply with the requirements of Subpart H.

(ii) Long Form Supply Contract:

Lump Sum Supply Contract (See § 813.-1301).

(iii) Short Form Supply Contracts:

Purchase Order and Voucher (See § 813.-1317a [1]).

Purchase Order (See § 813.1317b [1]).

Government's Order and Contractor's Acceptance (See § 813.1317c [1]).

Informal Invitation, Informal Bid, and Acceptance (See § 813.1317d [1]).

Delivery Order (See § 813.1317e).

Contractor's Offer and Government's Acceptance (See § 813.1317f [1]).

(iv) Construction and related contracts:

Lump Sum Construction Contract (See § 813.1302).

Cost-Plus-A-Fixed-Fee Construction Contract (See § 813.1303).

Cost-Plus-A-Fixed-Fee Architect-Engineer Contract (See § 813.1304).

Fixed-Fee Architect-Engineer-Construction-Management Services Contract (See § 813.1312).

Lump-Sum Contract for Architect-Engineer Services (With Optional Supervision) (See § 813.1316).

(v) Letter Orders:

Letter Order for Supplies (No Price Stated) (See § 813.1307).

Letter Order for Supplies (Price Stated) (See § 813.1308).

Letter Order Contract for Cost-Plus-A-Fixed-Fee Construction (See § 813.1309).

Letter Order Contract for Lump-Sum Construction (See § 813.1310).

(vi) Supplemental Agreements for Advance Payments:

Supplemental Agreement for Advance Payments with Interest on Fixed-Price Contracts (See § 813.1320).

Supplemental Agreement for Advance Payments with Interest on Fixed-Fee Contracts (See § 813.1321).

Supplemental Agreement for Advance Payments with Interest on a Letter Purchase Order (See § 813.1322).

Supplemental Agreement for Advance Payments without Interest on Fixed-Price Contracts (See § 813.1323).

Supplemental Agreement for Advance Payments without Interest on Fixed-Fee Contracts (See § 813.1324).

Supplemental Agreement for Advance Payments without Interest on Letter Purchase Orders (See § 813.1325).

(vii) Utility Service Forms:

Negotiated Electric Service Contract (Connection Charge) (See § 813.1315a).

Negotiated Utility Service Contract (No Connection Charge—Electric, Gas, Water, Sewage) (See § 813.1315b [1]).

(viii) Miscellaneous Contracts:

Defence Supplies Corporation (See § 813.1311).

War Supplies Limited (See § 813.1313).

Government-Owned Equipment Rental Agreement (See § 813.1314).

Informal Invitation, Informal Bid, and Acceptance (Sale of Property) (See § 813.1326 [1]).

(2) Forms of contract, devised by a particular technical service, or a staff division exercising procurement functions, to meet the needs of a recurrent situation of a special type, which may from time to time be approved by the Legal Assistant to the Director of Matériel or the Chief, Legal Branch, Director of Matériel, Headquarters, Army Service Forces (see § 801.107 (h)), for the general use of that technical service or staff division. Forms so approved should be periodically revised (see § 803.301 (a)) to accord with requirements of these procurements regulations published following approval of the forms. If deviation from such requirements appears to be necessary, the forms should be resubmitted for approval.

(3) The forms of contract enumerated below have been approved pursuant to subparagraph (2). Except where the particular form was approved by separate indorsement or memorandum, in which case the precise terms approved will appear from the file containing the indorsement or memorandum, it may be assumed that that version of the form was approved which on 7 July 1943 was authorized for use by the technical service or staff division involved.

Office of the Chief of Chemical Warfare Service: Short Form Research Contract (consideration nominal).

Negotiated Sale Contract.

Office of the Chief of Engineers:

Engineer Form No. 84	Release of Claim for Additional Fee.
Engineer Form No. 85	Release of Claim for Additional Fee to Extent only of Joint-Venturer.
Engineer Form No. 17	Hire by Government of Plant or Equipment.
CE Form No. 186	Lease of Plant.
Engineer Form No. 213a	Quotation.
Engineer Form No. 213b	Purchase Order.
Engineer Form No. 529	Contract for Reconditioning Construction and Maintenance Equipment.

Contract for Boiler Inspection Service.

[1] To be used in accordance with instructions appearing in the cited section.

Office of the Chief of Ordnance:
- Notice of Award (Ordnance Procurement Instructions, par. 13,002).
- Purchase Order Form (O. P. I., par. 13,003).
- Equipment Lease Form (O. P. I., par. 13,004).
- Facility, Lease and Operation Form (O. P. I., par. 13,005).
- Disposition of Personal Property—Negotiated Sale Agreement (O. P. I., par. 13,006.1).
- Disposition of Personal Property—Form S (Allocation) Contract (O. P. I., par. 13,006.2).
- Sale of Property to Defense Plant Corporation (O. P. I., par. 13,006.3).
- Sale of Property by Defense Plant Corporation to Ordnance (O. P. I., par. 13,006.4).
- Gage Repair Contract (O. P. I., par. 13,008).
- Lease of Government-Owned Machine Tool Equipment, etc., and Supplement Thereto (O. P. I., pars. 13,009.1 and 13,009.2).
- Repair Service Contract ("Drive-Away" Carriers) (O. P. I., par. 13,013).
- Supplemental Agreement for Modifying Production Rates in Existing Contracts (O. P. I., par. 13,015).
- Extension of Letter Contract (O. P. I., par. 13,016).
- Letter Order for Emergency Supplies (O. P. C. No. 12–44)
- Contract for Spare Parts and Military Publications (O. P. C. No. 67–44).

Office of the Quartermaster General:
- QMC Form No. 300___ Purchase Order for Use in Purchasing Certain Food Supplies.
- QMC Form No. 308___ Purchase Order.
- QMC Forms No. 315 and 316 (Tentative). Invitation, Bid and Acceptance Form for Purchasing Coal.
- QMC Form No. 327___ Contract for Sale of Waste Material.
- Uniform Burial Contract.
- QMC Form No. P640_ Petroleum Purchase and Storage (Interior).
- QMC Form No. P641_ Petroleum Storage Contract (Interior).
- QMC Form No. P642_ Contract for Purchasing Lubricating Oils and Greases.
- QMC Form No. 1013_ Contract for Warehouse Services.
- Contract for Procurement of Dehydrated Foods.

Office of the Chief Signal Officer:
- O. C. S. O. Form No. 6–D. General Contract for Purchase Order.
- W. D. S. C. Form No. 57.[1] Trunkline and other Communication Facilities and Services.
- W. D. S. C. Form No. 134.[1] Contract for Communication and Electric Time Facilities and Services.
- W. D. S. C. Form No. 1137. Telephone Service Order.
- W. D. S. C. Form No. 1165.[1] General Contract for Commercial Telephone Service Similar to that Furnished the Business Public.
- A. T. & T. Co. Form C276C (5–37).[1] Application for Private Line Service or Channel.

[1] It is emphasized that these forms should contain the standard clauses set forth in §§ 832.323 and 832.325, and General Condition 11 of W. D. Contract Form No. 47 (§ 813.1317).

Office of the Chief Signal Officer—Continued.
- Letter Order for Supplies (No Price Stated)
- Letter Contract for Motion Picture Training Film
- Contract for Motion Picture Training Film
- General Contract for Operation and Maintenance in connection with Army Telephone Systems[1]
- Contract for Maintenance in Connection with Army-Owned Teletypewriter Equipment

Office of the Surgeon General:
- S. G. Form No. 1–F__ Supply Contract.
- S. G. Form No. 2–B__ Long Form Supply Contract.
- S. G. Form No. 3–B__ Purchase Order.
- Contract with Universities for Courses of Instruction.
- Contract with Universities for Research in Prevention of Epidemic Diseases.
- Contract for Blood Plasma Processing.
- Supplemental Agreement for Use of Cellular Residue.

Office of the Chief Transportation:
- TC Form No. 101___ Lease of Equipment Under Public No. 779, 77th Congress.
- TC Form No. 102___ Lease of Equipment, with Indemnity, Under Public No. 779, 77th Conress.
- TC Form No. 103___ Standard Master Ship Repair Contract.
- TC Form No. 104___ Freight Handling Agreement.

Army Air Forces:
- Matériel Command, Contract Form No. 32—Fixed Price Supply Contract.
- Army Air Forces, Form No. 98—Purchase Order.
- Letter Contract for Supplies or Services (Fixed Price).
- Letter Contract for Supplies or Services (CPFF).
- Cost-Plus-A-Fixed-Fee Supply Contract (CPFF Form 3, revised).
- General Airlines Service Contract.
- Flying School Contract.

Office of the Provost Marshal General:
- Contract for Prisoner of War Labor.

Army Specialized Training Division, Office, Director of Military Training:
- Contract for Training in Medicine and Dentistry.
- Contract for Training in Veterinary Medicine.
- Training Unit Contract.

Special Services Division, Office, Director of Personnel:
- Contract for Correspondence Instruction.
- Contract for Physical Distribution of 16 mm Films.
- Contract for Physical Distribution of 35 mm Films.
- Contract for Production Services and Articles, Materials, Equipment and Facilities in Connection with Production of Films.
- Government Job Order and Contractor's Acceptance under Contract for Production Services, etc.
- Contract for Radio and Phonograph Recordings.

Service Commands:
- Form for laundry (and dry cleaning) contract and hospital laundry contract (see Part Two, ASF Circular 128, 8 May 1944).

(b) *Contract.* As used in this subpart, the term "contract" means any contract except supplemental agreements and change orders and except those contracts referred to in §§ 810.1014 and 810.1015.

(c) *Price.* As used in this subpart, the term "price" means in the case of a lump-sum contract (or supplemental agreement or change order relating thereto), the stated price, and in the case of a cost-plus-a-fixed-fee contract (or supplemental agreement or change order relating thereto), the estimated cost plus the fixed-fee.

(d) *Technical service.* Whenever authority is conferred by this subpart upon a technical service, that authority may be exercised by the chief of the technical service or by any officer or officers or civilian official or officials whom he may designate, subject to such regulations as he may prescribe.

§ 803.305 *Making and approval of awards of contracts, supplemental agreements and change orders*—(a) *Authority of technical services to make awards.* All awards of contracts, supplemental agreements and change orders, other than those described in paragraph (b) may be made by the technical service concerned without approval of higher authority.

(b) *Awards requiring the approval of Director, Purchases Division.* (1) The following awards must be submitted for approval to the Director, Purchases Division, Headquarters, Army Service Forces:

(i) Awards of contracts (other than Architect-Engineer Management or similar contracts) involving a price of $5,000,000 or more, and awards of supplemental agreements and change orders which have the effect of increasing the price of contracts (other than Architect-Engineer, Management or similar contracts) by $5,000,000 or more.

(ii) Awards of Architect-Engineer, Management or similar contracts when the construction contracts to which they relate involve a price of $5,000,000 or more, and awards of supplemental agreements and change orders affecting Architect-Engineer, Management or similar contracts when the changes being concurrently made in the construction contracts to which they relate have the effect of increasing the price of the construction contracts by $5,000,000 or more.

(2) If it is desired to execute a preliminary contract, as defined below, with a particular contractor, and the choice of contractor presents no real alternative, it shall not be necessary to obtain any approval pursuant to subparagraph (1) above. Such approval will, however, be obtained prior to the execution of the final definitive agreement, if required by subparagraph (1). The term "preliminary contract", as used in this subparagraph (2), refers to any type of tentative agreement (as, for example, a letter purchase order of the type set forth in § 813.1307) which, it is contemplated, will be subsequently superseded by a final definitive agreement which will obligate War Department funds in an estimated amount at least twice the amount obligated by the tentative agreement.

(c) *Submission of contract, supplemental agreement or change order in lieu of award.* In lieu of submitting an award for approval under paragraph (b), the contract, supplemental agreement or change order may itself be submitted for approval and manual execution by the Director, Purchases Division, Headquarters, Army Service Forces.

(d) *Information to be furnished in requesting approval of awards.* Requests for approval of awards will include the

information indicated below or such parts thereof as are relevant to the particular procurements. The requests should show the extent of the consideration given to the following points in the course of the negotiation and placement of the agreement.

(1) Requests for approval of awards under subparagraph (1) (i) of paragraph (b) (other than requests for approval of awards of preliminary agreements such as letter orders):

(i) Name and address of contractor.

(ii) Location of the plant from which items are to be furnished.

(iii) Quantity and brief description of items to be furnished.

(iv) Unit prices and total amount to be expended.

(v) Brief summary of delivery schedules.

(vi) Experience of contractor with same or similar work.

(vii) New facilities required and reference to any necessary approval thereof.

(viii) Whether negotiations were conducted with more than one contractor.

(ix) Brief reference to the consideration and application of contract placement policies (see Part 802, Subpart B).

(x) Reference to form of contract to be used, noting and justifying any provisions requiring approval of higher authority, or referring to any such approval previously obtained (see, for example, §§ 803.306 (b) and (d), 812.1243, 803.360 (a) and (b), 812.1224 and 803.341 (b):

(xi) Price information showing that a careful and thorough price analysis was made in the course of the negotiation and giving a brief narrative history of the negotiations with the contractor. This information should be given in sufficient detail to permit an appraisal of the consideration given to comparative prices, components of price, and cost and price trends. (See ASF Manual M 601, "Pricing in War Contracts"; Part 802, Subpart C).

(*a*) Comparative prices: The value of this information depends in large part on whether the conditions and circumstances of the procurements offered for comparison are in fact fairly comparable with those involved in the procurement approval of which is sought. The request should therefore indicate the consideration given to the various factors in the particular case which affect comparability. The following list of such possible factors is merely suggestive, not exhaustive: (*1*) volume of production; (2) contractors' experience in producing the same or similar items; (3) Government-owned facilities and Government-furnished material; (*4*) financing provisions; (5) royalty payments; (*6*) risk factors, including those arising out of the length of delivery schedules; (7) Government's assumption of risks by means of contract provisions; (*8*) comparative price movements.

(*b*) Components of price: The request should reflect the types of approach used in analyzing components of price, of which the following are suggestive: (*1*) analysis of the contractor's cost breakdowns; (2) comparisons of the contractor's cost estimates with his experienced costs and with the estimated and experienced costs of other suppliers of the same or similar items; (3) comparison of the contractor's cost estimates with the overall operating statement for his latest fiscal year or with budgeted forecasts for the period of production; (*4*) analysis of engineering cost estimates.

The consideration given to trends in prices, in cost of materials, and in wage rates and utilization of labor should be indicated in the request.

The reasons for substantial differences in costs and prices as well as the effect of subcontracting on costs and prices, should be summarized.

Presentation of the foregoing information should indicate that the price analysis was made with a view to effectuating, wherever possible, the War Department policy of reducing costs and prices.

(xii) State whether advance payments are to be requested and indicate percentage of total price.

(xiii) Approximate amount of subcontracting, in dollars and in percentage of price, proposed to be done by the contractor. Where the amount or the percentage is large, a summary of the analysis of available subcontract prices and all available price comparisons for the major components should be given.

(xiv) Where the request for approval includes, in addition to the principal unit, spare parts or special packaging, or both, there should be a clear summary of the method of the pricing thereof. In the case of spare parts, for example, the summary may show the consideration given to the relationship between the total of the prices for all the parts used in assembling a unit and the price of an assembled unit.

(xv) Where the agreement is on a cost-plus-a-fixed-fee basis, in addition to an analysis similar to that required elsewhere in this subparagraph (1) of this paragraph (to the extent feasible), a full statement of the reasons for the use of such type of agreement should be given (see § 802.232 (a) to (c)), together with an explanation of the basis of calculation of the fixed fee (see § 802.232 (c)).

(xvi) A brief statement of the consideration given to (*a*) the results of, (*b*) the information obtained in, and (*c*) any forward pricing agreement in connection with any statutory renegotiation of the contractor; together with a statement of the record of the contractor in making voluntary price reductions and refunds to the Government.

(xvii) Any other matters having a bearing on the reasonableness of the price, which it is desired to submit.

(xviii) Recommendation of the chief of the technical service, or his representative, as to the action desired to be taken by the Director, Purchases Division.

(2) Requests for approval of awards under subparagraph (1) (i) of paragraph (b) (other than requests for approval of awards of preliminary agreements such as letter orders):

(i) Name and address of contractor who is to furnish the services.

(ii) Brief description of the services and place of performance.

(iii) Brief statement of past performance record of the contractor.

(iv) Whether negotiations were conducted with more than one contractor.

(v) Brief description of project to which the services relate.

(vi) Form of agreement, with adequate reference to and justification of any provisions requiring approval of higher authority or to any such approval previously obtained.

(vii) The price, and whether it is considered reasonable.

(viii) If the agreement is on a cost-plus-a-fixed-fee basis, the amount of the fixed fee, and whether the fixed fee exceeds the maximum allowed under the schedule established by the Under Secretary of War.

(ix) Ratio of fixed fee to estimated gross construction cost.

(x) Whether agreement covers design only or supervision only, or both design and supervision.

(xi) Whether release of claim for additional fee has been obtained with respect to all prior cost-plus-a-fixed-fee construction or architect-engineer contracts with the War Department.

(xii) Recommendation of the chief of the technical service, or his representative, as to the action desired to be taken by the Director, Purchases Division.

(3) Requests for approval of awards of preliminary agreements such as letter orders:

(i) Such of the information required by the foregoing provisions of this paragraph as should be available in the circumstances of the particular preliminary agreement, and the reasons for not giving the information which is not furnished.

(ii) The reason for the use of a preliminary agreement (see § 803.303a).

(iii) Recommendation of the chief of the service, or his representative, as to the action desired to be taken by the Director, Purchases Division.

§ 803.306 *Making and approval of contracts, supplemental agreements and change orders*—(a) *Authority of technical services to make contracts.* A contract may be made by the technical service concerned without approval of higher authority (provided that approval of the award has been obtained, if such approval is required under § 803.305 (b), and the contract substantially embodies the award as approved), if:

(1) The contract is written on a standard form of contract; or

(2) The contract (i) complies with the requirements of Subpart H of this part, and (ii) does not contain any provision or involve any matter of policy which, in the opinion of the technical service, should be considered and passed upon by authority higher than the technical service.

(b) In determining whether a contract provision or matter of policy should be considered and passed upon by higher authority, consideration shall be given by the technical service to the following factors among others:

(1) Whether there is involved a conflict with a policy theretofore approved by higher authority;

(2) Whether there is involved a decision on an important question of policy which has not theretofore been passed upon by higher authority;

(3) Whether there is involved a decision on any matter in which uniformity among the several technical services appears to be desirable;

(4) Whether there is involved a decision on an important or doubtful question of law.

(c) *Authority of technical services to make supplemental agreements and change orders.* Except as provided in paragraph (e) and in § § 803.308a and 803.308g, a supplemental agreement to change order modifying a contract (other than an Architect-Engineer, Management or similar contract) may be made or issued by the technical services concerned without approval of higher authority (provided that approval of the award has been obtained if such approval is required under the provisions of § 803.305 (b) and the supplemental agreement, or change order substantially embodies the award as approved), if:

(1) The technical service had authority to make the original contract pursuant to paragraph (a), or the technical service did not have such authority but obtained approval pursuant to paragraph (d); and

(2) The provisions and features of the supplemental agreement or change order are themselves such that the technical service would have authority to include them in an original contract pursuant to paragraph (a).

Changes in Architect-Engineer, Management or similar contracts may also be made by the technical service concerned, provided that the requirements of subparagraphs (1) and (2) above are satisfied and provided that the change being currently made in the construction contract to which the Architect-Engineer, Management or similar contract relates does not necessitate approval. Supplemental agreements converting cost-plus-a-fixed-fee contracts to a fixed price basis will be governed by the provisions of paragraph (e).

(d) *Contracts, supplemental agreements and change orders requiring approval of Purchases Division.* The approval of the Purchases Division, Headquarters, Army Service Forces shall be obtained, as herein provided, in connection with all contracts other than those specified in paragraph (a), and all supplemental agreements and change orders other than those specified in paragraph (c). Where approval is necessary solely because one or more provisions of the contract, supplemental agreement or change order fail to comply with the requirements of Subpart H or present a matter or matters of policy which should be considered by authority higher than the technical service, the necessary approval may be obtained, prior to execution of the instrument on behalf of the technical service, on submission of the contract or the material provisions thereof to the Legal Assistant to the Director of Matériel or the Chief, Legal Branch, Director of Matériel, Headquarters, Army Service Forces, whose approval will be signified by indorsement, memorandum, letter or telegram in response to the request for approval; or on submission of the contract, supplemental agreement or change order, after execution on behalf of the technical service, for approval and manual execution by the Director, Purchases Division. In every other instance the contract, supplemental agreement or change order must be submitted, after execution on behalf of the technical service, for approval and manual execution by the Director, Purchases Division. Upon receipt of requests for the approval of deviations from the contract clauses set forth in §§ 803.365, the Legal Assistant to the Director of Matériel or the Chief, Legal Branch, Director of Matériel, Headquarters, Army Service Forces, will attend to all necessary clearances with the Contract Insurance Branch, Special Financial Services Division, Headquarters, Army Service Forces.

(e) *Supplemental agreements converting cost-plus-a-fixed-fee contracts to a fixed price basis.* (1) In all cases, supplemental agreements converting cost-plus-a-fixed-fee contracts to a fixed price basis will be made subject to the approval of the Director, Purchases Division, Headquarters, Army Service Forces. In the negotiation of all such supplemental agreements the general policies discussed in § 802.232 (e) should be considered so far as relevant. In submitting such supplemental agreements for the approval of the Director, Purchases Division, Headquarters, Army Service Forces, in addition to any information required by § 803.305 (b) or other instructions as to contract clearance, a written statement should be presented (i) analyzing the price data and other similar information, if any, submitted by the contractor, (ii) describing the investigations of these data and other relevant facts which have been made by the War Department representatives, and (iii) setting forth the principal considerations relevant to the conversion of the particular contract to a fixed price basis on the terms recommended. In the case of a partial conversion (not retroactive to the beginning of performance), the statement will indicate what steps have been taken to exclude from the proposed fixed price starting load costs for which the contractor has already been reimbursed under the cost-plus-a-fixed-fee contract. The records of the cost analyses and other investigations made in connection with the conversion will be preserved in the procurement office charged with the conversion negotiations or in the office of the chief of the technical service conerned.

(2) Each supplemental agreement providing for such a conversion will be made only after the contracting officer has satisfied himself that the facts warrant substantially the following recitals which will be included with appropriate modifications to meet the needs of each particular case in each supplemental agreement:

Whereas it is the policy of the War Department to convert cost-plus-a-fixed-fee contracts to a fixed price basis to the greatest extent feasible, and

Whereas the conversion of this contract from a cost-plus-a-fixed-fee contract to a fixed price basis is designed to develop greater efficiency in the use of manpower, materials and capacity by providing the contractor with an incentive to improve its operations, and

Whereas such improvements in operating efficiency tend to develop lower prices and costs, and

Whereas such conversion will tend to reduce the expense and manpower necessary for administrative work, both for the Government and for the contractor, and

Whereas after consideration of all factors deemed relevant and after a reasonable price analysis the fixed price herein provided has been found to be reasonable under all the circumstances, and

Whereas it has been determined administratively that it is to the advantage of the Government and that it will facilitate the prosecution of the war to convert this contract to a fixed price basis by this supplemental agreement entered into pursuant to the First War Powers Act, 1941, and Executive Order No. 9001.

(3) The supplemental agreement covering the conversion will be distributed as provided in §§ 803.303 (e) and 803.315 et seq. The statements and other data referred to in subparagraph (1) need not be submitted with the supplemental agreement to the General Accounting Office or to the finance officer, but will be retained as provided in subparagraph (1) available for inspection.

(4) It has been determined that the execution of supplemental agreements effecting such conversions of cost-plus-a-fixed-fee contracts to a fixed price basis will facilitate the prosecution of the war, when the contracting officer has satisfied himself as provided in subparagraph (2) above and when the supplemental agreement has been approved as provided in subparagraph (1) above.

§ 803.307 *Authority of technical service to reallocate awards and contracts.* It is recognized that, in order to promote the more efficient utilization of combined manufacturing facilities or to prevent interruption of work, it may become advisable to reallocate an award, contract, or modification thereof. Accordingly, when an award, contract, or modification thereof has been made with required approvals, and the technical service concerned thereafter determines that it is advisable to obtain the materials or services involved wholly or in part from another contractor or from two or more contractors, it is authorized without further approval to reallocate the award, contract or modification thereof in whole or in part to another contractor or to two or more contractors, and for this purpose to make appropriate awards and appropriate contracts; *Provided,* That the aggregate quantities, aggregate prices, and the terms of the awards and contracts resulting from the reallocation are substantially the same as those contained in the award, contract or modification thereof which was the subject of the reallocation.

§ 803.308 *Supplemental agreements and clauses prescribed by Subpart H.* Except as otherwise specifically provided to the contrary in any section of these procurement regulations, whenever any

contract (either as originally drawn or as the same may have been modified, amended or supplemented) contains a provision covering the same subject matter as a clause prescribed by Subpart H of this part, but in a form different from that therein prescribed, it will not be necessary, in executing any supplemental agreement or change order in connection with said contract, to amend such provision either with respect to the items which are the subject of the contract or with respect to the items which are the subject of the supplemental agreement or change order.

§ 803.308a *Supplemental agreements and change orders not involving receipt of consideration.* Except as otherwise specifically provided in these regulations, approval by the Director, Purchases Division, Headquarters, Army Service Forces, will be required for each supplemental agreement or change order which does not involve the receipt by the Government of adequate legal consideration, or which modifies or releases an accrued obligation owing directly or indirectly to the Government including accrued liquidated damages or liability under any surety or other bonds. In every such case the technical service shall submit a full statement of the case and of the action recommended together with a finding by the technical service, adequately supported, that the prosecution of the war would be facilitated by the action recommended. The Director, Purchases Division, will signify his approval by manual execution of the supplemental agreement or change order, where such instrument is submitted, or where such instrument is not submitted, by memorandum, indorsement, letter or telegram in response to the request for approval. Attention is directed to the provisions of § 803.308g. The provisions of this section apply to amendments or modifications of agreements for the repayment of excessive profits executed pursuant to the Renegotiation Act, as amended, except to those amendments of such agreements authorized by § 803.308e (b).

§ 803.308b *Correction of mistakes.* Effecting amendment of contracts with the least possible delay to correct misunderstanding, mistakes, errors, and ambiguities will facilitate the prosecution of the war by expediting the procurement program and by giving contractors proper assurance that mistakes unavoidable in a war program as large and extensive as that now in progress, will be corrected expeditiously and fairly. Accordingly, mistakes may be corrected by supplemental agreement pursuant to Title II of the First War Powers Act, 1941, and Executive Order No. 9001, as follows:

(a) Each chief of a technical service may, within the time prescribed by § 803.308f, enter into a supplemental agreement correcting mistakes found by the chief of the technical service to be of the following types:

(1) Misunderstandings, mistakes, and errors of the parties to a written agreement, or ambiguities therein, the correction of which would result in benefit to the Government;

(2) Misunderstandings, mistakes and errors of the parties to a written agreement, or ambiguities therein, which consist solely of a failure to express in the written agreement the true agreement between the parties in accordance with the negotiations between them, or of a mutual mistake as to a material fact;

(3) Mistakes and errors of a contractor, even if unilateral which consist solely of the failure of the contractor, in good faith, to set forth in a bid or in a written agreement what he intended to include therein.

Except as to misunderstandings, mistakes, errors or ambiguities of the type referred to in subparagraph (1) above, the authority conferred upon the chiefs of the technical services by this paragraph (a) is subject to the following limitations:

(i) The notice of the mistake must have been given by the contractor to the contracting officer before completion of performance and before the giving of notice of termination of the contract; *Provided,* That in case of contracts for sale of government property, such notice must be given by the purchaser to the contracting officer before completion of deliveries by the government or before final payment by the purchaser, whichever is later.

(ii) The change involved must not result in an adjustment in excess of $50,000; and

(iii) Where the contract was made as a result of a formal or informal invitation to bid the change must not result, in the case of contracts for the sale of government property, in the payment by the contractor of a sum less than the amount of any bid submitted by any other bidder upon substantially the same terms and conditions, and in the case of other contracts, in the payment to the contractor of a sum in excess of the amount of any bid submitted by any other bidder upon substantially the same terms and conditions, except that, in either case, if the contract was not originally placed on a basis of competition as to price but primarily on the basis of other considerations the limitation contained in this subdivision (iii) shall not be applicable.

This paragraph (a) does not grant any authority to the chief of a technical service to correct a mistake in an agreement for the repayment of excessive profits under the Renegotiation Act, as amended, and the correction of a mistake in any such agreement may be made only with the prior written approval of the Director, Purchases Division, Headquarters, Army Service Forces.

(b) At any time prior to the making of final payment under a termination settlement agreement, the chief of the technical service concerned may correct mistakes, errors and ambiguities in such termination settlement agreement when such correction will result in benefit to the Government or when the change involved does not result in an adjustment in excess of $50,000. The authority conferred by this paragraph (b) is not subject to any of the limitations created by paragraph (a) above or by § 803.303f.

(c) In any other case where the chief of a technical service determines that it will facilitate the prosecution of the war to execute a supplemental agreement to correct a mistake, he will first obtain approval of the Director, Purchases Division, Headquarters, Army Service Forces.

(d) Approval of the Director, Purchases Division, will not be required in the case of any supplemental agreement correcting a mistake, under which the Government receives adequate new legal consideration, regardless of whether the supplemental agreement involves an adjustment amounting to $50,000 or more, and regardless of the time of execution of such supplemental agreement.

Requests for approval by the Director, Purchases Division, Headquarters, Army Service Forces, of supplemental agreements to correct misunderstandings, mistakes, errors and ambiguities in contracts in accordance with the provisions of this section will be accompanied by a full statement of the circumstances including all relevant papers or copies thereof. The evidence submitted shall show that an error or mistake was made or that a misunderstanding or ambiguity exists, in what it consists, and how it occurred, the true intent of the parties, and the effect of the mistake, if not corrected, upon the financial condition of the contractor. When this section does not require that the approval of the Director, Purchases Division, be obtained, the chief of the technical service approving or executing such agreement will see that a similar statement is prepared with respect to each such supplemental agreement and that such statement and all relevant papers and evidences are carefully preserved. Attention is directed to the provisions of § 803.308g.

§ 803.308c *Contracts or supplemental agreements providing for advance payments.* The subject of advance payments is treated in Subpart G of this part. If a contract contains a clause authorizing the making of advance payments, the determination of whether the approval of the Purchases Division must be obtained under § 803.306 (d) should be based upon the provisions of the contract other than the clause providing for advance payments. If the making of advance payments is authorized under a supplemental agreement, the provisions of this subpart shall be inapplicable, and only Subpart G shall be considered in determining whether approval of such supplemental agreement by any authority higher than the technical service is necessary.

§ 803.308d *Ratification of prior action.* In any case where an existing War Department contract or any paragraph of these Procurement Regulations requires that any action affecting a War Department contract be approved by a contracting officer, chief of a technical service or other representative of the War Department in advance of the taking of such action or that it be so approved in writing by a stated time, such action may be approved or ratified in writing by such officer or representative of the War Department after such action has been taken or after such stated time. Such approval or ratification will take effect retroactively as of the date speci-

fied in the written instrument of approval or ratification. In general, cases which are appropriate for the exercise of the authority contained in this paragraph will fall into one of two categories, namely: (a) Cases where, in the interest of expediting production and without obtaining the requisite prior approvals, action has been taken in reliance in good faith upon assurances of a person in auhority, or (b) cases where the action taken without such assurances was of a nature which would have been approved had approval been sought seasonably. The prosecution of the war will be facilitated by the liberal use of the authority contained in this paragraph.

§ 803.308e *Extension of time for performance.* (a) The chief of each technical service may authorize contracting officers designated by him to extend by supplemental agreement within the time prescribed by § 803.308f, the time fixed for performance in any contract and to waive accrued liquidated damages. Each such supplemental agreement shall be entered into pursuant to the First War Powers Act and Executive Order No. 9001. If the contractor shall be in default by reason of delay at the date thereof, such supplemental agreement shall be subject to the approval of the Director, Purchases Division, Headquarters, Army Service Forces, unless the contracting officer shall find that such delay caused no substantial damage to the Government (as distinguished from the accrual of liquidated damages under the contract). For the purposes of this section, the contractor shall not in any case be considered in default by reason of delay if such delay is excusable within the meaning of the contract. Attention is directed to the provisions of § 803.308g.

(b) *The chief of the technical service* to which any contract for the repayment to the government of excessive profits, executed pursuant to section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended, has been assigned for administration, may extend by supplemental agreement the time within which any payment is to be made under such contract whenever he determines (1) that the extension is necessary to avoid an impairment of the contractor's ability to perform war contracts or subcontracts, and (2) that such action will facilitate the prosecution of the war. A copy of each such supplemental agreement, together with a full statement of the circumstances upon which the determination is based, will be forwarded to the Director, Renegotiation Division, Headquarters, Army Service Forces, upon the execution of the agreement.

§ 803.308f *Amendment of contracts after final administrative determination of amount due.* The authority granted to the chiefs of the technical services pursuant to §§ 803.308b (a), 803.308e (a), 803.379 and 803.380 will not be exercised (a) in the case of contracts for the sale of government property, after the completion of delivery by the government or final payment by the contractor, whichever is later or (b), in the case of other contracts, after the contracting officer has administratively determined the final amount due under the contract by communicating his determination to the contractor or by the approval of a final voucher therefor, except that if the contracting officer's determination is, by the terms of the contract, subject to review by the Secretary of War, or his duly authorized representative, such authority may be exercised at any time prior to final action on such review if the contractor perfects his right to such review. Attention is directed to the provisions of § 803.308g.

§ 803.308g *Supplements and change orders dealing with or directly affecting matters pending before the General Accounting Office in respect of the amended contract.* Chiefs of technical services may not approve or authorize the execution of any supplemental agreement or change order which deals with or directly affects the claim under the contract amended thereby which has been transmitted to the General Accounting Office, or any dispute under the contract which has been referred to the General Accounting Office. This limitation of authority is applicable to action taken pursuant to §§ 803.306 (c) and (d), 803.308a, 803.308b, 803.308e, 803.379 and 803.380 notwithstanding any authority granted to the chiefs of the technical services by those sections respectively. In requesting any approval of the Director, Purchases Division, Headquarters, Army Service Forces, required by these regulations, the chiefs of the several technical services will call attention to any matters pending before the General Accounting Office with respect to the contract in question, or any closely related contract which may be affected or dealt with by the supplementary agreement, change order, or action, approval of which is requested, and will state fully the circumstances in any such pending matter.

SUBPART C—FORMALITIES IN CONNECTION WITH EXECUTION OF CONTRACTS AND MODIFICATIONS THEREOF

§ 803.309 *Numbering contracts*—(a) *When required.* (1) Every contract involving the receipt or expenditure of public moneys will be numbered when:

(i) The actual or estimated amount involved is $5,000 or more, or

(ii) It is contemplated that more than one payment (or receipt) will be involved, regardless of the amount involved.

(2) The provisions of subparagraph (1) are not applicable to delivery orders evidencing interbranch or interdepartmental purchases (see § 806.605a and Subpart C of Part 806). Such delivery orders need only be given such designation as may be prescribed by the chiefs of the technical services. If, however, it is contemplated that any such order will involve more than one payment, it must be numbered in accordance with paragraph (b) of this section or § 803.318b (e) unless the procedure prescribed in § 803.318 (a) (3) is followed.

(b) *System.* Contract numbers will be placed in the upper right-hand corner and will consist of the following in the order named:

(1) The capital letter "W", representing the War Department.

(2) Station number representing the station or office as published in the War Department Fiscal Code.

(3) The letter or letters representing the technical service. No approved letter symbol may be changed, nor may any new letter symbol be adopted, unless approval therefor is first obtained from the Office of the Fiscal Director, Headquarters, Army Service Forces, which, before granting any such approval is required to obtain formal approval of the Comptroller General of the United States.

(4) A serial number, separated from the above by a hyphen, commencing with the number 1 and continuing in succession indefinitely without regard to the fiscal year. When the serial number reaches the limit of five digits (99,999), a new series will be used beginning with the serial number 1 and followed by the capital letter "A". Should additional series become necessary, they will be distinguished by the capital letters "B", "C", "D", etc., as may be required.

NOTE: The foregoing applies only to the numbering of technical service contracts and not to the numbering of service command contracts. As to the latter, see § 803.318b (e).

(c) *Examples.* Based upon paragraph (b) above, the following is the number of the first numbered contract executed by the Philadelphia Quartermaster Depot:

W-36-030 qm-1

(d) *Effect of War Department Fiscal Code.* (1) Under date of 1 July 1943, the War Department Fiscal Code was issued by the Office of the Fiscal Director.

(2) Part VIII of the aforementioned code prescribes a new list of station numbers. These new station numbers are to be used in numbering contracts (as required by paragraph (b) (2) and § 803.318b (e) (i) (ii)).

(3) It is to be noted that Part VII of the aforementioned code contain code numbers designating the various technical services as well as the various service commands. These code numbers are not to be substituted, in the numbering of contracts, for the letters previously used to designate the technical services and the service commands (as required by paragraph (b) (3) of this section and § 803.318b (e) (1) (iii)).

(4) When the new station numbers are put into use in connection with the numbering of contracts, a new series should be commenced; that is, the first contract so numbered at a given post should contain the serial number "1".

(5) If, since the issuance of the War Department Fiscal Code, the numbering of contracts has not been in accordance with the foregoing instructions, it is not necessary that the contracts be renumbered. If the system set forth in subparagraphs (1), (2), and (3) has been adopted, but a new series of contracts has not been commenced as directed by subparagraph (4), it is suggested that the contracts be not renumbered but that a new series of contract numbers be commenced as promptly as practicable.

§ 803.310 *Fiscal procedures*—(a) *Allotments of funds not to be exceeded.* The authority to make contracts is subject to the proviso that allotments made for supplies will not be exceeded. Officers who are charged with making contracts will submit, prior to the incurrence of obligations, all proposed contracts to the fiscal officer for verification as to the sufficiency of funds for that purpose. Officers who are charged with the fiscal record keeping will be held strictly responsible that obligations incurred on the basis of documents submitted for determination as to the sufficiency of funds do not exceed the amounts authorized and that such obligations include no other purpose than indicated in the allotment.

(b) *Statements as to availability of funds.* See AR 35–840 for the statements which will be made on contracts and on purchase orders placed under existing contracts as to the funds chargeable and the sufficiency thereof.

§ 803.311 *Execution of contracts*—(a) *Contracts with individuals.* A contract with an individual will be signed by the individual in his own name.

(b) *Contracts with an individual trading as a firm.* Such a contract will be signed by the individual in question. The following illustrates the form that such a contract will ordinarily take:

* * * * *

JOHN DOE COMPANY,
Contractor.

By _____
John Doe (Owner)

_____
(Business Address)

(c) *Contracts with partnerships.* (1) The contract may be signed in the name of the partnership by one or more of the partners. Each partner who signs will sign as one of the firm.

(2) A contract with a partnership doing business through a local representative or agent may be executed in the name of the firm by such local representative or agent.

(3) If the contract is executed in the manner specified in subparagraph (2) and the contract involves a substantial contract price, there should, if practicable, be filed with the contract a properly certified copy of the power of attorney showing the authority of the representative or agent executing the contract.

(d) *Contracts with corporations.* (1) A contract with a corporation will have the name of the corporation written in the blank space provided therefor at the end of the contract form, followed by the word "by", after which the officer or person who has been authorized to contract on behalf of the corporation will sign his name, with the designation of his official capacity.

(2) The contracting officer will in all cases endeavor to satisfy himself that the signer has authority to bind the corporation.

(3) If the contract form being used contains alternate certificates of the type set forth in § 813.1301 (Art. 24), the contracting officer will, if practicable, procure or make one of such alternate certificates.

(4) If the contract form being used does not contain alternate certificates of the type set forth in § 813.1301 (Art. 24), no such certificate need be executed, nor will the evidence specified in subparagraph (5) be required.

(5) In lieu of complying with subparagraph (3) above, the contracting officer may obtain satisfactory evidence of the authority of the signer to bind the corporation and file such evidence with the contract. Such evidence will consist of extracts from the records of the corporation showing either

(i) The election or appointment of the officer executing the contract on behalf of the corporation and the grant of authority to such officer to execute the contract; or

(ii) If the contract is signed by someone other than an officer of the corporation, the grant of authority to such person to execute the contract.

The above-mentioned copies will be certified by the custodian of such records, under the corporate seal (if there be one), to be true copies of the records of the corporation.

(e) *Contracts with joint-venturers.* Contracts are sometimes entered into with joint-venturers, consisting of a corporation and a partnership, or a partnership and an individual, etc. In such cases the contract will be signed by each participant in the joint-venture in the manner indicated for each type of participant in paragraphs (a) to (d), inclusive, of this section.

(f) *Contracting officer's signature.* The contracting officer will sign on behalf of the United States in the space provided for his signature, and his official title will be added.

(g) *Approval articles.* If approval and manual execution of a contract, supplemental agreement or change order by any War Department officer or official other than the contracting officer are required pursuant to these procurement regulations or the regulations of the technical service concerned, (1) an appropriate approval article will be included in the instrument, (2) all changes and deletions shall have been made before the instrument is forwarded for such approval, and (3) the instrument shall not be valid until such approval and manual execution have been obtained.

§ 803.312 *Statement and Certificate of Award (Standard Form No. 1036).* (a) When contracts are negotiated in accordance with the authority referred to in § 802.204, Standard Form No. 1036 need not be executed. (General Regulations of Comptroller General No. 51, Supp. No. 8, June 1, 1942). However, when Standard Form No. 1036 is not executed either:

(1) The notation "Negotiated Contract", signed by the officer negotiating the contract, should appear under or in close proximity to the contract symbol and number on the cover sheet of the contract or,

(2) The contract should show in the wording thereof that it was negotiated under the authority referred to in § 803.204 (Decision of Comptroller General dated July 11, 1942 (A-51607), rendered in response to letter of Acting Judge Advocate General of Navy dated June 27, 1942).

(b) If in exceptional cases contracts are awarded pursuant to formal advertising, Standard Form No. 1036, properly executed in accordance with instructions contained on the form, will be attached to the copy of the agreement which is furnished the General Accounting Office.

§ 803.313 *Form of supplemental agreements and change orders*—(a) *Supplemental agreements.* (1) Supplemental agreements will be reduced to writing and signed by the contracting parties. Supplemental agreements will bear the same identification as the contract which is thereby modified or amended, and will be lettered or numbered, whichever method is authorized by the chief of the technical service concerned, in the order in which the modifications or amendments to the contract are issued. One continuous series of lettering or numbering as the case may be, will be used for each contract, even though it is modified or amended, both by supplemental agreements and by change orders.

(2) Whenever it is desired to effect a modification of more than one contract, it is permissible, in lieu of executing separate supplemental agreements for each contract, to execute a single supplemental agreement. This may be particularly desirable in effecting reductions in the total contract price of more than one contract or in the unit prices payable for items deliverable under more than one contract, (whether in conjunction with renegotiation under the provisions of the Sixth Supplemental National Defense Appropriation Act, 1942 or otherwise). Such supplemental agreements should be numbered in accordance with subparagraph (1) above as a supplemental agreement to each contract modified thereby. This may be done either on the face thereof or on an exhibit thereto. The following illustrates the type of designation that should be given such a supplemental agreement:

Supplemental Agreement No. to Contract No.:	
3	W 669 qm–1
4	W 669 qm–2
8	W 669 qm–3

The above designations indicate that the single supplemental agreement constitutes the third modification of contract number W 669 qm–1; the fourth modification of contract number W 669 qm–2 and the eighth modification of contract number W 669 qm–3.

(b) *Change orders.* (1) Change orders will be in the form of letters addressed to the contractor, and will specify the number of the contract concerned, the changes to be made, the increase or decrease in price and time for performance, and such other terms as may be necessary. Change orders will bear the same identification as the contract which is thereby modified or amended and will be lettered or numbered whichever method is authorized by the chief of the technical service concerned, in the order in which the modifications or amendments to the contract are issued. One continuous series of lettering or numbering as the

case may be will be used for each contract, even though it is modified or amended both by supplemental agreements and by change orders.

(2) In order to avoid the work involved in duplicating change orders, the following procedure may, in the discretion of the chief of the technical service, be adopted with respect to any or all contracts:

(i) Change orders will be classified as primary change orders and secondary change orders.

(ii) Primary change orders are those which specify an increase or decrease in price or make any other material change in the terms of the contract.

(iii) All other change orders (including those in which an increase or decrease in price will be necessitated, but the amount of which is not known at the time of the change order) are secondary change orders.

(iv) Primary change orders will be numbered in accordance with subparagraph (1) above.

(v) Secondary change orders will be given only such identification as the chief of the technical service shall prescribe.

(vi) Secondary change orders will not be included in the continuous series of lettering or numbering referred to in the last sentence of subparagraph (1).

(vii) If a secondary change order is executed and it subsequently becomes apparent that the change made thereby will result in an increase or decrease in price, a supplemental agreement will be executed to evidence such increase or decrease.

§ 803.314 *Consent of sureties to modifications*—(a) *Supplemental agreements.* Subject to the provisions of paragraph (c) of this section, if payment or performance bonds have been executed in connection with a contract or if an advance payment bond has been given in connection with an advance payment made under a contract, the consent of the surety should be obtained to any supplemental agreement modifying or amending the contract.

(b) *Change orders.* Likewise, subject to the provisions of paragraph (c), the consent of such a surety should be obtained to any change order which has the effect of increasing the contract price by more than $25,000. Such consent is not necessary when the change order effects an increase in the contract price of $25,000 or less.

(c) *Exception to requirement of consent of surety.* The provisions of paragraphs (a) and (b) are subject to the qualification that the consent of a surety under a bond executed prior to the execution of a supplemental agreement, or change order is not necessary if (1) an additional bond is furnished in support of the supplemental agreement or change order and (2) such surety is also surety on the additional bond.

(d) *Examination of consents of sureties.* The original of each consent of surety required by paragraphs (a) and (b) together with the original signed number of the supplemental agreement or change order to which it relates will be forwarded through The Judge Advocate General to the General Accounting Office. The Judge Advocate General will examine the consent of surety as to form, execution and legal sufficiency and will then forward it together with the supplemental agreement or change order to the General Accounting Office for filing.

(e) *Form of consent of surety.* For form of consent of surety see § 804.496 (h).

SUBPART D—DISTRIBUTION OF CONTRACTS AND ORDERS THEREUNDER

§ 803.315 *General.* The following general instructions are applicable to the distribution of both numbered and unnumbered contracts:

(a) Contracts will not be distributed until properly signed by all parties, and approved, if approval is required.

(b) All instructions relating to distribution of contracts are subject to the provisions of AR 380–5 and all other current instructions governing the safeguarding and disclosing of information affecting the national defense of the United States. The General Accounting Office has requested that when contracts containing secret or confidential matter are forwarded to it, such contracts be transmitted under two covers, each cover to be addressed to the appropriate Army Audit Branch of the General Accounting Office (see § 803.317b). The inner cover only will be marked "Confidential."

§ 803.316 *Numbered contracts.* (a) Subject to such special instructions as may be issued by the chief of the technical service concerned, numbered contracts will be distributed as follows:

(1) The original signed number of each lump sum (fixed price) contract will be forwarded to the Army Audit Branch of the General Accounting Offices (see § 803.317b). The original signed number of each cost-plus-a-fixed-fee contract will be forwarded to the War Contract Service Section, Audit Division, General Accounting Office, Washington 25, D. C.

(2) The duplicate signed number will be filed with the contracting officer or as directed by the chief of the technical service concerned.

(3) The triplicate signed number will be forwarded to the contractor.

(4) An authenticated copy will be forwarded to the disbursing officer for his files.

(5) Additional authenticated copies or unauthenticated copies will be distributed as directed by the chief of the technical service concerned.

§ 803.317 *Unnumbered contracts.* (a) The original signed number will be furnished the disbursing officer and will be attached to the voucher on which payment is made and will accompany such voucher to the Army Audit Branch of the General Accounting Office (see § 803.317b).

(b) The duplicate signed number will be forwarded to the contractor.

(c) An authenticated copy will be furnished the disbursing officer for his files.

(d) Additional copies will be prepared and distributed as directed by the chief of the technical service concerned.

(e) A contract may be entered into under which it was anticipated that delivery would be completed in a single shipment but due to subsequent unforeseen conditions and circumstances the contractor is precluded from completing such delivery and instead makes partial shipments in order to fulfill his obligation as expeditiously as practical. Under such circumstances payments, not to exceed five (5) in number on any given contract, may be made with respect to partial deliveries under unnumbered contracts, provided that the original signed contract is attached to the first payment voucher and cross references thereto noted on successive partial and final payment vouchers. Such cross references will include the following information as to the first payment voucher: the date and the disbursing officer's name and voucher number.

§ 803.317a *Supplemental agreements and change orders.* (1) Signed numbers and copies of supplemental agreements and change orders will be distributed in the same manner as is prescribed for the contracts to which they pertain and the contracting officer will note on his retained copy of the supplemental agreement or change order the date on which the contractor's number was delivered or mailed to him. When, pursuant to § 803.313 (a) (2), a single supplemental agreement is executed to modify more than one contract, the following procedure will be followed:

(i) The original signed number will be forwarded to the Army Audit Branch of the General Accounting Office (see § 803.317b).

(ii) The duplicate signed number will be filed with the contracting officer who supervised the execution thereof or with the chief of the technical service concerned and correct copies of the supplemental agreement will be furnished to the contracting officers under all of the contracts affected by the supplemental agreement.

(iii) The triplicate signed number will be forwarded to the contractor.

(iv) An authenticated copy will be forwarded to the disbursing officer under each contract affected by the supplemental agreement.

(2) If the alternative procedure of numbering change orders provided for in § 803.313 (b) (2) is adopted, only primary change orders will be distributed in accordance with subparagraph (1) above. Secondary change orders will be given only such distribution as the chief of the technical service concerned may prescribe.

§ 803.317b *Army Audit Branches of the General Accounting Office.* In order to decentralize its work, the General Accounting Office has established an Army Audit Branch at each Army Regional Accounting Office. Accordingly, contracts, supplemental agreements and change orders, which formerly were required to be forwarded to the General Accounting Office in Washington, D. C., will in the future be forwarded to the appropriate Army Audit Branch.

(a) (1) The Army Audit Branches are maintained at the various Army Re-

gional Accounting Offices. The Army Audit Branch to which a particular contract, supplemental agreement or change order should be sent is the one located at the Army Regional Accounting Office to which the disbursing officer under the contract is required to submit his accounts (see paragraph (b) of this section). If a particular contract permits payment by more than one disbursing officer, and the accounts of such disbursing officers are submitted to different Army Regional Accounting Offices, copies of the contract (and of supplements and change orders) should be provided for the Army Audit Branches at each of such Army Regional Accounting Offices. In such cases, the original signed number and sufficient copies for each of the other Army Audit Branches concerned will be submitted to the Army Audit Branch for the area in which the contracting officer is located. The latter Branch will retain the original and distribute the copies to the other Army Audit Branches.

(2) It is to be emphasized that the contracts are not to be forwarded to the Army Regional Accounting Office but to the Army Audit Branch. Using the Los Angeles area as an example, the following illustrates the proper method of addressing the contracts:

General Accounting Office
Army Audit Branch
1206 Santee Street
Los Angeles, Calif.

(b) The following is a list of the Army Regional Accounting Offices to which disbursing officers presently are required to submit their accounts:

(1) Army Regional Accounting Office, 63 Vesey Street, New York 7, New York.

(i) Disbursing officers stationed in Washington, D. C., except the Disbursing Officer, Finance Office, U. S. Army, Washington, D. C., Transportation Division.

(ii) Disbursing officers stationed in the Military District of Washington, D. C.

(iii) Disbursing officers stationed within the geographical limits of the First, Second, and Third Service Commands, except those assigned to tactical organizations and mobile units.

(iv) Disbursing officers stationed in the offices of the Military Attachés.

(v) Disbursing officers stationed in the European, the North African, and the Middle Eastern Theaters of Operations.

(vi) Disbursing officers serving with U. S. Army Forces in Central Africa, India, Burma, and China.

(vii) Disbursing officers stationed at any Atlantic Base Command, excluding the Caribbean Defense Command.

(viii) Disbursing officers of Task Forces in the Atlantic Area.

(2) Army Regional Accounting Office, 366 West Adams Street, Chicago 6, Illinois.

(i) Disbursing officers who are assigned to tactical organizations and mobile units which operate within the continental limits of the United States.

(ii) Disbursing officers who are stationed within the geographical limits of the Fifth, Sixth, Seventh, and Eighth Service Commands.

(iii) Disbursing officers of the Northwest Service Command, the Alaska Defense Command, and other U. S. Army Forces in Canada.

(iv) Special Disbursing Agents assigned to United States Army Transports.

(3) Army Regional Accounting Office, 499 West Peachtree Street, Atlanta 3, Georgia.

(i) Disbursing officers stationed within the geographical limits of the Fourth Service Command except those assigned to tactical organizations and mobile units.

(ii) Disbursing officers serving with U. S. Army Forces in Central and South America.

(iii) Disbursing officers located in the Caribbean Defense Command.

(iv) The Disbursing Officer, Finance Office, U. S. Army, Washington, D. C., Transportation Division.

(4) Army Regional Accounting Office, 1206 Santee Street, Los Angeles 25, California.

(i) Disbursing officers within the geographical limits of the Ninth Service Command except those assigned to tactical organizations and mobile units.

(ii) Disbursing officers stationed within the Hawaiian Department.

(iii) Disbursing officers serving with U. S. Army Forces in South Pacific and Southwest Pacific Area.

§ 803.318 *Special cases*—(a) *Purchases under contracts of Procurement Division, Treasury Department; Navy Department; Post Office Department; etc.* (1) Delivery orders covering such purchases will be distributed in accordance with § 803.317 above. If the delivery order is numbered in accordance with § 803.309 and following, it will, of course, be distributed in accordance with § 803.316 (a).

(2) The chief of the technical service concerned will secure compliance with all special instructions of the respective agencies which make the contracts. For example, the regulations of the Procurement Division, Treasury Department require that a copy of all delivery orders placed under General Schedule of Supplies Contracts be forwarded to that Division.

(3) Vouchers submitted to the Army Audit Branch of the General Accounting Office (see § 803.317b) may relate to less than all of the items covered by the delivery order. If the original signed number of the delivery order has not already been so submitted, it will be submitted to said Army Audit Branch with the first voucher; and when vouchers are submitted to said Army Audit Branch covering subsequent payments, a reference will be made to the first voucher. The reference should contain the date on which the invoice covered by the first voucher was paid and the name of the disbursing officer by whom such payment was made.

SUBPART E—CONTRACT PROCEDURE WITHIN THE SERVICE COMMANDS

§ 803.318a *Organization of service commands.*—(a) *Functions of the service commands.* The Commanding Generals of the service commands are the direct subordinates of the Commanding General, Army Service Forces, and are his field representatives for the performance of the administrative, housing, hospitalization, and supply functions assigned to them. (See sec. 403.01 of the Army Service Forces Manual M 301.)

(b) *Relationship between the service commands and the technical services.* The former offices of the special staff (including the quartermaster, engineer, ordnance officer, and signal officer) are under the complete jurisdiction of the Commanding General of each service command, and are an integral part of his headquarters; such offices are not to be considered field offices or agencies of the technical services. The technical services act as staff agencies of the Commanding General, Army Service Forces, for the functions assigned to them in directing and supervising those functions in the service commands. Accordingly, they may issue instructions to the Commanding Generals of the service commands in their own names or under the authority of the Commanding General, Army Service Forces, but they may not exercise direct command of the subordinates in the headquarters of a Commanding General of a service command (including the quartermaster, engineer, ordnance officer, and signal officer). (See sec. 403.02 of the Army Service Forces Manual M 301.)

§ 803.318b *Contract procedure*—(a) *Appointment of contracting officers.* Commanding Generals of service commands are authorized to appoint contracting officers. Contracting officers so appointed may execute service command contracts as that term is defined in paragraph (c) below, as well as technical service contracts executed on behalf of a technical service as set forth in paragraph (c) (1) (vi) to (viii) below.

(b) As indicated in § 803.318a (b), as a result of the service command reorganization much of the contracting done at posts, camps and stations located within service commands is done under the complete jurisdiction of the commanding generals of the service commands. The chiefs of the technical services have no function to perform in connection with this contracting except as staff officers of the Commanding General, Army Service Forces. Some of the contracting done at posts, camps and stations is still, however, under the jurisdiction of the chiefs of the technical services. In order clearly to differentiate contracts which are executed under the jurisdiction of the commanding generals of the service commands from those executed under the jurisdiction of the chiefs of the technical services, it is important that contracts of the former type be numbered and distributed in a manner different from technical service contracts. Accordingly, in the succeeding paragraphs a separate system of numbering and distribution is provided for contracts of the former type which, for convenience will be referred to as service command contracts.

(c) (1) It is difficult to lay down any general rule as a guide to determining when a contract is to be numbered and distributed as a service command contract. The following general guides may be used for making the determination:

(i) All contracts which are executed within a service command and which are to be paid for with funds made available to the commanding generals of the service commands by the Commanding General, Army Service Forces, are to be regarded as service command contracts and not contracts of any technical service.

(ii) Contracts which are executed under the supervision of the command-

ing generals of the service commands and which are to be financed under an open allotment (see Part V, section 1, of the War Department Fiscal Code), are to be regarded as service command contracts.

(iii) Training contracts are to be regarded as service command contracts.

(iv) Contracts for the disposition of property, by sale or otherwise, are to be designated as service command contracts unless, as in the case of contracts for the disposition of real estate, the contract is of a type over which the chief of one of the technical services exercises direct supervision. In connection with contracts for the disposition of property, see § 807.706.

(v) In addition to contracts coming within the categories enumerated in subdivisions (i) to (iv) above, all other contracts which, pursuant to the provisions of the Army Service Forces Manual or the provisions of any other regulations, are executed under the complete jurisdiction of the commanding generals of the service commands are to be regarded as service command contracts.

(vi) Any type of contract which is to be financed with technical service funds is to be regarded as a technical service contract. Subdivisions (vii) and (viii) below are two specific illustrations of the general rule contained in this subdivision (vi).

(vii) When a contracting officer within a service command is requested to execute a contract on behalf of a technical service, and it is understood that such contract is to be paid for out of technical service funds, such contract is to be regarded as a technical service contract.

(viii) When a given item is not available at a technical service depot, a representative of a service command may be given sufficient funds by a technical service to enable the service command to purchase the item in question. A contract executed in making such a purchase is to be regarded as a technical service contract.

(ix) Prisoner of war labor contracts are not to be regarded as service command contracts. They are to be numbered as contracts of the Office of the Provost Marshal General. Thus the first contract executed at the Prisoner of War Camp, Pine Camp, N. Y., would be numbered

W-30-178 pmg-1

(x) Contracts for furnishing local transportation to Government and other personnel, executed in accordance with Circular No. 80, War Department, 1943 and Memorandum No. W55-15-43, issued by the Office of the Adjutant General, will be numbered in accordance with § 803.309 (b) as Transportation Corps contracts. This subparagraph is applicable to contracts for furnishing transportation to Army Air Forces installations and to plants of Army Air Forces contractors, as well as to contracts for the furnishing of transportation to other War Department installations and to the plants of other War Department Contractors. Any contracts for furnishing local transportation which, in accordance with any previous instructions, may have been numbered in a manner inconsistent with this subdivision (x) should, if practicable, be renumbered.

(2) In case of doubt as to whether a particular contract should be numbered and distributed as a service command contract an inquiry should be addressed to the Commanding General, Army Service Forces, Attention: Legal Branch, Director of Matériel. If time does not permit making such inquiry, the contract should be numbered as in the past, and an inquiry should be addressed to the Commanding General, Army Service Forces, Attention: Legal Branch, Director of Matériel, for advice as to how that type of contract should be numbered in the future.

(3) As indicated in paragraph (a) of this section the authority of a contracting officer of a service command includes authority to execute technical service contracts of the type referred to in subdivisions (vi) to (viii).

(d) *Distribution of service command contracts.* The provisions of Subpart D are applicable to service command contracts. In connection with service command contracts the term "chief of the technical service" is to be read as "commanding general of the service command." Service command contracts (as that term is defined in § 803.318b (c)) should not be forwarded to the headquarters of the various technical services for legal review. If the chief of a technical service requests that copies of a particular type of service command contract be forwarded to his office in order to complete his technical records, such copies may be forwarded pursuant to § 803.316 (a) (5).

(e) *Numbering of service command contracts.* (1) Contract numbers will be placed in the upper right-hand corner of service command contracts and will consist of the following in the order named:

(i) The capital letter "W", representing the War Department, followed by a hyphen.

(ii) The station number, that is, the station or office as published in the War Department Fiscal Code. There may be added to the station number a capital letter or other designation to indicate the branch by which the contract was executed. The following symbols will be used to designate the respective branches set opposite each symbol:

Q—Quartermaster.
S—Signal.
T—Transportation.
O—Ordnance.
E—Engineer.
M—Medical.
C—Chemical.
U—Repairs & Utilities Branch.
Tng—Training Branch.
AST—Army Specialized Training Branch.

No symbol other than those enumerated in the preceding sentences will be used unless approval for such use is obtained from the Legal Branch, Office of Director of Matériel, Headquarters, Army Service Forces. Any request for such approval should specify the reason why additional symbols are required. The Legal Branch will advise the Contract Service Section, Audit Division, General Accounting Office, Washington, D. C., of any approvals granted for the use of such additional symbols. It is to be emphasized that the use of the additional symbols authorized by this subdivision (ii) is for the convenience of the post, camp or station and, accordingly, is optional. The use of these branch symbols may be dispensed with or, if desired, a single branch symbol (and one series of contracts) may be used for more than one, but less than all, branches at a given post, camp or station.

(iii) A symbol in parenthesis to indicate the service command. In the case of the nine service commands, this symbol will consist of the capital letters S. C. in parenthesis followed by a hyphen and a roman numeral indicating in which service command the contract was executed. It is important that capital letters followed by periods and by the roman numeral be used in order that no confusion will arise with Signal Corps contracts which bear the symbol "sc". In the case of the Northwest Service Command and the Military District of Washington, this symbol will respectively consist of the capital letters S.C.N.W. and M.D.W., the symbol to be in parenthesis.

(iv) A serial number separated from the above by a hyphen, commencing with the number "1" and continuing in succession indefinitely without regard to the fiscal year.

(2) It is to be emphasized that the numbering procedure set forth in this paragraph is applicable only to service command contracts (as the term is defined in paragraph (c) of this section). When technical service contracts are executed within a service command (see paragraph (c), particularly subdivisions (vi) to (viii), such contracts should be numbered as technical service contracts in accordance with the provisions of § 803.309 (b).

(3) Serial numbers: It is desirable that separate series be commenced for service command contracts (as defined in paragraph (c) of this section). This should be done as promptly as possible. By adding the branch symbols authorized by subdivision (ii) of subparagraph (1) above, separate series may be maintained for each branch of a post, camp or station.

(4) Effect of War Department Fiscal Code. See § 803.309 (d).

(5) Contract of sale: Reference is made to § 807.706. As indicated therein when a contract of sale, as distinguished from a contract of purchase, is executed, the letter "s" will be added after the parenthesis of the symbol specified in subparagraph (1) (iii) of this paragraph.

(f) *Example.* Based upon paragraph (e), the following is the number of the first numbered contract executed at the Quartermaster Branch at Fort Bragg, North Carolina: W-31-001Q (S.C. IV)-1. The foregoing is on the assumption that the contract is to be paid with funds allotted to the Fourth Service Command by the Commanding General, Army Service Forces.

SUBPART F—CONTRACT APPEALS

§ 803.318d *War Department Board*—(a) *General.* By memorandum of the Secretary of War, dated 8 August 1942, there was constituted in the Office of the Under Secretary of War a board to be known as "War Department Board of Contract Appeals". The board is hereinafter referred to as "the Board". The Board consists of three members, one of whom is designated as President of the Board. There is also a recorder. The President of the Board and the recorder are required to be persons trained in the law. The Under Secretary of War recommends appointees for membership on the Board and for the position of recorder, and nominates the President of the Board. Appointments are made by the Secretary of War. If the Under Secretary of War at any time determines that additional members of the Board are necessary in order to process appeals with reasonable despatch, he may from time to time recommend for appointment such additional members of the Board as he deems necessary, and may make recommendations for the filling of any vacancies on the Board and in the office of the recorder. Upon request of the Under Secretary of War, The Judge Advocate General is authorized to assign to the Board one or more judge advocates as trial attorneys or examiners; and if and when deemed necessary by the Under Secretary of War and upon his request, The Judge Advocate General may also assign a judge advocate as general counsel.

(b) *Types of contracts, appeals from which may be taken.* In general, contracts contain two types of "disputes" clauses under which appeals may be taken. Some specifically authorize the Secretary of War to appoint as his authorized representative either individuals or "a board". (See § 803.326). Others do not specifically authorize the appointment of "a board". Contracts containing clauses specifically authorizing the designation of "a board" are referred to in the succeeding paragraphs as "contracts containing the standard clause". Contracts containing clauses not specifically authorizing the designation of "a board" are hereinafter referred to as "contracts containing the nonstandard clause".

(c) *Appeals under contracts containing standard clause.* In the case of contracts containing the standard clause, appeals from decisions of contracting officers or other authorities (including the chiefs of the technical services) will be heard, considered and decided by the Board acting as the duly authorized representative of the Secretary of War, as fully and finally as the Secretary of War might do.

(d) *Appeals under contracts containing the nonstandard clause.* In the case of contracts containing the nonstandard clause, appeals from decisions of contracting officers or other authorities (including the chiefs of the technical services) will be heard and considered by the Board which will report its views on such appeals to the President of the Board. The President, as the authorized representative of the Secretary of War, will then make the decision, as fully and finally as the Secretary of War might do, unless he shall not be in accord with the decision of the Board, in which case he will promptly submit the case for final determination upon the record to the Under Secretary of War. The latter will then make the decision as the duly authorized representative of the Secretary of War for that purpose.

(e) *Functioning of Board.* The President of the Board from time to time may divide the Board into divisions of one or more members and assign members to such divisions. A majority of the members of the Board or of a division thereof shall constitute a quorum for the transaction of the business of the Board or of a division respectively, and the decision of a majority of the members of the Board or of a division shall be deemed to be the decision of the Board or of the division as the case may be. If a majority of the members of the division is unable to agree on a decision, or if within thirty days after a decision by a division the Board or the President thereof directs that the decision of the division be reviewed by the Board, the decision will be so reviewed; otherwise the decision of a majority of the members of the division shall become the decision of the Board. If a majority of the members of the Board is unable to agree upon a decision, the President of the Board will promptly submit the appeal to the Under Secretary of War for his decision upon the record. The Under Secretary of War is designated as the authorized representative of the Secretary of War for that purpose. A vacancy in the Board or in any division thereof shall not impair the powers nor affect the duties of the Board or division nor of the remaining members of the Board or division, respectively. The authority and procedure specified in this paragraph shall apply whether the Board be acting as the duly authorized representative of the Secretary of War under paragraph (c) or in an advisory capacity under paragraph (d) of this section.

(f) *Taking testimony.* Any member of the Board or any examiner designated by the President of the Board for that purpose may hold hearings, examine witnesses, receive evidence, and report the evidence to the Board or, if the case is pending before a division, to the appropriate division.

(g) *Powers of Board.* The Board has all powers necessary and incident to the proper performance of its duties and has the power with the approval of the Under Secretary of War to adopt its own methods of procedure and rules and regulations for its conduct and for the preparation and presentation of appeals. These rules and regulations are set forth in paragraphs (a) to (l) of § 803.318.

(h) *Place for holding hearings.* The office of the Board is in the office of the Under Secretary of War but hearings also may be held in such other places as the Board determines to be expedient or necessary for the proper performance of its duties.

(i) *Procedure.* The Board fixes the times when and places where hearings will be held, and serves notice thereof. The parties or their representatives are entitled to be heard and introduce evidence; *Provided,* That if a transcript of the evidence taken at a hearing in the office of the chief of a technical service accompanies the record, the Board may limit the testimony before it to matters not disclosed by the transcript.

(j) *Correspondence.* All correspondence pertaining to appeals to the Secretary of War is to be referred to and conducted by the Board.

§ 803.318e *Rules and regulations of Board.* The rules and regulations promulgated by the Board, and approved by the Under Secretary of War under date of September 25, 1942, are set forth in paragraphs (a) to (l) of this section. A form of notice of appeal is set forth in paragraph (m). As said rules and regulations or such form are amended by the Board from time to time, these paragraphs will be amended to conform.

(a) *Rule I: General matters.*

1. *Correspondence.* All correspondence with the Board shall be addressed "War Department Board of Contract Appeals, Office of the Under Secretary of War, Washington, D. C."

a. Channels of communication. The president, any member of the Board, and the recorder thereof are authorized to correspond directly, without regard to the usual channels of communication, with any officer or other person within or without the Army, the War Department, the Ground Forces, the Army Service Forces, or the Army Air Forces, relative to any information desired by the Board, or in connection with any matters pertaining to the business of the Board. Any information obtained from such correspondence shall not be used as evidence at the hearing on any appeal without first having been submitted to the parties to the appeal.

b. Letters. Letters advising the appellant or other party to an appeal of the final decision of the Board on any appeal and any further correspondence regarding the appeal, including letters to the Comptroller General, may be signed by the president or recorder of the Board.

c. Transmission of papers. The president of the Board or the recorder thereof, by direction of the Board, is authorized to transmit directly to the chief of any technical service concerned, for appropriate action, any papers, documents, or other data pertaining to any appeal that may come to the Board, which the chief of such service is authorized under the terms of the contract finally to determine or to determine subject to appeal to the Secretary of War.

d. Routing of correspondence. All papers pertaining to appeals to the Secretary of War under War Department contracts, received in the War Department or any agency thereof, or any technical service, shall be transmitted directly to the War Department Board of Contract Appeals, except as provided in Rule II.

2. *Form, size and number of papers filed.* Appeals, notices, motions, applications, stipulations, briefs, depositions, and other papers, if typewritten, filed with the Board shall be typewritten on one side of the paper only, with margin 1½ inches on the left of the page, and, as far as practicable, shall be upon paper 8½ x 11 inches in size. The papers shall be fastened on the left side without covers or back. Six copies of each of such papers, whether typewritten or not, except stipulations and depositions, shall be filed.

3. *Number to be assigned to proceedings.* The recorder shall assign a number to each appeal coming before the Board, which number will be placed on all papers in the case.

4. *Amendments.* The Board may, in its discretion, allow any paper to be amended or corrected or any omission therein to be supplied.

5. *Service of papers.* Service of papers in all hearings, investigations, and proceedings pending before the Board may be made personally, or by mailing the same in a sealed envelope, registered, return receipt requested, with postage prepaid, addressed to the party upon whom service shall be made, and the date of the registry receipt shall be the date of service. Waiver of the service of any paper may be noted thereon or on a copy thereof, or on a separate paper, signed by the parties or their attorneys and filed with the Board. When any party has appeared by attorney, service upon the attorney will be deemed proper service upon such party.

6. *Substitution of parties.* In the event of the death of an appellant, or for other cause, including a change in the name of a corporation or other party or the succession of one party to the functions or interests of another, or in the event of a mistake in the name or title of a proper party, the Board may order substitution of the proper name or title.

7. *Motions for substitution.* All motions for substitution shall be accompanied by pertinent documentary evidence, unless the parties by stipulation filed with the Board agree to the substitution.

8. *Army Air Forces.* The term "technical services" as used in these rules, includes the Army Air Forces; and the term "chiefs of the technical services" includes the Commanding General, Army Air Forces.

(b) *Rule II: Proceedings preliminary to hearings.*

1. *Appeals, how taken.* *a.* An appeal from the decision of a contracting officer and an appeal from the decision of the chief of a technical service must be in writing, filed with the officer from whose decision the appeal is taken, within the time allowed by the contract, unless for good cause shown, the board shall determine to consider the appeal on its merits, notwithstanding it was not filed within the time allowed by the contract.

b. Form of appeals. Each appeal shall state the particular provisions of the contract out of which the dispute arises; the exact nature of the dispute and the ruling of the contracting officer or other authority from which the appeal is taken, together with a statement of specific facts claimed by the appellant to sustain his position. If the appeal is insufficient in these respects it may be returned for appropriate amendment. The appeal should follow, substantially, the form annexed to these rules and must be signed and sworn to by the appellant. Six copies of the appeal should be filed.

2. *Time of filing to be endorsed.* When the appeal has been received by the contracting officer or the chief of a technical service, as the case may be, he will endorse thereon the date of filing and forward the appeal, as hereinafter provided.

3. *Findings of fact and decisions.* *a.* In rendering a decision on any dispute involving a question of fact, the contracting officer or the chief of a technical service, as the case may be, shall prepare and sign findings of fact, a true copy of which with his written decision, shall be promptly furnished the contractor; and in case of appeal, the officer from whose decision the appeal is taken shall forward a true copy of such findings and of the decision, as hereinafter provided.

b. Forwarding by contracting officer. When an appeal is taken from the decision of a contracting officer he shall promptly forward to the chief of service concerned, a true copy of his findings of fact and of his decision; the original written appeal and the required copies thereof; a transcript of any evidence taken by him; and all pertinent papers in the case.

c. Forwarding by chiefs of Technical Services of appeals from decisions of Contracting Officer. (1) If the appeal from the contracting officer's decision is to the Secretary of War, the chief of the technical service receiving the appeal will exercise the utmost care to see that the record is complete as required by these rules and regulations; will add to the file, if not already in it, an original duplicate or true copy of the contract, including the plans and specifications and all changes and supplemental agreements; and shall promptly forward the complete file to the War Department Board of Contract Appeals.

(2) If for any reason the complete file cannot be so forwarded within five days from the date the appeal is received, the chief of the technical service will report to the War Department Board of Contract Appeals the date on which the appeal was received in his office and the reason for the delay in forwarding the file.

(3) It will be unnecessary, hereafter, for the chiefs of the technical services to furnish the reports required by paragraph 7, of P & C General Directive No. 72, of November 7, 1941.

4. *Forwarding appeals from chiefs of services.* The chief of a technical service, within five days after the receipt of a written appeal from his decision, will forward the original written appeal and the required copies thereof to the War Department Board of Contract Appeals, together with the following papers: a copy of his findings of fact and decision; the advisory report, if there be one, of the contract settlement board in his office; a transcript of any testimony taken during the course of the proceedings; a duplicate original or a certified copy of the contract, including the plans and specifications and all changes and supplemental agreements; the findings of fact and decision of the contracting officer; and all papers and correspondence pertaining to the contract, pertinent to the consideration of the appeal.

5. *Appeals improperly filed.* If any officer or agency of the War Department should receive a written appeal which has not been filed as provided in paragraph 1, of this rule, the recipient shall, after endorsing thereon the date of its receipt, immediately transmit the appeal to the chief of the technical service concerned:

a. For appropriate action as provided in paragraph 4, of this rule, if the appeal is from the decision of such chief; or

b. If the appeal is from the decision of a contracting officer, then for transmission to the contracting officer for action as required by paragraphs 3 *a.* and 3 *b.* of this rule.

6. *Calls for papers, documents and information.* After an appeal has been filed, the Board, or any member thereof, or any person designated by the Board for that purpose, may call for the production of any papers, documents, or specific information in the possession of any of the parties, relevant to the dispute out of which the appeal arises.

(c) *Rule III: Hearings.*

1. *Where held.* Hearings shall be held at the office of the Board unless otherwise directed by the Board.

2. *Notice of hearings.* *a.* The appellant and the representative of the Government shall be given at least 10 days notice of the time and place of hearing.

b. Continuances will not be granted except upon written motion and for good cause shown.

3. *Request for hearing at place other than office of the Board.* If the appellant shall desire that a hearing be held at a place other than the office of the Board, he shall at the time of taking his appeal, or within a reasonable time thereafter, but before service of notice of hearing, make a request therefor, showing the name of the place where he would prefer the hearing to be held, and stating fully the reason for such request. The representative of the Government may, within 10 days after an appeal has been filed in the office of the Board, file with the Board a request for hearing at a place other than the office of the Board and shall in such request state fully the reasons therefor. If neither the appellant nor the representative of the Government request a hearing at a place other than at the office of the Board, the Board may, nevertheless, on its own motion hold a hearing at another place.

4. *Stipulating facts.* The appellant and the representative of the Government may, by stipulation in writing filed with the Board, agree upon the facts or any portion thereof involved in the appeal, which stipulation shall be regarded and used as evidence at the hearing. However, the Board may, in such case, require additional evidence.

5. *Limiting testimony.* Where there is a transcript of testimony taken in the office of the chief of any technical service, the Board may, in its discretion, limit the testimony before it to testimony relative to matters not disclosed by the transcript. In all cases the Board may limit the amount of testimony, where merely cumulative.

6. *Submission on the record to the Under Secretary of War.* Where a majority of the members of the Board are unable to agree upon a decision, and the matter is submitted on the record to the Under Secretary of War for final determination, ordinarily, no further testimony will be introduced. However, the Under Secretary of War may, in his discretion, direct that additional testimony be taken before the Board, a division thereof, or before such person as he may designate, or he may direct a re-hearing before the Board, or reconsideration by the Board.

7. *Absence of parties or counsel.* The unexcused absence of a party or his counsel at the time and place set for the hearing of any proceeding will not be the occasion for delay, but the hearing will proceed and the case will be regarded as submitted on the part of the absent party or parties.

8. *Limitation of argument.* Oral argument before the Board or any division thereof may be limited by the Board or by the division, respectively.

9. *Briefs.* The parties may file briefs in lieu of personal appearances or in connection therewith. All briefs will be filed within 20 days after conclusion of the hearing unless otherwise directed by the Board or by the division before which the appeal is pending.

10. *Oral examination of witnesses.* Witnesses before the Board or any division thereof or before any member or examiner will be examined orally under oath, unless the facts are stipulated or the Board or division thereof shall otherwise order.

(d) *Rule IV: Evidence.*

1. *Copies of papers.* When books, records, papers, or documents have been received in evidence, a true copy thereof or of such part thereof as may be material or relevant may, in the discretion of the Board or of the division holding the hearings, be substituted therefor.

2. *Withdrawal of exhibits.* After a decision has become final, the Board may, upon motion, permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto, or may, on its own motion make such other disposition thereof as it deems advisable.

3. *Administration of oaths.* Any judge advocate or acting judge advocate, the president, any member or the recorder of the Board, or any officer detailed to conduct an

investigation, or hold a hearing, may administer oaths to witnesses.

4. *Ex parte affidavits not evidence.* Statements in the petition, ex parte affidavits, and briefs do not constitute evidence.

(e) *Rule V: Depositions.*

1. *Before whom taken.* *a.* Depositions to be read in evidence before the Board or any division thereof may be taken before and authenticated, by any officer, military or civil, authorized by the laws of the United States or by the laws of place where the deposition is taken, to administer oaths.

b. Form and return of deposition to Board. Each deposition shall show the docket number and the caption of the proceeding, the place and date of taking, the name of the witness, and the party by whom called. The officer taking a deposition shall enclose the original deposition and exhibits, in a sealed packet, with postage or other transportation prepaid, and direct and forward the same to the War Department Board of Contract Appeals, Office of the Under Secretary of War, Washington, D. C.

2. *Notice to take, or stipulation for taking.* When either party desires to take a deposition, unless the parties shall stipulate as to the time when and place where the deposition is to be taken and the name of the officer before whom it is to be taken and the name and address of the witness, such party shall give to the opposite party at least 10 days notice of the time when and the place where such deposition will be taken and the name and address and official title of the officer before whom it is proposed to take the deposition, as well as the name of the witness. A deposition may be taken either upon written interrogatories or upon oral examination, as may be specified in the notice. If the deposition is to be taken upon written interrogatories, copies thereof shall accompany the notice to take depositions. If the opposite party desires to submit cross interrogatories, same must be served upon the party giving the notice within 5 days from the receipt of the notice to take the deposition, or within such further time as may be allowed by the Board. In order to avoid the taking of depositions or to avoid a continuance for the purpose of taking the testimony of any witness, the parties may stipulate what the testimony of the witness would be if present, and such stipulation shall be received in evidence by the Board.

3. *Reason for taking.* A duly authenticated deposition may be read in evidence before the Board, if such deposition be taken when the witness resides, is found, or is about to go beyond the State, Territory, or District in which the Board or a division thereof is to hold a hearing, or beyond the distance of 100 miles from the place of hearing, or when it appears to the satisfaction of the Board or a division thereof, that the witness by reason of age, sickness, bodily infirmity, imprisonment, or other reasonable cause is unable to appear and testify in person at the place of hearing.

4. *Deposition not considered until offered.* *a.* Testimony taken by deposition will not be considered until offered and received in evidence.

b. Introduction of deposition by opposite party. A deposition taken by one party may be introduced by the opposite party, but the whole deposition must be offered unless otherwise stipulated by the parties, or directed by the Board or by the division hearing the appeal.

(f) *Rule VI: Decisions and findings.*

1. *Copies to be served on parties.* Decisions and findings of the Board, including decisions of any division thereof which have become decisions of the Board, including findings on questions of fact, shall be certified under the seal of the Board and served upon the parties or their attorneys in the manner herein provided for the service of papers.

2. *Divisional opinions.* A copy of each opinion of a division shall be promptly furnished by the division to each member of the Board, and if a majority of the members of the Board, including the president, shall at any time within 30 days after the date of the decision by the division file with the recorder a statement in writing to the effect that they do not desire a review of the decision by the Board, the recorder will make an entry in the records of the Board to that effect as of the date on which a majority of the members of the Board shall have filed such statements. Thereupon the decision of the division shall become the decision of the Board, and the recorder will promptly furnish copies of the decision to the parties concerned.

(g) *Rule VII: Representation.*

a. Qualifications of attorneys. Any appellant may be represented before the Board by an attorney at law who has been admitted to practice and who is in good standing, before the Supreme Court of the United States, or before the highest court of any State, Territory, possession or the District of Columbia. The Board may, in its discretion, require any person appearing as an attorney at law, to present to the Board evidence that he or she possesses the above qualifications. The statement of the attorney may be accepted as satisfying the requirement of this rule.

b. Representation in lieu of counsel. Any individual appellant may appear for himself. Any partnership appellant may be represented by one or more partners. Any corporate appellant may be represented by a *bonafide* officer of the corporation.

(h) *Rule VIII: Transcript of proceedings.*

1. *Record of hearings.* A full and complete record shall be kept of all hearings before the Board or any division thereof.

2. *Testimony to be taken stenographically.* The testimony shall be stenographically reported, and transcripts thereof shall be made, if in the opinion of the Board or of the division holding the hearing, a permanent record of the testimony is deemed necessary. Transcripts shall be supplied to the parties and to the public by the official reporter at such rates as may be fixed by contract between the Board and the reporter.

(i) *Rule IX: Rehearings.*

a. Applications for rehearings, etc. Either party may apply to the Board for a rehearing, or reconsideration as to any matter determined by the Board, and to a division of the Board as to any matter determined by that division. Rehearing, further hearing or reconsideration of a decision, may be had, if in the judgment of the Board or of the members of the division in which the decision was rendered, as the case may be, sufficient reason therefor be made to appear.

b. Motions for. All motions for rehearing, or reconsideration shall set forth specifically the ground or grounds relied upon to sustain the motion, and must be filed within 10 days from the date of the service of a copy of the decision of the Board or of a division, respectively, upon the party filing the motion. All such motions will be determined upon the record and briefs submitted and without oral argument or additional evidence.

(j) *Rule X: Computation of time.*

Sundays and legal holidays to be counted. Whenever these rules or any order of the Board prescribe a time within which any act may be performed, Sundays and legal holidays in the District of Columbia shall count the same as other days, except that when the time prescribed for the performance of an act expires on a Sunday or a legal holiday in the District of Columbia, such time shall extend to and include the next succeeding day that is not a Sunday or such a legal holiday: *Provided,* That when the time for performing any act is prescribed by statute, nothing in these rules shall be deemed to be a limitation or extension of the statutory time period.

(k) *Rule XI: Coordination with Price Adjustment Board.*

1. *Notice to Price Adjustment Board.* Upon the filing of an appeal with the Board, the recorder thereof will promptly advise the War Department Price Adjustment Board of the pendency of the appeal, giving the name of the contractor, the contract number, the name of the contracting officer or other authority from whose decision the appeal has been taken, together with a copy of the appeal or a brief statement of the issues involved.

2. *Information regarding renegotiation.* Prior to any hearing, the Board will ascertain from the War Department Price Adjustment Board, whether any renegotiation agreement has been accomplished relating to the contract under which the appeal is pending or whether renegotiation proceedings relative to the contract are pending. If a renegotiation agreement has been entered into such agreement will be taken into consideration by the War Department Board of Contract Appeals in reaching its decision. If renegotiation proceedings are pending the Board may, in its discretion, suspend further proceedings on the appeal until the renegotiation proceedings have been concluded. A copy of each decision rendered by the Board will be furnished the War Department Price Adjustment Board.

(l) *Rule XII: Effective date.*

These rules shall become effective from the date of their approval by the Under Secretary of War, and from time to time may be amended by the Board with such approval.

(m) *Form of notice of appeal.*

Appeal of _____
(Contractor)
Under Contract No. _____ B. C. A. No. _____

To the Secretary of War:

The undersigned contractor under the contract referred to above, hereby appeals to the Secretary of War from the decision of the

(here insert the name and title of the contracting officer, or the name and title of the chief of the technical service, as the case may be)

rendered on the _____ day of _____, 19____, wherein it was ruled:

(here insert the specific ruling from which the appeal is taken)

That said ruling was erroneous and that the undersigned contractor is aggrieved thereby, for the following reasons:

That the dispute arises out of the following provisions of the contract:

(here insert pertinent contract provisions)

That the facts which sustain appellant's position are as follows:

(here state specific facts upon which the claimant relies to sustain the appeal)

That the dispute out of which the appeal arises has not been disposed of by mutual agreement, although appellant has made an effort to that end.

This appeal is made pursuant to Article ____ of the contract.

That the postoffice address of appellant is as follows:

Dated at _____ this _____ day of _____ 19____

_____
(Contractor, appellant)

By _____
(Title of officer if a corporation, or the word "partner", if a partner signs for a partnership)

Form of verification where petitioner is an individual:

STATE OF _____
County of _____, *ss:*

_____, being first duly sworn upon his oath deposes and says that he is the appellant referred to above; that he has read the foregoing and knows the contents thereof, and that the facts therein stated are true of his own knowledge except as to matters which are therein stated on information or belief; and that as to those matters he believes the statements to be true.

_____

Subscribed and sworn to before me this _____ day of _____, 19____.

_____
Notary Public in and for the county of _____, state of _____

Form of verification where appellant is a corporation:

STATE OF _____
County of _____, *ss:*

_____, being first duly sworn upon his oath deposes and says, that he is the _____ of the above-named corporation, appellant; that he is authorized to make this oath for and on its behalf; that he has read the foregoing instrument, knows the contents thereof, and that the facts stated therein are true of his own knowledge, except as to matters which are therein stated on information or belief, and that as to those matters he believes the statements to be true.

_____

Subscribed and sworn to before me this _____day of _____, 19____

_____
Notary Public in and for the county of _____, state of _____

Form of verification where the petitioner is a partnership:

STATE OF _____
County of _____, *ss:*

_____, being first duly sworn upon his oath deposes and says that he is a member of the above-named partnership, appellant; that he has read the foregoing instrument, knows the contents thereof, and that the facts therein stated are true of his own knowledge, except as to matters which are therein stated on information or belief, and that as to such matters, he believes the statements to be true.

_____

Subscribed and sworn to before me this _____ day of _____, 19____

_____
Notary Public in and for the county of _____, state of _____

If the appellant is represented by an attorney give his name and address.

§ 803.318f *Appeals boards within the technical services*—(a) *General.* There should exist in each technical service, a board to act as an advisor to the chiefs of the technical services with respect to appeals under contracts which authorize the chiefs of the technical services to pass upon appeals either finally or subject to further appeals by the contractor to the Secretary of War.

(b) *Organization of boards.* Each board should consist of at least three members. One member of the Board, preferably with legal training, should be designated as executive secretary, to maintain a calendar of such cases as may be appealed to the chief of the service; to make a preliminary analysis of each case, and if necessary, return the file for further evidence, papers or exhibits; to maintain a record of the progress of each case; and in general, to act as executive representative of the Board and of chief of the technical service with respect to such matters. The Under Secretary of War will be informed of the name and address of every such executive secretary. Unless the chief of any technical service considers the volume of such work to be sufficient to require the full-time services of such executive secretary or other board members, they should be directed to perform such services in addition to other duties.

(c) *Procedure.* In order that a uniform and orderly procedure may be followed, the following steps are prescribed in each case. The board should:

(1) Investigate and determine the facts in each case. During each such investigation, an opportunity should be afforded to the contractor, if he desires it, to present evidence in support of his contentions.

(2) Arrive at a finding of all essential facts and prepare a statement thereof for the information of the chief of the technical service concerned, and of the Under Secretary of War in cases forwarded to him for disposition. In the latter cases the report of the Board, together with the recommendation of the chief of the technical service concerned and the complete files in the case, will be forwarded to the Under Secretary of War.

(3) Based upon these findings of fact, prepare any necessary correspondence, supplemental agreements, or other documents for the action of the persons concerned.

(d) In the determination of disputes, it will be the policy of all concerned to do complete and fair justice to the legitimate claims and contentions of every contractor, subject, however, to the limitation that in the absence of specific statutory authority no officer or official of the United States is vested with any power to surrender without consideration to the United States, any asset or right of the United States; every such officer and official must be controlled by the express terms of the contract in question and the applicable statutes and regulations.

(e) The recommendations of the boards in question will be advisory only; the chief of the technical service concerned will not be bound by any such recommendation.

SUBPART G—GUARANTEES, LOANS AND COMMITMENTS, AND ADVANCE PAYMENTS

§ 803.319 *General*—(a) *War Department policy.* It is the policy of the War Department that, in general, guarantees of loans, not in excess of 90 per cent of the principal amount of the loan, are to be employed rather than direct loans or participations in loans; and that likewise, guarantees of loans are, in general, to be employed in preference to advance payments. It is not intended entirely to supplant advance payments, especially where the technical service concerned concludes that the negotiation or performance of a particular contract will be facilitated by the use of advance payments.

(b) *Policy in connection with prime contractors.* Guaranteed loans to a prime contractor are particularly preferable to advance payments to such a contractor in the following situations:

(1) Where a number of technical services are involved,

(2) Where the prime contractor is at the same time a subcontractor under other prime contracts,

(3) Where the prime contractor has contracts with several branches of the government,

(4) Where the prime contractor has a large number of contracts and purchase orders.

In the above situations, guaranteed loans avoid the difficulties of segregation, accounting and supervision which are inherent in advance payments.

(c) *Policy in connection with subcontractors.* Guaranteed loans to subcontractors are preferable to subadvances even though the guarantee may exceed 90 per cent of the principal amount of the loan.

(d) *Cooperation with liaison officers.* The closest cooperation should exist between contracting officers, liaison officers (see § 803.320 (d)), and the Federal Reserve Banks, from the time negotiations for an award of a prime contract commence. Only in this way can there be devised the most practical method of financing from the standpoint of maximum war production by the contractor. In a given case, the most practical method of financing may be (1) private financing, (2) a guaranteed loan, (3) advanced payments, or (4) a direct Government loan; if a guaranteed loan or a direct loan, it may or may not be policed as to expenditures by the technical service most interested. That method of financing which is most conducive to maximum production should be adopted by mutual agreement between the contracting officer and the liaison officer, and it shall be the function of the liaison officed to endeavor to insure cooperation among the several technical services and with other branches of the government to this end.

(e) *Determination of method of financing at time of award.* In the case of prime contractors, especially those having contracts with a single technical service, the method of working capital financing most conducive to maximum production should be determined prior to the making of an award. The question of the amount of facilities necessary for such production and the method of financing such facilities should also be determined at that time. To these ends, the fiscal and production branches of

procurement offices should closely cooperate both internally and, where appropriate, with the liaison officers and the Federal Reserve Banks.

§ 803.320 *Guarantees, loans and commitments under Executive Order No. 9112*—(a) *Executive Order No. 9112.* Under date of March 26, 1942, Executive Order 9112 (7 F.R. 2367) was issued. It reads in part as follows:

(1) The War Department, Navy Department and the Maritime Commission are hereby respectively authorized, without regard to the provisions of law relating to the making, performance, amendment or modification of contracts, (a) to enter into contracts with any Federal Reserve Bank, the Reconstruction Finance Corporation, or with any other financing institution guaranteeing such Reserve Bank, Reconstruction Finance Corporation or other financing institution against loss of principal or interest on loans, discounts or advances, or on commitments in connection therewith, which may be made by such Reserve Bank, Reconstruction Finance Corporation, or other financing institution for the purpose of financing any contractor, subcontractor or others engaged in any business or operation which is deemed by the War Department, Navy Department or Maritime Commission to be necessary, appropriate or convenient for the prosecution of the war, and to pay out funds in accordance with the terms of any such contract so entered into; and (b) to enter into contracts to make, or to participate with any Federal Reserve Bank, the Reconstruction Finance Corporation, or other financing institution in making loans, discounts or advances, or commitments in connection therewith, for the purpose of financing any contractor, subcontractor or others engaged in any business or operation which is deemed by the War Department, Navy Department or Maritime Commission to be necessary, appropriate or convenient for the prosecution of the war, and to pay out funds in accordance with the terms of any such contract so entered into.

(b) *Administration.* The administration of the powers conferred upon the War Department by Executive Order 9112 are vested in the Advance Payment and Loan Branch, Office of the Fiscal Director, Headquarters, Army Service Forces. The general policies and procedures established by that Branch as well as the general contractual arrangements established by the Branch are subject to review by the Director, Purchase Division, Headquarters, Army Service Forces.

(c) *Financial contracting officers.* Financial contracting officers are officers or civilian officials attached to the Office of the Fiscal Director, Headquarters, Army Service Forces who have been granted authority by the Fiscal Director of said Division to execute or approve guarantees (either in the form of guarantees to save financial institutions harmless or in the form of commitments to purchase), to make direct Government loans, to enter into other financial arrangements, and to enter into commitments therefor, all pursuant to the authority conferred by Executive Order 9112; to participate in negotiations for financing; and to coordinate with the Federal Reserve Banks which act as agents of the War Department in arranging financing for businesses whose operations are necessary, appropriate or convenient for the prosecution of the war.

(d) *Liaison officers.* Liaison officers are officers or civilian officials attached to the Advanced Payment and Loan Branch, Office of the Fiscal Director, Headquarters, Army Service Forces, who have been detailed for duty in every city in which a Federal Reserve Bank is situated as well as in Los Angeles and Detroit. Their functions and duties are those specified in paragraphs (e) and (i) as well as in various other sections of this subpart.

(e) *Procedure for obtaining guaranteed loans.* Contractors may make applications for guaranteed loans:

(1) Through a local bank which in turn will transmit the applications to the Federal Reserve Bank in the district where the bank is located,

(2) Directly to the Federal Reserve Bank, or

(3) To a liaison officer.

It will be the duty of the liaison officer to obtain information from the procurement officers of the technical service or services concerned and from other appropriate sources as to whether the applicant's operations (existing or prospective) are necessary, appropriate, or convenient for the prosecution of the war and as to applicant's ability to perform its contracts. When liaison officers are not actually detailed to a given Federal Reserve District, the Federal Reserve Bank will perform this duty. Upon the basis of the information so obtained, the liaison officer will issue a Statement of Necessity. If the liaison officer is not satisfied that the terms and conditions of the loan will expedite production and protect the Government's interest to the fullest extent possible, the Statement of Necessity may be withheld pending the working out of satisfactory terms and conditions.

(f) *Loans and guarantees not requiring submission to the Advance Payment and Loan Branch, Office of the Fiscal Director.* Upon the issuance of a Statement of Necessity, a direct Government loan or a guarantee on behalf of the War Department may be completed by a Federal Reserve Bank, acting as fiscal agent of the United States on such terms and conditions as to it may seem advisable, provided that such loan or guarantee must be submitted for approval to the Advance Payment and Loan Branch, Office of the Fiscal Director, if it comes within any of the categories set forth in paragraph (g).

(g) *Loans and guarantees requiring submission to the Advance Payment and Loan Branch.* Direct Government loans and guarantees coming within any of the following categories must be submitted for approval to the Advance Payment and Loan Branch, Office of the Fiscal Director, Headquarters, Army Service Forces:

(1) All direct Government loans and also all guarantees when the amount thereof plus the amount of all loans and guarantees made pursuant to Executive Order No. 9112 (including Navy Department and Maritime Commission loans and guarantees), which the contractor has then outstanding, exceed $100,000.

(2) All guarantees when the liaison officer and the Federal Reserve Bank disagree as to the terms and conditions thereof.

(3) All guarantees, regardless of the principal amount of the loan, when the guarantee is for an amount in excess of 90 percent of the principal amount of the loan.

(4) All guarantees when the Federal Reserve Bank is itself participating in the loan.

(h) *Execution of loan or guarantee.* If the Federal Reserve Bank does not participate in the loan, the guarantee normally will be executed by the Federal Reserve Bank as fiscal agent of the United States. If the Federal Reserve Bank does participate in the loan, the guarantee will be executed by the financial contracting officer. Direct Government loans will be executed by a financial contracting officer.

(i) *Cooperation of procurement officers.* When it has been determined pursuant to § 803.319 (a) and (d) that a guaranteed loan is the method of financing most conducive to maximum war production, it is essential that the Federal Reserve Bank, the Advance Payment and Loan Branch, the liaison officers, and the financial contracting officers receive the fullest and speediest cooperation from the procurement officers of the various technical services. Procurement officers of the technical services will furnish such information relating to contracts awarded or executed by them, and as to subcontractors and orders under such contracts, as may be called for by the Federal Reserve Bank, the Advance Payment and Loan Branch, liaison officers or financial contracting officers. In order to expedite this cooperation, special units may be established in the district offices of the technical services, or existing Advance Payment Sections may be utilized for this purpose. Information normally required to be furnished will include:

(1) The need for the borrower's production, and

(2) The ability of the borrower to perform from the view point of technical production.

Obtaining information as to the borrower's financial condition is primarily the responsibility of the liaison officer and the Federal Reserve Banks. However, procurement officers of a technical service may supply such information and may make recommendations with respect thereto which will be given due weight provided that the information as to the necessity for the production and the technical ability of the borrower to perform is not delayed.

§ 803.321 *Advance payments*—(a) *General policy.* Subject to provisions of § 803.319 (a) to (c), advance payments will be made to contractors upon their request in all cases where such action will facilitate the prosecution of the war provided that after careful scrutiny it is determined that the national interest will be promoted thereby and provided that the Government will be adequately protected.

(b) *Types of contracts.* Subject to the provisions of paragraph (a), advance payments may be made in connection

with agreements of all kinds (whether contracts, letter contracts, letter purchase orders or other types of agreements).

(c) *Advance payments under contracts executed prior to December 27, 1941.* No advance payment in excess of 30 per cent of the amount of the contract will be authorized upon a contract entered into prior to December 27, 1941, except under a supplemental agreement containing provisions for such an advance payment executed on or after December 27, 1941.

(d) *Security.* Advance payments shall be authorized only upon the furnishing of adequate security by the contractor. The security to be furnished will be that required under the provisions of the standard clauses or standard forms of supplemental agreements referred to in paragraph (k). A guarantee by, or bond of, a parent corporation is desirable if the subsidiary corporation has limited financial responsibility, especially in the case of a newly formed subsidiary corporation. Whether guarantees, subordination agreements or other security devices should be required, in connection with advance payments, is within the discretion of the person having authority to approve the authorization of advance payments. Advance payments bonds will be required only in the most exceptional circumstances. (See §§ 804.406 (d) and 804.407 (a).)

(d–1) *Release of security upon liquidation of advance payments.* The execution, upon the liquidation of advance payments, of releases and agreements to release mortgages, guarantors in guaranty agreements, sureties on advance payment bonds, and other security devices, which may be required in connection with advance payments, will facilitate the prosecution of the war. Accordingly, such releases and agreements to release may be executed pursuant to Title II of the First War Powers Act, 1941, and Executive Order 9001, by the chief of a technical service or his duly authorized representative, or by the person to whom he may delegate such authority, in those cases where such security devices have been given to secure a specific advance payment or advance payments and no other obligations to the Government, and such advance payment or advance payments have been fully liquidated.

In cases where releases or agreements to release security devices, given in connection with advance payments, cannot be executed pursuant to the authority above granted, proposed releases or agreements to release, together with recommendations as to action requested, should be submitted to the Advance Payment and Loan Branch, Office of the Fiscal Director, for prior approval and execution by the Fiscal Director or his duly authorized representative to whom authority to execute such releases and agreements to release is granted pursuant to Title II of the First War Powers Act, 1941, and Executive Order 9001.

(e) *Definitions.* As used in paragraphs (f), (g) and (n), the following terms shall have the following meaning:

(1) The amount of the contract: In the case of a lump sum contract, the contract price; in the case of a cost-plus-a-fixed-fee contract, the estimated cost exclusive of the fixed-fee.

(2) Standard contract clause: A contract clause following without substantial deviation the wording of one of the contract clauses referred to in paragraph (k).

(3) Standard supplemental agreement: A supplemental agreement following without substantial deviation the wording of one of the forms of supplemental agreement referred to in paragraph (k).

The determination of whether there is a substantial deviation from contract clause or from a form of supplemental agreement is within the discretion of the chiefs of the technical services. In general, the determining factor is whether the modification changes established policies with respect to advance payments.

(f) *Initial advance payments not requiring approval of Advance Payment and Loan Branch.* Chiefs of technical services are authorized, without obtaining the approval of the Advance Payment and Loan Branch, Office of the Fiscal Director, Headquarters, Army Service Forces, to approve the authorization and making of initial advance payments on contracts pertaining to their respective services, when:

(1) The amount of the contract is less than $5,000,000 and the amount of the advance payment is not in excess of 50 per cent of the amount of the contract, and

(2) The advance payment is authorized under a standard contract clause or a standard supplemental agreement.

(g) *Subsequent advance payments not requiring approval of Advance Payment and Loan Branch.* The chiefs of the technical services are authorized, without obtaining the approval of the Advance Payment and Loan Branch, Office of the Fiscal Director, Headquarters, Army Service Forces, to approve the authorization and making of advance payments in addition to advance payments previously authorized in connection with a given contract, when:

(1) The amount of the contract on which the subsequent advance payment is based is less than $5,000,000 and the proposed advance payment does not exceed 50 per cent of such amount, and

(2) The proposed advance payment is authorized under an approved contract clause or an approved supplemental agreement.

As used in this paragraph (g), the term "amount of the contract on which the subsequent advance payment is based" means the amount by which the amount of the contract has been increased since the date of the last authorization of an advance payment.

(h) *Advance payments requiring approval of Advance Payment and Loan Branch.* Unless an advance payment comes within the provisions of paragraph (f) or (g), the authorization of such advance payment must be submitted for approval to the Advance Payment and Loan Branch, Office of the Fiscal Director, Headquarters, Army Service Forces. The submission to said Branch will consist of a recommendation of the chief of the technical service concerned, together with the following information:

(1) The amount proposed to be advanced.

(2) The amount of contract involved and the subject matter thereof.

(3) Whether the contract was awarded on a fixed price or on a cost-plus-a-fixed-fee basis.

(4) The terms of the proposed advance (including method and time of repayment or liquidation including, if possible, a schedule of deliveries).

(5) The national interest in making the advance.

(6) The security proposed to protect the Government against loss with the definite recommendation of the chief of the technical service as to the adequacy thereof.

(7) The financial position and the general character and responsibility of the contractor, as well as the technical ability of the contractor to perform the contract.

(8) A copy of the contractor's letter of request and any financial and budget data submitted relating to the necessity for the advance.

(9) Copy of contracting officer's report, if any, on the advance payment request.

(10) Any other information pertinent to a proper decision in the case.

(11) The date and identifying symbol of the approval of the award together with the appropriation available.

Requests for the approval of the authorization of an advance payment may be presented either during the negotiation of a contract or at any time thereafter. If the contract is available a copy thereof together with applicable letters of intent and intermediate supplemental agreements, if any, should be forwarded together with the recommendation. If a copy of the contract is not available at the time the recommendation is forwarded, such a copy should be submitted for review and filing promptly after execution.

(i) *Special provision with respect to advance payments under open-end provisions in connection with cost-plus-a-fixed-fee contracts.* If in connection with a cost-plus-a-fixed-fee contract, it is proposed to authorize the making of an advance payment in an amount equivalent to a percentage of the estimated cost as the same may be amended from time to time, approval of the Advance Payment and Loan Branch, Office of the Fiscal Director, Headquarters, Army Service Forces, need not be obtained unless the estimated cost of the contract exclusive of the fixed-fee at the time of the granting of such authorization is $5,000,000 or more (provided, of course, that the authorization is made under a standard contract clause or a standard supplemental agreement). If, however, it subsequently becomes apparent that the cost will be $5,000,000 or more, no further advances will be made under such authorization until such approval has first been obtained. If such approval has once been obtained, the making of advance payments, in addition

to those made prior to or at the time of such approval, may be made without further approval of the Advance Payment and Loan Branch, regardless of the amount of such additional advance payments.

(j) *Advance payments in connection with letter contracts or letter purchase orders.* Advance payments in connection with letter contracts or letter purchase orders will be provided for by a standard supplemental agreement. There should be included in such agreement a clause relieving a subsequent performance surety of the fidelity risk involved in making advance payments in any case where it is contemplated that a performance bond will be required in connection with the more formal contract and where no advance payment bond has been required.

(k) *Forms of supplemental agreement and contract clauses.* The following is a list of contract clauses and forms of supplemental agreements for use in connection with the authorization of advance payments:

(1) The contract clause contained in § 803.347 will be used in providing for advance payments with interest on fixed-price contracts.

(2) War Department Contract Form No. 20 will be used in executing a supplemental agreement for advance payments with interest on fixed-price contracts. (See § 813.1320)

(3) War Department Contract Form No. 21 will be used in executing a supplemental agreement for advance payments with interest on cost-plus-a-fixed-fee contracts. (See § 813.1321)

(4) The contract clause contained in § 803.348a will be used in providing for advance payments with interest on cost-plus-a-fixed-fee contracts.

(5) War Department Contract Form No. 22 will be used in executing a supplemental agreement for advance payments with interest on a letter purchase order. (See § 813.1322)

(6) The contract clause contained in § 803.348 will be used in providing for advance payments without interest on fixed-price contracts.

(7) War Department Contract Form No. 23 will be used for executing a supplemental agreement for advance payments without interest on fixed-price contracts. (See § 813.1323)

(8) The contract clause contained in § 803.348b will be used in providing for advance payments without interest on cost-plus-a-fixed-fee contracts.

(9) War Department Contract Form No. 24 will be used for executing a supplemental agreement for advance payments without interest on cost-plus-a-fixed-fee contracts. (See § 813.1324)

(10) War Department Contract Form No. 25 will be used for executing a supplemental agreement for advance payments without interest on letter purchase orders. (See § 813.1325)

(l) *Interest.* Except as set forth in paragraph (m) below, whenever an advance payment is made to a contractor by the War Department, a charge should be made for the use of the Government money so furnished. The charge should be in the nature of an interest charge computed, at convenient accounting periods, at the rate of two and one-half percent per annum on the unliquidated balance of advance payments outstanding from time to time. In the case of a fixed-price contract, the amount of the charge should be deducted from payments under the contract. In the case of a cost-plus-a-fixed-fee contract, the charge should be deducted from the amount of the fee otherwise payable to the contractor, and should not be an item of reimbursable cost under the contract.

(m) *Exceptions to interest requirement.* The requirement that interest be charged on advance payments shall not be applicable to advance payments:

(1) Authorized in connection with contracts which provide that the work thereunder shall be performed at cost without profit or fee to the contractor.

(2) Authorized in connection with cost-plus-a-fixed-fee contracts on which the fee is disproportionately small compared to the amount of interest that would accrue on the advance payment.

(3) Authorized in connection with contracts entered into, or contracts the terms of which had been agreed upon, prior to June 8, 1942, to the extent that such application would be inconsistent with the terms upon which such contracts were negotiated.

(4) Authorized in connection with fixed price contracts which have been converted from cost-plus-a-fixed-fee contracts provided that advances previously authorized on the cost-plus-a-fixed-fee contracts have been without interest and provided further that in negotiating the fixed prices on the converted contracts due allowance is made for the continuation of advances without interest. This does not preclude, however, the use of advances with interest in accordance with paragraph (l) in the negotiation of the converted contracts from a cost-plus-a-fixed-fee to fixed price basis if it is preferred to negotiate the new price on the use of advances with interest.

(5) Authorized to be made without interest by specific action of the Fiscal Director, Headquarters, Army Service Forces.

(6) Authorized in connection with cost-plus-a-fixed-fee contracts which have been terminated in whole or in part to the extent that such advance payments are used for the making of partial payments to subcontractors on account of termination claims of such subcontractors. Interest will cease to accrue on that part of the advance payment balance outstanding so used from the time such partial payments are made until the time the prime contractor is reimbursed for termination settlements with such subcontractors. (See §§ 815.654 (a) and 803.349a.)

(n) *Reports.* In connection with advance payments, the technical services will make the following report:

(1) *Individual advance payment report.* A complete report of each advance payment, except those approved by the Advance Payment and Loan Branch, Office of the Fiscal Director, Headquarters, Army Service Forces, pursuant to paragraph (h) or (i), will be submitted to said Branch, for consideration, review and file. There will be submitted with the report a copy of the contract under which the advance payment was authorized or, if the advance payment was authorized under a supplemental agreement, a copy of the contract and of such supplemental agreement. The report will contain a statement of the amount of the contract, the amount of the advance payment authorized, the national interest in making the advance payment, the proposed security and a statement as to whether prior approval of withdrawal is to be required, as well as a statement of the financial responsibility of the contractor and of its ability to perform the contract. The contractor's most recent balance sheet or a Federal Reserve Bank report should also be filed.

(2) *Quarterly report.* In each year, there shall be rendered to the Advance Payment and Loan Branch, Headquarters, Army Service Forces reports for the periods ending March 31, June 30, September 30, and December 31. Each such report will be rendered fifteen days after the close of the period. There will be set forth in such reports the status of all contracts on which advance payments have been authorized. The following data should be included in the report:

(i) Contract number.
(ii) Name of contractor.
(iii) Description of contract.
(iv) Type of contract.
(v) Amount of contract as it may be changed from time to time.
(vi) Amount of advance payments authorized.
(vii) Amount of advance payments made.
(viii) Advance payments recovered.
(ix) Advance payments outstanding.
(x) Appropriation symbol.
(xi) Project number.

A special statement should be included in the report as to any contract with respect to which the completion of the contract and liquidation of the advance payments appear to be doubtful together with a statement as to the steps being taken to protect the advance payments. A report should include data previously furnished and not merely cover the period from the last report. However the report need not include contracts upon which complete liquidation of the advance payments have been made and so reported in a previous report.

(3) *Interim reports.* If at any time between the rendering of quarterly reports it appears doubtful that a contractor to whom advance payments have been made will complete the contract, a report should be rendered to the Advance Payment and Loan Branch, Office of the Fiscal Director, Headquarters, Army Service Forces, immediately. The reports should include a statement of the facts in the case and of the steps being taken to protect the advance payments.

(o) *Advance payment for communication services and facilities in accordance with established tariffs of foreign communications companies.* In accordance with the First War Powers Act and Executive Order No. 9001, contracts covering the procurement of commercial communications services or facilities in

foreign countries may authorize advance payment of charges therefor when such advance payment is provided for in established tariffs or is in accordance with rules, practices, or regulations applicable to the furnishing of similar services and facilities to the general public. It is hereby determined that the insertion of such advance payment provisions will facilitate the prosecution of the war. In connection with such advance payments, it will not be necessary to make any of the reports provided for in paragraph (n).

SUBPART H—MANDATORY AND OPTIONAL CONTRACT PROVISIONS

§ 803.322 *Officials not to benefit clause.* Every contract, regardless of subject matter or amount, will contain the following clause without deviation:

Officials not to benefit. No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

§ 803.323 *Covenant against contingent fees.* (1) Every contract, regardless of subject material or amount (except contracts of sale, see § 807.726) will contain the following clause without deviation:

Covenant against contingent fees. The Contractor warrants that he has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Government the right to annul the contract, or, in its discretion, to deduct from the contract price or consideration the amount of such commission, percentage, brokerage, or contingent fees. This warranty shall not apply to commissions payable by contractors upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

(2) As to contracts of sale, see the specified provision set out in § 807.726.

(3) Also see § 811.1181.

§ 803.324 *Termination article for use in lump sum supply contracts.* (1) There is set forth below the new termination article prescribed by the Office of War Mobilization for use in lump sum supply contracts. This article will be referred to hereafter in this paragraph as the new article.

(2) The new article may be inserted in any lump sum supply contract.

(3) Every lump sum supply contract executed on and after 20 February 1944, except:

(i) Contracts to be completed in six months or less for an amount of less than $500,000 and

(ii) Contracts for an amount of less than $50,000, regardless of the date of completion, will contain the new article without deviation.

(4) As provided in § 815.107 (a), the chief of any technical service, without approval of higher authority, may amend any existing lump sum supply contract to insert therein the new article. Such amendments will take place wherever possible prior to giving formal notice of termination. Inasmuch as it is in the interest of both the contractors and the Government that termination be effected under a uniform article, a vigorous policy will be pursued of promptly inserting by amendment the new article in existing contracts (other than those within the exceptions of subdivisions (i) and (ii) of subparagraph (3) above) not now containing it. This policy will be applied with special emphasis in the case of contracts for large amounts and contracts calling for deliveries over long periods of time.

(5) Prior to the adoption of the new article by the Office of War Mobilization there was in use by the War Department a standard termination article for lump sum supply contracts which was contained in this section. The instructions contained in Part 815 are based upon the former article. To the extent that such instructions are inconsistent with the new article they are to be deemed inapplicable to contracts containing it. The sections of Part 815 containing such instructions will shortly be amended to conform to the new article.

(6) Simultaneously with the issuance of the new article the Office of War Mobilization published a "Statement of Principles for Determination of Costs Upon Termination of Government Fixed Price Supply Contracts." It will be noted that this statement is incorporated by reference by subparagraph (h) of the new article. The statement is set forth in full in § 815.480. For convenience the new article has been printed in § 815.901, as well as below in this section.

Article _____. *Termination at the option of the Government.* (a) The performance of work under this contract may be terminated by the Government in accordance with this Article in whole, or from time to time in part, whenever the contracting officer shall determine any such termination is for the best interests of the Government. Termination of work hereunder shall be effected by delivery to the contractor of a Notice of Termination specifying the extent to which performance of work under the contract shall be terminated, and the date upon which such termination shall become effective. If termination of work under this contract is simultaneous with, a part of, or in connection with, a general termination (1) of all or substantially all of a group or class of contracts made by the War Department for the same product or for closely related products, or (2) of war contracts at, about the time of, or following, the cessation of the present hostilities, or any major part thereof, such termination shall only be made in accordance with the provisions of this Article, unless the contracting officer finds that the contractor is then in gross or wilful default under this contract.

(b) After receipt of a Notice of Termination and except as otherwise directed by the contracting officer, the contractor shall (1) terminate work under the contract on the date and to the extent specified in the Notice of Terminations; (2) place no further orders or subcontracts for materials, services or facilities except as may be necessary for completion of such portions of the work under the contract as may not be terminated; (3) terminate all orders and subcontracts to the extent that they relate to the performance of any work terminated by the Notice of Termination; (4) assign to the Government, in the manner and to the extent directed by the contracting officer, all of the right, title and interest of the contractor under the orders or subcontracts so terminated; (5) settle all claims arising out of such termination of orders and subcontracts with the approval or ratifications of the contracting officer to the extent that he may require, which approval or ratification shall be final for all the purposes of this Article; (6) transfer title and deliver to the Government in the manner, to the extent and at the times directed by the contracting officer (i) the fabricated or unfabricated parts, work in process, completed work, supplies and other material produced as a part of, or acquired in respect of the performance of, the work terminated in the Notice of Termination, and (ii) the plans, drawings, information and other property which, if the contract had been completed, would be required to be furnished to the Government; (7) use his best efforts to sell in the manner, to the extent, at the time, and at the price or prices directed or authorized by the contracting officer, any property of the types referred to in subdivision (6) of this paragraph *Provided, however,* That the contractor (i) shall not be required to extend credit to any purchaser and (ii) may retain any such property at a price or prices approved by the contracting officer; (8) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and (9) take such action as may be necessary or as the contracting officer may direct for protection and preservation of the property, which is in the possession of the contractor and in which the Government has or may acquire an interest.

(c) The contractor and the contracting officer may agree upon the whole or any part of the amount or amounts to be paid to the contractor by reason of the total or partial termination of work pursuant to this Article, which amount or amounts may include a reasonable allowance for profit, and the Government shall pay the agreed amount or amounts. Nothing in paragraph (d) of this Article prescribing the amount to be paid to the contractor in the event of failure of the contractor and the contracting officer to agree upon the whole amount to be paid to the contractor by reason of the termination of work pursuant to this Article shall be deemed to limit, restrict or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the contractor pursuant to this paragraph (c).

(d) In the event of the failure of the contractor and contracting officer to agree as provided in paragraph (c) upon the whole amount to be paid to the contractor by reason of the termination of work pursuant to this Article, the Government, but without duplication of any amounts agreed upon in accordance with paragraph (c), shall pay to the contractor the following amounts.

(1) For completed articles delivered to and accepted by the Government (or sold or retained as provided in paragraph (b) (7) above) and not theretofore paid for, forthwith a sum equivalent to the aggregate price for such articles computed in accordance with the price or prices specified in the contract;

(2) In respect of the contract work terminated as permitted by this Article, the total (without duplication of any items) of (i) the cost of such work exclusive of any cost attributable to articles paid or to be paid for under paragraph (d) (1) hereof; (ii) the cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in paragraph (b) (5) above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the notice of termination of work under this contract which amounts shall be included in the cost on account of

which payment is made under subdivision (i) above; and (iii) a sum equal to _____% (Note 1), of the part of the amount determined under subdivision (i) which represents the cost of articles or materials not processed by the contractor, plus a sum equal to _____% (Note 2), of the remainder of such amount, but the aggregate of such sums shall not exceed 6% of the whole of the amount determined under subdivision (i), which for the purpose of this subdivision (iii) shall exclude any charges for interest on borrowings;

NOTES 1 and 2: The chief of each technical service may provide for determining the percentages to be inserted at Note 1 (which in no event will exceed 2%) and at Note 2 (which may be greater or less than or equal to 6%). The general use of 2% and 8% respectively, as arbitrary figures is recommended in the interest of expediting the execution of contracts. Where the use of arbitrary figures is not desired for any reason, the methods to be used in arriving at the percentage to be inserted at Note 2 shall be the same as those now used in price analysis. When the intended rate of profit on the finished article covered by the contract is lower than 8%, the insertion of a lower figure at Note 2 will of course be desirable.

(3) The reasonable cost of the preservation and protection of property incurred pursuant to paragraph (b) (9) hereof; and any other reasonable cost incidental to termination of work under this contract, including expense incidental to the determination of the amount due to the contractor as the result of the termination of work under this contract.

The total sum to be paid to the contractor under subdivisions (1) and (2) of this paragraph (d) shall not exceed the total contract price reduced by the amount of payments otherwise made and by the Contract price of work not terminated. Except for normal spoilage and to the extent that the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the contractor as provided in paragraph (d) (1) and paragraph (d) (2) (i), all amounts allocable to or payable in respect of property, which is destroyed, lost, stolen or damaged so as to become undeliverable prior to the transfer of title to the Government or to a buyer pursuant to paragraph (b) (7) or prior to the 60th day after delivery to the Government of an inventory covering such property, whichever shall first occur.

(e) The obligation of the Government to make any payments under this article: (1) shall be subject to deductions in respect of (i) all unliquidated partial or progress payments, payments on account theretofore made to the contractor and unliquidated advance payments, (ii) any claim which the Government may have against the contractor in connection with this contract, and (iii) the price agreed upon or the proceeds of sale of any materials, supplies or other things retained by the contractor or sold, and not otherwise recovered by or credited to the Government, and (2) in the discretion of the contracting officer shall be subject to deduction in respect of the amount of any claim of any subcontractor or supplier whose subcontract or order shall have been terminated as provided in paragraph (b) (3) except to the extent that such claim covers (i) property or materials delivered to the contractor or (ii) services furnished to the contractor in connection with the production of completed articles under this contract.

(f) In the event that, prior to the determination of the final amount to be paid to the contractor as in this article provided, the contractor shall file with the contracting officer a request in writing that an equitable adjustment should be made in the price or prices specified in the contract for the work not terminated by the Notice of Termination, the appropriate fair and reasonable adjustment shall be made in such price or prices.

(g) The Government shall make partial payments and payments on account, from time to time, of the amounts to which the contractor shall be entitled under this Article, whether determined by agreement or otherwise, whenever in the opinion of the contracting officer the aggregate of such payments shall be within the amount to which the contractor will be entitled hereunder.

(h) For the purposes of paragraphs (d) (2) and (d) (3) hereof, the amounts of the payments to be made by the Government to the contractor shall be determined in accordance with the Statement of Principles for Determination of Costs upon Termination of Government Fixed Price Supply Contracts approved by the Joint Contract Termination Board, December 31, 1943. The contractor for a period of three years after final settlement under the contract shall make available to the Government at all reasonable times at the office of the contractor all of its books, records, documents, and other evidence bearing on the costs and expenses of the contractor under the contract and in respect of the termination of work thereunder.

(a) Every lump-sum construction contract regardless of subject matter, except: (1) Contracts to be completed in six months or less for an amount of less than $500,000 and (2) Contracts for an amount of less than $50,000 regardless of the date of completion, will contain the following clause without deviation:

Article _____. *Termination for convenience of the Government.* (a) The Government may terminate this contract in whole or in part at any time by a notice in writing from the Contracting Officer to the Contractor, specifying the date upon which such termination shall become effective and the extent to which the performance of such contract shall be terminated. Termination shall be effective upon the date and to the extent specified in said notice.

(b) Upon receipt of the notice of termination the Contractor shall except insofar as the notice directs otherwise with respect to this contract, or, in the event of partial termination, with respect to the part thereof covered by the notice:

(1) Discontinue all work and the placing of all orders for materials and facilities otherwise required for the performance thereof;

(2) Cancel all existing orders and subcontracts to the extent such orders and subcontracts are chargeable to the performance thereof;

(3) Transfer to the Government, in accordance with the directions of the Contracting Officer, all materials, supplies, work in process, facilities, equipment, machinery or tools acquired by the Contractor in connection with the performance thereof, and all plans, drawings, working drawings, sketches, specifications and information for use in connection therewith. If and as the Contracting Officer so directs or authorizes, the Contractor shall sell at a price approved by the Contracting Officer, or retain at a price mutually agreeable, any such materials, supplies, equipment, machinery, tools, or other things, *Provided, however,* That the Contractor may retain any such equipment, machinery and tools as of right if he so elects in writing, stating that he will forego reimbursement therefor. The proceeds of any such sale, or the agreed price, shall be paid or credited to the Government in such manner as the contracting officer may direct so as to reduce the amount payable by the Government under this Article.

(4) Take such action as may be necessary to secure to the Government the benefits of any rights remaining in the Contractor under orders or subcontracts chargeable thereto to the extent that such orders or subcontracts are so chargeable;

(5) Take such action as the Contracting Officer may prescribe for the protection and preservation of all property in the possession or control of the Contractor, title to which is transferable to the Government under the provisions of this article.

Should the notice of termination cover only a portion of this contract, the Contractor will proceed to completion of such portions as are not terminated.

(c) Upon compliance by the Contractor with the above provisions of this Article and subject to deductions or credit for payments previously made, and without duplication of any such payments, the Government shall pay to the Contractor such sum as the Contracting Officer and the Contractor may agree by Supplemental Agreement is reasonably necessary to compensate the Contractor for his costs, expenditures, liabilities, commitments and work with respect to this contract, other than the expenditures and costs referred to in paragraph (e) of this Article. The Contracting Officer shall include in such sum such allowance for profit with respect to the contract as is reasonable under all the circumstances.

(d) If the Contracting Officer and the Contractor, within 90 days from the effective date of the notice of termination referred to in paragraph (a), or within such extended period as may be agreed upon between them, cannot agree upon the sum payable under the provisions of paragraph (c), the Government shall instead compensate the Contractor in the following manner, subject to deductions or credit for payments previously made, and without duplication thereof, and upon compliance with the provisions of paragraphs (a) and (b) of this Article:

(1) By reimbursing the Contractor for all actual expenditures and costs certified by the Contracting Officer as having been made or incurred with respect to this contract, including expenditures and costs made or incurred in connection with any portions of the contract which may have been completed prior to termination, as well as expenditures and costs made or incurred after termination in completing those portions of the contract which the Contractor may have been required by the notice of termination to complete.

(2) By reimbursing or providing for the payment or reimbursement of, the Contractor for all expenditures made or costs incurred with the prior written approval of the Contracting Officer in settling or discharging any outstanding contractual obligations or commitments incurred or entered into by the Contractor with respect to this contract; and

(3) By paying the Contractor, as a profit on this contract, insofar as a profit is realized hereunder, an amount to be computed by the Contracting Officer in the following manner:

(A) Estimate the profit which would have been realized on this contract if the contract had been completed and labor and materials costs prevailing at the date of terminations had remained in effect.

(B) Estimate, from a consideration of all relevant factors, the percentage of completion of the contract including any work performed after termination. In estimating the percentage of completion, the Contracting Officer shall estimate the percentage of the total work required by the contract which the work actually accomplished represents.

(C) Multiply the profit determined under (A) by the percentage determined under (B). The product is the amount to be paid the Contractor as profit.

(c) The Government shall pay to the Contractor such sum as the Contracting Officer and the Contractor may agree upon for expenditures made and costs incurred with the approval of the Contracting Officer (a) after the date of termination for the protection of Government property, and (b) for such other expenditures and costs as may be necessary in connection with the settlement of this contract, and in the absence of such agreement as to the amount of such expenditures and costs shall reimburse the Contractor for the same.

(f) The obligation of the Government to make any of the payments required by this Article shall be subject to any unsettled claim for labor or material and to any claim which the Government may have against the Contractor under or in connection with this contract, and payments under this Article shall be subject to reasonable deductions by the Contracting Officer on account of defects in materials or workmanship.

(g) The sum of all amounts payable under this Article, plus the sum of all amounts previously paid under this contract, shall not exceed the total contract price, adjusted in the event that this contract contains an article providing for price adjustment, on the basis of the estimate of the Contracting Officer, to the extent which would have been required by such article if this contract had been completed and labor and materials costs prevailing at the date of termination had remained in effect.

(h) Should the above provisions of this Article not result in payment to the Contractor of at least $100, then that amount shall be paid to the Contractor in lieu of any and all payments hereinbefore provided for in this Article.

(i) The Government shall promptly make partial payments to the Contractor

(1) on account of the amounts due under paragraphs (c), (d) and (e) of this Article to the extent that, in the judgment of the Contracting Officer, such payments are clearly within the amounts due under such paragraphs, and

(2) of such amounts as the Contracting Officer may direct, an account of proposed settlements of outstanding obligations or commitments, to be made by the Contractor pursuant to paragraph (d) (2) of this Article, if such settlements shall have been approved by the Contracting Officer and subject to such provisions for escrow or direct payment to the persons entitled to receive such settlement payments as the Contracting Officer may require.

(j) Any disputes arising out of termination under this Article shall be decided in accordance with the procedure prescribed in Article * * * of this contract.

(k) Upon the making of the payments called for by this Article, all obligations of the Government to make further payments or to carry out other undertakings hereunder shall cease forthwith and forever, except that all rights and obligations of the respective parties under the Articles, if any, of this contract applicable to patent infringements and reproduction rights shall remain in full force and effect.

(l) The Government shall terminate this contract only in accordance with this Article, except as otherwise provided by law or by Article * * * (Delays-Damage). Notwithstanding Article * * * (Delays-Damages) and any defaults of the Contractor, the Government shall terminate this contract only in accordance with this Article if such termination is simultaneous with or part of or in connection with a general termination of war contracts at, about the time of, or following the cessation of the present hostilities or the end of the present war, unless the Contracting Officer finds that the defaults of the Contractor (1) have been gross or wilful and (2) have caused substantial damage to the Government.

The foregoing clause may be inserted in any contract as to which its inclusion is not mandatory. (See also §§ 815.107, 815.310 and 802.234a.) In connection with the Termination Article set forth in this paragraph, see Subpart I of Part 803.

§ 803.325 *Anti-discrimination clause.* (a) Every contract, regardless of subject matter or amount, will contain (except as may be otherwise specifically permitted in Interpretations of Executive Order No. 9346, hereinafter referred to) the following clause without deviation:

Anti-discrimination. (a) The Contractor, in performing the work required by this contract, shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin.

(b) The Contractor agrees that the provision of paragraph (a) above will also be inserted in all of its subcontracts. For the purpose of this article, a subcontract is defined as any contract entered into by the Contractor with any individual, partnership, association, corporation, estate, or trust, or other business enterprise or other legal entity, for a specific part of the work to be performed in connection with the supplies or services furnished under this contract: *Provided, however,* That a contract for the furnishing of standard or commercial articles or raw material shall not be considered as a subcontract.

(b) The contract clause set forth in paragraph (a) above is required under the provision of Executive Order No. 9346 issued under date of 27 May 1943. Such Executive Order is set forth in paragraph 994. Interpretations of Executive Order No. 9346 are found in paragraphs designated 994–A, followed by a numeral.

(c) The contract clause set forth in paragraph (a) above is required, under the provisions of Executive Order No. 9346, to be included "in all contracts hereafter negotiated or *renegotiated* * * *". The inclusion of the word "renegotiated" has been interpreted as imposing the requirements set forth in paragraphs (d) and (e) below.

(d) Whenever the terms of a contract or contracts are to be modified by the execution of a supplemental agreement, and the contract or contracts to be modified do not contain a clause identical in wording with that set forth in paragraph (a) above, such supplemental agreement will provide that the contract or contracts are modified to include such a clause.

(e) Normally the provisions of paragraph (d) above will not be applicable to renegotiation agreements executed pursuant to the Renegotiation Act referred to in Part 812 of this chapter. If, however, the renegotiation agreement expressly purports to modify the terms of specified existing contracts with respect to future deliveries, the provisions of paragraph (d) will be applicable. Likewise, if the renegotiation agreement is to be followed by a supplemental agreement or agreements, modifying, with respect to future deliveries, the terms of existing contracts, such supplemental agreement or agreements will provide for the inclusion, in the contracts modified thereby, of the clause set forth in paragraph (a).

(f) When a prime contract is amended in accordance with paragraphs (c) or (d) above, it is not necessary that the existing subcontracts be correspondingly modified. However, if the subcontracts are subsequently amended for any other reason the anti-discrimination clause contained therein should be amended to conform to the wording of paragraph (a) of the clause set forth in paragraph (a) of this section. To make this clear, there may be inserted in the supplemental agreement which amends the prime contract a statement substantially as follows:

The amendment made by this section * * * shall be effective as of the date of approval of this supplemental agreement and shall not be deemed to require amendment of the antidiscrimination provisions contained in any subcontract theretofore entered into unless such subcontract is subsequently modified in some other respect.

§ 803.326 *Disputes concerning questions of fact.* (1) Every contract, regardless of subject matter, for an amount of $20,000 of more will, and every contract for an amount of less than $20,000 may (at the option of the contractor), contain the following article without deviation:

Disputes. Except as otherwise specifically provided in this contract, all disputes concerning questions of fact which may arise under this contract, and which are not disposed of by mutual agreement, shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail a copy thereof to the Contractor at his address shown herein. Within 30 days from said mailing the Contractor may appeal in writing to the Secretary of War, whose written decision or that of his designated representative or representatives thereon shall be final and conclusive upon the parties hereto. The Secretary of War may, in his discretion, designate an individual, or individuals, other than the Contracting Officer, or a board as his authorized representative to determine appeals under this Article. The Contractor shall be afforded an opportunity to be heard and offer evidence in support of his appeal. The president of the board, from time to time, may divide the board into divisions of one or more members and assign members thereto. A majority of the members of the board or of a division thereof shall constitute a quorum for the transaction of the business of the board or of a division, respectively, and the decision of a majority of the members of the Board or of a division shall be deemed to be the decision of the Board or of a division, as the case may be. If a majority of the members of a division are unable to agree on a decision or if within 30 days after a decision by a division, the board or the president thereof directs that the decision of the division be reviewed by the board, the decision will be so reviewed, otherwise the decision of a majority of the members of a division shall become the decision of the board. If a majority of the members of the board is unable to agree upon a decision, the president will promptly submit the appeal to the Under Secretary of War for his decision upon the record. A vacancy in the board or in any division thereof shall not impair the powers, nor affect the duties of the board or division nor of the remaining members of the board or division, respectively. Any member of the board, or any examiner designated by the president of the board for that purpose, may hold hearings, examine witnesses, receive evidence and report the evidence to the board or to the appropriate division, if the

case is pending before a division. Pending decision of a dispute hereunder the Contractor shall diligently proceed with the performance of this contract. Any sum or sums allowed to the Contractor under the provisions of this Article shall be paid by the United States as part of the cost of the articles or work herein contracted for and shall be deemed to be within the contemplation of this contract.

(2) Where a contract has no definite termination date, or where a termination date is expressed but the contract is subject to renewal (e. g., through failure of the Government to take action to terminate or through the Government's exercise of a right to renew), it may be difficult to determine whether the contract is for an amount of $20,000 within the meaning of subparagraph (1) above. The following rule of thumb is prescribed to resolve the difficulty in such cases: It will be assumed for the purpose of making the determination that the contract will run for a period of three years from its starting date, and the aggregate charge will be estimated on this basis. If the aggregate charge, so estimated, is $20,000 or more, the Disputes article will be included in the contract; if less than $20,000, the article may be included at the option of the contractor.

(a) In all contracts which contain a definition of "his duly authorized representative" in relation to the head of the department, as "any person authorized to act for him other than the contracting officer," the words "or board" will be inserted between the word "person" and the word "authorized".

§ 803.327 *Domestic articles clause.* Whenever the restrictions of the Buy American Act are applicable to any items deliverable under a contract (see §§ 805.502 to 802.504) the contract will contain the following clause. In such cases, this clause will be inserted without deviation except that there may be added such language as is necessary to indicate to which items the clause applies.

Domestic articles. Unless the Secretary of War shall determine it to be inconsistent with the public interest, or the cost to be unreasonable, only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States shall be delivered pursuant to this contract, except as noted in the specifications and/or other papers hereto attached. The provisions of this article shall not apply with respect to articles, materials, or supplies for use outside the United States, or if articles, materials, or supplies of the class or kind to be used, or the articles, materials, or supplies from which they 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.

§ 803.328 *Notice of shipments clause.* All contracts involving shipments of the types enumerated below, except contracts for the furnishing of supplies in connection with which a Government inspector or other Government official at the plant or warehouse of the contractor is charged with the duty of issuing notices of shipment, will contain a clause substantially as follows:

Notice of shipments. At the time of delivery of any of the following types of shipments to a carrier for rail, motor or water commercial transport, the contractor shall give notice to the consignee establishment including date, route, size and brief general description of the supplies being shipped: (a) shipments of one carload or more consigned to ports of embarkation, depots, arsenals and arsenal plants; (b) shipments of ammunition or gasoline of one carload or more, and shipments of ten carloads or more regardless of the character of the supplies, consigned to any War Department installation or unit of the Army. In the case of shipment to port of embarkation, the notice shall be by prepaid telegraph or teletype; if such shipment is "classified," all classified information shall be omitted and such general terminology substituted therefor as is permissible under security regulations. In respect to the other types of shipments, prepaid telegraph or teletype notice shall be used, except that (i) the contracting officer may permit mail or airmail notice (which may consist of bills of lading, or shipping tickets, or copies of War Department shipping documents) to be substituted if such notice will normaly arrive 24 hours prior to arrival of shipment; (ii) if the shipment is "classified," registered mail or registered airmail notice addressed personally to the commanding officer of the consignee establishment and transmitted in double envelopes, or such other method of notice as the contracting officer may specify, shall be used exclusively. A shipment is "classified" within the meaning of this Article if the contracting officer so indicates, or if it is made under a contract marked secret, confidential, or restricted.

§ 803.329 *Variation in quantities.* In those cases where it is desired to accept over or under deliveries due to manufacturing processes, etc., contracts may contain a clause substantially as follows:

Variation in quantities. Unless otherwise specified, any variation in the quantities herein called for, not exceeding 10 per cent, will be accepted as a compliance with the contract, when caused by conditions of loading, shipping, packing, or allowances in manufacturing processes, and payments shall be adjusted accordingly.

§ 803.329a *"Changes" article for supply contracts.* In any case where it is desired to include in a supply contract a provision giving the contracting officer in addition to the powers set forth in § 813.1301 (Art. 2) a power by change order (a) to increase or decrease within stated percentage limits the quantity of articles called for by the contract or (b) to accelerate or reduce the rate of delivery of the articles in the quantity called for by the contract, the following article relating to changes may be used instead of the article set forth in § 813.1301 (Art. 2).

Article ____. *Changes.* The Contracting Officer may at any time, by a written order, and without notice to the sureties make changes of any one or more of the following types:—(a) changes in the directions as to shipment and packing of any supplies; (b) increases or decreases in the quantity of supplies to be furnished hereunder, the total increase or decrease not, however, to exceed ____% of the quantity of supplies deliverable hereunder; (c) changes in the drawings or specifications, where the supplies to be furnished are to be specially manufactured in accordance with drawings and specifications; (d) extensions of the delivery schedules hereunder reducing the rate of deliveries of the supplies called for by this contract; or (e) accelerations of the delivery schedules hereunder by an increase or increases in the rate of deliveries hereunder. Unless consented to in writing by the Contractor, no change orders hereunder of the type mentioned in clause (d) of the preceding sentence shall cause decreases in the deliveries hereunder, and no change orders of the type mentioned in clause (e) of such sentence shall cause increases in the deliveries called for hereunder, amounting respectively in the aggregate in any one month to more than ____% of the quantity of supplies, the delivery of which is called for in such month by the delivery schedule originally contained in this contract. If such changes cause an increase or decrease in the amount of work under this contract or in the cost of performance of this contract or in the time required for its performance an equitable adjustment shall be made which adjustment may include in any instance an adjustment (i) in the purchase price, including (but not limited to) any adjustment in unit price fair in the light of any change in volume caused by such order, and (ii) in the delivery time or schedule, or (iii) in either the price or delivery schedule and the contract shall be modified in writing accordingly. Any claim for adjustment under this article must be asserted within 30 days from the date the change is ordered: *Provided, however,* That the Contracting Officer, if he determines that the facts justify such action, may receive, consider and adjust any such claims asserted at any time prior to the date of final settlement of the contract. If the parties fail to agree upon the adjustment to be made the dispute shall be determined as provided in Article ____ (Disputes) hereof. But nothing provided in this Article shall excuse the Contractor from proceeding with the contract as changed.

When the article set forth in § 813.1301 (Art. 2) is used, the fourth sentence of the article set out above beginning with the words "Any claim for adjustment * * *" may be used, at the discretion of the Contracting Officer, in lieu of the fourth sentence (beginning with the same words) of the article set forth in § 813.1301 (Art. 2). The provisions of clauses (d) and (e) of the first sentence of the foregoing article, or either of such clauses, may be omitted in the discretion of the Contracting Officer and, in the event of any such omission, the second sentence of the article will either be omitted or appropriately modified.

§ 803.330 *Partial payments in amount not to exceed 75 per cent of cost to contractor.* In those cases where it is contemplated that partial payments in an amount not to exceed 75 per cent of the cost to the contractor of the property will be made, the contract will contain a clause substantially as follows:

Partial payments. Partial payments, which are hereby defined as payments prior to delivery, on work in progress for the Government under this contract, may be made upon the following terms and conditions.

(a) The Contracting Officer may, from time to time, authorize partial payment to the Contractor upon property acquired or produced by it for the performance of this contract: *Provided,* That such partial payments shall not exceed 75 per cent of the cost to the Contractor of the property upon which payment is made, which cost shall be determined from evidence submitted by the Contractor and which must be such as is satisfactory to the Contracting Officer: *Pro-*

vided further, That in no event shall the total of unliquidated partial payments (see (c) below) and of unliquidated advance payments, if any, made under this contract, exceed 80 per cent of the total contract price of supplies still to be delivered.

(b) The title to all property upon which any partial payment is made prior to the completion of this contract shall vest in the Government in its then condition forthwith upon the making of any such partial payment or payments: *Provided,* That nothing herein shall deprive the Contractor of any further partial or final payments due or to become due hereunder; nor relieve the Contractor or the Government of any of their respective rights or obligations under this contract.

(c) In making payment for the supplies furnished hereunder, there shall be deducted from the contract price therefor a proportionate amount of the partial payments theretofore made to the Contractor, under the authority herein contained.

(d) It is recognized that property (including, without limitation, completed supplies, spare parts, drawings, information, partially completed supplies, work in process, materials, fabricated parts and other things called for herein) title to which is or may hereafter become vested in the Government pursuant to this Article will from time to time be used by or be put in the care, custody or possession of the Contractor in connection with the performance of this contract. At the direction or with the approval of the Contracting Officer (whether such direction or approval is given prior to or after the giving of a notice of the termination of this contract for the convenience of the Government), the Contractor shall make reasonable effort to transfer or dispose otherwise of such Government-owned property to such parties and upon such terms and conditions as the Contracting Officer may approve or ratify, or with like approval of the Contracting Officer, the Contractor may retain such property or any of it at a price mutually agreeable. The proceeds of any such transfer or disposition or the agreed price shall be retained by the Contractor and shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract, or shall otherwise be paid or credited to the Government in such manner as the Contracting Officer may direct. No such direction to transfer or dispose of such Government-owned property, given prior to the giving of a notice of termination, shall be binding upon the Contractor unless he consents thereto.

§ 803.331 *Partial payments in amount not to exceed 90 percent of direct labor and material cost to contractor.* In those cases where it is contemplated that partial payments in an amount not to exceed 90 per cent of the direct labor and material cost to the contractor will be made, the contract will contain a clause substantially as follows:

Partial payments. Partial payments, which are hereby defined as payments prior to delivery, on work in progress for the Government under this contract, may be made upon the following terms and conditions.

(a) The Contracting Officer may, from time to time, authorize partial payments to the Contractor upon property acquired or produced by it for the performance of this contract: *Provided,* That such partial payments shall not exceed 90 per cent of the direct labor and direct material costs to the Contractor of the property upon which payment is made, which costs shall be determined from evidence submitted by the Contractor and which must be such as is satisfactory to the Contracting Officer; *Provided, further,* That in no event shall the total of unliquidated partial payments (see (c) below) and of unliquidated advance payments, if any, made under this contract, exceed 80 per cent of the contract price of supplies still to be delivered.

(b) The title to all property upon which any partial payment is made prior to the completion of this contract shall vest in the Government in its then condition forthwith upon the making of any such partial payment or payments: *Provided,* That nothing herein shall deprive the Contractor of any further partial or final payments due or to become due hereunder; nor relieve the Contractor or the Government of any of their respective rights or obligations under this contract.

(c) In making payment for the supplies furnished hereunder, there shall be deducted from the contract price therefor a proportionate amount of the partial payments theretofore made to the Contractor, under the authority herein contained.

(d) It is recognized that property (including, without limitation, completed supplies, spare parts, drawings, information, partially completed supplies, work in process, materials, fabricated parts and other things called for herein) title to which is or may hereafter become vested in the Government pursuant to this Article will from time to time be used by or be put in the care, custody or possession of the Contractor in connection with the performance of this contract. At the direction or with the approval of the Contracting Officer (whether such direction or approval is given prior to or after the giving of a notice of the termination of this contract for the convenience of the Government), the Contractor shall make reasonable effort to transfer or dispose otherwise of such Government-owned property to such parties and upon such terms and conditions as the Contracting Officer may approve or ratify, or with like approval of the Contracting Officer, the Contractor may retain such property or any of it at a price mutually agreeable. The proceeds of any such transfer or disposition or the agreed price shall be retained by the Contractor and shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract, or shall otherwise be paid or credited to the Government in such manner as the Contracting Officer may direct. No such direction to transfer or dispose of such Government-owned property, given prior to the giving of a notice of termination, shall be binding upon the Contractor unless he consents thereto.

§ 803.331a *Amendment of contracts containing partial payments article to include substance of paragraph (d) of § 803.330 or 803.331.* Any contract which contains a partial payments article similar to that set forth in either § 803.330 or 803.331 but not containing the substance of subparagraph (d) of such article may be amended to include the substance of such subparagraph (d) in such partial payments article. The addition of such paragraph is considered to be of advantage to the Government as simplifying and expediting the transfer and disposition of property acquired for or used in the performance of a contract and it has been determined that the making of such amendments will facilitate the prosecution of the war. Authority is granted to the chief of each technical service to make or to authorize the making of such amendments pursuant to the First War Powers Act and Executive Order No. 9001.

§ 803.332 *Government owned facilities.* The following article is prescribed for inclusion in fixed or unit price contracts under which the contractor is to acquire or manufacture facilities for the account of the Government or the Government is to furnish facilities to the contractor, for use in connection with the contractor's work under the contract:

Government-owned facilities. (A) In connection with its work under this contract, the contractor shall, within the shortest practicable time, acquire or manufacture for the Government's account the facilities listed in Schedule "A" attached hereto, the estimated costs of which are therein stated. (With the prior written approval of the contracting officer as to their character and estimated costs, the contractor may substitute facilities similar to those listed in Schedule "A", in which event said Schedule will be modified accordingly.[1] Such facilities shall be installed by the contractor in its plant or plants, or, if approved in writing by the contracting officer, in the plants of subcontractors. The contractor shall insert provisions in all subcontracts under which such facilities are furnished to the subcontractors whereby there will be made applicable to the Government and the subcontractors substantially the same rights and obligations in respect to such facilities as are made applicable to the Government and the contractor under this Article.

(B) Upon inspection and acceptance of the facilities by the contracting officer, and upon the contractor's furnishing satisfactory evidence that it has made payment or incurred the costs as the case may be, the Government shall reimburse the contractor for the actual costs of Schedule "A" facilities approved by the contracting officer. The term "actual costs," as used in this Article, means the following:

(1) For facilities procured by the contractor from sources other than its own manufacture:

(a) The net invoice price to it of the facilities;

(b) The costs of transportation: *Provided,* That no costs of transportation shall be separately reimbursed when the invoice price reimbursed under (1) (a) hereof includes the costs of transportation;

(2) For facilities manufactured by the contractor:

(a) The net invoice price to it of all direct materials required in manufacture;

(b) The costs of transportation: *Provided,* That no costs of transportation shall be separately reimbursed when the invoice price reimbursed under (2) (a) hereof includes the costs of transportation;

(c) The costs to it of all direct labor required in manufacture;

(d) An amount equal to ——[1] per cent of item (2) (c) hereof as an allowance for all overhead and administrative expenses. The contractor represents, based on experience, that this amount does not include any element of profit, and represents no more than actual costs allocable to manufacture.

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[1] In appropriate cases the following language may be used in lieu of the sentence in the text enclosed in parentheses:

With the prior written approval of the contracting officer as to their character and estimated costs, the contractor may substitute facilities similar to those listed in Schedule "A", or the contractor may add additional facilities thereto, in which event said Schedule will be modified accordingly: *Provided, however,* That the actual costs reimbursed to the contractor pursuant to paragraph (B) below, for facilities listed in Schedule "A" or such similar facilities as the contractor may substitute therefor and such additional facilities as the contractor may add thereto, shall not exceed the sum of $——.

[2] Insert a number or the word "no".

The contractor shall install all Schedule "A" facilities at no expense to the Government in addition to the contract price.[3]

(C) In the event the contracting officer shall determine, at any time prior to installation of any item of Schedule "A" facilities, that such item is not reasonably necessary for the performance of this contract, or any other contract for the performance of which the use of that item has been authorized pursuant to paragraph (E) (2), within the time allowed for such performance, he may by written order exercise one of the following options with respect to that item:

(1) If the contractor has made no binding commitment and incurred no expense therefor of a kind reimbursable hereunder as an actual cost: The contracting officer may eliminate the item from Schedule "A" and the Government shall be relieved of any liability therefor.

(2) If the contractor has made a binding commitment or incurred expense therefor of a kind reimbursable hereunder as an actual cost: The contracting officer may direct the contractor to stop all further work and the making of all further commitments thereon and eliminate the item from Schedule "A". In that event the contractor and the contracting officer will attempt to agree on an amount which will reasonably compensate the contractor for the actual cost incurred by him with regard to such eliminated item. If no such agreement is reached within thirty (30) days after the date of elimination (or within such longer period as may at any time be mutually agreed upon), the contractor will be paid an amount, if any, which together with all sums previously paid by the Government on account of the item, shall be sufficient to reimburse the contractor for expenses paid and the settlement of any obligation incurred by the contractor thereon. In lieu of reimbursing the contractor for the settlement of obligations, the Government, in the discretion of the contracting officer, may assume such obligations or any of them. In no event shall the aggregate of reimbursement on account of the item (and of all payments previously made) together with the amount of any obligations assumed, exceed the actual costs, as herein defined, expended or incurred thereon up to the time of such elimination. The contracting officer may permit the contractor to sell or retain at prices or on terms agreed to by the Government any materials, supplies, or work in process, and the proceeds of such sale, or such agreed prices, shall be paid or credited to the Government in such manner as the contracting officer may direct. Upon payment to the contractor pursuant to this subparagraph (2), title to all materials, supplies, work in process and other things for which payment is made (except such property as may be sold or retained as above provided) will vest in the Government (if title thereto has not already vested in the Government). The Government will also become entitled to any rights under any commitment which it may assume, or for the settlement of which it shall have reimbursed the contractor.

(3) The contracting officer may direct the diversion of the item, when it shall have been acquired or its manufacture shall have been completed, to the Government or to any person designated by the contracting officer. In that event the Government shall reimburse the contractor for the actual costs of the item in accordance with the provisions of paragraph (B) hereof, with appropriate adjustment in the amount of reimbursable transportation costs. Upon diversion, the item will be eliminated from Schedule "A".

The determination of the contracting officer that an item of Schedule "A" facilities is not reasonably necessary for the performance of this contract, or any other contract for the performance of which the use of that item has been authorized pursuant to paragraph (E) (2), within the time authorized for such performance, is subject to written appeal by the contractor within ten (10) days to _____ or his
(Chief of the Technical Service)
duly authorized representative, whose decision thereon shall be final and conclusive upon the parties hereto. Pending this decision, the contracting officer shall not exercise any of the above options.

(D) Except with the prior written approval of the contracting officer for each such purchase, the contractor will not purhase any Schedule "A" facilities in which it had any property interest at any time after the commencement of negotiations for this contract.

(E) (1) Title to each item of Schedule "A" facilities shall vest in the Government immediately upon inspection and acceptance thereof by the contracting officer, or at such earlier time as the contracting officer may designate in writing. Such facilities shall be deemed personal property although they may be affixed to realty.

(2) The Government hereby grants to the contractor the right to use Schedule "A" facilities, without the payment of rental therefor, in connection with its work under this contract, and, subject to the written approval of the contracting officer and upon such terms as he may prescribe, in connection with any other work for which the Government and the contractor may heretofore have contracted, or may hereafter contract. (Where the Government, pursuant to this paragraph (E) (2), has granted to the contractor the right to use Schedule "A" facilities in connection with its work on any contract other than the contract of which this Article is a part, the contractor shall at any time, upon the request of the contracting officer, enter into suitable amendments of this Article or suitable separate agreements of lease of the facilities evidencing the terms upon which the facilities are then held.)

(F) (1) The contractor shall not be liable for loss or destruction of or damage to Schedule "A" facilities title to which has vested in the Government (a) caused by any peril while the facilities are in transit off the contractor's premises, or (b) caused by any of the following perils while the facilities are on the contractor's or subcontractor's or other premises or by removal therefrom because of any of the following perils:

Fire; lightning; windstorm, cyclone, tornado; hail; explosion; riot, riot attending a strike, civil commotion; vandalism and malicious mischief; aircraft or objects falling therefrom; vehicles running on land or tracks, excluding vehicles owned or operated by the contractor or any agent or employee of the contractor; smoke; sprinkler leakage; earthquake or volcanic eruption; flood, meaning thereby rising of rivers or streams; enemy attack or any action taken by the military, naval or air forces of the United States in resisting enemy attack.

The perils as set forth in (a) and (b) above are hereinafter called "excepted perils."

(2) The contractor represents that it is not maintaining and agrees that it will not hereafter maintain insurance (including self-insurance funds or reserves) covering loss or destruction of or damage to Schedule "A" facilities caused by any excepted peril, and represents that it is not including and agrees that it will not hereafter include in any price to the Government any charge or reserve for such insurance.

(3) Upon the happening of loss or destruction of or damage to Schedule "A" facilities caused by an excepted peril, the contractor shall communicate with the contracting officer and with the Loss and Salvage Organization now or hereafter designated by the contracting officer and, with the assistance of that organization employed by the contractor to perform services in accordance with instructions or regulations of the Government (unless the contracting officer directs that no such organization be employed), shall take all reasonable steps to protect the facilities from further damage, separate the damaged and undamaged facilities, put all the facilities in the best possible order, and furnish to the contracting officer a statement of: (a) the lost, destroyed and damaged facilities, (b) the time and origin of the loss, destruction or damage, (c) all known interests in commingled property of which the facilities are a part, and (d) the insurance, if any, covering any part of or interest in such commingled property. *If and as directed by the contracting officer, the contractor shall make repairs and renovations of the damaged facilities.*[4] The contractor shall be reimbursed the expenditures made by it in performing its obligations under this subparagraph (3) (including charges made to the contractor by the Loss and Salvage Organization, except any of such charges the payment of which the Government has, at its option, assumed direct), as approved by the contracting officer and set forth in a Supplemental Agreement.

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

(5) Except to the extent of any loss or destruction of or damage to Schedule "A" facilities for which the contractor is relieved of liability under the foregoing provisions of this paragraph (F), and except for reasonable wear and tear or depreciation, the facilities (other than facilities permitted to be sold) shall be returned by the contractor to the Government, or delivered by the contractor to any designee of the Government (at the time elsewhere in this Article provided) in as good condition as when received by the contractor in connection with this contract. In aid of its obligation so to return the facilities, the contractor shall, at its own expense, maintain a program for the proper use, care and maintenance of the

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[3] If costs of installation are to be reimbursed to the contractor, delete this sentence and substitute the following:

"(3) For the installation of facilities acquired or manufactured hereunder, when effected by the servants, agents or employees of the contractor:

"(a) The net invoice price to it of all direct materials required for installation;

"(b) The costs of transportation: *Provided*, That no costs of transportation shall be separately reimbursed when the invoice price reimbursed under (3) (a) hereof includes the costs of transportation;

"(c) The costs to it of all direct labor required for installation;

"(d) An amount equal to —— [insert a number or the word "no"] per cent of item (3) (c) hereof as an allowance for overhead and administrative expenses. The contractor represents, based on experience, that this amount does not include any element of profit, and represents no more than actual costs allocable to installation.

"(4) For the installation of facilities acquired or manufactured hereunder, when effected by persons other than the servants, agents or employees of the contractor:

"(a) The net invoice price to it of the installation."

[4] Italicized language may be omitted in appropriate cases.

facilities, as well as a property control and accounting system consistent with good business practice, and make repairs and replacements.

(6) In the event the contractor is indemnified, reimbursed or compensated for any loss or destruction of or damage to Schedule "A" facilities caused by an excepted peril, it shall equitably reimburse the Government. The contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such loss, destruction or damage and, upon the request of the contracting officer, shall at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

(7) Whenever any item of Schedule "A" facilities has become unserviceable (whether under circumstances which do or which do not render the contractor liable hereunder), the contractor shall notify the contracting officer, and it may then be required by the contracting officer to dismantle and prepare the item for shipment at no expense to the Government in addition to the contract price, whereupon the item shall be removed promptly by the Government at the Government's expense.

(G) Each item of Schedule "A" facilities shall be suitably marked with an identifying mark or symbol, indicating that such item is the property of the Government. Upon completion of the installation of such facilities, the contractor shall submit to the contracting officer a detailed inventory list including a description of the identifying mark or symbol on each item.

(H) The Government shall not be responsible for damages to property of the contractor or for personal injuries to the contractor's officers, agents, servants or employees, or other persons on the premises as invitees or licensees of the contractor, arising from or incident to the use of Schedule "A" facilities, and the contractor shall save the Government harmless from any and all such claims; *provided*, that nothing in this paragraph shall be deemed to affect any liability of the Government to its own employees.

(I) The Government shall at all times have access to the premises wherein any Schedule "A" facilities are located.

(J) Except as otherwise in this Article specifically provided, the contractor shall not remove or otherwise part with the possession of any Schedule "A" facilities. The contractor shall not pledge or assign, or transfer or purport to transfer title to any of such facilities in any manner to any third person, either directly or indirectly, nor do or suffer anything to be done whereby any of such facilities shall or may be seized, taken in execution, attached, destroyed or injured. Any violation of the provisions of this paragraph or of paragraph (F) hereof shall entitle the Government forthwith to enter upon the premises wherein such facilities are found and remove the same.

(K) In the event the contracting officer shall determine, at any time after installation of any item of Schedule "A" facilities, that the item is not reasonably necessary for the performance of this contract or any other contract for the performance of which the use of such facilities has been authorized, he may serve on the contractor a written notice of his intention to remove such item. This determination is subject to written appeal by the contractor within ten (10) days to _____ or his duly
(Chief of the Technical Service)
authorized representative, whose decision shall be final and conclusive upon the parties hereto. Pending this decision, the facilities shall remain in the contractor's plant available for use. At any time within one year after completion or termination in whole or in part of such contracts, the contracting officer may serve on the contractor a written notice of his intention to remove all the Schedule "A" facilities or any portion thereof. Within the shortest practicable time after service of a notice under this paragraph (K), and in no event later than fifteen days thereafter (unless a longer time is allowed by the contracting officer), the contractor, at no expense to the Government in addition to the contract price, will have dismantled and prepared for shipment the items affected. Upon notification from the contractor that the items are ready for shipment, the Government shall remove them at the Government's expense.

(L) If, upon the completion or termination of this contract or any other contract entered into between the Government and the contractor for the performance of which the use of Schedule "A" facilities has been authorized, no notice pursuant to paragraph (K) of intention to remove an item has been received, the contractor shall, at no expense to the Government in addition to the contract price, place the item in stand-by condition, and thereafter maintain it in such condition in its own plant for a period of ninety (90) days from the date of such completion or termination (unless a notice pursuant to paragraph (K) is received in the meantime). In lieu of placing the item in stand-by condition and maintaining it in its own plant, the contractor may store the same elsewhere at its own expense provided that the item can be quickly and readily reinstalled in the production line and production resumed within a reasonable time if necessary in the interest of the Government.

(M) Unless a notice pursuant to paragraph (K) is sooner received, the contractor shall, for a period of nine (9) months after completion of the stand-by period, store the items affected as follows:

(1) In the plant where the items are then located, or in the contractor's other plants in the same locality, if space is available thereat and storage will not materially impair the use of the plant or plants for the contractor's Government or commercial work; or

(2) If space is not available at such plant or plants or storage thereat will materially impair their use by the contractor, then at any other place or places in the vicinity selected by the contractor which are considered satisfactory by the contracting officer. However, the contractor's obligation to store under this subparagraph (2) shall cease if such other place or places cannot be obtained by the contractor, unless the Government shall itself find and designate a place or places of storage.

At the time the items are placed in storage, whether in the contractor's plant or elsewhere, the parties shall attempt to negotiate a Supplemental Agreement to this contract providing for payment to the contractor of a sum or sums agreed upon as representing the reasonable expenses of placing and maintaining the items in storage. In the absence of such agreement, the contractor shall be entitled to receive payment, under this contract, of such reasonable expenses. The contractor's obligation in respect to storage shall be contingent upon the availability of appropriated funds for payment of such reasonable expenses, and if appropriated funds are not available, the contractor shall be under no such obligation. The items affected shall have been dismantled and prepared for shipment, at no expense to the Government in addition to the contract price, within fifteen days after the expiration of the storage period, or, if no storage obligation arises, then within fifteen days after the expiration of the stand-by period (unless a longer time is allowed by the contracting officer). Upon notification from the contractor that the items are ready for shipment, the Government shall remove them at the Government's expense.

(N) The ninety (90) day stand-by period, and the nine (9) month storage period, may be eliminated, shortened or lengthened by agreement of the parties on mutually agreeable terms.

(O) [5] The Government reserves the right to furnish to the contractor f. o. b. the contractor's plant any or all the items of Schedule "A" facilities upon written notice by the contracting officer to the contractor at any time prior to the installation of such items. In such event the contracting officer shall exercise the option described in paragraph (C) (1) or (C) (2) with respect to the item, eliminate it from Schedule "A", and place it on the list of Schedule "B" facilities hereinafter provided for.

(P) [5] The Government shall furnish to the contractor f. o. b. the contractor's plant, the Government-owned facilities listed in Schedule "B" attached hereto, not later than the dates shown thereon. Subject to the right of the contractor to inspect and reject Schedule "B" facilities for good and sufficient reason prior to shipment, the contractor shall receive the same in their then condition, without warranty express or implied on the part of the Government as to serviceability or fitness for use. The contractor shall bear the costs of installation of such facilities.[6] Schedule "B" facilities shall be held by the contractor and considered and treated in the same manner as Schedule "A" facilities under and pursuant to [7] paragraphs (E) (2) and (F) to (N) inclusive of this article.

(Q [5] The contractor has in its possession, installed and ready for use under this contract, the facilities listed in Schedule "C", title to which is in the Government. Such facilities shall be held by the contractor and considered and treated in the same manner as Schedule "A" facilities under and pursuant to paragraphs (E) (2) and (F) to (N) inclusive of this article. Any previous agreement to the contrary is hereby modified accordingly.

NOTE 1: See §§ 803.365 (a-1), 804.451 (a), 804.498 and 807.723, and Part 810.

NOTE 2: Where it is determined that a rental should be charged (see § 810.1002) paragraph (E) (2) of the article should be appropriately modified.

NOTE 3: Attention is invited to the fact that Government bills of lading (or commercial bills of lading to be converted into Government bills of lading at destination) may be availed of to secure the benefits of land grant freight rates where title to the facilities or parts thereof is in the Government at point of origin (see paragraphs (E) (1) and (B)).

NOTE 4: In cases where facilities are hereafter to be acquired or manufactured by, or furnished by the Government to, a contractor, a clause may be included granting an option to the contractor to purchase the facilities, provided the chief of the technical service finds that such action will be in the interest of the Government. (The power to make this finding is *not* subject to delegation by the chief of the technical service, unless the Director, Purchases Division, Headquarters, Army Service Forces, specifically authorizes a delegation.) In such cases, unless otherwise authorized by the Director, Purchases Division, Headquarters, Army Service Forces, the option will contain the following features:

[5] Delete if inapplicable.

[6] If such costs are to reimbursed to the contractor, make appropriate changes (see paragraphs (B) (3) (a) (c) (d) and (B) (4) (a) above).

[7] Insert "subparagraphs (1) and (3 of paragraph (C) and" if contractor is to be reimbursed the costs of installation of Schedule "B" facilities.

(i) The option will come into effect only upon the date of expiration of the standby-plus-storage period, and will cover all, but not part of, the facilities as to which a standby obligation arose and as to which no notice under paragraph (K) of intention to remove has been served upon the contractor during the standby-plus-storage standby period.

(ii) The option period will extend for not more than fifteen days after the date specified in Note 4 (i).

(iii) The option price will be the full cost of the facilities to the Government (including transportation and installation charges) less specified rates of depreciation, plus storage charges incurred under paragraph (M).

NOTE 5: Amendments may be made of existing contracts, substituting the article above set forth (or pertinent portions thereof) for provisions regarding Government-owned facilities now appearing in such contracts, subject to the following:

(i) Uniformity of treatment is considered essential. Accordingly, authority to make these amendments will not be exercised until the technical service concerned apprises all its contractors holding Government-owned facilities of the promulgation of the article above set forth and specifically informs them that they may negotiate with the Government for amendment of their contracts.

(ii) Government negotiators must recognize that contractors will typically derive substantial benefits from these amendments. For example, under the article above set forth the standby period is ninety days and storage is at Government expense, while under the article previously authorized the standby period was one year, and storage expenses were not chargeable to the Government. In general, the article above set forth facilitates the conversion of plants. Accordingly, amendments of existing contracts will be permitted only where the Government receives material and adequate consideration, measured by any difference in value to the contractor between the superseded article and the article inserted by amendment.

(iii) Except with the approval of the chief of the technical service concerned, no amendment will be permitted of an existing Government-owned facilities article which includes a purchase option, unless, as part of the amendment, the purchase option is modified to include the features mentioned in Note 4 (i), (ii) and (iii) above. (The power to give such approval is *not* subject to delegation by the chief of the technical service, unless the Director, Purchases Division, Headquarters, Army Service Forces, specifically authorizes a delegation.) The approval of the Director, Purchases Division, Headquarters, Army Service Forces, will be obtained before any existing Government-owned facilities article which does not include a purchase option, is amended to grant such option.

(iv) The technical services will maintain close supervision of all amendments under this Note 5 and will require adequate records to be prepared and preserved of the negotiations leading to the amendments.

NOTE 6: In the event that the facilities are located in an area outside the United States, where the services of the Loss and Salvage Organizations and not available, the following clause will be used in lieu of paragraph (F) (3) above:

"Upon the happening of loss or destruction of or damage to Schedule "A" facilities caused by an excepted peril, the contractor shall communicate with the contracting officer, shall take all reasonable steps to protect the facilities from further damage, separate the damaged and undamaged facilities, put all the facilities in the best possible order, and furnish to the contracting officer a statement of: (a) the lost, destroyed and damaged facilities, (b) the time and origin of the loss, destruction or damage, (c) all known interests in commingled property of which the facilities are a part, and (d) the insurance, if any, covering any part of or interest in such commingled property. *If and as directed by the contracting officer, the contractor shall make repairs and renovations of the damaged facilities.* [Italicized words may be omitted in appropriate cases.] The contractor shall be reimbursed the expenditures made by it in performing its obligations under this subparagraph (3) as approved by the contracting officer and set forth in a Supplemental Agreement."

§ 803.334 *Records of Government-owned property.* All contracts, in connection with which property or supplies of any kind owned by the United States are furnished to a contractor for use on the contract or as guides, samples, etc., will contain the following clause without deviation:

Record of Government-owned property. The Property Officer, _____, is designated as the officer to maintain the necessary property records in connection with this contract, as contemplated by AR 35-6520.

§ 803.335 *Patent risks*—(a) *Applicable statutes.* The act of June 25, 1910, as amended (35 U.S.C. 68, 94) provides that whenever an invention covered by a patent of the United States is without license used or manufactured by the United States, or by any person, firm or corporation for and with the authorization and consent of the United States, the patent owner's remedy shall (except in certain cases) be by suit against the United States in the Court of Claims for recovery of his reasonable and entire compensation for such use or manufacture. The provision of paragraphs (b) to (h), inclusive, relate to the contract articles which, as between the Government and the contractor, allocate the ultimate risks created by the above statute and provide for matters cognate thereto.

(b) *Policy in regard to patent risks.* The policy of the War Department in regard to the allocation of ultimate risk of patent infringement liability is summarized as follows:

(1) Whether the Government will accept all patent infringement risks, or require the contractor to indemnify the Government against all or some part of those risks, depends in every case on the nature of the particular item to be supplied. Where a contract calls for the supply of several items the risk may be allocated in one manner as to some items and in a different manner as to other items.

(2) Some items are in all respects made to the contractor's own specifications, or are standard commercial items of a type regularly dealt in as such by the contractor, and are not made to Government-furnished specifications in any material respect. In the procurement of such items the War Department will normally require the contractor to indemnify the Government against all patent infringement risks involved therein. For this purpose the contract will normally contain the contract article set forth in paragraph (d) below. It may, in addition, contain the contract article set forth in paragraph (f).

(3) Other items are, from the standpoint of structure or composition, in part made as described in subparagraph (2) above and in some other part made to meet Government-furnished specifications. In the procurement of such items the War Department will normally require the contractor to indemnify the Government against all patent infringement risks involved therein except those which necessarily result from the contractor's compliance with specifications or provisions forming a part of the contract or with specific written instructions given by the contracting officer for the purpose of directing the manner of performance under the contract. For this purpose the contract will normally contain the contract article set forth in paragraph (e) below and, in addition, the contract article set forth in paragraph (f).

(4) Other items are in all respects made to meet Government-furnished specifications, or are in every substantial respect different from any item which has ever regularly been dealt in as a standard commercial item by the particular contractor, and are not made to the contractor's own specifications in any material respect. In the procurement of such items the War Department will normally not require the contractor to indemnify the Government against any part of the patent infringement risks involved therein. For this purpose the contract will normally contain the contract article set forth in paragraph (f), and normally will not contain either of the contract articles set forth in paragraphs (d) and (e).

(5) In every contract where there is reason to believe that the manufacture, use or disposal of any of the items to be supplied will create risk of patent infringement (and without regard to whether the contract contains either of the indemnity clauses of paragraphs (d) or (e), or no indemnity clause), or may involve the payment of royalties, the contract will normally contain the contract article set forth in paragraph (f) which specifies the conditions under which the Government's authorization and consent is to be given, and provides for assistance in discovering patent liabilities and for securing to the Government the benefit of royalty reductions.

(6) Provision whereby the contractor agrees to indemnify the Government against all or any of the patent infringement risks involved may be included in or omitted from any particular contract or specified class of contracts where, within the discretion of the chief of the technical service concerned (see paragraph (c) below), such action is necessary or appropriate to facilitate procurement.

(7) Where the giving of bond in support of the contractor's indemnity obligation is deemed necessary, the contract will normally contain the contract article set forth in paragraph (g) below.

(c) *Discretion of the chiefs of technical services.* In executing the policy stated in paragraph (b), the chief of each technical service shall have the following authority:

(1) He may issue such instructions for the guidance of his service as may be appropriate to effectuate the policy stated above.

(2) He may, in particular contracts or specified classes of contracts, authorize deviations from the policy, or the omission or alteration of any of the contract articles set forth in paragraphs (d) to (g), inclusive, whenever in his judgment such action is necessary or appropriate to facilitate procurement.

(3) He may redelegate the powers granted to him under this section to the chief legal officer and to the chief patent officer in the headquarters of his service, except that the Commanding General, Army Air Forces may redelegate such power to any officer within the headquarters of the Army Air Forces and within the headquarters of any of the major commands of the Army Air Forces.

(d) *Indemnity against patent risks (broad form).* Where it is proper to require the contractor to indemnify the Government against all patent infringement risks, the appropriate contract article is as follows:

ARTICLE TWO. *Patent indemnity.* The Contractor agrees to indemnify the Government, its officers, agents, servants and employees, against liability including costs and expenses for infringement upon any Letters Patent of the United States (except Letters Patent issued upon an application which is now or may hereafter be ordered to be kept secret under the provisions of the Act of October 6, 1917, as amended, 35 U.S.C. 42) occurring in the performance of this contract or in the use or disposal by or for the Government of any article or thing whose delivery the Government accepts under this contract.

(e) *Indemnity against patent risks (narrow form).* Where it is proper to require the contractor to indemnify the Government against all patent infringement risks except those which necessarily result from the contractor's compliance with specifications or provisions forming a part of the contract, or specific written instructions given by the contracting officer for the purpose of directing the manner of performance thereof, the appropriate contract article is as follows:

ARTICLE _____. *Patent indemnity.* (a) The Contractor agrees to indemnify the Government, its officers, agents, servants and employees, against liability including costs and expenses for infringement upon any Letters Patent of the United States (except Letters Patent issued upon an application which is now or may hereafter be ordered to be kept secret under the provisions of the Act of October 6, 1917, as amended, 35 U. S. C. 42) occurring in the performance of this contract or in the use or disposal by or for the Government of any article or thing whose delivery the Government accepts under this contract, *excepting however* infringement necessarily resulting from the Contractor's compliance with specifications or provisions now or hereafter forming a part of this contract or with specific written instructions given by the Contracting Officer for the purpose of directing the manner in which the Contractor shall perform this contract.

(b) The Contractor shall diligently and promptly report to the Contracting Officer in reasonable written detail (i) each claim of patent infringement asserted with respect to, and (ii) the identity and apparent pertinence of each adversely-held domestic patent having a bearing or apparent bearing upon, the subject-matter or performance of this contract which has heretofore or shall hereafter prior to final settlement come to the attention of the Contractor's legal representatives or executive agents.

(f) *Authorization and assistance.* Where there is reason to believe that the manufacture, use or disposal of any of the items to be supplied under a contract may create risk of patent infringement or may involve the payment of royalties, the appropriate contract article is as follows:

ARTICLE _____. *Authorization and assistance.* (a) For the purpose set forth in Section 6 of the Royalty Adjustment Act 1942 (Public No. 768, 77th Cong.; 35 U.S.C. 94), insofar as said Section 6 refers to the Act of June 25, 1910 as amended (35 U.S.C. 68), and for no other purpose whatsoever, the Government shall, without prejudice to its rights of indemnification if any, be deemed to have given its authorization and consent to the use and manufacture, in the performance of this contract or of any subcontract hereunder, (1) of any patented invention embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract and (2) of any patented invention utilized in machines or methods the use of which necessarily results from the Contractor's compliance with (i) specifications or written provisions now or hereafter forming a part of this contract or (ii) specific written instructions given by the Contracting Officer for the purposes of this paragraph.

(b) The Contractor shall diligently and promptly report to the Contracting Officer in reasonable written detail (i) each claim of patent infringement asserted with respect to, and (ii) the identity and apparent pertinence of each adversely-held domestic patent having a bearing or apparent bearing upon, the subject matter or performance of this contract which has heretofore or shall hereafter prior to final settlement come to the attention of the Contractor's legal representatives or executive agents.

(c) In case the rates or amounts of any royalties, which are directly or indirectly chargeable to the Government under this contract, are adjusted pursuant to the provisions of the Royalty Adjustment Act 1942 (Public No. 768, 77th Cong.; 35 U.S.C. 89) or in any other manner, the prices herein shall be reduced to the extent that the Contractor receives the benefit of such adjustment of royalties, or fails to take the benefit thereof after the Government has given the Contractor notice in writing not to make the payment involved, and the Contractor shall pay or credit, as the Contracting Officer may direct, the amount of such price reduction. Nothing contained in this contract shall be deemed to constitute an approval by the Government of the rates or amounts of any royalties chargeable to the Government hereunder, or to prejudice or impair the right of the Government or any department or agency thereof to adjust the rate or amount of such royalties.

Attention is directed to the fact that clause (b) of the foregoing article is a duplicate of clause (b) of the contract article set forth in paragraph (e) above. If the contract articles set forth in this paragraph and in paragraph (e) are both used in the same contract the duplicating provision of (f) should be eliminated.

(g) *Indemnity bond.* Where the giving of bond in support of the contractor's indemnity obligation is deemed necessary, the appropriate contract article is as follows:

ARTICLE _____. *Indemnity bond.* The Contractor shall give a bond in an amount satisfactory to the United States, the terms of which shall fully protect the Government against loss should the Contractor default in any patent indemnity obligation herein set forth.

(h) *Counter-indemnity.* No provision whereby the Government expressly agrees to indemnify the contractor against liability for patent infringement shall be included in any contract except with the express written approval of the Director, Purchases Division, Headquarters, Army Service Forces; but the foregoing does not apply to the use of contract articles, such as that set forth in paragraph (f), specifying the conditions under which the Government's authorization and consent is to be given.

§ 803.336 *Disclosure of information.* All secret, confidential or restricted contracts will contain the following clause without deviation:

Disclosure of information. (a) It is understood that disclosure of information relating to the work contracted for hereunder to any person not entitled to receive it, or failure to safeguard all secret, confidential and restricted matter that may come to the Contractor or any person under his control in connection with the work under this contract, may subject the Contractor, his agents, employees, and subcontractors to criminal liability under the laws of the United States. See Title 1 of an Act approved June 15, 1917 (40 Stat. 217; 50 U.S.C. 31–42) as amended by an Act approved March 28, 1940 (54 Stat. 79); and the provisions of an Act approved Jan. 12, 1938 (52 Stat. 3; 50 U.S.C. 45–45d, as supplemented by Executive Order No. 8381, dated March 22, 1940, 5 F.R. 1147.

(b) The Contractor shall cause a like provision to be inserted in all subcontracts under this contract.

§ 803.337 *Employment of aliens.* All secret, confidential or restricted contracts will contain the following clause without deviation:

Employment of aliens. The Contractor will not permit any alien employed or to be employed by it or by any sub-bidder or subcontractor to have access to the drawings, specifications and accompanying enclosures relating to the performance of this contract, or to the models or material referred to therein, or to engineering principles, composition, subassemblies, or assemblies which are vital to the functioning or use of the article or articles forming the subject matter of this contract, without the written consent beforehand of the Secretary of War.

With respect to any secret, confidential or restricted contract, now in effect and not completely performed, which contains a provision with respect to the employment of aliens, in a different form from that herein prescribed, the chiefs of technical services concerned will take steps, where they deem it necessary to do so, to amend such provision by substituting therefor the clause herein prescribed.

(a) *Employment of aliens in connection with contracts for aircraft, aircraft parts or aeronautical accessories.* All secret, confidential or restricted contracts which are also subject to the act approved July 2, 1926, as amended March 3, 1927, section 10 (j)–(p); 10 U.S.C. 310 (j)–(p), relating to the employment of aliens in connection with contracts for furnishing or constructing aircraft, aircraft parts or aeronautical accessories for the United States may also contain such reference to that act or its provi-

sions as the Commanding General, Army Air Forces, deems appropriate.

§ 803.338 *Plant protection clause.* In those cases where the contracting officer deems it necessary to retain some control as to the plant protective devices in a particular plant, the contract will contain a clause substantially similar to one of those set forth below. Such a clause will not normally be necessary in construction contracts.

Plant protection. The Contractor shall maintain in and about his plant adequate plant protective devices and shall employ such watchmen, guards and other personnel as the Contracting Officer may deem necessary to prevent espionage, sabotage, and other malicious destruction or damage.

Plant protection. The Contractor shall maintain in and about his plant adequate plant protective devices and shall employ such watchmen, guards and other personnel as the Contracting Officer may deem necessary to prevent espionage, sabotage, and other malicious destruction or damage. If the Contracting Officer from time to time shall require the installation of plant protective devices or the employment of watchmen, guards or other personnel, or both, in addition to those deemed necessary by him on the date the Contractor shall commence performance of this contract, the cost of any such devices installed or the pay of any such personnel employed, or both, at the written request and upon the written authorization of the Contracting Officer, shall be reimbursed to the Contractor upon submission of vouchers approved by the Contracting Officer, provided that no reimbursement of the cost of any such installation or pay of any such personnel, or both, shall be made in excess of the cost thereof, as estimated in advance and approved in writing by the Contracting Officer.[1]

Plant protection. (a) The Contractor and each Subcontractor, at his own expense, at all times during the term of this contract, or any subcontract hereunder, shall continue all such precautions for the guarding and protection of his plant, property and work in process, as immediately prior to the date of this contract have been taken by the Contractor or Subcontractor for the protection of the plant, and shall make available such information with respect thereto as the Contracting Officer may request.

(b) The Contractor agrees to furnish the authorized Security and Safety personnel of the War Department with a survey of the existing internal security system at the Contractor's plant. The Contractor agrees, at his own expense, to make the changes set forth in Appendix . . . hereto annexed and made a part hereof to cause his existing internal security system to comply with the regulations of _____
(Chief of Technical Service)
including the recommendations made by the appropriate War Department Internal Security personnel

(c) At any time during the term of this contract, the Contracting Officer or his duly authorized representative may require the Contractor or Subcontractor to install and maintain in and about the plant additional protective devices, equipment and personnel. The Contractor and each Subcontractor shall submit promptly to the Contracting Officer or his duly authorized representative, for prior approval as to estimated cost, detailed inventories, including the estimated cost of each item of protective devices or equipment so required to be installed and of installing the same and a detailed estimate of the cost of maintaining any such additional protective devices or equipment and personnel.

(d) The Contractor or Subcontractor shall be reimbursed upon the submission of a voucher approved by the Contracting Officer, or his duly authorized representative, for the cost of maintaining such additional personnel as may have been required under paragraph (c) hereof, and the Contractor shall be reimbursed also for all payments made by it to Subcontractors pursuant to paragraph (h) hereof. The Contractor or Subcontractor shall be reimbursed, upon the submission of a voucher approved by the Contracting Officer or his duly authorized representative, the invoice price of the additional plant protective devices or equipment so required pursuant to Paragraph (c) hereof. In addition the Contractor or Subcontractor shall be reimbursed the reasonable cost of installing such additional plant protective devices or equipment. Such reasonable cost shall include only transportation to the Contractor's or Subcontractor's plant, direct labor, and direct material necessary for the installation of the additional plant protective devices or equipment. The Government shall not be under obligation to make reimbursement of total cost of such additional plant protective devices or equipment and of installing the same in excess of the estimate approved in advance by the Contracting Officer unless payment of such excess shall be approved or ratified by the Contracting Officer as reasonable. If the Contracting Officer and the Contractor or Subcontractor, as the case may be, are able to agree upon the amount of the cost of such additional devices or equipment, such sum shall be the amount to be reimbursed hereunder.

(e) Title to all plant protective devices and equipment added under Paragraph (c) of this Article shall be in the Government. The Contractor or Subcontractor, during the term of this contract or any extension thereof or during the term of the Subcontract or any extension thereof, at his own expense, shall maintain and keep in good condition and repair all such protective devices and equipment. If such protective devices and equipment are to be installed on premises leased by the Contractor, the Contractor shall take appropriate steps to preserve the Government's right to remove such property pursuant to Paragraph (g) of this Article.

(f) The _____
(Chief of Technical Service)
or his duly authorized representative, and authorized plant protection personnel of the War Department, at all times during the performance of this Contract or any extension thereof, or during the term of the Subcontract or any extension thereof, and until after expiration of the right of removal set forth below, shall have access to the Contractor's plant, or the plant of the Subcontractor, in order to inspect, inventory, or remove any of said plant protective devices or equipment required pursuant to Paragraph (c) hereof, and to inspect the premises with respect to compliance with all regulations and requirements concerning plant protection, including any recommendations made by the appropriate War Department Internal Security personnel.

(g) After the completion or termination of this contract and prior to final settlement thereof, the Contractor, or the Subcontractor, as the case may be, shall have the option, exercisable in writing, to purchase at the then value as fixed by the Contracting Officer, or his duly authorized representative, any special plant protective devices or equipment theretofore installed in his plant pursuant to Paragraph (c). Not later than the date of final settlement, the Contractor or Subcontractor shall notify the Contracting Officer in writing to remove any such devices or equipment as to which the option to purchase is not to be exercised, and the Government shall have the right, at any time within 180 days after the receipt of such notice, to remove at its own expense any such plant protective devices or equipment.

(h) The Contractor agrees to insert in each of his subcontracts the following provision:

"The Subcontractor agrees to be bound by the provisions of Article _____ of the
(This Article)
prime contract with the Government insofar as they are applicable to this contract. The Prime Contractor will reimburse the Subcontractor for the cost of such special devices, equipment and personnel as have been or hereafter may be added by the Subcontractor, pursuant to Paragraph (c) of Article _____, for which reimbursement has not been made by the Government direct to the Subcontractor according to the terms set forth in Paragraph (d) of Article _____"

(i) For the purpose of this Article, a subcontract is defined as any contract or agreement entered into between the Contractor and any other party, for the performance of all or any part of the work called for under this Contract.

(j) The Contractor, upon the request of the Contracting Officer, shall dismiss any officer or employees whose continued employment is deemed by the Contracting Officer to endanger the safety of the plant. In the event any such officer or employee is reinstated upon request of the Contracting Officer, the Contractor shall be reimbursed the costs incident to such rehiring, including back wages approved by the Contracting Officer.

(k) If guard personnel are members of the Civilian Auxiliary to the Military Police or successor organization, the Contractor shall be reimbursed for such additional cost approved by the Contracting Officer as may be incurred because of compliance with regulations and orders issued by a military commanding officer in charge of the Contractor's plant guards.

§ 803.339 *Price adjustment for increase of freight rates.* In appropriate cases, contracts will contain a clause substantially as follows:

Price adjustment for increase in freight rates. If after the date of the bid, or in the case of a contract not entered into pursuant to a bid after the date of the award, the Interstate Commerce Commission shall authorize an increase in freight rates upon the materials set out below, which are used in the production of the supplies covered by this contract, and if the contractor is required to pay increased freight rates on such materials (either by payment to the carrier or because the increased freight charges are added to the price paid by the contractor for the materials) in order to perform the contract, the prices named herein will be increased accordingly, and the amount due the contractor as a result of such increase will be charged to the Government and entered on vouchers (or invoices) as a separate item: *Provided,* That the contractor shall not be entitled to receive payment for any such increase unless he submits such evidence as may be required by the contracting officer with respect to the increased freight charges borne by the contractor: *And provided further,* That the contractor shall not be entitled to receive payment for any such increase to the extent that such payment may be inconsistent with any applicable maximum price regulations issued by the Office of Price Administration or other lawful authority.

[1] If desired an additional proviso may be added, reading substantially as follows:

Provided further that no reimbursement of the cost of any such installation or pay of any such personnel is being made to the contractor by other means.

§ 803.340 *Clauses for rental of gas cylinders.* Every contract for the rental of gas cylinders will contain a clause substantially similar to one of the following:

Rental of gas cylinders (individual basis). Cylinders shall remain the property of the contractor and will be loaned, without charge, to the Government for a period of 30 days after the date of shipment of cylinders from the contractor's plant. Beginning with the first day after the expiration of the 30-day free loan period to and including the day the cylinders are released to the transportation company for return to the contractor, there will be charged and the United States agrees to pay the contractor a rental at the rate of $_____ per cylinder per day for the use of cylinders not returned to the contractor.

Rental of gas cylinders (quantity basis). Cylinders shall remain the property of the contractor and will be loaned, without charge, to the Government for a period of 30 days after the date of shipment of cylinders from the contractor's plant. Beginning with the first day after the expiration of the 30-day free loan period to and including the day the cylinders are released to the transportation company for return to the contractor, there will be charged and the United States agrees to pay the contractor a rental at the rate of $_____ per cylinder per day, computed on a quantity basis, as indicated below, for the use of cylinders not returned to the contractor. This rental charge will be computed separately for oxygen and acetylene cylinders and for each point of delivery named in the contract. A credit of 30 cylinder days will accrue for each cylinder shipped. A debit of one cylinder day will accrue for each cylinder for each day held beginning with the day after date of shipment from contractor's plant to and including the day the cylinder is released to the transportation company for return to the contractor. At the end of the contract period, in the event the total number of debits exceeds the total number of credits, rental will be charged for the difference. If the total number of credits equals or exceeds the total number of debits, no charge will be made for the use of the cylinders.

All cylinders not returned to the contractor on or before the expiration of a 90-day rental period or lost or damaged beyond repair while in the possession of the United States Government shall be paid for by the United States to the contractor at a replacement value of $_____ for each oxygen cylinder of 100 to 110 cubic feet capacity, $_____ for each oxygen cylinder of 200 to 200 cubic feet capacity, $_____ for each acetylene cylinder of 100 to 150 cubic feet capacity, and $_____ for each acetylene cylinder of 250 to 300 cubic feet capacity.

Cylinders retained or lost and so paid for shall be considered the property of the United States. But if and when located they may, at the option of the Government, be returned to the contractor, and, in such event, credit shall be allowed to the Government at the replacement value paid, less rental at the rate of $_____ per day beginning at the expiration of the 30-day loan period as aforesaid to the date upon which cylinders are turned over to carrier for return to contractors plant.

§ 803.341 *Price adjustment based on production experience.* The following articles provide for (1) redetermination of price by formula paragraph (a), (2) price revision by negotiation paragraph (b), (3) conversion of fixed-fee contract to fixed price basis paragraph (c), (4) incentive provisions in fixed-fee contracts paragraph (d). They may be used in accordance with the instructions in Subpart B of Part 812.

(a) *Article ____. Redetermination of price by formula.*

(a) *Agreement to redetermine price.* The Government and the Contractor recognize that the costs of performing this contract cannot be accurately estimated at the time of its execution, and that the price fixed in Article ____ may therefore be too high. They therefore agree that the contract price fixed in Article ____ shall be redetermined in accordance with this Article on the basis of the actual experience of the Contractor in performing part of the contract. They agree that the cost of producing the first ____% of the items called for hereunder (hereinafter called the "preliminary run") will not necessarily be typical for the remainder of the contract. The cost of producing the next ____% (hereinafter called the "test run") shall therefore be used as the general basis for the redetermination of price.

(b) *Estimate of costs.* The Contractor represents that the contract price fixed in Article ____ is based on a total estimated cost of $_____, itemized as follows:[1]

A. Factory Cost.
1. Direct materials.
2. Direct productive labor.
3. Direct engineering labor.
4. Miscellaneous direct factory charges.
5. Indirect factory expenses[2] (State basis of allocation).

Total Factory Cost

B. Other manufacturing cost.
C. Miscellaneous direct expenses.
D. Indirect engineering expenses.
E. Expenses of distribution, servicing and administration.
F. Guarantee expenses.

(c) *Cost statements.*

(1) Within ____ days after the completion of the production of the "test run" the Contractor shall submit to the Contracting Officer the following data—

(i) Separate statements showing the costs of producing the "preliminary run" and the "test run" itemized in the same way as the estimated cost stated in section (b) above:

(ii) Estimates of the cost of producing the items to be delivered during the remainder of the contract based upon the previous cost experience of the Contractor and upon all other relevant factors; and

(iii) Proposed revised prices under the contract.

(2) The Contractor will maintain books, records and accounts so as to reflect accurately and segregate clearly the costs of performing this contract during the "preliminary run" and "test run". For this purpose the Contractor may follow the cost accounting system regularly used by it, if the Contracting Officer finds it is adequate and in accordance with sound accounting practice. The statements showing costs experienced by the Contractor under this contract shall be based upon such books, records and accounts and shall be certified as correct by two officers of the Contractor or by an independent public accountant. The Contractor shall submit his books, records and accounts to such examination and audit as the Contracting Officer may request.

(d) *Method of redetermination.* (1) Upon the filing of the data required by section (c) hereof, the Contracting Officer and the Contractor shall determine the costs of producing the "preliminary run" and the "test run" and the cost of producing the remainder of the items called for by the contract as indicated by the cost of production of the "test run" and the cost estimate submitted by the Contractor under section (c). Any disagreement as to the experienced costs or estimated costs shall be subject to Article ____ (Disputes).

(2) If the cost of producing the "preliminary run" and the "test run" plus the cost of production of the remainder of the items called for by the contract as determined under subsection (1) above, is less than the total estimated cost stated in section (b), the total price to be paid pursuant to Article ____ shall be reduced by the amount of the difference. The redetermined price shall be evidenced by a supplemental agreement.

(e) *Payment.* Pending the redetermination of the contract price hereunder the Government shall pay for all items delivered hereunder at the price fixed in Article ____. Upon the redetermination of the price hereunder the Contractor shall apply as a credit against payment for subsequent deliveries or shall repay to the Government, as the Contracting Officer may direct, an amount equal to the difference between the price paid on all items theretofore delivered and the redetermined price for such items; and the Government shall pay for all items thereafter delivered the redetermined price minus any such credit. If, before the price is redetermined hereunder, any amount paid under this contract has been included in any renegotiation agreement made under Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended, no refund or credit shall be required hereunder with respect to that amount.

(f) *Renegotiation.* Any redetermination of the contract price made under this Article is without prejudice to the determination of any excessive profits of the Contractor upon subsequent renegotiation under Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended, or the contract article inserted herein pursuant to that Act.

(b) *Article ____. Revision of entire price by negotiation.*

(a) *Agreement to revise price.* The Government and the Contractor recognize that the costs of performing this contract cannot be accurately estimated at the time of its execution and that the contract price fixed in Article ____ may therefore be either too high or too low. They therefore agree that the contract price shall be revised upward or downward in accordance with this article on the basis of actual experience of the Contractor in producing ___% of the items under this contract (hereinafter called the "trial run"). They recognize that the costs of performing that part of the contract will not be typical for the remainder of the contract, but will provide sufficient information and experience to permit revision of the price.

(b) *Estimate of costs.* The Contractor represents that the contract price fixed in Article ____ is based on a total estimated cost of $_____, itemized as follows:[1]

A. Factory Cost.
1. Direct materials.
2. Direct productive labor.
3. Direct engineering labor.
4. Miscellaneous direct factory charges.
5. Indirect factory expenses.[2] (State basis of allocation.)

Total Factory Cost

B. Other manufacturing cost.
C. Miscellaneous direct expenses.
D. Indirect engineering expenses.
E. Expenses of distribution, servicing and administration.

[1] This breakdown may be altered to suit particular circumstances. Any reserves for contingencies should be stated separately and clearly identified.

[2] State separately the estimated amount of each of the following items included:
(a) Normal depreciation.
(b) Special amortization.

F. Guarantee expenses.

(c) *Cost statements.*

(1) Within _____ days after the completion of the trial run, the Contractor shall submit to the Contracting Officer the following data:[3]

(i) Separate statements showing costs of production for the trial run, itemized in the same way as the estimated cost stated in section (b) above.

(ii) Estimates of the cost of producing the items to be delivered during the remainder of the contract based upon the previous cost experience of the Contractor and upon all other relevant factors.

(iii) Proposed revised prices under the contract.

(2) The Contractor will maintain books, records and accounts so as to reflect accurately and segregate clearly the costs of performing this contract. For this purpose the Contractor may follow the cost accounting system regularly used by it, if the Contracting Officer finds it is adequate and in accordance with sound accounting practice. The statements showing costs experienced by the Contractor under this contract shall be based upon such books, records and accounts and shall be certified as correct by two officers of the Contractor or by an independent public accountant. The Contractor shall submit his books, records and accounts to such examination and audit as the Contracting Officer may request.

(d) *Negotiation for revision.* (1) Upon the filing of the data required by section (c) hereof, the Contractor and Contracting Officer shall negotiate in good faith to agree upon revised prices under this contract. The revised price may be different for different periods of the contract and may be in excess of or less than the price stated in Article ___ hereof. The agreement reached shall be evidenced by a supplemental agreement to this contract stating the revised price under the contract.

(2) If the Contracting Officer and Contractor fail to agree on revised prices under the contract within thirty days after the date for filing of the data by the Contractor under section (c) hereof, or such further period as may be fixed by agreement, the Contractor, if not in default, or the Government, may terminate the contract hereunder by written notice delivered within ten days after the expiration of said thirty day period or extension. Upon such termination by either party, the rights and obligations of the parties shall be governed by the provisions of Article ____ hereof ("Termination for the Convenience of the Government"), except that the Contractor shall be allowed no profit for any uncompleted portion of the contract. If revised prices are not agreed upon and the contract is not terminated, the Government shall pay to the Contractor the price fixed in Article ____ for the remainder of the contract.

(e) *Payments.* Until the contract price is revised hereunder, the Government shall pay to the Contractor the price set forth in Article ___ for all articles delivered. If the contract price is revised upward hereunder, the Government shall pay to the Contractor the difference between the prices paid on all items theretofore delivered and the revised price for such items. If the contract price is revised downward hereunder an amount equal to the difference between the price paid on all items theretofore delivered and the revised price for such items, shall be applied as a credit against payments for subsequent deliveries or shall be applied in such other manner or repaid to the Government, as the Contracting Officer may direct. For all items delivered after any price revision hereunder, the Government shall pay the contractor the revised price, minus any such credit. If, before the price is redetermined hereunder, any amount paid under this contract has been included in any renegotiation agreement made under Section 403 of the Sixth Supplemental National Defence Appropriation Act, 1942, as amended, no refund or credit shall be required hereunder with respect to that amount.

(f) *Renegotiation.* Any revision of the contract price made under this Article is without prejudice to the determination of any excessive profits of the Contractor upon subsequent renegotiation under Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended, or the contract article inserted herein pursuant to that Act.

(c) *Article _____. Conversion to fixed price contract.*

(a) The Government and the Contractor agree to convert this contract from a cost-plus-a-fixed-fee basis to a fixed price basis in accordance with this article.

(b) Within (15) days after the production of ____% of the items covered by this contract, the Contractor will submit to the Contracting Officer the following data:[1]

(1) Statements showing the cost of producing all items theretofore completed for delivery for which cost figures are available, and such other statements as the Contracting Officer may require.

(2) Estimates of the cost of producing the remainder of the contract based upon the previous cost experience of the Contractor and upon all other relevant factors.

(3) Proposed prices for the items theretofore delivered and to be delivered during the remainder of the contract.

(c) Upon the filing of the data required by section (b) hereof, the Contractor and Contracting Officer will negotiate in good faith to agree upon a price or prices for this contract on a fixed price basis. In negotiating such prices consideration may be given to all pertinent factors which have affected the Contractor's costs during the preceding period and which are likely to affect such costs during the remainder of the contract and to all pertinent factors bearing upon the profit margin which is reasonable for the Contractor to earn under the contract. The agreement to convert may make the fixed price basis applicable to the entire contract, including performance before as well as after the effective date of the conversion; and it may provide for the treatment of any advance payments and reimbursements theretofore made to the Contractor as payments under the revised contract, for appropriate credit for deliveries theretofore made by him, and for releasing to the Contractor any interest or title of the Government in any materials and property acquired for the performance of the contract. The terms of the agreement shall be evidenced by a supplemental agreement.

(d) Any conversion made or contract price fixed under this Article is without prejudice to the determination of any excessive profits of the Contractor upon subsequent renegotiation under Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended, or the contract article inserted herein pursuant to that Act.

(d) *Article _____. Adjustment of fixed fee.*

(a) *Agreement to adjust.* The Government and the Contractor agree that the fee fixed in Article ____ hereof shall be adjusted in accordance with this Article. In this Article the first ____% of the items to be produced hereunder is called the "preliminary run"; the next ____% thereof is called the "test run" and all items to be produced hereunder after the test run are called the "remainder of the contract".

(b) *Basis of adjustment.* (1) Within 3 days after the production of the test run the Contractor shall submit to the Contracting Officer the following data:

(i) Separate itemized statements showing the costs of production of the preliminary run and the test run.

(ii) Estimates of the costs of producing the remainder of the contract, based upon the previous cost experience of the Contractor and all other relevant factors.

(2) Upon the filing of the foregoing data, the Contracting Officer and Contractor shall agree upon an estimate for the cost of producing the remainder of the contract (herein called the "target estimate") on the basis of the costs of production of the test run and the estimated costs submitted by the Contractor.

(c) *Adjustment.*

(1) Upon the completion of the contract the Contractor shall submit itemized statements of the cost of producing the remainder of the contract. The Contracting Officer, after making such adjustments as he deems necessary therefor, shall determine the amount by which the Contractor had reduced the costs of producing the remainder of the contract below the target estimate by efficiency in buying, production or management or has increased such costs above the target estimate by its inefficiency in these respects. Using the amount of the reduction or increase of costs so determined, he shall compute the percentage of the target estimate which such reduction or increase represents.

(2) The Contracting Officer shall then adjust the fee on the basis of the percentage of such increase or reduction in costs in the following manner.

(i) For each 1% of such reduction in costs up to 10% the fee shall be increased by 1% of the dollar amount of the fee or for each 1% of such increase in costs up to 10% the fee shall be decreased by 1% of the dollar amount of the fee.

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[3] Where it will be unduly difficult for the Contractor to submit the data in the form specified in paragraphs (i) and (ii), the following form may be substituted for these paragraphs, if the Contracting Officer is satisfied that it will provide reliable and sufficient data for the purposes of the article:

"(i) Revised estimates of the cost of performing the entire contract, based upon the cost experience of the Contractor during the trial run and upon all other relevant factors, itemized in the same way as the estimated cost stated in section (b) above, and showing separately any reserves for contingencies included in the estimate."

Paragraph (iii) will then be renumbered (ii).

[1] Where it will be unduly difficult for the Contractor to submit the data in the form specified in paragraphs (1) and (2), the following form may be substituted for these paragraphs, if the Contracting Officer is satisfied that it will provide reliable and sufficient data for the purposes of the article:

"(1) Revised estimates of the cost of performing the entire contract, based upon the cost experience of the Contractor during the trial run and upon all other relevant factors, itemized in the same way as the estimated cost stated in section (b) above, and showing separately any reserves for contingencies included in the estimate."

Paragraph (3) will then be renumbered (2).

(ii) For each 1% of such reduction in costs beyond 10% the fee shall be increased by 2% of the dollar amount of the fee or for each 1% of increase in costs beyond 10% the fee shall be reduced by 2% of the dollar amount of the fee.

In no event shall the fee as adjusted be increased to more than 7% of the original estimated costs or be reduced to less than 1% of the original estimated cost.

(d) *Books and records.* The Contractor will maintain books, records and accounts so as to reflect accurately and segregate clearly the costs of performing this contract. For this purpose the Contractor may follow the cost accounting system regularly used by it, if the Contracting Officer finds that it is adequate and in accordance with sound accounting practice. The statements showing costs experienced by the Contractor under this contract shall be based upon such books, records and accounts and shall be certified as correct by two officers of the Contractor or by an independent public accountant. The Contractor shall submit his books, records and accounts to such examination and audit as the Contracting Officer may request.

(e) *Disputes.* Any disagreement with respect to the amount of the "target estimate" under section (b) (2), or the amount of the reduction or increase in costs under section (c) (1), or the computation of the adjustment of the fee under section (c) (2) shall be subject to Article — (Disputes).

§ 803.342 *Articles governing statutory renegotiation.* The following articles dealing with statutory renegotiation will be used in accordance with Part 812 of this chapter (§ 812.1202 et seq., § 812.1207 et seq.).

(a) [*Form I*] *Renegotiation pursuant to the Renegotiation Act: Form for general use.*

Article _____. *Renegotiation.* (a) This contract shall be deemed to contain all the provisions required by subsection (b) of the Renegotiation Act as amended by Section 701 of the Revenue Act of 1943 (Public Law No. 235, 78th Congress, enacted February 25, 1944).

(b) In compliance with said subsection (b) of the Renegotiation Act, the Contractor shall insert in the subcontracts specified in said subsection (b) either the provisions of this Article or the provisions required by said subsection (b).

(b) [*Form II*] *Same: Form for contracts exempt under discretionary exemption.*

Article _____. *Renegotiation.* (a) The Contractor agrees to insert in the subcontracts specified in subsection (b) of the Renegotiation Act as amended by Section 701 of the Revenue Act of 1943 (Public Law No. 235, 78th Congress, enacted February 25, 1944), either the provisions required by said subsection (b) or the following:

"Article _____. Renegotiation. (a) This contract shall be deemed to contain all the provisions required by subsection (b) of the Renegotiation Act as amended by Section 701 of the Revenue Act of 1943 (Public Law No. 235, 78th Congress, enacted February 25, 1944).

"(b) In compliance with said subsection (b) of the Renegotiation Act, the Contractor shall insert in the subcontracts specified in said subsection (b) either the provisions of this Article or the provisions required by said subsection (b)."

(b) The Contractor agrees that there may be retained by the United States from amounts otherwise due the Contractor or that the Contractor will repay to the United States, as the Secretary of War or his duly authorized representative may direct, any amounts which under subsection (b) of the Renegotiation Act he is directed to withhold from a subcontractor and which are actually unpaid at the time the Contractor receives such direction.

(c) [*Form III*] *Same: Form for supplemental agreements.*

Article _____. *Renegotiations.* (a) This contract shall be deemed to contain all the provisions required by subsection (b) of the Renegotiation Act as amended by Section 701 of the Revenue Act of 1943 (Public Law No. 235, 78th Congress, enacted February 25, 1944).

(b) In compliance with subsection (b) of the Renegotiation Act, the Contractor shall insert in the subcontracts specified in said subsection (b) and made by the Contractor after the date of this instrument either provisions similar to paragraphs (a) and (b) of this Article or the provisions prescribed by said subsection (b) of the Renegotiation Act.

(c) This Article applies only to the supplemental agreement by which it was added and to any supplemental agreement or change orders hereafter executed except that the Contractor may discharge any obligation under the basic contract to insert renegotiation provisions in subcontracts, by inserting therein either the provisions of paragraphs (a) and (b) of this Article or the provisions prescribed by subsection (b) of the Renegotiation Act.

§ 803.342a *Price revision by mutual agreement.* There may be included in any contract (1) which is for an amount of $100,000 or less and (2) which is also developmental or experimental in character a clause substantially as follows:

ARTICLE _____. *Price revision by mutual agreement.*

(a) Upon the written demand of the Contracting Officer, made at any time until sixty (60) days after the completion or termination of this contract, the Contractor will renegotiate the contract price to reduce it to an amount representing fair and reasonable compensation for the performance of the Contract. In such negotiations the efficiency of the Contractor in production, buying and management will be given due weight.

(b) The Contractor will furnish to the Contracting Officer such statements of actual costs of production and such other financial statements, at such times and in such form and detail, as the Contracting Officer may prescribe, and will permit such audits and inspections of its books and records as the Contracting Officer may request.

(c) The Government shall retain from amounts otherwise due the Contractor, or the Contractor shall repay to the Government if paid to him, any amount of the contract price found as a result of such renegotiation to represent an excessive price and not eliminated through reductions in contract price or otherwise, as the Contracting Officer may direct.

(d) The provisions of this article shall not be construed as precluding any renegotiation which may be required under Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended.

(e) As used in this article the term "this contract" means this contract as originally written or as modified from time to time.

§ 803.343 *Rate of Wages clause.* All contracts subject to the Davis-Bacon Act will contain the following clause without deviation:

Rate of wages. (In accordance with the act of August 30, 1935, 49 Stat. 1011, as amended by the act of June 15, 1940, 54 Stat. 399 (U. S. Code, title 40, secs. 276a and 276a–1), this article shall apply if the contract is in excess of $2,000 in amount and is for the construction, alteration, and/or repair, including painting and decorating, of a public building or public work within the geographical limits of the States of the Union, the Territory of Alaska, the Territory of Hawaii, or the District of Columbia.)

(a) The contractor or his subcontractor shall pay all mechanics and laborers employed directly upon the site of the work, unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less or more than those stated in the specifications (subject to Executive Order Number 9250 and the General Orders and Regulations issued thereunder) regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and such laborers and mechanics; and the scale of wages to be paid shall be posted by the contractor in a prominent and easily accessible place at the site of the work. The contracting officer shall have the right to withhold from the contractor so much of accrued payments as may be considered necessary by the contracting officer to pay to laborers and mechanics employed by the contractor or any subcontractor on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by such laborers and mechanics and not refunded to the contractor, subcontractors, or their agents.

(b) In the event it is found by the contracting officer that any laborer or mechanic employed by the contractor or any subcontractor directly on the site of the work covered by the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid as aforesaid, the Government may, by written notice to the contractor, terminate his right to proceed with the work or such part of the work as to which there has been a failure to pay said required wages and prosecute the work to completion by contract or otherwise, and the contractor and his sureties shall be liable to the Government for any excess costs occasioned the Government thereby.

(c) The regulations of the Secretary of Labor, referred to in article _____ (non-rebate of wages) hereof, allow certain "permissible deductions" from the wages required by this article to be paid.

The article to which cross reference is made in paragraph (c) of the above clause is that contained in § 803.344.

(a) There will be contained in each contract subject to the Davis-Bacon Act (or in the specifications accompanying the contract) a clause substantially as follows:

The minimum wages to be paid laborers and mechanics on this project, as determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the pertinent locality, are as follows:

Classification of laborers and mechanics	Minimum rates of wages per hour

Any class of laborers and mechanics not listed in the preceding paragraph, which will be employed on this contract, shall be classified or reclassified conformably to the foregoing schedule by mutual agreement between the contractor and class of labor concerned,

subject to the prior approval of the contracting officer. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics to be used, the question, accompanied by the recommendation of the contracting officer, shall be referred to the Secretary of Labor for final determination. The wages specified in this schedule shall be the maximum wages to be paid, subject, however, to Executive Order No. 9250 and the General Orders and Regulations issued thereunder.

§ 803.344 *Nonrebate of wages clause.* All contracts subject to the Copeland "Kick-back" Act will contain the following clause without deviation:

Nonrebate of wages. The contractor shall comply with the regulations of the Secretary of Labor pursuant to the Act of June 13, 1934, 48 Stat. 948 (U.S. Code, title 40, secs. 276b and 276c), and any amendments or modifications thereof, shall cause appropriate provisions to be inserted in subcontracts to insure compliance therewith by all subcontractors subject thereto, and shall be responsible for the submission of affidavits required of subcontractors thereunder, except as the Secretary of Labor may specifically provide for reasonable limitations, variations, tolerances, and exemptions from the requirements thereof.

§ 803.345 *Convict labor.* All contracts, except those to which the prohibition against use or employment of convict labor is clearly inapplicable, and except those containing the clause set forth in either §§ 803.353 or 803.353 (d) will contain the following clause without deviation:

Convict labor. The contractor shall not employ any person undergoing sentence of imprisonment at hard labor. This provision shall not be construed to prevent the contractor or any subcontractor hereunder from obtaining any of the supplies, or any component parts or ingredients thereof, to be furnished under this contract or any of the materials or supplies to be used in connection with the performance of this contract, directly or indirectly, from any Federal, State or territorial prison or prison industry: *Provided,* That such articles, materials or supplies are not produced pursuant to any contract or other arrangement under which prison labor is hired by or employed or used by any private person, firm or corporation.

Any contract related to the prosecution of the war which contains a convict labor provision in a different form from that herein prescribed will be amended by the contracting officer to substitute the form herein prescribed for such other form if the contractor so desires.

For discussion of the above clause as well as of the convict labor provision of the Walsh-Healey clause, see §§ 809.901 to 809.903, inclusive.

§ 803.346 *Eight-hour law.* All contracts subject to the provisions of the Eight-Hour Law of 1912 will contain the following clause without deviation:

Eight-hour law. No laborer or mechanic doing any part of the work contemplated by this contract, in the employ of the contractor or any subcontractor contracting for any part of said work contemplated, shall be required or permitted to work more than 8 hours in any one calendar day upon such work at the site thereof, except upon the condition that compensation is paid to such laborer or mechanic in accordance with the provisions of this article. The wages of every laborer and mechanic employed by the contractor or any subcontractor engaged in the performance of this contract shall be computed on a basic day rate of 8 hours per day and work in excess of 8 hours per day is permitted only upon the condition that every such laborer and mechanic shall be compensated for all hours worked in excess of 8 hours per day at not less than one and one-half times the basic rate of pay. For each violation of the requirements of this article a penalty of $5 shall be imposed upon the contractor for each laborer or mechanic for every calendar day in which such employee is required or permitted to labor more than 8 hours upon said work without receiving compensation computed in accordance with this article, and all penalties thus imposed shall be withheld for the use and benefit of the Government: *Provided,* That this stipulation shall be subject in all respects to the exceptions and provisions of U. S. Code, title 40, sections 321, 324, 325, and 326, relating to hours of labor, as modified by the provisions of Section 303 of Public Act No. 781, 76th Congress, approved September 9, 1940, relating to compensation for overtime.

§ 803.347 *Advance payments with interest.* A clause substantially as follows will be included in fixed-price contracts when it is contemplated that advance payments with interest will be made thereon:

Advance payments. (a) At any time and from time to time, after the approval of this contract, at the request of the Contractor and subject to the approval of the _____ or his duly authorized
(Chief of supply service)
representative, or of the person to whom authority has been delegated to make advance payments, as to the present need therefor, the Government shall advance to the Contractor sums not to exceed _____
(Insert amount of advance payment)
_____ or _____ per centum (____%) of the contract price, as it may be amended, whichever shall be the smaller. On the unliquidated balance of the advance payments outstanding, the Contractor agrees to pay interest at the rate of two and one-half per cent per annum to be computed in accordance with the provisions of paragraph (f).

(b) As a condition precedent to the making of any advance payment or payments as hereinbefore provided, the Contractor shall furnish the Government with such adequate security as the Under Secretary of War or the person to whom authority has been delegated to make advance payments shall prescribe; *Provided:* That, if other security is not prescribed, the terms of this contract shall be considered adequate security for such advance payments; *Provided further:* That, if at any time the Under Secretary of War deems the security furnished by the Contractor inadequate, the Contractor shall furnish such additional security as shall be satisfactory to the Under Secretary of War.

(c) Until all advance payments hereunder are liquidated, all funds received as advance payments under this contract together with _____ per cent (____%) of all other cash
(Insert per cent to be deposited which shall be not less than 85%)
payments under this contract, shall be deposited in a special bank account or accounts at a member bank or banks of the Federal Reserve System, or any "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation (Act of August 23, 1935; 49 Stat. 684), as amended (12 U. S. C. 264), separate from the Contractor's general or other funds. Such special bank account or accounts shall be so designated as to indicate clearly to the bank their special character and purpose, and the balances in such account or accounts shall be used by the Contractor exclusively as a revolving fund for carrying out the purposes of this contract (including reimbursement to the Contractor for any reasonable amounts expended by him for such purposes), and any amendments thereto, and not for the other business of the Contractor; *Provided:* That for the purpose of determining proper disposition of funds hereunder such of the Contractor's costs as may not be directly allocable to this contract, as it may be amended, may be charged against funds deposited in the special account in that proportion which the amount of work being done under this contract, as it may be amended, approximately bears to the total amount of work being performed by the Contractor, out of which such costs also arise, but within the period to which such costs relate. When required by the _____
(Chief of _____ or his duly authorized repre-
technical service)
sentative, or any other person to whom authority to make advance payments has been delegated, withdrawals from such special account or accounts shall be made subject to the prior written approval of the Contracting Officer or his duly authorized representative. Any balances from time to time in such special account or accounts shall secure the repayment of the advances in connection with which the special account or accounts are opened, and the Government shall have a lien upon such balances to secure the repayment of such advances which lien shall be superior to any lien of the bank or any other person upon such account or accounts by virtue of assignment to it of such contract or otherwise; *Provided:* That the bank shall be under no liability to any party hereto for the withdrawal of any funds from said special account upon checks, properly endorsed and signed by the Contractor, except that after the receipt by the bank of written directions from the _____
(Chief of technical service)
or his duly authorized representative, the bank shall act thereon and be under no liability to any party hereto for any action taken in accordance with the said written directions. Any instructions or written directions received by the bank through the Contracting Officer upon War Department stationery and purporting to be signed by, or by the direction of, the _____
(Chief of technical service)
or his duly authorized representative shall, insofar as the rights, duties, and liabilities of the bank are concerned, be conclusively deemed to have been properly issued and filed with the bank by the _____
(Chief of technical service)
or his duly authorized representative.

(d) If, upon the completion of the contract, or upon its termination for other than the fault of the Contractor, the advance payments made to the Contractor have not been fully liquidated in the manner herein provided, the unliquidated balance of such advance payments shall be deducted from any payments otherwise due the Contractor, and if the sum or sums due the Contractor be insufficient to cover such balance, the deficiency shall be paid by the Contractor in cash forthwith after demand and final audit by the Government of all accounts hereunder: *Provided, however,* That in the event of such termination of the contract for other than the fault of the Contractor, such deduction shall not be made prior to final audit unless and only to the extent that, the Contracting Officer or his duly authorized representative shall determine that such action is reasonably required in order to secure the eventual repayment in full to the Government of such unliquidated advance pay-

ments. In the event of cancellation or termination of this contract because of the fault of the Contractor, the Contractor agrees to return to the Government, upon demand, without set-off of any sums alleged to be due the Contractor, the unliquidated balance of any advance payment. Furthermore, if, in the opinion of the _____ (Chief of technical _____ or his duly authorized representative, service) the unobligated balance of the advance payments made by the Government under paragraph (a) hereof exceeds the amount necessary for the current needs of the Contractor, as determined by the _____ (Chief of technical service) or his duly authorized representative the amount of such excess shall, upon demand made by the _____ or his duly au- (Chief of technical service) thorized representative be promptly returned to the Government and will be credited against the balance due the Government on advances previously made. If the demand made in any event set forth in this subparagraph is not met upon receipt of such demand by the Contractor, the amount demanded will bear interest at the rate of six percent (6%) rather than two and one-half percent (2½%) per annum from the date of the receipt of the demand until payment is made. *Provided, however,* That such additional interest over and above the regular two and one-half percent is hereby waived as to any sum paid by the Contractor within 15 days after the amount becomes due hereunder.

(e) Except as otherwise provided herein, liquidation of the principal of any advance payment or advance payments made to the Contractor hereunder shall be made by deductions of _____ per cent (____% from any and all payments made by the Government under the terms of the contract or by means of direct repayment by the Contractor from his own free funds or from the special account or accounts: *Provided,* That if at any time, as a result of amendments to the contract or otherwise, the unliquidated balance of the principal of advance payments made exceeds _____ per cent (____%) of the balance of the total contract price then unpaid, the amount of such excess which has not then been expended or obligated shall upon demand of the _____, or (Chief of technical service) his duly authorized representative be promptly returned to the Government by withdrawal from the special account or accounts or otherwise, and that portion of the excess which has been expended or obligated may, at the option of the Contractor, be so returned and if not so returned, shall, together with any unexpended or unobligated portion of the excess not otherwise returned to the Government, be deducted from any and all payments to be made by the Government under the contract: *Provided further,* That, if and when the contractor has, by means of deductions or otherwise, reimbursed the Government in full for payments made, any money remaining in the special bank account or accounts shall be free and clear of any lien hereunder and the bank or banks concerned shall have authority to pay same to the contractor and shall thereupon be relieved of any further obligation to the Government on account thereof.

(f) On the unliquidated balance of the advance payments outstanding, the contractor agrees to pay interest at the rate of two and one-half per cent per annum. Such interest shall be computed at the end of each calendar month on the average daily balance of the principal of the unliquidated advance payments outstanding. In determining such balance, charges on account of the advance payments to the Contractor hereunder shall be made as of the dates of the checks therefor; credits arising from deductions from payments to the Contractor under this contract shall be made, upon the issue of the check for such payment, as of the dates of shipment as indicated on the Contractor's invoice and/or Government Receiving Report; and credits arising from cash repayments to the Government by the Contractor shall be made as of the dates the checks therefor are received by the disbursing officer. As soon as such monthly computations shall have been made, the interest so determined shall be deducted from the payments otherwise due to contractor under this contract: *Provided, however,* That in no event shall deductions on account of interest exceed five per cent (5%) of the gross payment due the contractor prior to any deduction under this paragraph or paragraph (e) or any other provisions of this contract. In the event the accrued interest exceeds such five per cent, the excess of such interest shall be carried forward and deducted from subsequent payments. The interest shall not be compounded, and shall, subject to the provisions of paragraph (d) hereof, cease to accrue upon the termination of the contract for other than the fault of the contractor, or upon the date found by the Contracting Officer to be the date upon which the contractor completed his performance under the contract.

(g) The contractor shall, at all times, afford to the Contracting Officer or his duly authorized representative, proper facilities for the inspection and audit of the contractor's accounts, and the contractor hereby agrees that the Contracting Officer, or his duly authorized representative, shall have the right, so far as the contractor's rights are concerned, during business hours, to inspect and make copies of any entries in the books and records of the bank relating to the said special account.

(h) Subject to the approval of the Contracting Officer or his duly authorized representative the contractor may make payments to subcontractors and materialmen in advance out of the special account, for labor or services, or to pay for material in advance of delivery at the site of the work or at an approved storage site. Such subadvances shall not exceed _____ per cent of the subcontract price and the subcontractor or materialmen to whom such advances are made shall furnish adequate security therefor. Unless other security is furnished, covenants in subcontracts, expressly made for the benefit of the Government, providing for a subspecial account with Government lien thereon and for a Government lien on property, tangible or intangible, purchased from the special account, and imposing upon the subcontractor substantially the same duties and giving the Government substantially the same rights as are provided herein between the Government and the contractor, have been prescribed by the Under Secretary of War as minimum adequate security for such subadvances.

(i) If no surety bond is furnished as part of the security under subparagraph (b) hereof, then, upon receipt of items or materials paid for from such special account or accounts, such items or materials shall be segregated and the Government shall have a lien on such items or materials until the advance payment or payments have been fully liquidated, or until the item or items and/or materials concerned have become the property of the Government as the result of partial payments, or otherwise; *Provided:* That if segregation in any instance be impracticable and the items or materials concerned are consequently intermingled with other property of the Contractor, then and in that event the lien above provided for in favor of the Government shall extend to the intermingled mass to the amount represented by the value of the items or materials involved; and without limiting the generality of the foregoing, such lien shall continue as follows: (a) in case the contract covers construction, until such items or materials are incorporated into the building, and thereafter on the building in the construction of which the items or materials are incorporated; (b) in the case of items or materials comprising facilities, on such facilities both before and after their installation in the plant; and (c) in the case of articles contracted for, until the items or materials so paid for are fabricated into such articles, and thereafter on the articles until accepted by the Government [; and the Government shall hereby likewise have an effective assignment of a security interest in all intangible property purchased, or otherwise acquired, with funds from said special account].[1] If at any time during the progress of the work under this contract it becomes necessary to deliver any item or items and/or materials upon which the Government has a lien as aforesaid to a third person, the contractor shall notify such third person of the lien herein provided and shall obtain from such third person a receipt, in duplicate, acknowledging, among other things, the existence of such lien. A copy of each receipt shall be delivered by the contractor to the contracting officer.

(j) Any assignment of moneys due or to become due under this contract shall be subordinate to the rights or claims of the Government arising under this contract or any amendment thereto by virtue of any advance payments authorized herein or otherwise; *Provided,* that, if at any time any claim arising under this contract is assigned or purportedly assigned in any manner inconsistent with the said rights of the Government, the _____ or his duly authorized (Chief of technical service) representative shall have the right to suspend further advance payments without notice.

§ 803.348 *Advance payments without interest.* A clause substantially as follows will be included in fixed price contracts when it is contemplated that advance payments without interest will be made thereon:

Advance payments. (a) At any time and from time to time, after the approval of this contract, at the request of the Contractor and subject to the approval of the _____ or his duly authorized (Chief of technical service) representative, or of the person to whom authority has been delegated to make advance payments, as to the present need therefor, the Government shall advance to the Contractor, without payment of interest therefor by the Contractor, sums not to exceed _____ or _____ per (Insert amount of advance payment) centum (____%) of the contract price, as it may be amended, whichever shall be the smaller.

(b) As a condition precedent to the making of any advance payment or payments as hereinbefore provided, the Contractor shall furnish the Government with such adequate security as the Under Secretary of War or the person to whom authority has been delegated to make advance payments shall prescribe; *Provided:* That, if other security is not prescribed, the terms of this contract shall be considered adequate security for such advance payments; *Provided further:* That if at any time the Under Secretary of War deems the security furnished by the Contractor inadequate, the Contractor shall furnish such additional security as shall be satisfactory to the Under Secretary of War.

(c) Until all advance payments hereunder are liquidated, all funds received as advance

[1] The bracket provision may be inserted in the case of experimental contracts or other cases where deemed especially appropriate.

payments under this contract together with _____ per cent (____%) of all
(Insert per cent to be deposited which shall be not less than 85%)
other cash payments under this contract, shall be deposited in a special bank account or accounts at a member bank or banks of the Federal Reserve System, or any "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation (Act of August 23, 1935; 49 Stat. 684), as amended (12 U.S.C. 264), separate from the Contractor's general or other funds. Such special bank account or accounts shall be so designated as to indicate clearly to the bank their special character and purpose, and the balances in such account or accounts shall be used by the Contractor exclusively as a revolving fund for carrying out the purposes of this contract (including reimbursement to the Contractor for any reasonable amounts expended by him for such purposes), and any amendments thereto, and not for the other business of the Contractor; *Provided:* that for the purpose of determining proper disposition of funds hereunder such of the Contractor's costs as may not be directly allocable to this contract, as it may be amended, may be charged against funds deposited in the special account in that proportion which the amount of work being done under this contract, as it may be amended, approximately bears to the total amount of work being performed by the Contractor, out of which such costs also arise, but within the period to which such costs relate. When required by the _____ or his duly authorized
(Chief of technical service)
representative, or any other person to whom authority to make advance payments has been delegated, withdrawals from such special account or accounts shall be made subject to the prior written approval of the Contracting Officer or his duly authorized representative. Any balances from time to time in such special account or accounts shall secure the repayment of the advances in connection with which the special account or accounts are opened, and the Government shall have a lien upon such balances to secure the repayment of such advances which lien shall be superior to any lien of the bank or any other person upon such account or accounts by virtue of assignment to it of such contract or otherwise; *Provided:* That the bank shall be under no liability to any party hereto for the withdrawal of any funds from said special account upon checks, properly endorsed and signed by the Contractor, except that after the receipt by the bank of written directions from the _____
(Chief of
_____ or his duly authorized repre-
technical service)
sentative, the bank shall act thereon and be under no liability to any party hereto for any action taken in accordance with the said written directions. Any instructions or written directions received by the bank through the Contracting Officer upon War Department stationery and purporting to be signed by, or by the direction of, the _____
(Chief of
_____ or his duly authorized represen-
technical service)
tative shall, in so far as the rights, duties, and liabilities of the bank are concerned, be conclusively deemed to have been properly issued and filed with the bank by the _____
_____ or his duly authorized repre-
(Chief of technical service)
sentative.

(d) If, upon the completion of the contract, or upon its termination for other than the fault of the Contractor, the advance payments made to the Contractor have not been fully liquidated in the manner herein provided, the unliquidated balance of such advance payments shall be deducted from any payments otherwise due the Contractor, and if the sum or sums due the Contractor be insufficient to cover such balance, the deficiency shall be paid by the Contractor in cash forthwith after demand and final audit by the Government of all accounts hereunder: *Provided, however,* That in the event of such termination of the contract for other than the fault of the Contractor, such deduction shall not be made prior to final audit unless, and only to the extent that, the Contracting Officer or his duly authorized representative shall determine that such action is reasonably required in order to secure the eventual repayment in full to the Government of such unliquidated advance payments. In the event of cancellation or termination of this contract because of the fault of the Contractor, the Contractor agrees to return to the Government, upon demand, without set-off of any sums alleged to be due the Contractor, the unliquidated balance of any advance payment. Furthermore, if, in the opinion of the_____or his duly author-
(Chief of technical service)
ized representative, the unobligated balance of the advance payments made by the Government under Paragraph (a) hereof exceeds the amount necessary for the current needs of the Contractor, as determined by the _____or his duly authorized
(Chief of technical service)
representative the amount of such excess shall, upon demand made by the_____
_____or his duly authorized
(Chief of technical service)
representative be promptly returned to the Government and will be credited against the balance due the Government on advances previously made. If the demand made in any event set forth in this subparagraph is not met upon receipt of such demand by the Contractor, the amount demanded will bear interest at the rate of six per cent (6%) per annum from the date of the receipt of the demand until payment is made: *Provided, however,* That such payment of interest is hereby waived as to any sum paid by the Contractor within 15 days after the amount becomes due hereunder.

(e) Except as otherwise provided herein, liquidation of any advance payment or advance payments made to the Contractor hereunder shall be made by deductions of _____ per cent (____%) from any and all payments made by the Government under the terms of the contract or by means of direct repayment by the Contractor from his own free funds or from the special account or accounts: *Provided:* That if at any time, as a result of amendments to the contract or otherwise, the unliquidated balance of the principal of advance payments made exceeds _____ per cent (____%) of the balance of the total contract price then unpaid, the amount of such excess which has not then been expended or obligated shall upon demand of the _____,
(Chief of technical service)
or his duly authorized representative be promptly returned to the Government by withdrawal from the special account or accounts or otherwise, and that portion of the excess which has been expended or obligated may, at the option of the Contractor, be so returned and if not so returned, shall, together with any unexpended or unobligated portion of the excess not otherwise returned to the Government, be deducted from any and all payments to be made by the Government under the contract; *Provided further,* that, if and when the Contractor has, by means of deductions or otherwise, reimbursed the Government in full for payments made, any money remaining in the special bank account or accounts shall be free and clear of any lien hereunder and the bank or banks concerned shall have authority to pay same to the Contractor and shall thereupon be relieved of any further obligation to the Government on account thereof.

(f) The Contractor shall, at all times, afford to the Contracting Officer or his duly authorized representative, proper facilities for the inspection and audit of the Contractor's accounts, and the Contractor hereby agrees that the Contracting Officer, or his duly authorized representative shall have the right, so far as the Contractor's rights are concerned, during business hours, to inspect and make copies of any entries in the books and records of the bank relating to the said special account.

(g) Subject to the approval of the Contracting Officer or his duly authorized representative the Contractor may make payments to subcontractors and materialmen in advance out of the special account, for labor or services, or to pay for material in advance of delivery at the site of the work or at an approved storage site. Such subadvances shall not exceed _____ per cent of the subcontract price and the subcontractor or materialmen to whom such advances are made shall furnish adequate security therefor. Unless other security is furnished, covenants in subcontracts, expressly made for the benefit of the Government, providing for a subspecial account with Government lien thereon and for a Government lien on property, tangible or intangible, purchased from the special account, and imposing upon the subcontractor substantially the same duties and giving the Government substantially the same rights as are provided herein between the Government and the Contractor, have been prescribed by the Under Secretary of War as minimum adequate security for such subadvances.

(h) If no surety bond is furnished as part of the security under subparagraph (b) hereof, then, upon receipt of items or materials paid for from such special account or accounts, such items or materials shall be segregated and the Government shall have a lien on such items or materials until the advance payment or payments have been fully liquidated, or until the item or items and/or materials concerned have become the property of the Government as the result of partial payments, or otherwise: *Provided,* That if segregation in any instance be impracticable and the items or materials concerned are consequently intermingled with other property of the Contractor, then and in that event the lien above provided for in favor of the Government shall extend to the intermingled mass to the amount represented by the value of the items or materials involved; and without limiting the generality of the foregoing, such lien shall continue as follows: (a) in case the contract covers construction, until such items or materials are incorporated into the building, and thereafter on the building in the construction of which the items or materials are incorporated; (b) in the case of items or materials comprising facilities, on such facilities both before and after their installation in the plant; and (c) in the case of articles contacted for, until the items or materials so paid for are fabricated into such articles, and thereafter on the articles until accepted by the Government [; and the Government shall hereby likewise have an effective assignment of a security interest in all intangible property purchased, or otherwise acquired, with funds from said special account][1] If at any time during the progress of the work under this contract it becomes necessary to deliver any item or items and/or materials upon which the Government has a lien as aforesaid to a third person, the Contractor

[1] The bracket provision may be inserted in the case of experimental contracts or other cases where deemed especially appropriate.

shall notify such third person of the lien herein provided and shall obtain from such third person a receipt, in duplicate, acknowledging, inter alia, the existence of such lien. A copy of each receipt shall be delivered by the Contractor to the Contracting Officer.

(i) Any assignment of moneys due or to become due under this contract shall be subordinate to the rights or claims of the Government arising under this contract or any amendment thereto by virtue of any advance payments authorized herein or otherwise: *Provided,* That, if at any time any claim arising under this contract is assigned or purportedly assigned in any manner inconsistent with the said rights of the Government, the _____ or his duly
(Chief of technical service)
authorized representative shall have the right to suspend further advance payments without notice.

§ 803.348a *Advance payments; cost-plus-fixed-fee contracts; with interest.* A clause substantially as follows will be included in cost-plus-fixed-fee contracts when it is contemplated that advance payments with interest will be made thereon:

Advance payments. (a) At any time and from time to time after the execution of this contract, the Government at the request of the Contractor and subject to the approval of the _____ or his duly
(Chief of technical service)
authorized representative, or the person to whom authority to make advance payments has been delegated, as to the present need therefor, shall advance to the Contractor sums not to exceed _____ per centum (_____ %) of the estimated cost of this contract (exclusive of the Contractor's fixed fee), as it may be amended from time to time. On the unliquidated balance of the advance payments outstanding, the Contractor agrees to pay interest at the rate of two and one-half percent (2½%) per annum to be computed in accordance with the provisions of paragraph (f) hereof.

(b) As a condition precedent to the making of any advance payment or payments as hereinbefore provided, the Contractor shall furnish the Government with such adequate security as the Under Secretary of War or the person to whom authority has been delegated to make advance payments shall prescribe: *Provided,* That, if other security is not prescribed, the terms of this contract shall be considered adequate security for such advance payments; and *Provided further,* That if at any time the Under Secretary of War deems the security furnished by the Contractor inadequate, the Contractor shall furnish such additional security as shall be satisfactory to the Under Secretary of War.

(c) Until all advance payments hereunder are liquidated, all funds received as advance payments under this contract together with all funds received as reimbursements for the cost of the work under Article _____ of this contract, exclusive of the Contractor's fixed fee, shall be deposited in a special bank account, or accounts at a member bank or banks of the Federal Reserve System or any "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation (Act of August 23, 1935; 49 Stat. 684, as amended; 12 U.S.C. 264) separate from the Contractor's general or other funds. Such special bank account or accounts shall be so designated as to indicate clearly to the bank their special character and purpose, and the balance in such account or accounts shall be used by the Contractor exclusively as a revolving fund for carrying out the purposes of this contract and any amendments thereto, and not for other business of the Contractor. Any balances from time to time in such special account or accounts shall at all times secure the repayment of the advances in connection with which the special account or accounts are opened, and the Government shall have a lien upon such balances to secure the repayment of such advances, which lien shall be superior to any lien of the bank or any other person upon such account or accounts by virtue of assignment to it of such contract or otherwise; *Provided:* That the bank shall be under no liability to any party hereto for the withdrawal of any funds from said special account upon checks properly endorsed and signed by the Contractor, except that after the receipt by the bank of written directions from the _____ or his duly authorized
(Chief of technical service)
representative, the bank shall act thereon and be under no liability to any party hereto for any action taken in accordance with the said written directions. Any instructions or written directions received by the bank through the Contracting Officer upon War Department stationery and purporting to be signed by, or by the direction of, the _____ or his duly authorized
(Chief of technical service)
representative, shall, insofar as the rights, duties, and liabilities of the bank are concerned, be conclusively deemed to have been properly issued and filed with the bank by the _____ or his duly author-
(Chief of technical service)
ized representative.

(d) It is agreed that the aggregate of the advance payments outstanding under this contract, together with funds received as reimbursement for the cost of the work by the Contractor under Article _____ of this contract, shall, at no time, exceed the total estimated cost of the work under this contract as it may be revised from time to time, and any such excess shall be immediately repaid by the Contractor to the Government or if any reimbursement is due from the Government to the Contractor, shall be deducted therefrom: *Provided, however,* That if the total cost of the work under this contract shall be in excess of the amount so paid to the Contractor, including said advance payments, the Government upon presentation of satisfactory evidence shall currently and promptly reimburse the Contractor to the extent of such excess cost (subject to any delay in the availability of appropriated funds).

(e) If, upon completion of this contract, or upon the termination thereof for other than the fault of the Contractor, the advance payments made to the Contractor in respect of this contract have not been fully liquidated in the manner herein provided, the unliquidated balance of such advance payments shall be deducted from any payments otherwise due the Contractor in respect of this contract; and if the sum or sums due the Contractor be insufficient to cover such balance, the deficiency shall be paid by the Contractor in cash forthwith after demand and final audit by the Government of all accounts hereunder in respect of this contract: *Provided, however,* That in the event of such termination of the contract for other than the fault of the Contractor, such deduction shall not be made prior to final audit unless, and only to the extent that, the Contracting Officer or his duly authorized representative shall determine that such action is reasonably required in order to secure the eventual repayment in full to the Government of such unliquidated advance payments. In the event of cancellation or termination of this contract because of the fault of the Contractor, the Contractor, notwithstanding any ultimate rights to be reimbursed, agrees to return to the Government, upon demand, without set-off of any sums alleged to be due the Contractor, the unliquidated balance of any advance payment. Furthermore, if, in the opinion of the _____ or
(Chief of technical service)
his duly authorized representative, the unobligated balance of the advance payments made by the Government under paragraph (a) hereof exceeds the amount necessary for the current needs of the Contractor, as determined by the _____ or his
(Chief of technical service)
duly authorized representative, the amount of such excess shall, upon demand by the _____ or his duly authorized
(Chief of technical service)
representative, be promptly returned to the Government and will be credited against the balance due the Government on advances previously made. If the demand made in any event set forth in this paragraph is not met upon receipt of such demand by the Contractor, the amount demanded will bear interest at the rate of six percent (6%) rather than two and one-half percent (2½%) per annum from the date of the receipt of the demand until payment is made: *Provided, however,* That such additional interest over and above the regular two and one-half percent is hereby waived as to any sums paid by the Contractor within 15 days after the amount becomes due hereunder. If and when the Contractor has, by means of deductions or otherwise, reimbursed the Government in full for payments made, any money remaining in the special bank account or accounts shall be free and clear of any lien hereunder, and the bank or banks concerned shall have authority to pay same to the Contractor and shall thereupon be relieved of any further obligation to the Government on account thereof.

(f) On the unliquidated balance of the advance payments outstanding, the Contractor agrees to pay interest at the rate of two and one-half percent (2½%) per annum. Such interest shall be computed at the end of each calendar month on the average daily balance of the principal of the unliquidated advance payments outstanding. In determining such balance, charges on account of the advance payments to the Contractor hereunder shall be made as of the dates of the checks therefor; credits resulting from disbursements made by the Contractor which are applied against advance payments shall be made upon the approval of the vouchers therefor by the disbursing officer, as of the dates respectively upon which the Contractor presents to the Contracting Officer or his duly authorized representative full and accurate data for the preparation of each such voucher which date shall, as to each such voucher, be certified by the Contracting Officer or his duly authorized representative on the face thereof; and credits arising from cash repayments to the Government by the Contractor shall be made as of the dates the checks therefor are received by the disbursing officer. As soon as such monthly computations shall have been made, the interest charge so determined shall be deducted from any payments on account of the fixed fee which may be made to the Contractor from time to time under this contract. In the event the accrued interest exceeds any such payment, the excess of such interest shall be carried forward and deducted from subsequent payments on account of the fixed fee. The interest shall not be compounded, and shall, subject to the provisions of paragraph (e) hereof, cease to accrue upon the termination of the contract for other than the fault of the Contractor, or upon the date found by the Contracting Officer to be the date upon which the Contractor completed his performance under the contract.

(g) The Contractor shall, at all times, afford to the Contracting Officer, or his duly authorized representative, proper facilities

for the inspection and audit of the Contractor's accounts, and the Contractor hereby agree that the Contracting Officer, or his duly authorized representative, shall have the right so far as the Contractor's rights are concerned, during business hours, to inspect and make copies of any entries in the books and records of the bank or banks relating to the said special account or accounts.

(h) Subject to the approval of the Contracting Officer or his duly authorized representative the Contractor may make payments to subcontractors and materialmen in advance out of the special account, for labor or services, or to pay for materials in advance of delivery at the site of the work or at an approved storage site. Such subadvances shall not exceed _____ percent (_____%) of the subcontract price or estimated cost, as the case may be, and the subcontractor or materialmen to whom such advances are made shall furnish adequate security therefor. Unless other security is furnished, covenants in subcontracts, expressly made for the benefit of the Government, providing for a subspecial account with Government lien thereon and for a Government lien on or title to property, tangible or intangible, purchased from the special account, and imposing upon the subcontractor substantially the same duties and giving the Government substantially the same rights as are provided herein between the Government and the Contractor, have been prescribed by the Under Secretary of War as minimum adequate security for such subadvances.

(i) Any assignment of moneys due or to become due under this contract shall be subordinate to the rights or claims of the Government arising under this contract or any amendment thereto by virtue of any advance payments authorized herein or otherwise; *Provided,* That, if at any time any claim arising under this contract is assigned or purportedly assigned in any manner inconsistent with the said rights of the Government, the_____ or his duly
(Chief of technical service)
authorized representative shall have the right to suspend further advance payments without notice.

§ 803.348b *Advance payments; cost-plus-fixed-fee contracts; without interest.* A clause substantially as follows will be included in cost-plus-a-fixed-fee contracts when it is contemplated that advance payments without interest will be made thereon:

Advance payments. (a) At any time and from time to time after the execution of this contract, the Government at the request of the Contractor and subject to the approval of the _____ or his duly author-
(Chief of technical service)
ized representative, or the person to whom authority to make advance payments has been delegated, as to the present need therefor shall advance to the Contractor, without payment of interest thereon by the Contractor, sums not to exceed _____ per cent (____%) of the estimated cost of this contract (exclusive of the Contractor's fixed fee), as it may be amended from time to time.

(b) As a condition precedent to the making of any advance payment or payments as hereinbefore provided, the Contractor shall furnish the Government with such adequate security as the Under Secretary of War or the person to whom authority has been delegated to make advance payments shall prescribed: *Provided:* That, if other security is not prescribed, the terms of this contract shall be considered adequate security for such advance payments: *And provided further,* That if at any time the Under Secretary of War deems the security furnished by the Contractor inadequate, the Contractor shall furnish such additional security as shall be satisfactory to the Under Secretary of War.

(c) Until all advance payments hereunder are liquidated, all funds received as advance payments under this contract together with all funds received as reimbursements for the cost of the work under Article _____ of this contract, exclusive of the Contractor's fixed fee, shall be deposited in a special bank account or accounts at a member bank or banks of the Federal Reserve System or any "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation (Act of August 23, 1935; 49 Stat. 684) as amended (12 U.S.C. 264) separate from the Contractor's general or other funds. Such special bank account or accounts shall be so designated as to indicate clearly to the bank their special character and purpose, and the balance in such account or accounts shall be used by the Contractor exclusively as a revolving fund for carrying out the purposes of this contract and any amendments thereto and not for other business of the Contractor. Any balances from time to time in such special account or accounts shall at all times secure the repayment of the advances in connection with which the special account or accounts are opened, and the Government shall have a lien upon such balances to secure the repayment of such advances, which lien shall be superior to any lien of the bank or any other person upon such account or accounts by virtue of assignment to it of this contract or otherwise; *Provided:* That the bank shall be under no liability to any party hereto for the withdrawal of any funds from said special account upon checks, properly endorsed and signed by the Contractor, except that after the receipt by the bank of written directions from the _____ or his duly
(Chief of technical service)
authorized representative, the bank shall act thereon and be under no liability to any party hereto for any action taken in accordance with the said written directions. Any instructions or written directions received by the bank through the Contracting Officer upon War Department stationery and purporting to be signed by, or by the direction of, the _____ or his duly author-
(Chief of technical service)
ized representative, shall, in so far as the rights, duties, and liabilities of the bank are concerned, be conclusively deemed to have been properly issued and filed with the bank by the _____ or his duly au-
(Chief of technical service)
thorized representative.

(d) It is agreed that the aggregate of the advance payments outstanding under this contract together with funds received as reimbursement for the cost of the work by the Contractor under Article _____ of this contract shall, at no time, exceed the total estimated cost of the work under this contract as it may be revised from time to time and any such excess shall be immediately repaid by the Contractor to the Government or if any reimbursement is due from the Government to the Contractor, shall be deducted therefrom; *Provided, however,* That if the total cost of the work under this contract shall be in excess of the amount so paid to the Contractor, including said advance payments, the Government upon presentation of satisfactory evidence shall currently and promptly reimburse the Contractor to the extent of such excess cost (subject to any delay in the availability of appropriated funds).

(e) If, upon completion of this contract, or upon the termination thereof for other than the fault of the Contractor, the advance payments made to the Contractor in respect of this contract have not been fully liquidated in the manner herein provided, the unliquidated balance of such advance payments shall be deducted from any payments otherwise due the Contractor in respect of this contract; and if the sum or sums due the Contractor be insufficient to cover such balance, the deficiency shall be paid by the Contractor in cash forthwith after demand and final audit by the Government of all accounts hereunder in respect of this contract: *Provided, however,* That in the event of such termination of the contract for other than the fault of the Contractor, such deduction shall not be made prior to final audit unless, and only to the extent that, the Contracting Officer or his duly authorized representative shall determine that such action is reasonably required in order to secure the eventual repayment in full to the Government of such unliquidated advance payments. In the event of cancellation or termination of this contract because of the fault of the Contractor, the Contractor, notwithstanding any ultimate rights to be reimbursed, agrees to return to the Government, upon demand, without set-off of any sums alleged to be due the Contractor, the unliquidated balance of any advance payment. Furthermore, if, in the opinion of the _____ or
(Chief of technical service)
his duly authorized representative, the unobligated balance of the advance payments made by the Government under paragraph (a) hereof exceeds the amount necessary for the current needs of the Contractor, as determined by the _____ or his
(Chief of technical service)
duly authorized representative, the amount of such excess shall, upon demand by the _____ or his duly authorized
(Chief of technical service)
representative, be promptly returned to the Government and will be credited against the balance due the Government on advances previously made. If the demand made in any event set forth in this paragraph is not met upon receipt of such demand by the Contractor, the amount demanded will bear interest at the rate of six percent (6%) per annum from the date of the receipt of the demand until payment is made; *Provided, however,* That such payment of interest is hereby waived as to any sum paid by the Contractor within 15 days after the amount becomes due hereunder. If and when the Contractor has, by means of deductions or otherwise, reimbursed the Government in full for payments made, any money remaining in the special bank account or accounts shall be free and clear of any lien hereunder and the bank or banks concerned shall have authority to pay same to the Contractor and shall thereupon be relieved of any further obligation to the Government on account thereof.

(f) The Contractor shall, at all times, afford to the Contracting Officer, or his duly authorized representative, proper facilities for the inspection and audit of the Contractor's accounts, and the Contractor hereby agrees that the Contracting Officer, or his duly authorized representative shall have the right so far as the Contractor's rights are concerned, during business hours, to inspect and make copies of any entries in the books and records of the bank or banks relating to the said special account or accounts.

(g) Subject to the approval of the Contracting Officer or his duly authorized representative the Contractor may make payments to subcontractors and materialmen in advance out of the special account, for labor or services, or to pay for materials in advance of delivery at the site of the work or at an approved storage site. Such subadvances shall not exceed _____ percent (____%) of the subcontract price or estimated cost, as the case may be, and the subcontractor or materialmen to whom such advances are made shall furnish adequate security therefor. Unless other security is furnished, covenants in subcontracts, expressly made for

the benefit of the Government, providing for a subspecial account with Government lien thereon and for a Government lien on or title to property, tangible or intangible, purchased from the special account, and imposing upon the subcontractor substantially the same duties and giving the Government substantially the same rights as are provided herein between the Government and the Contractor, have been prescribed by the Under Secretary of War as minimum adequate security for such subadvances.

(h) Any assignment of moneys due or to become due under this contract shall be subordinate to the rights or claims of the Government arising under this contract or any amendment thereto by virtue of any advance payments authorized herein or otherwise, *Provided* That, if at any time any claim arising under this contract is assigned or purportedly assigned in any manner inconsistent with the said rights of the Government, the _____ or his
(Chief of technical service)
duly authorized representative shall have the right to suspend further advance payments without notice.

§ 803.349 *Advance payments; additional provision.* The following sentences may be inserted immediately following the second sentence of clause (c) of the Advance Payments Articles set forth in §§ 803.347 and 803.348 when (a) a contractor has more than one contract with the supply service concerned and segregation of materials and separate accounting between the contracts are difficult or impracticable and (b) the contracts to be included within the pooling arrangement run concurrently or substantially overlap each other in time of performance:

When so authorized in writing by the Contracting Officer or his duly authorized representative, funds received as advance payments under this contract and any other contract or contracts now in existence or hereafter entered into between the_____
(Chief of tech-
_____ and the Contractor, together with nical service)
any or all payments under this contract and such other contracts which are required to be deposited in a special account, may be considered to be a single revolving fund which may be used by the Contractor for the purposes of any or all of said contracts without regard to the origin of such funds. In such event, any provision of this contract inconsistent with the foregoing provision shall be automatically modified accordingly.

Under like circumstances a similar insertion may be made after the second sentences of Article 3 of War Department Contract Forms Numbers 20 and 23. (See §§ 813.1320 and 813.1323).

§ 803.349a *Advance payments; optional amendment to clause in § 803.348a.* (a) The following sentence may be inserted immediately following the third sentence of paragraph (f) of the advance payments article set forth in § 803.348a, either before or after termination, when it is desired to make partial payments to subcontractors in accordance with § 815 654 (a) (2):

When the work under this contract is terminated in whole or in part and partial payments are made to subcontractors against their termination claims out of the revolving fund set up under paragraph (c) hereof, the average daily balance of the principal of the unliquidated advance payments will be reduced for the purpose of the computation of interest by the amount of such partial payments from the time such payments are made until the contractor is reimbursed for termination settlements with such subcontractors.

(b) If the article in § 803.348a is amended as provided for in (a) above, the following new clause also should be inserted in the article:

Subject to the approval of the Contracting Officer or his duly authorized representative the Contractor may, in the event of the termination of this contract in whole or in part, make partial payments to subcontractors and suppliers out of the special account against their termination claims without regard to the provisions of paragraph (h) hereof.

(c) Under like circumstances similar insertions may be made in War Department Contract Form Number 21. (See § 813.1321.)

§ 803.350 *Termination clause.* The following clause will be incorporated in all cost-plus-a-fixed-fee construction contracts without deviation:

Termination for convenience of the Government. 1. The Government may terminate this contract at any time by a notice in writing from the Contracting Officer to the Contractor. Such termination shall be effective in the manner and upon the date specified in said notice and shall be without prejudice to any claims which the Government may have against the Contractor. Upon receipt of such notice, the Contractor shall, unless the notice directs otherwise, immediately discontinue all work and the placing of all orders for materials, facilities, and supplies in connection with performance of this contract and shall proceed to cancel promptly all existing orders and terminate all subcontracts insofar as such orders and/or subcontracts are chargeable to this contract.

2. If this contract is terminated for the fault of the Contractor, the Contracting Officer may enter upon the premises and take possession for the purpose of completing the work contemplated by this contract, of any or all materials, tools, machinery, equipment, and appliances which may be owned by or in the possession of the Contractor and all options, privileges, and rights, and may complete or employ any other person or persons to complete said work. Following such termination, rental shall be paid to the Contractor for such construction plant or parts thereof as he may own, and which the Government may retain at rates prescribed in Article ——.

3. Upon the termination of this contract, full and complete settlement of all claims of the Contractor arising out of this contract shall be made as follows:

a. The Government shall assume and become liable for all obligations, commitments, and claims that the Contractor may have theretofore in good faith undertaken or incurred in connection with said work, the cost of which would be reimbursable in accordance with the provisions of this contract; and the Contrator shall, as a condition of receiving the payments mentioned in this article, execute and deliver all such papers and take all such steps as the Contracting Officer may require for the purpose of fully vesting in the Government, the rights and benefits of the Contractor under such obligations or commitments.

b. The Government shall reimburse the Contractor for all expenditures made in accordance with Article _____ and not previously reimbursed.

c. The Government shall reimburse the Contractor for such further expenditures after the date of termination for the protection of Government property and for accounting services in connection with the settlement of this contract as are required or approved by the Contracting Officer.

d. The Government shall pay to the Contractor any unpaid balance for the rental of the Contractor's equipment in accordance with Article _____ to date of termination.

e. If the contract is terminated for the convenience of the Government, the Contractor will be paid that proportion of the prescribed fee which the work actually completed bears to the entire work under this contract less fee payments previously made. If the contract is terminated due to fault of the Contractor, no additional payments on account of the fee will be made.

f. The obligation of the Government to make any of the payments required by this Article, or by Article _____ of this contract, shall be subject to any unsettled claims in connection with this contract which the Government may have against the Contractor.

4. Prior to final settlement the Contractor shall furnish a release as required in Article _____ hereof.

§ 803.351 *Price adjustment articles.* The price adjustment articles set forth in this section may be used when it is desired to provide for Price Adjustment under certain circumstances. Such articles will be used in accordance with the instructions contained in §§ 812.1232 and 812.1233.

(a) *Article _____. Price adjustment for costs of natural and synthetic rubber.*

(a) The Contractor represents that the prices under this contract have been fixed on the assumption that natural and synthetic rubber to be used by it and its subcontractors in the performance of this contract will be obtained at the following prices specified in the agreement between Rubber Reserve Company and the War Department:

Type of rubber:	*Estimated pound quantities*	*Price per (cents)*
Natural rubber	_____	22½
GRS synthetic (Buna S)	_____	18½
GRI synthetic (Butyl)	_____	15½
GRM synthetic (Neoprene, type GN)	_____	27½

(b) If that agreement between Rubber Reserve Company and the War Department is hereafter revised or terminated, and the prices payable by War Department contractors and subcontractors for natural or such synthetic rubber are increased above or reduced below the prices per pound specified in (a) above, the parties hereto will equitably adjust the contract price hereunder to reflect any increase or decrease in the costs of the Contractor in performing this contract to the extent caused by such change in the price of natural or such synthetic rubber. If the parties fail to agree upon the adjustment to be made the dispute shall be determined in accordance with the "Disputes" article hereof. Any adjustment hereunder shall be evidenced by a supplemental agreement to this contract.

(b) *Article _____. Price adjustment for freight costs on allocations.*

(a) The Contractor represents that the contract price is based on procuring any steel needed for the performance of this contract from the plant of the _____ Company located at _____ at a net cost to the Contractor of $_____ per ton for freight.

(b) If as a result of priority or allocation orders by any Government agency the Contractor is unable to procure all or any part of the steel needed for the performance of this contract from that source and is required to obtain all or part of such steel from some other point of origin, the parties will make an equitable adjustment in the contract price for any increase or decrease in freight costs to the Contractor resulting from such change in source, in accordance with section (c).

(c) The Contractor will notify the Contracting Officer within 30 days after it is first required to obtain steel from some other source, or within such further period as the Contracting Officer may allow before the date of final settlement of the contract. The Contractor will keep accurate records, based on his regular system of inventory accounting, of all such material so purchased for the performance of this contract and of the freight paid thereon. After the Contractor has obtained all of such material needed hereunder, he shall promptly submit to the Contracting Officer a statement showing the quantities of such material purchased hereunder and actual freight paid thereon. The Contracting Officer may agree with the Contractor for such adjustment, if any, in the contract price as he deems justified. If the parties fail to agree upon the adjustment to be made, the dispute will be determined in accordance with Article ____ (Disputes). The adjustment shall be evidenced by supplemental agreement to this contract.

(c) *Article ____. Price adjustments for changes in delivery schedules.*

(a) If the Government reduces the rate of deliveries hereunder by partial termination for the convenience of the Government, or if, without fault or negligence on the part of the Contractor, the Government or any of its agencies or instrumentalities, by any preference, priority or allocation order, or by any other act, at any time prevents the Contractor from delivering any of the items under this contract in accordance with the delivery schedules then in effect, and such reduction or delay so changes or interrupts the Contractor's schedules of production as substantially to affect the cost of any of the items procured hereunder, the Government will make an equitable adjustment in the contract price and time for performance hereunder.

(b) The Contractor shall assert any claim for adjustment under this Article within thirty (30) days after the date any such reduction is ordered or any such delay first occurs or within such further period as the Contracting Officer may allow before the date of final settlement of the contract. The Contracting Officer may agree with the Contractor upon such adjustment, if any, in the contract price or time of performance hereunder or both, as he deems justified. If the parties fail to agree as to the cause of the delay or upon the adjustment to be made the dispute shall be determined in accordance with Article ____ (Disputes). The adjustment shall be evidenced by a supplemental agreement to this contract.

(d) *Article for use in contracts for the purchase of lumber; coal; or basic steel products from steel mills (Schedule I of CMP Regulation 1, as amended from time to time).*

Article ____. Escalation in relation to OPA ceiling prices. The contractor represents and warrants that the prices shown herein are not in excess of the maximum prices established by the Office of Price Administration, or other authorized government agency, and in effect upon the date hereof for the supplies to be furnished hereunder. In the event such maximum price applicable to any item is increased or decreased the price payable for any subsequent delivery of such item made in accordance with the provisions of the contract, shall be increased, or decreased, by the same number of cents, or fraction thereof, per unit, that such maximum price may be increased, or decreased, up to and including the date of delivery.

NOTE: Where the foregoing article is used, the following clause may be added:

Price adjustment in relation to other factors. In the event that the establishment and maintenance by the Office of Price Administration or other Government agency of maximum prices for the type of [lumber] [coal] [steel] covered by this contract is terminated during the contract period, and if during the remainder of such period changes should occur in working hours, wage scales, or other conditions of employment, which changes are a part of the general revision of such conditions [within the producing district where the coal is mined], the parties hereto, upon the request in writing of one to the other within 30 days after the effective date upon which any such change occurs, may redetermine by negotiation the unit price affected: *Provided*, That pending such negotiation the contractor shall continue deliveries hereunder. Any price redetermination as herein provided shall be applicable to all deliveries after the effective date upon which the change occurs permitting redetermination as herein provided.

(e) [Deleted]

(f) *Article for use only in long term contracts (six months or more) for the purchase of gasoline and fuel oil (other than aviation gasoline).*

Article ____. Escalation in relation to OPA ceiling prices.—The contractor represents and warrants that the prices shown herein are not in excess of the maximum prices established by the Office of Price Administration, or other authorized government agency, and in effect upon the date hereof for the supplies to be furnished hereunder. In the event such maximum price applicable to any item is increased the price payable for any subsequent delivery of such item, made in accordance with the provisions of the contract, shall be increased by the same number of cents or fractions thereof, per unit, that such maximum price may be increased up to and including the date of delivery unless such price is redetermined as hereinafter provided. In the event such maximum price is decreased, the price payable for any deliveries made subsequent to the reduction shall not be changed (except that if such maximum price shall be below the contract price, the contract price shall be reduced to the maximum price) unless such price is redetermined as hereinafter provided. Within sixty days after the date of any change in such maximum price, the contractor, if required by the contracting officer so to do, shall furnish the contracting officer with such pertinent data, as he may reasonably require showing the extent to which the factors causing such change are applicable to the supplies to be furnished. Any accounting data shall be that resulting from customary accounting practice in the industry. Upon the basis of such information the parties, by negotiation, shall redetermine the price applicable to such items, which redetermined price shall be effective from the date of the change in such maximum price until another change occurs in said maximum price. In the event of the failure of the parties to agree upon a redetermined price the contracting officer may terminate at the end of said sixty-day period (and within fifteen days thereafter) the right of the contractor to proceed with further deliveries of such item without liability upon either party except liability incurred with respect to deliveries made or orders placed prior to the date of termination. Failure on the part of the contracting officer to terminate the contract under the provisions of this paragraph shall not affect the right of the government to terminate under any other provisions of this contract.

§ 803.352 *Delays-damages clause.* Every lump-sum supply contract, regardless of subject matter except contracts for an amount of less than $5,000, will contain a clause substantially as follows:

Delays-Damages. (a) If the Contractor refuses or fails to make deliveries of the supplies within the time specified in Article __, or any extension thereof, the Government, subject to the provisions of paragraph (b) below, may, by a notice in writing from the Contracting Officer to the Contractor of its intention to terminate under this Article, terminate the right of the Contractor to proceed with delivery of the supplies or such parts thereof as to which there has been delay. In such event, the Government may (1) require the Contractor to deliver to the Government such completed supplies, partially completed supplies and materials, parts, plans, drawings, information, and contract rights of the Contractor, (hereinafter called manufacturing material), as the Contractor has produced or acquired for the performance of such portion of this contract as to which the right to proceed with delivery is terminated, and accomplish or secure the completion or manufacture of supplies therewith; and, in addition thereto or in lieu thereof (2) purchase in the open market or secure by contract or otherwise, the manufacture and delivery of supplies similar to those called for by this contract in an amount which together with the supplies, if any, completed under (1) above shall not exceed the amount of supplies the right to proceed with delivery of which is terminated. If delivery is made pursuant to clause (1) of the preceding sentence the Government shall pay to the Contractor, less any previous payments, the following: (a) For each unit of the completed supplies accepted by the Government the unit contract price, and (b) for all partially completed supplies and manufacturing material delivered, the unit contract price for each unit of supplies completed or manufactured therewith, less the cost to the Government of completion or manufacture, but if that cost exceeds the unit contract price, the Contractor and his sureties shall be liable for such excess. If the cost to the Government of supplies procured in accordance with clause (2) above exceeds the corresponding unit price or prices under this contract, the Contractor and his sureties shall be liable for such excess.

(b) The Government shall not have a right of termination under this Article if (i) the delay of the Contractor in making deliveries is an excusable delay, as hereinafter defined, and (ii) the Contractor notifies the Contracting Officer in writing of such delay and the cause thereof, within ten days from the beginning thereof or within such further period as the Contracting Officer shall, with the approval of the Secretary of War or his duly authorized representative, prior to the date of final settlement of the contract, grant for the giving of such notice. Upon receipt of such notification from the Contractor, the Contracting Officer shall ascertain the cause of the delay, and his findings of fact thereon shall be final and conclusive on the parties hereto, subject to appeal within thirty days by the Contractor to the Secretary of War or his duly authorized representative, whose decision on such appeal as to the cause of delay shall be final and conclusive on the parties hereto. The term "excusable delay" as used in this paragraph means any delay in making deliveries which results without fault or neg-

ligence on the part of the Contractor and which is due to unforeseeable causes beyond his control including, without being limited to, acts of God or of the public enemy, any preference, priority or allocation order issued by the Government or any other act of the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; and, unless the Contracting Officer shall determine that the materials or supplies to be furnished under a subcontract are procurable in the open market, any delay of a Subcontractor which results without fault or negligence on the part of the Contractor, and which is due to unforeseeable causes beyond the control of the Contractor, including without being limited to the types of causes above enumerated.

(a) If desired, paragraph (b) of the clause set forth above may be modified in either of the following manners:

(1) The portion of said paragraph (b) commencing with the word "and" in the fifth line and ending with the word "Contractor" in the fifteenth line of that paragraph, may be eliminated. In such event, the "(i)" in the third line of that paragraph will be eliminated, the comma after the word "defined" in the fifth line will be changed to a period, and the word "the" in the fifteenth line will be changed to "The".

(2) There may be substituted for the first sentence of said paragraph (b), the following sentence:

The Government shall not have a right of termination under this Article if (i) the delay of the Contractor in making deliveries is an excusable delay, as hereinafter defined, and (ii) the Contractor notifies the Contracting Officer in writing of such delay and the cause thereof, prior to the date of final settlement of the contract.

(b) If desired, the word "unforeseeable", contained in the clause set forth above, may be omitted. If the word is omitted, and bids are being solicited informally or otherwise, and there exists some foreseeable and probable cause of delay which would be beyond the control of the contractor, care should be exercised in evaluating the various bids submitted. It is possible under those circumstances for contractor "A" to submit a bid which requires performance within a time schedule which could not possibly be adhered to if such cause of delay materialized. Under the delays-damages clause, as modified in accordance with this paragraph, the failure to perform within the time schedule might well be construed as an excusable delay. Contractor "B", although capable of performing with as great despatch as "A" may allow for the probable cause of delay, and submit a bid calling for deliveries at a date later than that offered by "A". In evaluating the two bids, the fact that "A" has not made allowance for the probable cause of delay should be taken into account.

(c) For the purpose of the first sentence of paragraph (b) of the Delays-Damages clause set forth above, and for the purpose of any like provision contained in any contract clause which has been inserted in a contract in lieu of said Delays-Damages clause, the chief of the technical service or such person as he may designate shall be deemed to be the "duly authorized representative of the Secretary of War". If desired, the term "chief of technical service or his duly authorized representative" may be substituted for the term "Secretary of War or his duly authorized representative".

§ 803.352a *Provision for liquidated damages.* Except with the permission of the chief of the technical service concerned (which may be granted with respect to contracts individually or by class), or in accordance with general instructions given by him, no contract shall provide for liquidated damages in the event of default. Where a contract provides for liquidated damages and a default takes place, action will be taken, subject to the provisions of §§ 803.308e, 803.379 and 803.380, promptly on behalf of the Government to enforce any remedies available under the contract. So far as possible, such action will be taken in such manner as will prevent the inequitable accumulation of liquidated damages.

§ 803.353 *Walsh-Healey Act; representations and stipulations.* All supply contracts subject to the Walsh-Healey Act (Act of June 30, 1936; Public Law No. 846, 74th Congress; 49 Stat 2036; 41 U.S.C. 35–45) (see § 809.916 and sections following), except as provided in paragraph (d), will contain the following clause without deviation:

Representations and stipulations pursuant to the Walsh-Healey Act:

(a) The contractor is the manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured, or used in the performance of the contract.

(b) All persons employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any account, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under the contract: *Provided, however,* That this stipulation with respect to minimum wages shall apply only to purchases or contracts relating to such industries as have been the subject matter of a determination by the Secretary of Labor.

(c) No person employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract shall be permitted to work in excess of 8 hours in any 1 day or in excess of 40 hours in any 1 week unless such person is paid such applicable overtime rate as has been set by the Secretary of Labor: *Provided, however,* That the provisions of this stipulation shall not apply to any employer who shall have entered into an agreement with his employees pursuant to the provisions of paragraphs 1 or 2 of subsection (b) of section 7 of an act entitled "The Fair Labor Standards Act of 1938": *Provided further,* That in the case of such an employer, during the life of the agreement referred to, the applicable overtime rate set by the Secretary of Labor shall be paid for hours in excess of 12 in any 1 day or in excess of 56 in any 1 week and if such overtime is not paid, the employer shall be required to compensate his employees during that week at the applicable overtime rate set by the Secretary of Labor for hours in excess of 8 in any 1 day or in excess of 40 in any 1 week.

(d) No male person under 16 years of age and no female person under 18 years of age and no convict labor will be employed by the contractor in the manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in the contract.

(e) No part of the contract will be performed nor will any of the materials, supplies, articles, or equipment to be manufactured or furnished under said contract be manufactured or fabricated in any plants, factories, buildings, or surroundings or under working conditions which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of the contract. Compliance with the safety, sanitary, and factory inspection laws of the State in which the work or part thereof is to be performed shall be prima facie evidence of compliance with this subsection.

(f) Any breach or violation of any of the foregoing representations and stipulations shall render the party responsible therefor liable to the United States of America for liquidated damages, in addition to damages for any other breach of the contract, in the sum of $10 per day for each male person under 16 years of age or each female person under 18 years of age, or each convict laborer knowingly employed in the performance of the contract, and a sum equal to the amount of any deductions, rebates, refunds or underpayment of wages due to any employee engaged in the performance of the contract; and, in addition, the agency of the United States entering into the contract shall have the right to cancel same and to make open-market purchases or enter into other contracts for the completion of the original contract, charging any additional cost to the original contractor. Any sums of money due to the United States of America by reason of any violation of any of the representations and stipulations of the contract as set forth herein may be withheld from any amounts due on the contract or may be recovered in a suit brought in the name of the United States of America by the Attorney General thereof. All sums withheld or recovered as deductions, rebates, refunds, or underpayments of wages shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employees who have been paid less than minimum rates of pay as set forth in such contracts and on whose account such sums were withheld or recovered: Provided, That no claims by employees for such payments shall be entertained unless made within 1 year from the date of actual notice to the contractor of the withholding or recovery of such sums by the United States of America.

(g) The contractor shall post a copy of the stipulations in a prominent and readily accessible place at the site of the contract work and shall keep such employment records as are required in the Regulations under the act available for inspection by authorized representatives of the Secretary of Labor.

(h) The foregoing stipulation shall be deemed inoperative if this contract is for a definite amount not in excess of $10,000.

(a) *Changes in regulations under Walsh-Healey Act.* From time to time there are issued by the Secretary of Labor changes in regulations under the Walsh-Healey Act which have the effect of modifying the standard representations and stipulations which are required to be inserted in supply contracts subject to that act (see, for example, § 809.917 (b) (5)),

Accordingly, if desired, there may be added to the representations and stipulations set forth above an additional paragraph as follows:

(i) The foregoing representations and stipulations shall be subject to all applicable regulations, determinations and exemptions of the Secretary of Labor now or hereafter in effect.

(b) *Convict labor.* For discussion of the provision with respect to convict labor contained in paragraph (d) of the representations and stipulations set forth above, see § 809.903 (b).

(c) *Minimum wage determinations under the Walsh-Healey Act.* (1) It is not necessary that contracts subject to the Walsh-Healey Act contain a statement as to the minimum wage determination which is applicable.

(2) Provisions of subparagraph (1) above do not however, affect the requirement that the applicable minimum wage determination, if any, be set forth in the individual purchase action report (see § 802.293).

(d) *Incorporation by reference of Walsh-Healey Act stipulations.* By Circular Letter No. 12-42, dated January 4, 1943, the Administrator of the Wage and Hour and Public Contracts Divisions of the Department of Labor permitted the incorporation of the Walsh-Healey Act representations and stipulations by reference. Accordingly, notwithstanding the provisions of this section, such representations and stipulations may be incorporated by reference. The following language is suggested.

The representations and stipulations required by Section 1 of the Act of June 30, 1936 (Walsh-Healey Act, Public No. 846, 74th Congress) to be included in all contracts therein specified are hereby incorporated and made a part of this contract with the same force and effect as if fully set forth in the contract.

If desired, the following sentence may be added:

Such representations and stipulations shall be subject to all applicable regulations, determinations, and exemptions of the Secretary of Labor now or hereafter in effect.

(Compare paragraph (a).)

§ 803.354 *Notice to Government of labor disputes.* The following clause will be contained without deviation in all contracts except (1) those to which it is clearly inapplicable (2) those which are written on a standard form of contract, such as War Department Contract Form No. 17 (§ 813.1317), which does not contain the clause:

Notice to the Government of labor disputes. Whenever an actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor will immediately give notice thereof to the[1]_____ Such notice shall include all relevant information with respect to such dispute.

§ 803.355 *Assignment of rights; unclassified contracts.* In accordance with the Assignment of Claims Act of 1940 every contract which provides for payments aggregating $1,000 or more, with the exception of secret, confidential and restricted contracts, will contain the following clause without deviation:

Assignment of rights hereunder. (a) Claims for monies due or to become due the Contractor from the Government under this contract may be assigned to a bank, trust company or other financing institution, including any Federal lending agency. Any such assignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment may be made to one party as agent or trustee for two or more parties participating in such financing.

(b) In the event of any such assignment the assignee shall file four signed copies of a written notice of the assignment, together with one copy of the instrument of assignment, with each of the following:

(i) General Accounting Office;

(ii) the Contracting Officer;

(iii) the surety or sureties upon the bond or bonds, if any, in connection with this contract;

(iv) the officer designated in this contract to make payments thereunder.

(c) Any claim under this contract which has been assigned pursuant to the foregoing provisions of this Article may be further assigned and reassigned to a bank, trust company or other financing institution, including any Federal lending agency. In the event of such further assignment or reassignment the assignee shall file one signed copy of a written notice of the further assignment or reassignment together with a true copy of the instrument of further assignment or reassignment with the contractor; and shall file four signed copies of such written notice and one copy of such instrument with each of the parties designated in the preceding paragraph.

(d) No assignee shall divulge any information concerning the contract except to those persons concerned with the transaction.

(e) Payment to an assignee of any claim under this contract shall not be subject to reduction or set-off for any indebtedness of the assignor to the United States arising independently of this contract.

(f) Indication of the assignment of claim and of any further assignment thereof and the name of the assignee will be made on all vouchers or invoices certified by the contractor.

§ 803.356 *Assignment of rights; secret, confidential and restricted contracts.* Unless the omission of such provision is authorized by the chief of the technical service concerned, secret, confidential and restricted contracts will contain the following clause without deviation:

Assignment of Rights Hereunder. No claim under this contract shall be assigned. In the event that the omission of the foregoing provision is authorized as aforesaid, the contract will contain without deviation the clause set forth in § 803.355 and there shall be added thereto the following paragraphs without deviation:

(g) In no event shall copies of any plans, specifications, or other similar documents marked "Secret", "Confidential" or "Restricted" and annexed or attached to this contract be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive the same.

(h) The contractor agrees that he will obtain from the assignee an agreement signed by such assignee similar to that required by paragraph 51, AR 320-5. In such agreement the assignee shall also agree that, in case of further assignment, it will obtain a similar agreement from such assignee.

§ 803.357 *Tax articles in fixed price (lump sum) contracts.* Forms of tax articles are set forth below in paragraphs (a) and (b). Whichever form is applicable must be used in all contracts executed on or after 1 June 1944 and may be used (in preference to the forms of articles formerly contained in such paragraphs) in contracts executed before that date.

(a) *Long form tax article.* Except as otherwise stated in paragraphs (b) and (e) all fixed price (lump sum) contracts will include a tax article substantially in the form set forth in this paragraph. Attention is directed to the necessity of including in each contract suitable provisions (see § 805.358) to specify any taxes to be excluded from or included in the contract price otherwise than as provided in such tax article. If desired, the words "of the award of this contract" or "of the bid upon the basis of which this contract was placed" may be substituted for the italicized words "of this contract" in the following article, provided that such substitution is made uniformly throughout the article and that the date of the award or the date of the bid, as the case may be, is specified in the contract.

Article _____. Taxes. (a) Unless otherwise indicated in this contract, (A) the prices herein do not include any state or local sales, use or other tax from which the Contractor or this transaction of the procurement of these supplies or work is exempt, and (B) the prices herein include all applicable Federal taxes and other applicable state and local taxes in effect at the date *of this contract.* Upon request of the Contractor the Government will issue tax exemption certificates or furnish other similar proof of exemption with respect to all taxes excluded from the price.

(b) If after the date *of this contract* the Federal Government or any state or local government shall impose, remove or change (including any change by the removal by statute of an exemption available to the Contractor for the purposes of this contract) any duty, sales, use or excise tax or any other tax or charge directly applicable to the supplies or work covered hereby or the materials used in the manufacture thereof or directly upon the importation, production, processing, manufacture, construction, sale or use of such supplies, work or materials, which tax or charge must be borne by the Contractor because of a specific contractual obligation or by operation of law, or, in case of a decrease or elimination of any such tax, where the Contractor is relieved to that extent, and, if in case of an increase in such an existing tax or the imposition of such a new tax the Contractor has paid such tax or charge to the Federal Government or to a state or local government, or any other person, then the prices named herein will be increased or decreased accordingly and any amount due to the Contractor as a result of such change will be charged to the Government and entered on vouchers (or invoices) as a separate item: *Provided, however,* That the Government reserves the right to issue to the Contractor in lieu of such payment a tax exemption certificate or certificates acceptable to the Federal Government or state or

[1] Such officers as may be designated by the chief of the technical service concerned.

local government, as the case may be. The amount of any adjustment pursuant to this paragraph (b) may be determined by a written agreement between the parties hereto. Nothing contained herein shall be construed as requiring the Government to reimburse the Contractor for any Federal, state, or local income taxes, income surtaxes or excess profits taxes, transportation taxes, or taxes on property.

(c) In the case of any state or local tax or charge which the Contractor contends is chargeable to the Government because of the provisions of this Article, or any other provision of this contract, the Contractor agrees to refrain from paying any such tax or charge upon the direction of the Contracting Officer (in which event the Government will save the Contractor harmless from penalties and interest incurred through compliance with the direction of the Contracting Officer not to pay such tax); to take such steps as may be directed by the Government to cause such tax or charge to be paid under protest; to preserve and, if so directed by the Contracting Officer, to cause to be assigned to the Government any and all rights to the abatement or refund of such tax or charge; if so requested, to permit the Government to prosecute any claim, litigation or proceeding for the refund of such tax in the name of the Contractor, and to furnish to the Government all reasonable assistance and cooperation requested by the Government in any litigation or proceeding for the recovery of such tax or charge.

(d) Where any duties or taxes have been included in the contract price (including the price as adjusted under paragraph (b) of this Article) and a refund or drawback is obtained by the Contractor by reason of the export or re-export of supplies covered hereby, or of materials used in the performance of this contract, the amount of such refund or drawback will be paid over to the Government, or credited against amounts due from the Government under this contract: *Provided, however,* That the Contractor shall not be required to apply for such refund or drawback unless so requested by the Contracting Officer.

If desired the following sentence, or substantially similar language, may be added at the end of paragraph (b) of the foregoing tax article:

For the purposes of any additional procurement of supplies or work called for by any agreement supplemental hereto, the words "*date of this contract*" shall be deemed to refer to the date of such supplemental agreement.

(b) *Short form tax article.* (1) The short form tax article set forth below may be used, in lieu of the form set forth in paragraph (a), (i), where the estimated time for performance does not exceed sixty days, (ii) where the contract is executed on a standard form of contract (as that term is defined in § 803.304 (a)) which contains the short form tax article, and (iii) where the contract instrument is a purchase order. The long form tax article (paragraph (a)) may be inserted in lieu of the short form tax article in any standard form of contract which contains the short form tax article.

Article ____. Taxes. Unless otherwise indicated in this contract, (A) the prices herein do not include any state or local sales, use or other tax from which the Contractor or this transaction of the procurement of these supplies is exempt, and (B) the prices herein include all applicable Federal taxes and other applicable state and local taxes in effect at the date of this contract. Upon request of the Contractor the Government will issue tax exemption certificates or furnish other similar proof of exemption with respect to the taxes excluded from the price. Where any duties or taxes have been included in the contract price and a refund or drawback is obtained by the Contractor by reason of the export or re-export of supplies covered hereby, or of materials used in the performance of this contract, the amount of such refund or drawback will be paid over to the Government, or credited against amounts due from the Government under this contract: *Provided, however,* That the Contractor shall not be required to apply for such refund or drawback unless so requested by the Contracting Officer.

(2) Attention is again directed to the necessity of including in each contract (see § 803.358) suitable provisions to specify any taxes to be excluded from, or included in, the contract price other than as provided in such tax article.

(c) [Deleted.]

(d) *State and local taxes.* State and local sales or use taxes generally do not apply to sales directly to the United States or to the use of property by the United States (see § 808.831). Special provisions may be included in any contract with respect to any state or local excise tax as to which there is doubt whether an exemption exists applicable to the transaction covered by the contract. Any such special provisions should clearly specify whether such tax is to be included in or excluded from the price and whether the Government must pay or reimburse the contractor for the tax if no exemption is applicable. Contracting officers, so far as is practicable, should take precautions to see that contractors do not include in their bid, or price any amount for (1) any state or local sales or use taxes which do not apply to sales to the Federal Government or to the use of property by the Federal Government, or (2) any other state or local taxes, exemption from which is available in the case of transactions to which the Federal Government is a party.

(e) *Omission of standard tax articles.* The chief of any technical service may authorize the omission of the tax articles set forth in paragraphs (a) and (b) of this section from any contract where they are plainly inapplicable or inappropriate. In any class or classes of contracts for services where a major part of the cost of performance consists of payroll expense, e. g., stevedoring contracts, the chief of any technical service may authorize the inclusion of a provision for price adjustment in the event of changes in payroll taxes with respect to such services. The form of any such provision in general should be similar to the provision found in paragraph (b) of the tax article set out in paragraph (a) of this section but should not be made applicable to taxes other than those paid with respect to the wages of the employees of the particular contractor.

(f) *Customs duties.* Customs duties are Federal taxes and under the contract clauses set forth in paragraphs (a) and (b) of this section, will, unless otherwise indicated in the contract, be deemed to be included in the contract price. As to the right to "drawback," see § 805.506.

§ 803.358 *Specification of taxes included or excluded; information to bidders.* (a) The standard tax articles state that the contract prices include Federal taxes. However, as stated in Part 808 of this chapter, certain exemptions from Federal excise taxes are available to the United States. In the event any contract for the procurement of an item for which an exemption is available to the United States is executed containing one of the standard tax articles, and any Federal tax is to be excluded from the contract price, it will be necessary in such contract to show expressly and accurately the Federal tax so excluded.

(b) Likewise, where any particular state or local tax is included in or excluded from the contract price otherwise than as is stated in the standard provision of the tax article used in the contract, such contract must contain appropriate provisions indicating expressly and accurately the nature of any such particular tax.

(c) Invitations to bid, requests for proposals, specifications, instructions to bidders, and proposals should indicate expressly the types of taxes to be included in or excluded from the contract price and whether tax exemption certificates will be given or required. The tax provisions of each contract must be in conformity with any invitation to bid, specifications and proposals issued or made in connection therewith.

(d) Information with respect to Federal, state or local taxes may be found in Part 808 of this chapter.

§ 803.360 *Periodic adjustment of price and exemption from renegotiation.* The following articles for periodic adjustment of price will be used in accordance with Part 812, Subpart D, of this chapter.

(a) *Form I: Article ____ Periodic adjustment of price.*

(a) *Price periods.* The Government and the Contractor agree to adjust the contract price under this contract periodically in accordance with this article and agree that the performance under this contract will be divided into successive periods for that purpose. The first period will extend from _____ to _____; and the second and each succeeding period will extend for ____ months from the end of the preceding period.

(b) *Estimates and prices for first period.* (1) The Contractor and the Government have agreed upon the following estimate of costs for the items to be delivered during the first period hereunder.[1]

[1] This breakdown may be altered to suit particular circumstances. Any reserves for contingencies should be stated separately and clearly identified.

A. Factory cost.
1. Direct materials.
2. Direct productive labor.
3. Direct engineering labor.
4. Miscellaneous direct factory charges.
5. Indirect factory expenses[2] (state basis of allocation).
6. Total factory cost.
B. Other manufacturing cost.
C. Miscellaneous direct expenses.
D. Indirect engineering expenses.
E. Expenses of distribution, servicing, and administration.
F. Guarantee expenses.

(2) The Contractor and the Government have agreed upon the price fixed in Article— hereof for the first period. The Contracting Officer hereby finds that the provisions of this contract are adequate to prevent excessive profits hereunder during the first period without any renegotiation pursuant to section 403, the Sixth Supplemental National Defense Appropriation Act, 1942, as amended. The Contractor and the Government therefore agree that the prices fixed in Article ____ hereof shall be paid for items delivered hereunder during the first period and that such prices for that period shall not be subject to renegotiation under said statute as amended or Article ____ hereof.

(c) *Periodic statements.* Fifteen days before the end of each period hereunder, except the last, or at such other time or times as the Contracting Officer may fix, the Contractor will submit to the Contracting Officer the following data—

(1) Statements showing the actual cost of producing all items completed for delivery during such period, for which cost figures are available, and such other statements as the Contracting Officer may require.

(2) Estimates of the cost of items to be delivered during the next succeeding period, based upon the previous cost experience of the Contractor and upon all other relevant factors.

(3) Proposed prices for items to be delivered during the next succeeding period.

(d) *Periodic price adjustment—exemptions.* (1) Upon the filing of the data required by section (c) hereof, the Contractor and the Contracting Officer will negotiate in good faith to agree upon adjusted cost estimates and prices for items to be delivered during the next succeeding period under this contract.

(2) Prices so negotiated and agreed upon may be in excess of or less than the prices stated in Article ___ hereof. In negotiating such prices consideration will be given to all pertinent factors which have affected the Contractor's costs for items delivered hereunder during any preceding period, or which are likely to affect such costs for items to be delivered hereunder during the next succeeding period, and to all pertinent factors bearing upon the profit margin which is reasonable for the Contractor to earn during the succeeding period. Whenever the Contractor, by skillful management, careful buying, or efficiency in production, has reduced costs experienced during the next preceding period below the estimated amount thereof, and the Government will benefit therefrom by reduced prices from the succeeding period, the contemplated margin of profit for the succeeding period may be increased in recognition of these facts.

(3) After each negotiation, the agreement reached will be evidenced by a supplemental agreement to this contract stating the cost estimates and adjusted prices for the succeeding period. In the discretion of the Contracting Officer, the supplemental agreement may contain a finding that the provisions of this contract and said supplemental agreement are adequate to prevent excessive profits during the applicable succeeding period, and an agreement that the prices fixed for such period will not be subject to renegotiation under section 403, the Sixth Supplemental National Defense Appropriation Act, 1942, as amended, or under Article ___ hereof.

(4) A disagreement between the Contracting Officer and the Contractor as to an adjusted price for any period will not be subject to Article ___ (Disputes), and during that period the Contractor shall be paid the price fixed for the preceding period.

(e) *Payments.* During the first period the Government shall pay to the Contractor the price set forth in Article ____ for all items delivered. During each succeeding period the Government will pay to the Contractor the prices negotiated hereunder for items delivered in that period. If the price for any succeeding period hereunder is still under negotiation and not agreed upon at the beginning of that period, then until an adjusted price for that period is agreed upon, the Contractor will be paid the price fixed for the last preceding period; but after the Contractor and Contracting Officer have agreed by supplemental agreement upon the adjusted prices, an amount equal to the difference between the prices paid on the items delivered in that period and such adjusted prices will be added to or deducted from payments for subsequent deliveries under this contract or will be paid by or returned to the Government, as the Contracting Officer may direct.

(f) *Accounts and records—statements.* The Contractor will maintain books, records, and accounts so as to reflect accurately and segregate clearly the costs of performing this contract. For this purpose the Contractor may follow the cost accounting system regularly used by it, if the Contracting Officer finds that it is adequate and in accordance with sound accounting practice. All statements showing costs experienced by the Contractor under this contract will be based upon such books, records, and accounts, and will be certified as correct by two officers of the Contractor or by an independent auditor, approved by the Contracting Officer. The Contractor will submit its books, records, and accounts to such examination and audit as the Contracting Officer may request. The Contractor represents that the estimates of future costs contained in paragraph (b), and hereafter submitted pursuant to paragraph (c) (2) reflect the best judgment of the Contractor as to probable costs on the basis of previous cost experience and all other relevant factors, and contain no provisions for reserves or allowances not revealed therein.

(g) *Termination.* For the purposes of paragraph (d) of Article ____ hereof, (Termination at the Option of the Government), the following provisions shall govern:

(1) The prices payable for completed articles under paragraph (d) (1) of that Article shall be (i) the prices agreed upon for the price period in which the completed articles were delivered or ready for delivery, if adjusted prices have been agreed upon for that period, or (ii) such estimated prices as the Contracting Officer deems reasonable under all the circumstances, if adjusted prices have not been agreed upon for that period.

(2) The "total contract price" shall be computed on the basis of the prices actually paid or payable for completed articles and, for the remaining articles covered by the contract, shall be based on (i) the prices agreed upon for the price period in which the notice of termination takes effect, if adjusted prices have been agreed upon for that period, or (ii) such estimated prices as the Contracting Officer deems reasonable under all the circumstances, if adjusted prices have not been agreed upon for that period. The "contract price of work not terminated" shall also be computed on the basis of (i) and (ii) above.[4]

(b) [*Form II*] *Article ____. Periodic adjustment of price.*

(a) *Price periods.* The Government and the Contractor recognize that the costs of performing this contract cannot be accurately estimated at the time of its execution and that the price fixed in Article____ may therefore be either too high or too low in the light of actual experience under the contract. The Contractor and the Government agree that for the purpose of adjusting the contract price in accordance with this Article the performance under this contract will be divided into ____ successive periods. The first period will extend from _____ to _____; and the second and each succeeding period will extend for _____ months from the end of the preceding period.

(b) *Estimate of costs.* The Contractor represents that the contract price fixed in Article __ is based on a total estimated cost of $_____ itemized as follows:[2]

A. Factory cost.
1. Direct materials.
2. Direct productive labor.
3. Direct engineering labor.
4. Miscellaneous direct factory charges.
5. Indirect factory expenses[3] (state basis of allocation).
6. Total factory cost.
B. Other manufacturing cost.
C. Miscellaneous direct expenses.
D. Indirect engineering expenses.
E. Expenses of distribution, servicing, and administration.
F. Guarantee expenses.

(c) *Periodic statements.* Fifteen days before the end of each period hereunder, except the last, or at such other time or times as the Contracting Officer may fix, the Contractor will submit to the Contracting Officer the following data—

(1) Statements showing the actual cost of producing all items completed for delivery during such period, for which cost figures are available, and such other statements as the Contracting Officer may require.

(2) Estimates of the cost of items to be delivered during the next succeeding period, based upon the previous cost experience of the Contractor and upon all other relevant factors.

(3) Proposed prices for items to be delivered during the next succeeding period, and, at the end of the first period, proposed adjusted prices for items delivered during the first period.

(d) *Periodic price adjustment.* (1) Upon the filing of the data required by section (c) hereof, the Contractor and the Contracting Officer will negotiate in good faith to agree upon adjusted cost estimates and prices for items to be delivered during the next succeeding period under this contract. In addition, upon the first such negotiation, they will negotiate to agree upon adjusted prices for the items delivered during the first period.

(2) Prices so negotiated and agreed upon may be in excess of or less than the prices stated in Article ____ hereof. In negotiating such prices, consideration will be given to all pertinent factors which have affected the

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[2] State separately the estimated amount of each of the following included:
(a) normal depreciation;
(b) special amortization.

[3] Paragraph (g) is to be included in the article whenever the contract contains the uniform termination article (§ 803.32‡).

[4] This breakdown may be altered to suit particular circumstances. Any reserves for contingencies should be separately stated and clearly identified.

[2] State separately the estimated amount of each of the following items included:
(a) normal depreciation;
(b) special amortization.

Contractor's costs for items delivered hereunder during any preceding period, or which are likely to affect such costs for items to be delivered hereunder during the next succeeding period, and to all pertinent factors bearing upon the profit margin which is reasonable for the Contractor to earn during the period involved. Whenever the Contractor, by skillful management, careful buying or efficiency in production, has reduced costs experienced during the next preceding period below the estimated amount thereof, and the Government will benefit therefrom by reduced prices for the succeeding period, the contemplated margin of profit for the succeeding period may be increased in recognition of these facts.

(3) After each negotiation, the agreement reached will be evidenced by a supplemental agreement to this contract stating the cost estimates and adjusted prices for the succeeding period and, after the first such negotiation, also stating the adjusted prices for the preceding first period. At the discretion of the Contracting Officer, the supplemental agreement may contain a finding that the provisions of this contract and said supplemental agreement are adequate to prevent excessive profits for the first period or during the applicable succeeding period, and an agreement that the prices fixed for such period will not be subject to renegotiation under section 403, Sixth Supplemental National Defense Appropriation Act, 1942, as amended, or under Article ____ hereof.

(4) A disagreement between the Contracting Officer and the Contractor as to an adjusted price for any period will not be subject to Article ____ (Disputes), and during that period the Contractor will be paid the price fixed for the preceding period.

(e) *Payments.* (1) During the first period the Government will pay to the Contractor the price set forth in Article ____ for all items delivered. During each succeeding period the Government will pay to the Contractor the prices negotiated hereunder for items delivered in that period. If the price for any succeeding period hereunder is still under negotiation and not agreed upon at the beginning of that period, then until an adjusted price for that period is agreed upon, the Contractor will be paid the fixed price established for the last preceding period.

(2) After the Contractor and Contracting Officer have agreed by supplemental agreement upon the adjusted prices for the first period, or for any other period in which payment of the prices fixed for the preceeding period has been continued pending agreement upon the adjusted prices, an amount equal to the difference between the prices paid on the items delivered in that period and such adjusted prices will be added to or deducted from payments for subsequent deliveries under this contract or will be paid by or returned to the Government, as the Contracting Officer may direct.

(f) *Accounts and records; statements.* The Contractor will maintain books, records, and accounts so as to reflect accurately and segregate clearly the costs of performing this contract. For this purpose the Contractor may follow the cost accounting system regularly used by it, if the Contracting Officer finds that it is adequate and in accordance with sound accounting practice. All statements showing costs experienced by the Contractor under this contract will be based upon such books, records, and accounts, and will be certified as correct by two officers of the Contractor or by an independent auditor, approved by the Contracting Officer. The Contractor will submit his books and accounts to such examination and audit as the Contracting Officer may request. The Contractor represents that the estimates of future costs contained in paragraph (b), and hereafter submitted pursuant to paragraph (c) (2) reflect the best judgment of the Contractor as to probable costs on the basis of previous cost experience and all other relevant factors, and contain no provisions for reserves or allowances not revealed therein.

(g) *Termination.* For the purposes of paragraph (d) of Article ____ hereof, (Termination at the Option of the Government), the following provisions shall govern:

(1) The prices payable for completed articles under paragraph (d) (1) of that Article shall be (i) the prices agreed upon for the price period in which the completed articles were delivered or ready for delivery, if adjusted prices have been agreed upon for that period, or (ii) such estimated prices as the Contracting Officer deems reasonable under all the circumstances, if adjusted prices have not been agreed upon for that period.

(2) The "total contract price" shall be computed on the basis of the prices actually paid or payable for completed articles and, for the remaining articles covered by the contract, shall be based on (i) the prices agreed upon for the price period in which the notice of termination takes effect, if adjusted prices have been agreed upon for that period, or (ii) such estimated prices as the Contracting Officer deems reasonable under all the circumstances, if adjusted prices have not been agreed upon for that period. The "contract price of work not terminated" shall also be computed on the basis of (i) and (ii) above.[1]

§ 803.360a *Price adjustment article based on optional periodic adjustment of price; where contractor has had previous experience in production of item.* The following article is for use only in contracts where the contractor has had previous experience in producing the same or substantially the same item. Where the contractor has had no such experience, this article will include the changes set forth in paragraph (a) (1), (2), (3) and (4) of this section and may include the changes set out in paragraphs (a) (5) and (6) of this section. Deviations in the form of the article set out in this section will be made only with the written approval of the Director, Purchases Division, Headquarters, Army Service Forces, or his authorized representative. The principles set forth in § 812.1235a, are applicable to the use of this article.

Article ____. (a) The Contractor and the Government have agreed upon the prices fixed in Article ____ hereof, for the items to be delivered hereunder which prices shall remain in effect unless and until changed in accordance with this article or some other provision of this contract.

(b) Either the Government or the Contractor may, at any time specified in this article, deliver to the other a written demand that the parties negotiate to adjust the prices under this contract. The right herein given to demand such negotiation may be exercised by either party at any time and from time to time: *Provided, however,* That no such demand shall be made before (*insert date*). [*Optional*—and thereafter neither party shall make a demand having an effective date within 90 days of the effective date of any prior demand, provided, however, that this limitation shall not be applicable in the event that during any 90-day period a duly authorized Government agency shall authorize or order a change in wages or employment conditions in the plants of the contractor used in the performance of this contract].

(c) Every demand under this article shall specify the date (which shall not be earlier than the delivery of the demand) after which the adjusted prices shall be effective as to deliveries made thereafter. Such date is herein referred to as "the effective date of the demand." Any demand under this article, if made by the contractor, shall state briefly the ground or grounds therefor and shall be accompanied by revised cost estimates itemized, so far as is practicable, as in the cost estimates stated in the War Department Procurement Form or in the original negotiation and showing clearly the changes from the cost estimates presented prior to the execution of the contract (or at the time of any earlier demand) and the reasons therefor together with any relevant data of the type usually furnished in the case of the negotiation of a new contract giving weight to the additional information developed in the performance under the contract and the experienced costs thereunder. If the demand is made by the Government, such information shall be furnished by the contractor within twenty days of the delivery of the demand.

(d) Negotiations for price adjustments under this article shall be conducted on the same basis, employing the same types of data, as in the case of the negotiation of a price under a new contract. [*Optional*—In fixing a revised price recognition shall be given to the Contractor in the form of an increased estimated profit allowance for special efficiency or skill in reducing costs and the estimated amount of profit allowance may be reduced where the contractor's performance has been inefficient.]

(e) After each negotiation, any agreement reached will be evidenced by a supplemental agreement to this contract stating the prices to be effective with respect to deliveries after the effective date of the demand, (or such other later date as the parties may fix by agreement), which prices may be the same as or higher or lower than the prices orginally fixed by this contract or fixed at the time of any earlier demand.

(f) If within thirty (30) days after the effective date of the demand (or such further period as may be fixed by agreement) the Contracting Officer and Contractor fail to agree as to adjusted prices, the Contractor, if it has substantially complied with the requirements of this article as to the furnishing of data, may give written notice to the Contracting Officer requiring the Government to pay the prices set forth in such notice on all deliveries made on or after a date specified in such notice which shall not be earlier than thirty days after its delivery. Unless prior to thirty days after the date of delivery of such notice to the Contracting Officer there shall be served upon the Contractor an Order pursuant to Section 801 of the Revenue Act of 1943 (which may contain any terms or conditions permitted by said Section) fixing the price to be paid for articles and services to be delivered under this contract from and after the date of the Order for the balance of the contract or until a date specified in such order, the Government shall pay the prices set forth in the Contractor's notice for deliveries on or after the date specified in the notice. However, if the Contracting Officer and the Contractor fail to agree as aforesaid and if Section 801 shall not be in force, the Contracting Officer prior to or within thirty (30) days after receipt of such a notice from the Contractor, may deliver to the Contractor a written election by which the Government agrees to pay the Contractor fair and just compensation for all deliveries made after delivery of such written election. Such written election shall specify the amount which the Contracting Officer deems to be fair and just compensation for such deliveries. If no such Order or written election is served upon

[1] Paragraph (g) is to be included in the article whenever the contract contains the uniform termination article (§ 803.324).

or delivered to the Contractor, such prices set forth in the Contractor's notice shall be incorporated in an appropriate supplemental agreement. The Contractor's delivery of a notice pursuant to this paragraph (f) shall constitute (1) a refusal, within the meaning of Section 801, to agree to prices for the articles and services to be furnished under this contract less than the prices specified in the Contractor's notice [*Optional alternative*—which the Secretary of War considers fair and reasonable] (2) a waiver and release of any right (under said Section 801 or otherwise) of the Contractor to further negotiation with any representative of the War Department as to fair and reasonable prices and (3) a consent by the Contractor that an Order may be made pursuant to Section 801 without other or further notice to the Contractor than the service of such order. In the event of the service of such an order, the contract shall continue in effect except as modified by said Order and the Contractor shall have any and all rights granted to it under paragraph (c) of said Section 801 to sue the United States and to recover under said Section, (or if a written election is served upon the Contractor as above provided, the contract shall continue in effect as modified by such written election and the Contractor (A) shall be paid currently the amount specified by the Contracting Officer in such written election for all deliveries affected thereby and (B) may recover from the United States, by suit brought within six months after the delivery of such written election or after the completion of deliveries under this contract whichever shall last occur, any amount by which fair and just compensation for such deliveries exceeds the amount so specified).

(g) Until a new price shall become effective in accordance with this article, the prices in force at the effective date of the demand shall be paid upon all deliveries, subject to appropriate later adjustment in accordance with the terms of any supplemental agreement made under subparagraph (e) or (f).

(h) Any provision of this article and any action thereunder shall be without prejudice to (1) the determination of any excessive profits of the Contractor under the Renegotiation Act; (2) to any Order fixing the price of articles to be furnished or services to be rendered hereunder made under Section 801 of the Revenue Act of 1943; and (3) to any right of the Government to terminate this contract under any provision of this contract.

(i) For any of the purposes of paragraph (d) of Article ____ (Termination at the Option of the Government), of this contract (including, without limitation, the computation of "the total contract price" and "the contract price of work not terminated"), the contract price of completed articles shall be deemed to be,

(1) for all items delivered prior to the effective date of the last demand under this article, the contract price (giving effect to any adjustments under this article) applicable to each such item;

(2) for all items delivered on or after the effective date of such last demand,

(A) the contract price as adjusted in accordance with this article, if such adjustment shall have been agreed upon; and

(B) if such adjustment shall not have been agreed upon, then such estimated prices as the Contractor and the Contracting Officer may agree upon as reasonable under all the circumstances and in the absence of such agreement such reasonable prices as may be determined in accordance with Article ___ (Disputes).

(a) *Price adjustment article based on optional periodical adjustment of price; where contractor has had no adequate prior experience in production of item.* The changes set forth in this paragraph will be made in the article found in this section, in those cases where it is desired to include that article in a contract with a contractor who has had no adequate experience in the type of production called for by the contract. The principles discussed in § 812.1235a (a), (b) and (c), inclusive, will be applicable to the use of the article in these instances subject to the additional provisions set forth in § 812.1235a (d). The above mentioned changes in the article set out in this section are:

(1) Add to paragraph (a) of the article set out above:

The Government and the Contractor recognize that the cost of performing this contract cannot be accurately estimated at the time of its execution and that the contract price fixed may therefore be either too high or too low. They, therefore, agree that the contract price may be revised upward or downward in accordance with this article and to the extent and in the manner hereby permitted upon demand of either party.

(2) Substitute for the first two sentences of paragraph (c) of the article set out above:

(c) Every demand under this article shall specify the date (which, except as provided in the next sentence of this paragraph (c) shall not be earlier than the delivery of the demand) after which the adjusted prices shall be effective, as to deliveries made thereafter, which date is herein referred to as "the effective date of the demand." In the case of the first demand made pursuant to this article by either party, if made prior to the delivery of thirty per cent of the (*here specify principal items to be furnished under the contract*) to be furnished under the contract, either party (either in the demand or by delivering a written notice to the other within 10 days of the delivery of the demand) may require that the effective date of the demand shall be a date prior to the delivery of any items under this contract (unless the parties shall agree in writing to a later date).

(3) Change the first clause of the first sentence of paragraph (f) of the article set out above:

(f) If within forty (40) days after the effective date of the demand or of the delivery thereof whichever date is later (or such further period as may be fixed by agreement) the Contracting Officer and the Contractor fail to agree as to adjusted prices * * *

(4) Add at the end of paragraph (i) of the article set out above, the following:

In making a settlement under said paragraph (d) of Article ____ (Termination at the Option of the Government), if (I) any completed articles shall have been delivered to and accepted by the Government, and (II) payment therefor shall not be included in the settlement made under said paragraph (d) because of having theretofore been made, payments theretofore made for such completed articles shall be appropriately adjusted so that the Contractor will be paid in the aggregate therefore the adjusted prices applicable as stated in this paragraph.

(5) The chief of a technical service may, but is not required to, change paragraph (g) of the article set out above by substituting a comma for the period at the end of the paragraph (g) and adding the following:

, or any adjustment as provided in this paragraph (g). If in the case of a first demand by either party, (1) the demand requests a revision of the price of items delivered prior to a date sixty days after the delivery of such demand and (2) the parties are unable to agree upon the adjustment to be made with respect to such items the price of such items delivered prior to a date sixty days after the delivery of the demand shall be an amount determined to be fair and just compensation therefor in accordance with Article ____ (Disputes).

(6) In addition to the change in paragraph (i) of the article set forth above, directed by subparagraph (4) above, the chief of any technical service may, but is not required to, add at the end of paragraph (i), as so changed, the following additional provision:

In the event that notice of a total termination of this contract is given prior to a first demand under paragraph (b) of this article, a demand may be made hereunder by either party for any price adjustment permitted by this article as part of the termination settlement, notwithstanding any of the provisions of paragraph (b) of this article.

§ 803.360b *Retroactive changes in wages, salaries or other terms or conditions of employment.* The following article may be used in any contract which contains any of the contract articles set out in §§ 803.341 (a) and (b), 803.360 (a) and (b), and 803.360a: *Provided*, That the contracting officer is satisfied that the contractor has excluded from his price all or substantially all contingency allowances for wage increases and adjustments in conditions of employment.

ARTICLE ____. In the event that the Contractor is ordered by a duly authorized agency of the Government, or is authorized by such agency, to make retroactive changes in the wages, salaries or other terms and conditions of employment, which shall affect the cost of the deliveries hereunder, the Contractor and the Contracting Officer will negotiate to agree upon adjusted prices for the items to be delivered hereunder, the cost of which will be so affected. In such negotiations the Contractor and the Contracting Officer in good faith will estimate the effect of such retroactive wage or employment adjustments on the cost of such items and the prices payable for the items so delivered will be adjusted to reflect, to an extent which is deemed reasonable under all the circumstances, such estimated effect on cost so agreed upon subject to the terms and conditions set forth below:

(1) The following shall be conditions precedent to any adjustment under this article:

(A) The Contractor shall give written notice to the Contracting Officer of any reference to the War Labor Board or any other Government Agency of any request on behalf of its employees for any wage adjustment or adjustment in conditions of employment which may affect materially the costs of performing this contract. Such notice shall be given within 20 days after such reference is made (or at the time of the execution of this contract, if such reference has been made prior to the execution of the contract and has not been acted upon finally).

(B) The Contractor shall submit to the Contracting Officer, not later than thirty days (or within such further period as may be agreed upon) after the date of the order for or authorization of any such retroactive wage or employment adjustment and in any event prior to final payment under the contract, the following:

(I) A written demand that the parties negotiate to adjust the contract prices on the items delivered during a stated period.

That period shall, in no event, commence at a date earlier than the first day specified in the order or authorization for the retroactive wage or employment adjustment.

(ii) Estimates of the probable effects of such retroactive wage or employment adjustment on the costs of the Contractor of producing the items delivered during the period stated in the demand giving due effect to estimates of inventories of completed articles and work in process on hand at the beginning of such period, and to the fact that the full effect of the wage or employment adjustment will not normally be reflected immediately in the cost of items delivered under the contract. Such estimates shall be accompanied by estimates of the effect of the retroactive wage or employment adjustment on the direct and indirect labor costs of the articles included in the deliveries during such period.

(iii) Proposed prices for each item covered by the contract which were delivered during the stated period.

(iv) A true copy of the order or authorization for such retroactive wage increases.

(2) It is recognized that it will not be practicable to make precise computations of the effect of any such retroactive wage or employment adjustment on the Contractor's costs and therefore it is the intention of the parties that negotiation and determination of any adjustment in price under this article shall be on the basis of such estimates of the effect of the retroactive adjustment as the Contracting Officer (or the Secretary of War or his duly authorized representative in taking action under Article ____ (Disputes) of this contract) may deem to be appropriate.

(3) The Contractor agrees that it will not request and shall not be entitled to receive an adjustment under this article except to the extent that such retroactive wage or employment adjustment operates to reduce the profit which it is estimated will be realized by the Contractor from such performance below a reasonable profit under all the circumstances. [*Optional*—In determining what constitutes a reasonable profit, the Contractor shall be rewarded for efficient and economical performance of the contract by a special allowance for profit.] In no event shall any such adjustment exceed the amount of the estimated effect of such retroactive wage or employment adjustment on the Contractor's costs hereunder during the stated period specified in the written demand mentioned in subparagraph (1) (B) (i) above.

(4) Any agreement reached under this Article will be incorporated in a supplemental agreement to this contract which shall be subject to the written approval of the Director, Purchases Division, Headquarters, Army Service Forces [in AAF contracts, substitute: "the Under Secretary of War or his duly authorized representative"] and which shall state (a) the revised prices to be effective with respect to deliveries during a specified period to be set forth in such agreement and (b) the method of adjusting the payments therefor.

(5) Any disagreement as to any adjustment of the price to be made pursuant to this article will be disposed of as a question of fact in accordance with Article ____ (Disputes.)

§ 803.361 *Short term pricing.* The following article for revision, after part performance, of the contract price for the remainder of the contract may be used in accordance with Part 812, Subpart C.

(a) *Article ____. Revision of future prices by negotiation.*

(a) *Agreement to revise price.* The Government and the Contractor agree that after the delivery of __% of the articles hereunder (herein called the "initial period") the contract price fixed in Article ____ shall be revised upward or downward for deliveries after the initial period (called herein the "remainder of the contract") in accordance with this Article.

(b) *Cost statements.* (1) Within __ days before the completion of the initial period, the Contractor shall submit to the Contracting Officer the following data:

(i) Itemized statements showing costs of production during the preceding part of the initial period.

(ii) Estimates of the cost of producing the items to be delivered during the remainder of the contract based upon the previous cost experience of the Contractor and upon all other relevant factors.

(iii) Proposed revised prices for the remainder of the contract.

(2) The Contractor will maintain books, records and accounts so as to reflect accurately and segregate clearly the costs of performing this contract. For this purpose the Contractor may follow the cost accounting system regularly used by it, if the Contracting Officer finds it is adequate and in accordance with sound accounting practice. The statements showing costs experienced by the Contractor under this contract shall be based upon such books, records and accounts and shall be certified as correct by two officers of the Contractor or by an independent public accountant. The Contractor shall submit his books, records and accounts to such examination and audit as the Contracting Officer may request.

(c) *Negotiation for revision.* (1) Upon the filing of the data required by section (b) hereof, the Contractor and Contracting Officer shall negotiate in good faith to agree upon revised prices for the remainder of this contract. The revised price may be different for different periods of the contract and may be in excess of or less than the price stated in Article __ hereof. The agreement reached shall be evidenced by a supplemental agreement to this contract stating the revised price for the remainder of the contract.

(2) If the Contracting Officer and Contractor fail to agree on revised prices for the remainder of the contract within thirty (30) days after the date for filing of the data by the Contractor under section (b) hereof, or such further period as may be fixed by agreement, the Contractor, if not in default, or the Government may terminate the contract hereunder by written notice delivered within ten days after the expiration of said thirty day period or extension. Upon such termination by either party, the rights and obligations of the parties shall be governed by the provisions of Article __ hereof ("Termination for the Convenience of the Government"), except that the Contractor shall be allowed no profit for any uncompleted portion of the contract. If revised prices are not agreed upon and the contract is not so terminated, the Government shall pay to the Contractor the price fixed in Article __ for the remainder of the contract.

(d) *Payments.* Until the contract price is revised hereunder, the Government shall pay to the Contractor the price set forth in Article ___ for all articles delivered after the initial period. If the contract price for the remainder of the contract is revised upward hereunder, the Government shall pay to the Contractor the difference between the price paid on all items delivered after the initial period and the revised price for such items. If the contract price for the remainder of the contract is revised downward hereunder an amount equal to the difference between the price paid on all items delivered after the initial period and the revised price for such items, shall be applied as a credit against payments for subsequent deliveries or shall be applied in such other manner or repaid to the Government as the Contracting Officer may direct. For all items delivered after any price revision hereunder, the Government shall pay the Contractor the revised price, minus any such credit.

(f) *Renegotiation.* Any revision of the contract price made under this Article is without prejudice to the determination of any excessive profits of the Contractor upon subsequent renegotiation under Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended, or the contract article inserted herein pursuant to that Act.

§ 803.362 *Accident prevention.* Every lump sum construction contract, regardless of subject matter or amount, except contracts for the construction and/or repair of vessels and other floating equipment, will contain a clause substantially as follows:

Accident prevention. In order to protect the life and health of employees in the performance of this contract, the contractor will comply with all pertinent provisions of the "Safety Requirements for Excavation—Building—Construction" approved by the Chief of Engineers, December 16, 1941, as revised 15 March 1943, (a copy of which is on file in the office of the contracting officer) and as may be amended, and will take or cause to be taken such additional measures as the contracting officer may determine to be reasonably necessary for this purpose. The contractor will maintain an accurate record of and will report to the contracting officer in the matter and on the forms prescribed by the contracting officer, all cases of death, occupational disease and traumatic injury arising out of or in the course of employment on work under this contract. The contracting officer will notify the contractor of any non-compliance with the foregoing provisions and the action to be taken. The contractor shall, after receipt of such notice, immediately correct the conditions to which attention has been directed. Such notice, when served on the contractor or his representatives at the site of the work, shall be deemed sufficient for the purpose aforesaid. If the contractor fails or refuses to comply promptly, the contracting officer may issue an order stopping all of any part of the work. When satisfactory corrective action is taken, a start order will be issued. No part of the time lost due to any such stop order shall be made the subject of claim for extension of time or for excess costs or damages by the contractor.

Every fixed-fee construction contract, regardless of subject matter or amount, will contain a clause substantially similar to the foregoing except that the last sentence will be omitted.

§ 803.363 *Disposition of Government-owned property by Contractors.* (a) An article substantially as follows may be inserted in Cost-plus-a-fixed-fee Contracts when authorized by the provisions of § 807.727:

It is recognized that property (including without limitation machine tool and processing equipment, manufacturing aids, raw, manufactured, scrap and waste materials), title to which is or may hereafter become vested in the Government, will be used by or will be in the care, custody or possession of the Contractor in connection with the performance of this contract. With the approval in writing of the Contracting Officer (whether such approval is given prior to or after the giving of a notice of the termination of this contract for the convenience of the Government), the Contractor may transfer or otherwise dispose of such Government-owned property to such parties and upon

such terms and conditions as the Contracting Officer may approve or ratify, or, with like approval by the Contracting Officer, the Contractor may itself acquire title to such property or any of it at a price mutually agreeable. The proceeds of any such transfer or disposition of the agreed price of any property, title to which is so acquired by the Contractor, shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract, or shall otherwise be paid in such manner as the Contracting Officer may direct.

(b) If desired, the article authorized in paragraph (a) may be designated as subparagraph (a) and there may be added thereto provisions substantially as follows:

(b) The Contractor is authorized to insert in any subcontract made by the Contractor on a cost-plus-a-fixed-fee basis under this contract substantially the following provision:

ARTICLE ____. Sale of Government Property—It is recognized that property (including without limitation machine tools and processing equipment, manufacturing aids, raw, manufactured, scrap and waste materials) title to which is or may hereafter become vested in the Government, will be used by or will be in the care, custody or possession of _____ in connection
(Subcontractor)
with the performance of this subcontract. With the approval in writing of the Contracting Officer for the plant of _____ (whether such approval
(Subcontractor)
is given prior to or after the giving of a notice of the termination of this subcontract), _____ may transfer
(Subcontractor)
or otherwise dispose of such Government-owned property to such parties and upon such terms and conditions as such Contracting Officer may approve or ratify, or, with like approval by, and at a price agreeable to, such Contracting Officer, _____ may itself acquire title
(Subcontractor)
to such property or any of it. The proceeds of any such transfer or disposal or the agreed price of any property, title to which is so acquired by _____
(Subcontractor)
shall, at the direction of such Contracting Officer, be applied by _____
(Subcontractor)
in reduction of any payments to be made by _____ under this subcon-
(Prime Contractor)
tract, or shall be paid to the Treasurer of the United States, or to _____
(Prime Contractor)
for the account of the United States, in such manner as such Contracting Officer may direct.

(c) Upon approval of any transfer or other disposition of Government-owned property as provided in paragraph (b) above, which transfer or disposition is made to a transferee other than the Contractor, the Contractor shall be and hereby is released and discharged from liability for such property, if any, except that the Contractor shall be obligated to account to the Government for the proceeds of any such transfer or disposal of such property paid or credited to the Contractor pursuant to the direction of the Contracting Officer for the plant of any such subcontractor.

(c) Any existing cost-plus-a-fixed-fee contract may be amended to include an article substantially similar to that authorized by paragraph (a) above or that authorized by paragraphs (a) and (b) above.

(d) If a cost-plus-a-fixed-fee contract contains an article authorized by paragraph (a) above and it is desired, without amending such contract, to confer upon subcontractors authority to dispose of Government-owned property, the subcontracts may be amended to insert therein the article contemplated by clause (b) contained in paragraph (b) above.

§ 803.364 *Marking of shipping containers.* Every supply contract relating to supplies destined for overseas shipment will contain a clause substantially as follows (see § 811.1101):

Marking of shipping containers. The Contractor will follow any directions set forth in the contract specifications concerning the marking of containers in which the supplies are to be shipped. If the contract specifications contain no such directions, the Contractor will follow such instructions on the matter as he may from time to time receive from the Contracting Officer.

§ 803.365 *Contract clauses in connection with bonds and insurance.* (a) In compliance with the policy expressed in § 804.434, the following article is prescribed for inclusion in cost-plus-a-fixed-fee contract (see Note 2 below).

Liability for Government-owned property. (a) Except as otherwise specifically provided, the contractor shall not be liable for loss or destruction of or damage to property of the Government in the possession or control of the contractor in connection with this contract (hereinafter called "Government property") unless such loss, destruction or damage results from wilful misconduct or failure to exercise good faith on the part of the contractor's corporate officers or other representatives having supervision or direction of the operation of the whole of the contactor's business or of the whole of any plant operated by the contractor in the performance of this contract.

(b) The contractor represents that it is not maintaining and agrees that it will not hereafter maintain insurance (including self-insurance funds or reserves) covering loss or destruction of or damage to Government property, and represents that it is not including and agrees that it will not hereafter include in any price to the Government any charge or reserve for such insurance.

(c) Upon the happening of loss or destruction of or damage to Government property caused by:

Fire; lightning; windstorm, cyclone, tornado, hail; explosion; riot, riot attending a strike, civil commotion; vandalism and malicious mischief; aircraft or objects falling therefrom; vehicles running on land or tracks, excluding vehicles owned or operated by the contractor or any agent or employee of the contractor; smoke; sprinkler leakage; earthquake, or volcanic eruption; flood, meaning thereby rising of rivers or streams; enemy attack or any action taken by the military, naval or air forces of the United States in resisting enemy attack,

the contractor shall communicate with the contracting officer and with the Loss and Salvage Organization now or hereafter designated by the contracting officer and, with the assistance of that organization employed by the contractor to perform services in accordance with instructions or regulations of the Government (unless the contracting officer directs that no such organization be employed), shall take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best possible order, and furnish to the contracting officer a statement of: (1) the lost, destroyed and damaged Government property, (2) the time and origin of the loss, destruction or damage, (3) all known interests in commingled property of which the Government property is a part, and (4) the insurance, if any, covering any part of or interest in such commingled property. *If and as directed by the contracting officer, the contractor shall make repairs and renovations of the damaged Government property.*[1] The contractor shall be reimbursed the expenditures made by it and approved by the contracting officer in performing its obligations under this paragraph (c) (including charges made to the contractor by the Loss and Salvage Organization, except any of such charges, the payment of which the Government has, at its option, assumed direct).

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

(e) The Government shall at all times have access to the premises wherein any Government property is located.

(f) The contractor shall insert in all cost-plus-a-fixed-fee subcontracts under this contract provisions which will make applicable to the Government and the subcontractors substantially the same rights and obligations in respect to the Government property as are made applicable to the Government and the contractor under this Article.

NOTE 1: Where *facilities*, such as machinery, are furnished by the Government or acquired for Government account under cost-plus-a-fixed-fee contracts, appropriate *additional* provisions, dealing with such subjects as standby, storage and removal, may be included.

NOTE 2: (a) The Article set forth above will be included in all cost-plus-a-fixed-fee contracts executed on or after 15 March 1944.

(b) Whenever the terms of a cost-plus-a-fixed-fee contract are to be modified by the execution, on or after 15 March 1944, of a supplemental agreement, and the contract to be modified does not contain an Article identical in wording with that set forth above, the supplemental agreement will provide that the contract is modified to include the Article.

(c) In order that the services of the Loss and Salvage Organizations may be made available, widely and promptly, it is desired, in addition, that existing contracts be amended whenever practicable to incorporate the Article even when occasion does not arise to write a supplemental agreement for other reasons.

NOTE 3: See §§ 804.431 (a) and 804.493 in regard to Loss and Salvage Organizations.

NOTE 4: In the event that the Government property is located in an area outside of the United States, where the services of the Loss and Salvage Organizations are not available, the following clause will be used in lieu of paragraph (c) above:

Upon the happening of loss or destruction of or damage to Government property, the contractor shall communicate with the contracting officer, shall take all reasonable steps to protect the Government property

[1] Italicized language may be omitted in appropriate cases.

from further damage, separate the damaged and undamaged Government property, put all the Government property in the best possible order, and furnish to the contracting officer a statement of: (1) the lost, destroyed and damaged Government property, (2) the time and origin of the loss, destruction or damage, (3) all known interests in commingled property of which the Government property is a part, and (4) the insurance, if any, covering any part of or interest in such commingled property. *If and as directed by the contracting officer, the contractor shall make repairs and renovations of the damaged Government property.*[1] The contractor shall be reimbursed the expenditures made by it and approved by the contracting officer in performing its obligations under this paragraph (c).

(a–1) Except in the special cases discussed in § 804.451, the following article is prescribed for inclusion in fixed or unit price contracts under which Government-owned property is furnished to the contractor. (See Note 1 below). When deemed desirable by a technical service, because of the amount of Government property involved or for other reasons in the best interests of the United States, the substance of the following Article may also be approved for inclusion in fixed or unit price subcontracts under either cost-plus-a-fixed-fee or fixed or unit price prime contracts. This article is not intended to cover Government-owned facilities furnished under fixed or unit price contracts or subcontracts, as to which see § 803.332.

Liability for Government-owned property. (a) Except as otherwise specifically provided, the contractor shall not be liable for loss or destruction of or damage to property of the Government in the possession or control of the contractor in connection with this contract (hereinafter called "Government property") (1) caused by any peril while the property is in transit off the contractor's premises, or (2) caused by any of the following perils while the property is on the contractor's or subcontractor's or other premises or by removal therefrom because of any of the following perils:

Fire; lightning; windstorm, cyclone, tornado, hail; explosion; riot, riot attending a strike, civil commotion; vandalism and malicious mischief; aircraft or objects falling therefrom; vehicles running on land or tracks, excluding vehicles owned or operated by the contractor or any agent or employee of the contractor; smoke; sprinkler leakage; earthquake or volcanic eruption; flood, meaning thereby rising of rivers or streams; enemy attack or any action taken by the military, naval or air forces of the United States in resisting enemy attack.

The perils as set forth in (1) and (2) above are hereinafter called "excepted perils".

(b) The contractor represents that it is not maintaining and agrees that it will not hereafter maintain insurance (including self-insurance funds or reserves) covering loss or destruction of or damage to Government property caused by any excepted peril, and represents that it is not including and agrees that it will not hereafter include in any price to the Government any charge or reserve for such insurance.

(c) Upon the happening of loss or destruction of or damage to Government property caused by an excepted peril, the contractor shall communicate with the contracting officer and with the Loss and Salvage Organization now or hereafter designated by the contracting officer and, with the assistance of that organization employed by the contractor to perform services in accordance with instructions or regulations of the Government (unless the contracting officer directs that no such organization be employed), shall take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best possible order, and furnish to the contracting officer a statement of: (1) the lost, destroyed and damaged Government property, (2) the time and origin of the loss, destruction or damage, (3) all known interests in commingled property of which the Government property is a part, and (4) the insurance, if any, covering any part of or interest in such commingled property. *If and as directed by the contracting officer, the contractor shall make repairs and renovations of the damaged Government property.*[1] The contractor shall be reimbursed the expenditures made by it in performing its obligations under this paragraph (c) (including charges made to the contractor by the Loss and Salvage Organization, except any of such charges the payment of which the Government has, at its option, assumed direct), as approved by the contracting officer and set forth in a Supplemental Agreement.

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

(e) Except to the extent of any loss or destruction of or damage to Government property for which the contractor is relieved of liability under the foregoing provisions of this Article, and except for reasonable wear and tear or depreciation, or the utilization of the Government property in accordance with the provisions of this contract, the Government property (other than property permitted to be sold) shall be returned to the Government in as good condition as when received by the contractor in connection with this contract. In aid of its obligation so to return the Government property, the contractor shall maintain a property control, accounting and maintenance system consistent with good business practice.

(f) In the event the contractor is indemnified, reimbursed or compenstaed for any loss or destruction of or damage to Government property, caused by an excepted peril, it shall equitably reimburse the Government. The contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such loss, destruction or damage and, upon the request of the contracting officer, shall at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

(g) The Government shall at all times have access to the premises wherein any Government property is located.

NOTE 1. (a) The Article set forth above will be included in all fixed or unit price contracts under which Government-owned property is furnished to the contractor, executed on or after 15 March 1944.

(b) Whenever the terms of such a fixed or unit price contract are to be modified by the execution, on or after 15 March 1944, of a supplemental agreement, and the contract to be modified does not contain an Article identical in wording with that set forth above, the supplemental agreement will provide that the contract is modified to include the Article.

(c) In order that the services of the Loss and Salvage Organizations may be made available, widely and promptly, it is desired, in addition, that such existing contracts be amended whenever practicable to incorporate the Article even when occasion does not arise to write a supplemental agreement for other reasons.

NOTE 2: See §§ 804.451 (a) and 804.498 in regard to Loss and Salvage Organizations.

NOTE 3: In the event that the Government property is located in an area outside of the United States, where the services of the Loss and Salvage Organizations are not available, the following clause will be used in lieu of paragraph (c) above:

Upon the happening of loss or destruction of or damage to Government property caused by an excepted peril, the contractor shall communicate with the contracting officer, shall take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best possible order, and furnish to the contracting officer a statement of: (1) the lost, destroyed and damaged Government property, (2) the time and origin of the loss, destruction or damage, (3) all known interests in commingled property of which the Government property is a part, and (4) the insurance, if any, covering any part of or interest in such commingled property. *If and as directed by the contracting officer, the contractor shall make repairs and renovations of the damaged Government property.*[1] The Contractor shall be reimbursed the expenditures made by it in performing its obligations under this paragraph (c) as approved by the contracting officer and set forth in a Supplemental Agreement.

(b) Every cost-plus-a-fixed-fee contract will contain the following clause without deviation:

Allowable items of cost shall include the contractor's actual expenses incurred under his contract for:

a. Such bonds and insurance policies as have been approved or required by the Contracting Officer.

b. Losses or expenses not compensated by insurance or otherwise (including settlements made with the written consent of the Contracting Officer) actually sustained by the Contractor in connection with the work and found and certified by the Contracting Officer to be just and reasonable, unless reimbursement therefor is expressly prohibited; provided that such reimbursement shall not include any amount for which the Contractor would have been indemnified or compensated by insurance except for failure of the Contractor to procure or maintain bonds or insurance in accordance with the requirements of the Contracting Officer.

c. The cost of reconstructing and replacing any of the work or property destroyed or damaged and not covered by insurance, but expenditures under this item must have the written authorization of the Contracting Officer in advance.

d. The cost, including incidental expenses and premiums (if any), of providing such death, injury, internment, and other benefits to the Contractor's employees engaged in performing services under this contract as the Contracting Officer may approve or require.

(c) Every cost-plus-a-fixed-fee contract will contain the following clause without deviation:

Insurance. *a.* The Contractor shall procure and thereafter maintain such bonds and insurance in such forms and in such

[1] Italicized language may be omitted in appropriate cases.

amounts and for such periods of time as the Contracting Officer may require in writing and shall be reimbursed for the cost thereof;

b. In every instance where this contract requires the United States to pay the premium on a bond or insurance policy, the bond or insurance policy shall contain an endorsement or other recital excluding by appropriate language any claim on the part of the insurer or obligor to be subrogated, on payment of a loss or otherwise, to any claim against the United States;

c. The Contractor shall give the Contracting Officer or his representative immediate notice in writing of any suit or action filed against the Contractor arising out of the performance of this contract and of any claim against the Contractor the cost and expense of which are reimbursable under the provisions of Article ____ hereof, and the risk of which is then uninsured or in which the amount claimed exceeds the amount of insurance coverage. The Contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the Contractor. Insofar as the following shall not conflict with any policy or contract of insurance, and upon request of the Contracting Officer, the Contractor shall do any and all things to effect an assignment and subrogation in favor of the Government of all Contractor's rights and claims except against the Government, arising from or growing out of such asserted claims, and, if required by the Contracting Officer, shall authorize representatives of the Government to settle and/or defend any such claim and to represent or take charge of any such litigation affecting the Contractor.

(d) Every cost-plus-a-fixed-fee contract, the terms of which do not require the incorporation by reference in cost-plus-a-fixed-fee subcontracts, of all of the terms and conditions of the prime contract in regard to insurance and liability, will contain the following clause without deviation:

Additional provisions. (1) The Contractor will include in each cost-plus-a-fixed-fee subcontract made under this contract a provision as follows:

(a) The title to all work under this subcontract, completed or in the course of manufacture or assembly in the Subcontractor's plant, shall be in the Government. Upon delivery thereof to the Subcontractor at any point within the continental limits of the United States or any place approved by the Contractor, title to all purchased materials, parts, assemblies, subassemblies, tools, machinery, equipment and supplies, for which the Subcontractor shall be entitled to be reimbursed hereunder, shall vest in the Government.

(b) The Subcontractor shall not be reimbursed for the cost of any insurance on any property of the Government.

(c) As used herein the term "Government" shall be deemed to mean the United States of America.

(2) The Contractor will, if so requested by the Contracting Officer, include in any particular cost-plus-a-fixed-fee subcontract, a provision as follows:

The Subcontractor shall procure and thereafter maintain the following insurance: ____ (here shall be inserted the types, amounts and limits of insurance, as specified in writing by the Contracting Officer). The cost of such insurance and losses or expenses (including settlements made with the written consent of the Contracting Officer who executed the principal contract or his duly authorized successor or representative) not compensated by insurance or otherwise and found and certified by the Contractor and said Contracting Officer or his duly authorized successor or representative to be just and reasonable, actually sustained by the Subcontractor in the defense and/or discharge of such claims of others on account of death or bodily injury of persons or loss or destruction of or damage to property as may arise out of or in connection with the performance of the work under this subcontract shall be allowable items of cost hereunder; *Provided*, That such reimbursement shall not include any amount for which the Subcontractor would have been indemnified or compensated except for the failure of the Subcontractor to procure or maintain insurance in accordance with the requirements of this subcontract. The Subcontractor shall give the Contractor immediate notice in writing of any suit or action filed against the Subcontractor, arising out of the performance of this subcontract and of any claims against the Subcontractor, the cost and expense of which is reimbursable under the provisions of this subcontract pertinent to allowable items of cost, and the risk of which is then uninsured or in which the amount claimed exceeds the amount of insurance coverage. The Subcontractor shall furnish immediately to the Contractor copies of all pertinent papers received by the Subcontractor. Insofar as the following shall not conflict with any policy or contract of insurance, and upon request of the Contractor, the Subcontractor shall do any and all things to effect an assignment and subrogation in favor of the Contractor or its nominee of all Subcontractor's rights and claims, except rights and claims of the Subcontractor against the Contractor or such nominee, arising from or growing out of such asserted claim, and, if required by the Contractor, shall authorize representatives of the Contractor or of its nominee to settle and/or defend any such claim and to represent the Subcontractor in or take charge of any such litigation. Every policy for the insurance referred to in this paragraph shall contain an indorsement or other recital excluding by appropriate language any claim on the part of the insurer or obligor to be subrogated on payment of a loss or otherwise to any claim against the Contractor or the Government.

(3) Whenever a provision as set forth in paragraph (2) of this article is inserted in any subcontract, then the contractor will forthwith transmit to the Contracting Officer all notices and copies of papers received by it from the subconstractor, will make the Government its nominee for all assignments and subrogations received by it from the subcontractor thereunder and, if required by the Contracting Officer, will do everything in its power to have representatives of the Government authorized to settle and/or defend the claims therein referred to and to represent the subcontractor in or to take charge of the litigation therein referred to.

(e) In accordance with the instructions contained in paragraphs (f) to (i), inclusive, there will be inserted without deviation in Architect-Engineer-Construction-Management Service Contracts and all contracts (except supply contracts), executed under or in connection with such contracts, the appropriate clause or clauses set forth in said paragraphs.

(f) In the Architect-Engineer-Construction-Management-Service-contract the following clause:

The A-E-M hereby agrees that he will procure and maintain bonds and insurance in such forms and in such amounts and for such periods of time as the Contracting Officer may require or approve. Insurance shall cover all work required by this contract, regardless of whether it is performed by the A-E-M's own forces, subcontractors, or under direct contracts with the Government, as is contemplated in Article____
(Article containing ____ of this contract. General Statement of Work and Services)

(g) In cost-plus-a-fixed-fee subcontracts, executed under Architect-Engineer-Construction-Management Service Contracts, there wil be inserted without deviation the following clause:

All necessary insurance protection required under the terms of this contract will be provided by the policies maintained by the Architect-Engineer-Manager Contractor.

(h) In lump-sum subcontracts, executed under Architect-Engineer-Construction-Management Service Contracts, there will be inserted without deviation the following clause:

(1) The Architect-Engineer-Manager Contractor will, at no cost to the Subcontractor, maintain policies providing the following insurance protection for the Subcontractor, which insurance shall apply only to operations of the Subcontractor under this subcontract and employees of the Subcontractor engaged therein and shall not apply to any other operations or employees of the Subcontractor:

(a) *Workmen's compensation.* (i) In jurisdictions where there are Workmen's Compensation Laws, either mandatory or elective, statutory coverage; and in jurisdictions where the Workmen's Compensation Law does not cover all occupational diseases, occupational disease coverage by endorsement for limits of $50,000 per person in any one case and, subject to that limit for each person, an aggregate limit of $100,000 for each year of the policy period;

(ii) In those states where there is a "per accident" limitation of coverage under paragraph 1 (b) of the policy, an endorsement will be added to provide $100,000 limit for each accident;

(iii) In those states where there is a "per person" limitation of coverage under paragraph 1 (b) of the policy, an endorsement will be added to provide $50,000 limit for each person;

(iv) In jurisdictions where there are no Workmen's Compensation Laws, Employers' Liability Insurance, including occupational disease coverage, for limits of $50,000 per person in any claim and, subject to that limit for each person, $100,000 for two or more persons in any one accident and $100,000 aggregate limit for each year of the policy period for occupational disease claims.

(b) *General liability.* Insurance with limits of $50/100,000 for bodily injury liability on the comprehensive policy form; the policy will be endorsed to include coverage for aircraft and watercraft operations by elimination of any such exclusions therein.

(c) *Automobile public liability and property damage.* Insurance with limits of $50/100,000 for bodily injury liability and $5,000 for property damage liability on the comprehensive policy form covering all owned, nonowned and hired automobiles which will be used in connection with the work to be done under the contract, and which are not for use exclusively on the premises at which the work under such contract is performed.

(2) The Subcontractor may purchase at his own expense such additional or other insurance protection as he may deem necessary. The Contracting Officer or his authorized representative may restrict access to the site of the work to such personnel of any insurance carrier providing additional or other insurance coverage referred to in this paragraph for the proper servicing of such insurance as he may deem necessary.

(i) In prime lump sum or unit price contracts, collateral to Architect-Engineer-Construction-Management Service Contracts, there will be inserted without deviation the following clause:

(1) The Architect-Engineer-Manager Contractor will, at no cost to the Contractor, maintain policies providing the following insurance protection for the Contractor and his Subcontractors (excluding supply subcontractors) which insurance shall apply only to operations of the Contractor and such Subcontractors under this contract and employees of the Contractor and such Subcontractors engaged therein and shall not apply to any other operations or employees of the Contractor and such Subcontractors:

(a) *Workmen's compensation.* (i) In jurisdictions where there are Workmen's Compensation Laws, either mandatory or elective, statutory coverage; and in jurisdictions where the Workmen's Compensation Law does not cover all occupational diseases, occupational disease coverage by endorsement for limits of $50,000 per person in any one case, and subject to that limit for each person, an aggregate limit of $100,000 for each year of the policy period;

(ii) In those states where there is a "per accident" limitation of coverage under paragraph 1(b) of the policy, an endorsement will be added to provide $100,000 limit for each accident;

(iii) In those states where there is a "per person" limitation of coverage under paragraph 1 (b) of the policy, an endorsement will be added to provide $50,000 limit for each person;

(iv) In jurisdictions where there are no Workmen's Compensation Laws, Employers' Liability Insurance including occupational disease coverage, for limits of $50,000 per person in any claim and, subject to that limit for each person, $100,000 for two or more persons in any one accident and $100,000 aggregate limit for each year of the policy period for occupational disease claims.

(b) *General liability.* Insurance with limits of $50/100,000 for bodily injury liability on the comprehensive policy form; the policy will be endorsed to include coverage for aircraft and watercraft operations by elimination of any such exclusions therein.

(c) *Automobile liability and property damage.* Insurance with limits of $50/100,000 for bodily injury liability and $5,000 for property damage liability on the comprehensive policy form covering all owned, non-owned and hired automobiles which will be used, in connection with the work to be done under the contract, and which are not for use exclusively on the premises at which the work under such contract is performed.

(2) The contractor or his subcontractors may purchase at their own expense such additional or other insurance protection as they may deem necessary. The Contracting Officer or his authorized representative may restrict access to the site of the work to such personnel of any insurance carrier providing additional or other insurance coverage referred to in this paragraph for the proper servicing of such insurance, as he may deem necessary.

§ 803.366 *Offers of prompt payment of cash discounts.* All invitations for bids, formal or informal, directed to more than one prospective contractor, will contain a clause substantially as follows:

Offers of prompt payment or cash discounts will not be considered in the award of contracts or purchase orders, but if such an offer is made, the Government reserves the right to take advantage of the same according to its terms in making payment.

§ 803.367 *Subcontracting clause, fixed price supply contract.* All fixed price supply contracts, except those in which, in the opinion of the contracting officer, subcontracting (as defined in (d) below) is impracticable, will contain the following clause without deviation:

Subcontracting. (a) It is mutually understood and agreed that the policy of the Government, as declared by Congress in Public Law 603—77th Congress (the Smaller War Plants Act) is to bring about the greatest utilization of small war plants facilities which is consistent with efficient production of war materials.

(b) The Contractor agrees to accomplish the maximum amount of subcontracting to smaller war plants that the Contractor finds to be consistent with the efficient performance of all its other obligations undertaken by this contract.

(c) The Government agrees that in any renegotiation proceedings involving this contract, proper consideration will be given to the efficiency and ingenuity exhibited by the prime contractor in subcontracting to and in utilizing the facilities of, smaller war plants; to the amount of such subcontracting so accomplished; and to the amount of technical, engineering and other assistance rendered by the Contractor to such subcontractors.

(d) For the purposes of this article the term "subcontracts" includes only contracts for the production or of work upon an item, component, or asembly manufactured according to Government specifications or specifications of a prime contractor and does not include (1) any purchase of a standard commercial or catalog item, or (2) any purchase of a basic raw material, or (3) any purchase of supplies or services for the general operation of the contractor's plant, or (4) any purchase from a parent subsidiary or affiliate of the contractor.

§ 803.368 *Subcontracting cost-plus-a-fixed-fee supply contracts.* All cost-plus-a-fixed-fee supply contracts, except those in which, in the opinion of the Contracting Officer, subcontracting is impracticable, will contain the following clause without deviation:

Subcontracting. It is mutually understood and agreed that the policy of the Government, as declared by Congress in Public Law 603—77th Congress (the Smaller War Plants Act) is to bring about the greatest utilization of small plants which is consistent with efficient production of war materials. It is also recognized that business concerns operating small plants are frequently unable to produce certain articles at as low a per unit cost as business concerns operating large plants. Accordingly, the Contractor, with the written approval of the Contracting Officer, may, in cases where the manufacturing costs are found to be greater, pay to firms operating small plants higher pricer than to firms operating large plants, to the extent determined to be reasonable in the light of the difference in their costs of manufacturing the article to be sub-contracted.

SUBPART I—TERMINATION OF FIXED-PRICE (LUMP SUM) CONTRACTS UPON DEFAULT OF CONTRACTOR

§ 803.379 *Steps to be taken in event of default.* The rigid enforcement of contract provisions (a) imposing liquidated damages on contractors for failure to perform within specified periods, or (b) authorizing termination of contracts for default, has been found in many instances to impede the prosecution of the war. The exercise by the several chiefs of technical services of discretion to take such action as may seem to them fair and equitable under all the circumstances will expedite the procurement of necessary war materiél and facilitate the prosecution of the war. For the foregoing reasons authority is delegated to and confirmed in the chief of each technical service to authorize contracting officers under his command, subject to such limitations as the chief of the technical service may establish, to take any of the following courses in the event of default of the contractor:

(1) Permit the contractor to proceed and to charge the contractor with the actual damages resulting from the default. If the contract provides for liquidated damages, such damages and not actual damages must be charged.

(2) Enter into a supplemental agreement with the contractor's surety providing for the completion of performance of the contract and for payment therefor. Such supplemental agreement should clearly state that all rights against the contractor are reserved so far as the surety does not undertake to cure the effect of the defaults by the contractor.

(3) Terminate the contract:

(i) Under any provision of the contract permitting termination in the event of default, in which case the provisions of § 803.380 shall be applicable. In exercising the authority to terminate for default due regard should be given to the preservation of rights against any surety on any performance bond.

(ii) Under any contract article providing for termination for the convenience of the Government, when the defaults of the contractor have not been gross or willful, and have not caused substantial injury to the Government, if the contracting officer shall find that the use of that termination article will facilitate the prosecution of the war and be equitable under all the circumstances.

(4) Extend by supplemental agreement the time fixed in the contract for performance in the manner provided in § 803.308e, and within the time prescribed by § 803.308f, if the default consists of failure to perform within the time specified by the contract. In general, it is not the policy of the Government to terminate contracts for default under the stringent provisions of a delays-damages article, in a manner to bring about a forfeiture or a severe loss on the part of the contractor, merely because, at a time when the Government desires to terminate its contract for reasons not based upon the defaults of the contractor, the contractor happens to be in technical default under the contract. Attention is directed as to the provisions of § 803.308g.

§ 803.380 *Steps to be taken in event of termination because of default.* If termination is effected pursuant to a contract provision substantially similar to that set forth in §§ 803.352 or 813.1302 (Art. 9) of these procurement regulations (or any similar authorized contract provision used in lieu of either of these provisions), the chief of a technical service may, but is not required to, pursue the remedies provided for in such contract provision or available by law. In the event the contract remedies are elected, the procedure set forth in § 803.380a will

be followed. In lieu of making use of the contract remedies he may within the time prescribed by § 803.308f, if he finds that to do so will facilitate the prosecution of the war, make a supplemental agreement with the contractor and relieve the contractor of liability which would result from the enforcement of such remedies. Such an agreement may be entered into only with the prior approval of the Director, Purchases Division, Headquarters, Army Service Forces (obtained in the manner provided in § 803.308a except where the chief of a technical service shall find any one of the following facts:

(a) That the Government no longer has need for the supplies, services, or construction called for by the contract;

(b) That the supplies or services, undelivered because of the contractor's default, can be obtained from some source other than the contractor on a basis as favorable as that set forth in the contract or that the construction provided for in the contract can be accomplished on terms substantially as favorable to the Government as though performed under the original contract;

(c) That for reasons of policy the technical service wishes to buy supplies of the type covered by the contract on terms more expensive or less favorable to the Government than those set forth in the terminated contract. (For example, the technical service may desire to buy from particular producers or in particular geographical areas in order to distribute war work more widely despite any extra expense involved. The excess expense in such a case should not equitably be charged to the contractor);

(d) That any excess cost charged to the contractor would be nominal;

(e) That the contractor currently employs less than 100 employees or was recommended as a prime contractor by the Smaller War Plants Division, War Production Board, has other war contracts existing or prospective, and that enforcement of the remedies provided in the contract would materially impair his ability to perform such contracts.

In any case where, pursuant to the foregoing provisions of this paragraph, a supplemental agreement relieving the contractor of liability is authorized, the chief of the technical service may, instead of entering into such a supplemental agreement, enter into a supplemental agreement (1) cancelling the contract by mutual consent without cost to the Government and (2) granting a mutual release of all claims arising out of the contract.

§ 803.380a *Procedure to be followed when remedies under delays-damages contract article are pursued.* If a contractor defaults and it is determined to pursue the remedies provided by a contract provision substantially similar to that set forth in §§ 803.352 or 813.1302 (i) of these Procurement Regulations (or any similar authorized contract provision used in lieu of either of these provisions), the following procedure will, in general, be followed:

(1) The contractor will be notified in writing that his right to proceed has been terminated.

(2) A copy of the termination notice will be furnished to the disbursing officer who will be advised to withhold further payments to the contractor pending additional instructions.

(3) Supplies or materials similar to those called for by the contract will then be procured elsewhere at as reasonable a price as practicable considering the quantity and quality required by the Government and the time in which the supplies or materials are required. In the case of a construction contract, the work will be completed according to the plans and specifications either by such other responsible contractor who offers the lowest price or by Government plant and hired labor. In either construction or supply contracts the excess cost to the Government will be charged to the contractor and the proper disbursing officer will be notified to withhold payments to cover the excess costs, pending payment thereof by the contractor.

(4) The contracting officer, immediately upon making the contract for the purchase of the materials or supplies, or for the completion of the construction contract, will request immediate remittance of the excess cost from the defaulting contractor.

(5) If the contracting officer collects the entire amount of the excess cost, he will furnish a report with reference thereto to the proper disbursing officer, transmitting the amount collected for disposition by the disbursing officer in accordance with paragraph 5*g*, AR 35–6040.

(6) If the contracting officer is unable to make collection of the entire amount of excess cost, he will furnish a complete report of the facts and circumstances to the proper disbursing officer.

If the contractor was given financial assistance by the Government (see Subpart G of this part) appropriate steps will be taken to protect the interest of the Government.

(a) *Reports of default.* (1) The reports to which reference is made in subparagraphs (5) and (6) above will be made on the form set forth in paragraph (g), or such other form as may be prescribed by the chief of the technical service; or, if the contract in question is a Treasury Procurement Supply Contract, such report will be made on Form 59 Treasury Department, Procurement Division, Branch of Supply (Report on Delinquent Contractor).

(2) The number of copies of the report to be made is as follows:

(i) It will be submitted to the disbursing officer in quadruplicate, except that when the contracting officer makes the collection in accordance with subparagraphs (4) and (5) above, the report will be submitted in duplicate.

(ii) If the purchase was made against a defaulting contractor of the Procurement Division, Treasury Department, three additional copies will be made and submitted to the disbursing officer.

(3) The form which is suggested for use under contracts generally is self-explanatory. However, attention should be given to the following:

(i) Under "Remarks," include a statement as to the reason why the purchase was made against the defaulting contractor, substantiated by copies of correspondence and other pertinent papers, if any. If the space under "Remarks" is not sufficient, the back of the form may be used.

(ii) The contracting office will sign the form in the space provided therefor under the heading "Remarks".

(4) In preparing reports covering TPS contracts on Form 59, in addition to the above (i) and (ii), attention should be given to the following:

(i) Above the line noted "Item No." enter the applicable contract number and, if stated in the contract, the period governed by the contract. For example, if the item is purchased on the General Schedule of Supplies, the TPS contract number and period covered thereby would be given as TPS–8920–11/2/33 to 8/31/36.

(b) *Collection of the excess cost.* (1) The disbursing officer, upon receipt of the report to which reference is made in subparagraph (6) above, will effect collection of the excess cost from the defaulting contractor by deducting the amount thereof from any funds payable to the defaulting contractor.

(2) If the disbursing officer effects collection of the entire amount of excess cost due the Government in accordance with subparagraph (1) of this paragraph, he will indicate that action on the appropriate form and sign the form under the heading "Remarks" or on the back of the form, and dispose of the report as follows:

(i) The original will be attached to the voucher or other form covering the collection.

(ii) The duplicate copy will be filed in the office of the disbursing officer.

(iii) The triplicate and quadruplicate copies, if any, will be transmitted to the contracting officer, marked for his information only.

(d) The three additional copies to which reference is made in subparagraph (2) (ii) of paragraph (a) above will be transmitted to the Branch of Supply, Procurement Division, Treasury Department, in cases where collection has been made by either the disbursing officer or the contracting officer.

(3) If the disbursing officer finds it impracticable to collect the entire amount of excess cost due the Government, he will indicate his action and recommendation on the appropriate form and sign the form under "Remarks" or on the back of the form, and dispose of the report as follows:

(i) If the default was made on a War Department Contract:

(*a*) The original and quadruplicate copy will be transmitted to the Office of the Fiscal Director, Headquarters, Army Service Forces, the original to be forwarded to the General Accounting Office and the quadruplicate copy to be retained by the Office of the Fiscal Director, Headquarters, Army Service Forces.

(*b*) The duplicate copy will be filed in the office of the disbursing officer.

(*c*) The triplicate copy will be transmitted to the contracting officer with a notation to the effect that the excess cost could not be collected and that the mat-

ter has been reported to the Office of the Fiscal Director, Headquarters, Army Service Forces, for reference to the General Accounting Office.

(ii) If the default was made on a contract of the Procurement Division, Treasury Department:

(*a*) The original, quadruplicate and the three additional copies to which reference is made in subparagraph (2) (ii) of paragraph (a) above, will be transmitted directly to the Branch of Supply, Procurement Division, Treasury Department.

(*b*) The duplicate copy will be filed in the office of the disbursing officer.

(*c*) The triplicate copy will be transmitted to the contracting officer with a notation to the effect that the excess cost could not be collected and that the matter has been reported to the Procurement Division, Treasury Department.

(c) In the event that collection of the excess cost is effected by means of contractor's check, money order, cash, or any means other than set-off against another account due the contractor, Standard Form No. 1044 (Schedule of Collections), properly completed, will be submitted in accordance with AR 35-780 with the required number of copies to be submitted with Form 59. In the cases to which reference is made in subparagraph (2) (ii) of (a) above, when collection is effected, three additional copies of Standard Form No. 1044 will be made for transmission with the additional copies of the report.

(d) If purchase is made against a defaulting contractor under a War Department contract and no excess cost is involved, a report on the appropriate form will be made and disposition of the report will be made as indicated in paragraph (b) (3) above. If a TPS contract is involved a report will be made on Form 59 and submitted by the contracting officer directly to the Branch of Supply, Procurement Division, Treasury Department, in triplicate.

(e) A purchase or purchases against the account of a defaulting contractor must not exceed the quantity originally ordered, with consideration given, of course, to the variation clause, if any, in the contract, and must be secured on the same unit basis, such as each dozen, pound. However, this does not preclude the Government from entering into one contract with the completing contractor which includes additional needed supplies provided that the excess costs to be charged against the account of the defaulting contractor are determined as provided in the preceding sentence of this paragraph.

(f) The foregoing instructions do not apply to defaulting contracts under Navy Supply or Post Office Department Contracts. On such defaults, no action should be taken until after the matter has been submitted by the contracting officer by letter to the department concerned through the chief of the technical service. In an emergency, telegraphic submission will be in order.

(g) *Form.*

REPORT ON DELINQUENT OR DEFAULTING CONTRACTOR

Service _____ Fiscal year _____
No. of contract or P. O. _____
Date _____
Original appropriation involved _____

Original order—Name of delinquent contractor—	*Purchase against account of original contractor—Name of dealer from whom purchased*
Address	Address
Order No. _____ Date _____	Order No. _____ Date _____
Quantity	Quantity
Unit Price	Unit Price
Quantity discount	Quantity discount
Time payment discount	Time payment discount
Total contract cost	Total open market cost
Total excess cost	

(Difference between contract and open market cost)

Collection made by _____
(Disbursing officer) (D. O. Symbol No.)
Schedule of Collections _____ Month _____ Year _____
Remarks: [1] _____

Signed _____
Title _____

[1] Remarks should be supported by: (a) copies of all purchase orders issued to the completing contractor as well as purchase orders directed to the defaulting contractor, (b) a citation to all vouchers making payment to the defaulting and/or the completing contractor, (c) copies of all correspondence directed to the debtor as well as those received thereform relative to the indebtedness.

SUBPART L—MISCELLANEOUS

§ 803.390 *Assignments*—(a) *Basic statutes.* There are two statutes creating restrictions on assignments of contracts with and claims against the United States. In 1940 both of these statutes were amended by the addition thereto of a paragraph making the restrictions inapplicable in certain situations. (See § 803.390 (b).)

Prior to the amendment in 1940, Revised Statutes 3737 provided as follows:

No contract or order, or any interest therein, shall be transferred by the party to whom such contract or order is given to any other party, and any such transfer shall cause the annulment of the contract or order transferred, so far as the United States are concerned. All rights of action, however, for any breach of such contract by the contracting parties are reserved to the United States. (41 U.S.C. 15.)

Prior to said amendment in 1940, Revised Statutes 3477 provided as follows:

All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration thereof, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney, must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgments of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same. The provisions of this section shall not apply to payments for rent of post-office quarters made by postmasters to duly authorized agents of the lessors. * * * (31 U.S.C. 203.)

(b) *Assignment of Claims Act of 1940.* In 1940 by the enactment of the Assignment of Claims Act (Public No. 811—76th Congress), aproved 9 October 1940, the restrictions created by sections 3477 and 3737 of Revised Statutes referred to in paragraph (a) above were, subject to certain conditions therein specified, made inapplicable to any case in which monies due or to become due under a contract providing for payments aggregating $1,000 or more, are assigned to a bank, trust company, or other financing institution including any Federal lending agency. The conditions specified in the act are, in general, those set forth in paragraphs (a), (b) and (c) of the standard article contained in § 803.355.

(c) *Assignments by operation of law.* It has been held that the provisions of sections 3477 and 3737 of the Revised Statutes, do not apply where a contract or claim is transferred by order of a court in receivership or bankruptcy proceedings, such an assignment, being by operation of law. (See 3 Comp. Gen. 623; 5 id. 592.)

(d) *Transfer of entire business.* It has been held that where an individual or corporation having a contract with or claim against the Government sells an entire business to another individual or corporation, the transferee will be recognized by the United States as the lawful successor in interest of the contractor or claimant notwithstanding the provisions of sections 3477 and 3737 of the Revised Statutes, referred to above. (9 Comp. Gen. 72, 74.)

(e) *Corporate mergers.* It has likewise been held that the provisions of section 3477 of the Revised Statutes are inapplicable to the transfer of a claim against the United States resulting from the merger of one corporation into an-

other. (Seaboard Airline Railway v. U. S., 256 U. S. 655.)

(f) *Recognition of assignments prohibited by Revised Statutes.* Assignments or transfers of contracts and claims prohibited by sections 3477 and 3737 of the Revised Statutes are merely voidable and may be validated by the Government. Authority to validate such assignments or transfers is vested in the chiefs of the technical services.

(g) In connection with the assignment of claims, contracting officers will, upon request of the contractor, furnish proposed assignees information regarding the status of the contract at the time of the assignment. In so doing, the contracting officer will advise the assignee that the information is so furnished only for confidential use in connection with the assignment.

§ 803.391 *Charges for telegraph, cable, and radio messages in cost-plus-a-fixed-fee contracts.* Pursuant to the provisions of Public Law, 4, 78th Congress, approved 6 March 1943, cost-plus-a-fixed-fee contractors and subcontractors are no longer entitled to send telegraph, cable or radio messages at government rates.

§ 803.392 *Handling defaults and threatened defaults by suppliers and subcontractors under cost-plus-a-fixed-fee prime contracts.* The following procedures are established to assure to the Government the maximum amount of protection and salvage in cases where suppliers or subcontractors of cost-plus-a-fixed-fee prime contractors fail or refuse to perform their obligations under purchase orders or subcontracts, or threaten to do so:

(a) In general, it is the responsibility of the prime contractor to administer and police his purchase orders and subcontracts; and nothing herein contained shall be construed to remove, lessen or impair such responsibility. In case of a threatened breach of contract by a supplier or subcontractor, it is the duty of the prime contractor to use all lawful means employed by businessmen in the trade to obtain performance. This will normally include the sending of a reminder to the supplier or subcontractor that compliance with contract terms is expected and that the supplier or subcontractor will be held to strict accountability for breach; personal interviews where feasible; and similar steps. It is also the duty of the prime contractor to take steps reasonably necessary to assure that he will not lose contract rights through waiver or estoppel.

(b) Where default is threatened by a supplier or subcontractor because of bona fide misunderstandings or differences between him and the prime contractor which appear to be capable of fair settlement, the prime contractor will attempt, through negotiation, to obtain such settlement. But no settlement involving any change in the terms of a purchase order or subcontract previously approved by the Contracting Officer shall be made without the written approval of the Contracting Officer.

(c) The prime contractor will notify the Contracting Officer promptly of any situation which may require the issuance of a purchase order or subcontract to another supplier or subcontractor for supplies or services covered by a purchase order or subcontract as to which default is in prospect or has occurred. Such additional purchase order or subcontract may be issued when the successful and speedy completion of the prime contractor's work is imperilled by default of a supplier or subcontractor. The prime contractor will maintain full and accurate records of cost under such additional purchase order or subcontract for the purpose, among others, or establishing a claim for damages against the defaulting supplier or subcontractor. He will also prepare and keep careful notes of all other information pertinent to the case which may be of assistance in the event of a lawsuit.

(d) Where a supplier or subcontractor has defaulted, and a claim arises in favor of the prime contractor, the latter will attempt to negotiate and settle the claim on reasonable terms whenever it appears that a fair settlement may be preferable to litigation. The prime contractor will keep the Contracting Officer informed of the progress of such settlement negotiations. The Contracting Officer shall have authority to approve a settlement and no settlement agreement will be made without his written approval.

(e) When, in the opinion of the prime contractor, further efforts at settlement will be ineffectual, he will so notify the Contracting Officer. If the Contracting Officer concurs in this opinion, he will direct the prime contractor to assemble all the papers pertinent to the claim, and to make or obtain any affidavits or other records of the transaction, and to prepare any necessary report on the claim. The Contracting Officer will forward this record (in triplicate), together with his own report and recommendation (in triplicate), to the Litigation Division, Office of The Judge Advocate General, through the chief of the technical service concerned.

(f) The Judge Advocate General may from time to time in the further handling of the claim request cooperation and assistance from the prime contractor, the Contracting Officer, and the chief of the technical service concerned, and will in some cases require the Contracting Officer to obtain assignment, from the prime contractor to the United States, of the defaulted purchase order or subcontract. No such assignment will be obtained without the approval of The Judge Advocate General.

(g) If the matter is to be forwarded to the General Accounting Office by The Judge Advocate General it will be forwarded through the Office of The Fiscal Director, Headquarters, Army Service Forces.

§ 803.393 *Disclosure of information in connection with completing Selective Service affidavit*—(a) It appears that some industrial firms have been setting forth detailed information on their war production activities, including dollar value of contracts, in completing the Affidavit — Occupational Classification (Industrial) D.S.S. Form 42A, Selective Service System.

(b) The information elicited on the reverse side of this form, pertaining to activities, production, contemplated conversion and numbers of employees, should be stated in general terms only. Detailed confidential data will not be included.

(c) All companies holding War Department contracts will be informed by the chiefs of the technical services that they must avoid any inclusion of confidential war production and related data in completing above mentioned forms.

§ 803.394 *Contracts for electric power*—(a) *Presidential directives.* (1) Under date of September 26, 1942, the following letter was received by the Secretary of War from the President:

September 26, 1942.

My dear Mr. Secretary:

It is of the utmost importance that the costs of the war program be held to a minimum consistent with the fullest and most rapid progress. In arranging for the electric power supply for war plants or establishments, the cheapest sources of power consistent with war requirements should be used.

Public and private power supplying agencies should be advised as far in advance as possible of the prospective location and requirements of plants or establishments on or near their systems in order that they may assist in solving the power supply problem involved at the lowest possible cost. In many instances it should be possible to lessen power costs if provision is made for power to be supplied to the consuming agencies directly from the power generating agency. If the lines of the lowest cost power supplying agency do not connect immediately with the war plants, there is no reason why connecting lines of other companies or agencies should not be utilized for a reasonable transmission charge. I am asking the Federal Power Commission to cooperate by using its emergency powers when necessary to make available transmission and other appropriate services for the effectuation of this policy.

I do not think that companies not themselves having sufficient power to supply war plants should be purchasing power from neighboring public power agencies for resale to these plants at a substantial profit. In such cases business like procedure would suggest that the power be purchased directly from the power supplying agencies and reasonable transmission charges be paid to the transmitting companies.

Adoption of my suggestion will not discriminate in favor of public or private power, but will accord with sound business practice.

Sincerely yours,

FRANKLIN D ROOSEVELT

Hon. HENRY L. STIMSON,
Secretary of War.

(2) Under date of October 22, 1942, the following letter was received by the Chairman, Federal Power Commission from the President:

October 22, 1942.

My dear Mr. Olds:

I would like the Federal Power Commission, after consultation with the procurement agencies and the War Production Board, to establish the procedure, outlined in the attached memorandum, to effectuate the policies set forth in my letter of September 26, 1942, addressed to the War Department, Navy Department, Maritime Commission, Defence Plant Corporation, Federal

Housing Agency and the War Production Board.

Sincerely yours,

FRANKLIN D ROOSEVELT

Hon. LELAND OLDS, *Chairman,*
Federal Power Commission.

The following memorandum was attached to the 22 October 1942 letter from the President to Mr. Leland Olds, Chairman, Federal Power Commission.

Outline of Procedure for Purchase of Power for War Plants and Establishments:

(1) Each agency directly or indirectly responsible for power procurement to designate a Power Procurement Officer to handle all contracts and arrangements for electric power as hereinafter provided.

(2) Each agency to direct its representatives to report promptly to the Power Procurement Officer each proposed procurement of power, in excess of a reasonable minimum, which involves Government approval or any Government obligation. Such reports to include all essential facts in accordance with forms approved by the Federal Power Commission.

(3) Power Procurement Officers to refer such reports promptly to the Federal Power Commission, together with proposed contracts, for determination whether cheaper power supply is available and, if so, how it can be delivered. Federal Power Commission to issue necessary orders after consultation with War Production Board as to priorities and allocations.

(4) Federal Power Commission to determine whether proposed rates and conditions are reasonable and, if unreasonable, to fix proper terms and otherwise cooperate with Power Procurement Officers in effectuating arrangements necessary for securing power on best possible terms.

(5) Review and renegotiation of existing contracts to be in accordance with above procedure.

(b) *War Department Power Procurement Officer.* Pursuant to the directives from the President, set forth in paragraph (a), Colonel R. C. Kuldell, Office, Chief of Engineers, has been designated by the Secretary of War as the War Department Power Procurement Officer with the following responsibilities for contracts of 1000 kilowatts or over for electric service to all installations where the War Department has an interest in the cost of electric service:

(1) Review of all existing contracts and initiation of such modifications or changes as are considered to be required to comply with the principles expressed in the President's directives.

(2) Review of proposed contracts and of proposed supplements to existing contracts, if such supplements extend the time, alter the contract price, or make any other substantial change in the contract terms, to assure that such contracts and supplements are consistent with the principles expressed in the President's directives.

(c) *Representatives of War Department Power Procurement Officer.* The Repairs and Utilities Divisions of the Service Command Engineer Offices are designated as representatives of the War Department Power Procurement Officer. These representatives will carry out, under his direction, such field activities as may be necessary in connection with contracts and supplements to contracts for electrical service to all establishments within the geographical boundaries of the Service Commands, where the War Department has an interest in the cost of electric service. Commanding Officers at all such establishments will cooperate with these representatives by making available such information as is required for their review of existing and proposed contracts and supplements.

(d) *Liaison with War Department Power Procurement Officer.* The Commanding General, Army Air Forces, and the chiefs of the technical services are directed to designate an officer or civilian representative to maintain liaison with the War Department Power Procurement Officer on matters pertaining to contracts for electric service. The latter should be notified of such appointment and of the address and telephone number of the person designated.

(e) *Required provision in contracts and supplements.* All contracts and supplements of the character referred to in paragraph (b), will contain a statement that the contract or supplement is subject to the approval of the War Department Power Procurement Officer and will not be binding until so approved. Such contracts and supplements will then be forwarded through the Repairs and Utilities Division of the Service Command Engineer Office to the War Department Power Procurement Officer, Office of the Chief of Engineers, for such approval.

§ 803.395 *Contracts within section 9, Military Appropriation Act, 1944.* (a) Section 9, Military Appropriation Act, 1944 (Public Law 108, 78th Congress) provides:

> Whenever, during the fiscal year ending June 30, 1944, the Secretary of War should deem it to be advantageous to the national defense, and if in his opinion the existing facilities of the War Department are inadequate, he is hereby authorized to employ, by contract or otherwise, without reference to section 3709, Revised Statutes, civil service or classification laws, or section 5 of the Act of April 6, 1914 (38 Stat. 335), and at such rates of compensation (not to exceed $25 per day for individuals) as he may determine, the services of architects, engineers, or firms or corporations thereof, and other technical and professional personnel as may be necessary.

(b) Except as may be provided in other applicable statutes, the statute above-quoted affects (1) each War Department contract for architectural, engineering, technical or professional services (i) made with any individual; or (ii) made with a firm or corporation which is engaged primarily in the business of furnishing such services, and (2) each War Department contract for the employment of the services of accountants or other experts to assist in inaugurating new or changing old methods of transacting business of the Department. Except as above stated, it does not apply to any contracts with firms or corporations for services related to the development, invention, design, procurement, production, repair, or maintenance of war supplies, matériel or facilities or for research or services concerning any such supplies, matériel or facilities, or to any other type of War Department contract.

(c) Notwithstanding anything contained in Subpart B of this part, each contract of the type described in the first sentence of paragraph (b) above, regardless of amount, and each supplemental agreement or change order making a material change in such a contract, will contain a provision stating that it is subject to the approval of the Secretary of War or Under Secretary of War and will not be binding until so approved; and such contract, supplemental agreement or change order will be forwarded by the chief of the technical service involved for approval by the Secretary of War or Under Secretary of War through the Director, Purchases Division, Headquarters, Army Service Forces. The chief of the technical service, in recommending approval, will refer specifically to the statute above quoted and will furnish a full statement of facts supporting the findings and determination required by the statute to be made by the Secretary of War (Under Secretary of War).

(d) Each such contract, supplemental agreement and change order will cite as authority the statute above quoted, the First War Powers Act, 1941, and Executive Order No. 9001.

(e) Where such contract is with an individual, it will expressly limit the compensation payable to him to not more than twenty-five dollars per day, plus additional compensation for overtime pursuant to the provisions of the War Overtime Pay Act of 1943 (Public Law 49, 78th Cong., approved 7 May 1943).

[Procurement Reg. 4]

PART 804—BONDS AND INSURANCE

SUBPART A—GENERAL

Sec.
804.401 Rescission of regulations.
804.402 Compliance with this part.
804.403 Exceptions to requirements of this part.
804.404 Security of insurance and bond information.

SUBPART B—BONDS

804.405 Types of bonds.
804.406 Contract bond requirements on lump sum construction and supply contracts.
804.407 Contract bond requirements for cost-plus-a-fixed-fee contracts.
804.408 General policy as to rates.
804.409 Filing and examination of bonds and consents of surety.
804.410 Bonds executed by receivers, trustees, administrators, or executors as principal obligors.
804.411 Bonds executed by limited partnerships as principal obligors.
804.412 Reports.

SUBPART C—SURETIES ON BONDS

804.415 Definition of consent of surety.
804.416 Requirement.
804.417 Forms.
804.418 Procedure for accomplishing execution of consent or correction of bonds and consents.
804.419 Corporate sureties.
804.420 Individual sureties.
804.421 Partnerships as sureties.
804.422 Substitution or replacement of a surety.
804.423 Options in lieu of sureties on bonds.

SUBPART D—INSURANCE

General

Sec.
804.431 General policy.
804.432 Exclusion of subrogation.

Insurance in Connection with Cost-Plus-a-Fixed-Fee Contracts

804.434 Insurance on Government-owned property.
804.435 Waiver of Defense Plant Corporation insurance requirements.
804.436 Casualty insurance.
804.437 Miscellaneous insurance.
804.438 Group insurance.
804.439 Procedure.
804.440 Description of plan.
804.441 Benefits in event of capture or detention of employees.
804.442 Insurance in connection wth cost-plus-a-fixed-fee contracts outside of the continental United States.

Insurance in Connection With Lump Sum Contracts

804.450 General.
804.451 Insurance on government-owned property.
804.452 Waiver of Defense Plant Corporation insurance requirements.
804.453 Lump sum contracts excluding cost of insurance.

Architect-Engineer-Management Contracts

804.460 Architect - Engineer - Management contracts.

War Risk Insurance in Connection With Vessels or Other Floating Equipment

804.461 Master policy.

Purchase of Insurance by Cost-plus-a-fixed-fee Contractors

804.470 Acceptability of insurance carrier.
804.471 Methods of purchase of casualty insurance.

War Department Insurance Rating Plan

804.473 Plan in general.
804.474 Duration of coverage.
804.475 Endorsements to be attached to policy.
804.476 Rules and rates under War Department Insurance Rating Plan.
804.477 Rules and rates with respect to workmen's compensation.
804.478 Employers' liability insurance (Mississippi):
804.479 Employers' liability and voluntary compensation insurance (Oregon and Washington).
804.480 Experience rating not to be employed.
804.481 Automobile bodily injury and property damage liability insurance.
804.482 Comprehensive bodily injury liability insurance.
804.483 Insurance advisor.

Special Instructions for the Preparation of Policies

804.485 Workmen's compensation policies.
804.486 Average rates for construction projects insured under the War Department Insurance Rating Plan.
804.487 Fire insurance.
804.488 Rules and regulations of the state of Massachusetts pertaining to use of War Department Insurance Rating Plan in that state.
804.489 Rules and regulations pertaining to use of War Department Insurance Rating Plan in state of Texas.

Settlement of Claims

804.490 Settlement under the War Department Insurance Rating Plan.
804.491 Claims, losses and claims service under the War Department Insurance Rating Plan.

Miscellaneous

Sec.
804.492 War risk indemnity contracts.
804.493 Reports.

SUBPART E—BONDS AND INSURANCE FORMS

804.496 Bond forms.
804.497 Insurance forms.
804.498 List of offices of loss and salvage organizations.
804.499 Extension of policy period endorsement for workmen's compensation and employers' liability policy.

SUBPART A—GENERAL

§ 804.401 *Rescission of regulations.* Army Regulations 5–140, May 22, 1940, as amended; Army Regulations 5–220, August 7, 1940, as amended; and all other directives and instructions relating to bonds and insurance issued prior to February 1, 1943, are hereby rescinded.

§ 804.402 *Compliance with this part.* Unless otherwise specifically provided, compliance with any provision of this part or of any amendment thereto which requires a change in procedure or in any contract provision shall not be mandatory until thirty days after the issuance of such regulation or amendment.

§ 804.403 *Exceptions to requirements of this part.* Where any provisions of this part, establishes requirements the application of which is impractical in a given special case or in a particular situation, the matter should be submitted to the Insurance Branch, Fiscal Division, Headquarters, Army Service Forces with a full statement of the facts and circumstances. That Branch has authority to make exceptions to requirements set forth in this part.

§ 804.404 *Security of insurance and bond information.* The attention of all concerned is directed to the security problem involved in insurance transactions. The following is the full text of paragraph IV of War Department Circular No. 398, 1942:

IV—Security of insurance information. 1. Effective procurement and distribution of war supplies and materials, and the efficient operation of supply and repair facilities, private and public, are essential to speedy victory and the conservation of lives and property. Every contract operation of the War Department involving a private person or organization places upon that person or organization some degree of financial responsibility for loss or damage to persons or property. A prudent business man or organization promptly seeks to pass this liability to a second party, an insurer, for a known price in order to stabilize costs.

2. Insurance underwriters customarily require detailed knowledge of the risks underwritten. In many cases insurance sources require and obtain a continuous knowledge of the operations either by reason of the insurance service facilities at the project site or through reports required by the insurance contract. These reports are used for the purpose of computing premium charges. Usually, when no service facilities are installed at the project, the policy contract makes provision for the right of examination and audit by the insurer's personnel.

3. It is essential that all concerned fully appreciate the potential value of insurance as a source of detailed and current information. Our enemies are adept at utilizing this source for intelligence purposes and over a period of time have, by devious and ingenious commercial transactions, infiltrated the world insurance structure.

4. Appropriate action is expected in the near future to reduce drastically the flow of insurance information out of the United States. This action will not eliminate the danger to security of vital information unless greater care is exercised in its dissemination and safekeeping within the United States.

5. All concerned will bring this matter to the immediate attention of private persons or organizations engaged in war projects. Management will see to it that insurers are permitted only such information as is proved to be essential to their operations, and that such information as is permitted will be kept in a safe manner. Each insurer will be required to designate its representative or representatives to whom such information will be given, and will be required to undertake that such information as is obtained will not be furnished to any other insurer or organization without the prior approval of the contractor and the Army representative in charge. In the absence of an Army representative, contractors will be advised to communicate direct with the Insurance Branch, Fiscal Division, Headquarters, Services of Supply. All concerned desiring assistance or guidance will also communicate with the Insurance Branch.

6. It is realized that insurance is a necessary adjunct to industry, and that insurers require some information in order to operate intelligently. However, indications are that great care has been exercised with respect to dissemination of information concerning vital operations, but little or no attention has been paid to the insurance source. More emphasis will be placed upon security when selecting an insurer in connection with important operations, and security will never be sacrificed for price.

The foregoing is equally applicable to bonds, and strict compliance therewith by all concerned is in the National interest.

SUBPART E—BONDS

§ 804.405 *Types of bonds.* There are set forth in this section brief descriptions of the more common types of bonds, riders, and endorsements used in connection with War Department Contracts. In certain of those paragraphs there are contained cross references to the forms of bonds, riders, and endorsements which are contained in Subpart E of this part.

(a) *Bid bond.* A bid bond is a bond accompanying a bid in which the obligor obligates himself in an amount stated (the penal sum), which obligation, it is stated, is to be void if:

(1) The bid is not withdrawn after the opening within the period specified in the bid, or, if no shorter period is specified, within sixty days; and

(2) A written contract, with such bond or bonds as may be required, is executed within ten days after the prescribed forms are presented for signature. (For form see § 804.496 (a).)

(b) *Annual bid bond.* An annual bid bond is a single bond securing all bids submitted to a designated agency during the fiscal year. Such a bond is executed in lieu of executing separate bid bonds for each bid. (For form see § 804.496 (b).)

(c) *Performance bond.* A performance bond is a bond which is executed in connection with a contract and which secures the performance and fulfillment of all the undertakings, covenants, terms, conditions and agreements contained in the contract. (For form see § 804.496 (c).)

(d) *Annual performance bond.* An annual performance bond is a single bond securing the performance and fulfillment of all the undertakings, covenants, terms, conditions and agreements of all contracts executed with a designated agency during a fiscal year. Such a bond is executed in lieu of executing separate performance bonds for each contract. (For form see § 804.496 (d).)

(e) *Payment bond.* A payment bond is a bond which is executed in connection with a contract and which secures the payment of all persons supplying labor and material in the prosecution of the work provided for in the contract. (For form see § 804.496 (e).)

(f) *Advance payment bond.* An advance payment bond is a bond which secures the performance and the fulfillment of a contractual provision for the making of advance payments of the type described in § 803.321, et seq. (For form see § 804.496 (f).)

(g) *Patent infringement bond.* A patent infringement bond is a bond which secures the performance and fulfillment of the undertakings contained in a patent clause of the type set forth in § 803.335. (For form see § 804.496 (g).)

(h) *Fidelity bond (blanket).* A fidelity bond is a bond under which the obligor agrees to indemnify an employer up to an amount stated in the bond for losses caused by dishonesty on the part of all employees except those expressly excluded by written endorsement on the bond. (For form see § 804.496 (i).)

(i) *Forgery bond or policy (depositor's form).* A forgery bond or policy is a bond or policy under which the obligor agrees to reimburse a purchaser and others named in the bond or policy (the insureds) to an amount stated in the bond or policy:

(1) For losses caused by the forging or altering of a check, draft, or similar instrument issued by or purported to have been issued by any of the insureds named in the bond or policy.

(2) For losses resulting from the fact that a check or draft has been obtained from the insureds through the device of impersonation (For form see § 804.496 (j)).

(j) *Retroactive reinstatement rider.* This rider contains a provision which is available for blanket fidelity and forgery bonds whereby after a loss has been sustained the penalty of the bond is restored to its original amount with respect to prior losses. There is contained in the bond itself a provision which automatically restores the penalty of the bond to the original amount with respect to future losses.

(k) *Waiver of restoration premium rider.* This rider contains a provision which is available for blanket fidelity and forgery bonds which has the effect of eliminating the premium charge for restoring the penalty of the bond after a loss has been sustained.

(l) *Endorsement excluding subrogation to claims against the United States.* This endorsement contains a provision which excludes any claim on the part of the surety company to be subrogated on payment of a loss or otherwise to any claim against the United States. It is required to be placed on any fidelity or forgery bond, the premium for which is either paid by the Government directly or is a reimbursable item under a cost-plus-a-fixed-fee contract.

(m) *Cancellation or change notice rider.* This rider contains a provision by which a surety agrees to notify certain named interested parties in the event that the bond is cancelled or changed in any other manner.

(n) *License or permit bond.* This is a bond which secures to a municipality or other public authority the payment of fines or the amount of any losses sustained as a result of action taken, or omitted to be taken, in violation of the terms of a license or permit. The indemnity sometimes runs to third persons in addition to the municipality.

§ 804.406 *Contract bond requirements on lump sum construction and supply contracts*—(a) *Bid bonds.* Bid bonds will not be required in connection with lump sum construction and supply contracts except when the contract was placed as a result of formal advertising and the invitation to bidders specified that the contracts were to be supported by performance and/or payment bonds. On such bonds as are required the penal sum will be in an amount deemed adequate for the protection of the United States. The maximum rates of premiums on such bonds are as follows:

(1) On construction contracts not exceeding $2,500, a premium of twenty cents per $100 of bid price, the minimum premium being $1.00;

(2) On construction contracts in an amount in excess of $2,500, a flat fee of $5.00 per bond;

(3) On supply contracts not in excess of $1,250 in amount, a premium of twenty cents per $100 of bid price, the minimum premium being $1.00;

(4) On supply contracts in excess of $1,250 in amount, a flat fee of $2.50 per bond.

The charge for a bid bond is applied as a credit against the premium for the performance bond if the contractor is the successful bidder.

(b) *Performance bonds.* The extent to which performance bonds will be required in connection with lump sum construction and supply contracts will be determined by the chief of the supply service concerned. However, the requirement of performance bonds will be the exception rather than the rule. On such bonds as are required the penal sum will be the lowest which, in the exercise of sound judgment, is deemed adequate for the protection of the United States. The maximum rates of premiums on such bonds are as follows:

(1) On lump sum construction contracts for both performance and payment bonds on the same contract with stipulated completion time not exceeding twelve months:

(i) For Class "A" construction (including dredging):

(*a*) $5.00 per thousand of the contract price up to $2,500,000 and $3.75 per thousand of the portion of the contract price in excess of $2,500,000; or

(*b*) Where the total penal sum of the performance and payment bonds is less than 10% of the contract price, $40.00 per thousand of the aggregate penal sum of both the performance and payment bonds; and

(*c*) A minimum premium in any case of $7.50 per bond.

(ii) For Class "B" construction (including highways and bridges):

(*a*) $6.65 per thousand of the contract price up to $2,500,000 and $5.00 per thousand of the portion of the contract price in excess of $2,500,000; or

(*b*) Where the total penal sum of the performance and payment bonds is less than 15% of the contract price, $45.00 per thousand of the aggregate penal sum of both the performance and payment bonds; and

(*c*) A minimum premium in any case of $10 per bond.

(2) On lump sum supply contracts (for performance bonds only) a premium of $1.00 per thousand of the contract price, the premium in no event to exceed $3.00 per thousand of the penal sum of the bond and in no event to be less than $5.00.

(c) *Payment bonds*—(1) *Lump sum construction contracts.* Payment bonds will be required in connection with all lump sum construction contracts where performance bonds are required. As a general rule payment bonds will also be required in connection with all other construction contracts which exceed $2,000 in amount. However, as to contracts where performance bonds are not required, the requirement of a payment bond may in the discretion of the chief of the supply service concerned be waived when the credit of the contractor makes the requirement unnecessary. The penal sum of payment bonds executed in connection with lump sum construction contracts will be as follows:

(i) When the contract price is $1,000,000 or less, 50 percent of the contract price;

(ii) When the contract price is in excess of $1,000,000 but less than $5,000,000, 40 percent of the contract price;

(iii) When the contract price is $5,000,000 or more, $2,500,000.

The maximum rates of premium for payment bonds executed in connection with lump sum construction contracts will be $4.50 per thousand of contract price up to $2,500,000 and $3.35 per thousand of the portion of the contract price in excess of $2,500,000; the premium in no case to exceed 3.3 percent of the penal sum of the bond. The minimum premium will be $10.00 per bond.

(2) *Lump sum supply contracts.* Payment bonds will not be required in connection with lump sum supply contracts except where, in the opinion of the chief of the supply service concerned, the requirement of such a bond would facilitate the prosecution of the war. The penal sum of the bond will be the lowest sum which in the exercise of sound judgment is deemed reasonably adequate for the protection of the United States as the representative of the suppliers of labor and materials. The maximum rates of premium on payment bonds executed in

connection with lump sum supply contracts are as follows:

(i) On lump sum supply contracts of $1,000,000 or less where the penalty of the bond does not exceed 50% of the contract price: $2.25 per thousand on 50 percent of the contract price;

(ii) On lump sum supply contracts of $1,000,000 or less where the penalty of the bond exceeds 50 percent of the contract price: $2.25 per thousand of the penal sum of the bond;

(iii) On lump sum supply contracts in excess of $1,000,000 but not in excess of $6,250,000 where the penalty of the bond does not exceed 40 percent of the contract price: $2.25 per thousand on 40 percent of the contract price;

(iv) On lump sum supply contracts in excess of $1,000,000 but not in excess of $6,250,000 where the penalty of the bond exceeds 40 percent of the contract price: $2.25 per $1,000 of the penal sum of the bond;

(v) On lump sum supply contracts in excess of $6,250,000: $2.25 per thousand of the penal sum of the bond and in no event less than $5,625.

If both performance and payment bonds are required in connection with a supply contract, the rates set forth in paragraphs (b) (2) and (c) (2) represent the maximum rates of premium for each separate bond.

(d) *Advance payment bonds.* The extent to which advance payment bonds will be required in connection with lump sum construction and supply contracts is discretionary with the chief of the supply service concerned, but such bonds will be required only in the most exceptional circumstances. The penal sum of the bond will be the lowest sum which in the exercise of sound judgment is deemed reasonably adequate for the protection of the United States. The maximum rates of premium are as follows:

(1) On the first $2,500,000 advanced—$6.00 per thousand;

(2) On any sum advanced in excess of $2,500,000 and up to $5,000,000—$5.75 per thousand;

(3) On any sum advanced in excess of $5,000,000 and up to $7,500,000—$5.50 per thousand;

(4) On any sum advanced in excess of $7,500,000—$5.00 per thousand.

The above rates are computed on all moneys advanced, and are for bonds guaranteeing performance of contractual provisions covering advance payments only; they are not for guaranteeing the performance of any other contracts.

(e) *Patent infringement bonds.* (1) A patent infringement bond will not be required with respect to any contract in connection with which a performance bond has been executed.

(2) Even if a performance bond has not been executed the requirement of a patent infringement bond will be the exception rather than the rule. Where, however, a lump sum supply contract or construction contract contains a patent clause of the type set forth in § 803.335 and the financial responsibility of the contractor is unknown or doubtful, a patent infringement bond may, in the discretion of the chief of the supply service concerned, be required.

(3) On such bonds as are required, the penal sum will be the lowest which, in the exercise of sound judgment, is deemed adequate for the protection of the interests of the United States. The maximum rate of premium is $10 per thousand per annum on the penal sum of the bond. The maximum premium for the term of the bond is five annual premiums of $10 per thousand each. If the term premium is paid in advance, a discount of 20 percent is applicable.

(f) *Annual bid bonds.* The annual bid bond is not in general use for lump sum construction and supply contracts.

(g) *Annual performance bonds.* The annual performance bond is not in general use for lump sum construction and supply contracts.

§ 804.407 *Contract bond requirements for cost-plus-a-fixed-fee contracts.* (a) Bid, performance, payment, advance payment, patent infringement, annual bid and annual performance bonds will not be required for cost-plus-a-fixed-fee supply contracts, construction contracts, or contracts for the operation of Government-owned plants.

(b) *Fidelity bonds.* Fidelity bonds will be approved in connection with cost-plus-a-fixed-fee supply contracts, construction contracts or contracts for the operation of Government-owned plants only in those cases where in the opinion of the chief of the supply service concerned it is desirable to obtain the investigating and claims facilities of a surety company and such bonds are considered to be reasonably necessary for the protection of the contractor or the Government. A Primary Commercial Blanket form of bond with a rider providing for retroactive reinstatement for prior losses in the penal sum of $10,000 will be considered sufficient. The following additional clauses will be required:

(1) A rider excluding any claim on the part of the surety company to be subrogated on the payment of loss or otherwise, to any claim against the United States;

(2) A rider providing for pro rata refund of premium in the event of cancellation by the insured;

(3) A rider providing for a notice to the chief of the supply service concerned in the event of any change in or cancellation of the bond;

(4) A rider providing for investigation of all claims;

(5) A rider providing for investigation of all Class "A" employees.

There are a variety of discounts which may be applied to blanket fidelity insurance under certain circumstances. A 30% class discount may be applicable to the class A employee premium charge, depending on the nature of the assured's contracts on hand when the bond is written or renewed. A 10% general discount may be applicable to the combined class A and class B employee premium charge for a Primary Commercial Blanket Bond, depending on the number of employees involved and the amount of the bond. An experience discount ranging as high as 25% may be applicable to the final premium, depending on the size of the premium and the amount of claims or losses incurred. Therefore, when blanket fidelity insurance is purchased, carriers should be cautioned to apply all appropriate discounts.

When, pursuant to § 804.409 (c) hereof, a duplicate of the fidelity bond or policy is forwarded to the Contract Insurance Branch, Special Financial Services Division, Headquarters, Army Service Forces, it will be accompanied by (i) a statement showing what percentage of the name assured's total volume of contracts for all departments and agencies of the Government is cost-plus-a-fixed-fee, (ii) a classification of the employees showing the number placed in A, B, and C classes, and (iii) if available a complete computation of the premium charge or proposed premium charge. Upon receipt of this data the Contract Insurance Branch will advise the service concerned if the premium has not been correctly computed.

(c) *Forgery bonds.* This type of bond will be approved in connection with cost-plus-a-fixed-fee supply contracts, construction contracts or contracts for the operation of Government-owned plants only in those cases where, in the opinion of the chief of the technical service concerned, the operation of the contract requires the employment of a large number of new employees who may be inexperienced in the proper method of handling accounting matters and where the contractor concerned transacts the greater part of his business by checks. If, in such a case, it is determined that a forgery bond or policy is desirable to obtain the investigating and claims facilities of a surety company and is considered reasonably necessary for the protection of the Government or the contractor, a forgery bond or policy with a retroactive reinstatement rider may be approved in the penal sum of $10,000. This sum is considered sufficient. The clauses referred to in paragraph (b) (1) to (b) (4) will be required.

(d) *License and permit bonds.* These types of bonds will be approved only in those cases where in the opinion of the chief of the technical service concerned such bonds provide a necessary protection to the Government or to the contractor against liability to third parties or where failure to provide such bonds would constitute a violation of an applicable ordinance or statute of a municipality or other public authority.

(e) *Endorsement excluding subrogation to claims against the United States.* In every case where a contract requires the United States to pay the premium, either directly or by way of reimbursement, on a bond, the bond will contain an endorsement or other recital excluding by appropriate language any claim on the part of the surety to be subrogated, on payment of a loss or otherwise, to any claim against the United States.

§ 804.408 *General policy as to rates.* The rates referred to in § 804.406:

(1) Are maximum rates. Where a surety charges less than the rates shown in said section, care should be observed

that the savings resulting therefrom are reflected in the contract price.

(2) Apply to both prime contracts with the War Department and subcontracts thereunder.

(3) Apply to all bonds which were executed on or after August 28, 1942 in connection with contracts of the types referred to in § 804.406.

(4) Apply to the increased amount of any contract, the amount of which is increased on or after August 28, 1942.

(5) Are based on a stipulated completion time not exceeding twelve months on Class "A" and Class "B" construction contracts.

(a) *Bond premium computation on terminated contracts.*—(1) Premium on the bonds described in § 804.406 (b) and (c) (except in certain instances mentioned in such paragraphs where the rate is applied to the penalty of the bond or bonds) is determined by multiplying the appropriate rate of premium by the final contract price, that is, the total remuneration received by the contractor after final settlement. The rule followed by the surety industry generally is as follows:

> The "contract price" on which premium is computed means the whole sum of money or other reimbursement which has passed from the owner to the contractor when final settlement between the two has been made, excluding any bonus for "time". If this sum is different from the original estimate, premium must be adjusted accordingly, either by a refund of part of the original premium by the surety if the original estimate was larger than the actual contract price, or by payment of additional premium by the contractor if the original estimate was smaller than the actual contract price. (Towner Rating Bureau bond manual—page 47.)

Accordingly, when a contract is terminated short of original estimate, the decrease in contract price requires that an adjustment in bond premium be taken into account when final settlement is made. Such adjustment (or return premium) on a contract decrease is ascertained by subtracting from the original premium the amount of premium developed in multiplying the appropriate rate by the terminated contract price. By "appropriate" rate is meant the rate that would have been used for a contract in the amount of the terminated contract price at the time the original contract was awarded. Care should be observed in connection with construction contracts in excess of $2,500,000 in amount for the reason that prior to 28 August 1942 such contracts were accorded special rates of a graduated nature, depending on the size of the contract and the performance time involved. Subsequent to 28 August 1942 special rates have been promulgated for construction contracts where performance time required more than twelve months. In any case where doubt exists or special circumstances are believed involved, full details together with the recommendation of the chief of the technical service will be forwarded to the Contract Insurance Branch, Special Financial Service Division, Headquarters, Army Service Forces, for review and advices.

(2) Premium on bonds required in support of War Department contracts other than those described in § 804.406 (b) and (c) is determined by various methods, depending on the nature of the bond or contract involved. As a general rule, adjustment of bond premium is in order where a contract is terminated short of completion. Especially is this true where the bond premium is included in the contract price as an item of cost. In any case where doubt exists or special circumstances are believed involved, full details together with the recommendation of the chief of the technical service will be forwarded to the Contract Insurance Branch, Special Financial Services Division, Headquarters, Army Service Forces, for review and advices.

(3) Premium on fidelity and forgery bonds furnished in connection with cost-plus-a-fixed-fee contracts is paid for a certain period of time, which is generally one year. There is attached to each such bond a rider providing for pro rata refund of premium on a calendar day basis when the bond is canceled upon contract termination.

§ 804.409 *Filing and examination of bonds and consents of surety.* (a) All bonds of the types described in § 804.405, will be executed in duplicate.

(b) (1) The original of all surety bonds required by the various elements of the War Department (except as hereinafter provided in subparagraph (3)) will be forwarded to The Judge Advocate General. The latter will examine them as to legal sufficiency and as to form and execution. In the case of corporate sureties he will examine them to ascertain whether the corporate officials who purported to execute the bonds on behalf of the corporate sureties had authority to do so; and in the case of individual sureties he will examine them to ascertain whether the affidavit of justification and the certificate of sufficiency of the surety or sureties are in accordance with regulations. The Judge Advocate General will then forward the bond to the proper office for filing. To assist in this, it is important that the forwarding office indicate clearly on the front page of the bond the Army Audit Branch of the General Accounting Office to which the bond should be sent (see § 803.317b (a) and (b)). The duplicate will be retained and filed in the office to which it pertains or which authorized its acceptance.

(2) Consents of surety will be handled in the same manner as bonds, except that for more expeditious handling they may be forwarded in blank to the Office of The Judge Advocate General which will have them executed in Washington under the Expediter Plan and then approve them.

(3) The following bonds will not be forwarded to The Judge Advocate General:

(i) Bid bonds (except annual bid bonds). The original and duplicate numbers will be retained in the office to which they pertain or which authorized their acceptance.

(ii) Blanket fidelity and forgery bonds. Refer to paragraph (c) for filing of duplicates.

(iii) All bonds required by Army Regulations to be filed elsewhere than at the War Department. The orginal and duplicate will be retained in the office to which they pertain or which authorized their acceptance.

(c) The duplicate of all fidelity and forgery bonds will be forwarded to the Contract Insurance Branch, Special Financial Services Division, Headquarters, Army Service Forces, for examination and filing.

§ 804.410 *Bonds executed by receivers, trustees, administrators, guardians, or executors as principal obligors.* (a) Receivers, trustees, administrators, guardians or executors are officers of the court which appointed them. Their powers are limited to those specified in the court order appointing them. Accordingly, when a bond is executed by such an officer of a court, a duly authenticated copy of the court order showing his authority to execute the bond should be obtained.

(b) All bonds executed by such a court officer should commence substantially as follows:

> I (we) John Doe (and _____) as executor (s) (administrator (s)) of the estate of _____, deceased (trustee (s) of _____) (receiver (s) _____).

(c) The execution should be prepared and signed by such court officer in the blank space provided for the signature of the individual obligors and should be in substantially the following form:

> John Doe (and_____) as executor(s) (administrator(s) of the estate of _____deceased (trustee(s) of_____) (receiver of _____).

(d) In the case of a bond executed by the receiver of a corporation, the corporate seal should not be affix inasmuch as the bond is not the bond of the corporation itself, but a bond executed by the receiver on behalf of the estate of which he is receiver.

(e) Bonds executed by a receiver or trustee which may extend beyond the term of his appointment, and all bonds executed by administrators or executors will not in general be acceptable, unless the court has entered a specific decree authorizing the type of bond in question, or unless in the general decree appointing the officer the court has specifically granted authority to execute the type of bond in question. In either event a duly authenticated copy of the court order should be attached to the copy of the copy of the bond.

§ 804.411 *Bonds executed by limited partnerships as principal obligors.* If the principal obligor is a limited partnership the individual names and residences of the general and limited partners will appear in the body of the bond with a recital that they are general and limited partners respectively. The limited partnership shall be named, the location of its business specified, and the bond shall be executed in the name of the limited partnership by all of the general partners with a recital that they are general partners and by such general partners as individuals.

§ 804.412 *Reports.* The chief of each technical service will submit to the Chief of the Contract Insurance Branch, Special Financial Services Division, Headquarters, Army Service Forces, a data sheet in connection with each contract in support of which a bond is required. The form of this data sheet is set forth in § 804.496 (l).

SUBPART C—SURETIES ON BONDS

§ 804.415 *Definition of consent of surety.* A consent of surety is an instrument by which the surety or sureties on a bond or bonds supporting a contract:

(a) Consent to a supplemental agreement which modifies or amends the contract, or

(b) Consent to a change order making an authorized modification.

§ 804.416 *Requirement.* The circumstances under which consents of sureties are required are set forth in § 803.314.

§ 804.417 *Forms.* The form of consent to be used in cases where an advance payment provision was added by supplemental agreement subsequent to the original execution of the contract is set forth in subparagraph (2) of § 804.496 (h).

The forms of consent to be used in all other cases is set forth in subparagraph (1) § 804.496 (h).

(a) *Filing and examination of consents of surety.* See § 804.409 (b).

§ 804.418 *Procedure for accomplishing execution of consent or correction of bonds and consents.* There are two procedures for obtaining the execution of consents. Either may be used but it is suggested that the so-called "expediter plan" expedites the handling of these matters particularly where a number of co-sureties are involved. On occasion, use of the so-called "standard plan" has resulted in considerable delay in obtaining consents or correction of bonds. Accordingly, the expediter plan is recommended. The following is a description of the two procedures:

(1) *Expediter plan.* There has been established in Washington at the Office of the Association of Casualty and Surety Executives, Washington Building, an arrangement whereby either Mr. Howard M. Starling or Mr. Charles M. Walker, on his sole unwitnessed signature, will execute consents of surety and make corrections in bonds and consents in compliance with requests originating either in Washington or in the field offices. These representatives of the surety industry have been so empowered by all of the surety companies on the Treasury Department List and authenticated evidence of their authority as above described has been filed with Office of The Judge Advocate General and with the Section of Surety Bonds, Treasury Department. Whenever a supply service desires to avail itself of the expediter plan, it should transmit an unexecuted consent or the incorrect bond or consent in the manner described in subparagraph (2) of § 804.410 (b) to the Office of The Judge Advocate General. That office will get in touch with Mr. Starling or Mr. Walker who will handle all the details for the surety companies concerned and will execute or correct the instrument. The Office of The Judge Advocate General will then handle the document in the manner set forth in § 803.314 (d).

(2) *Standard plan.*—If the expediter plan is not used, the request for a consent or for a correction of a bond or consent should be made directly to the surety company concerned or its representative.

§ 804.419 *Corporate sureties.*—(a) *Corporate surety acceptability requirements.* In order to be acceptable to the War Department, the corporate surety must have obtained from the Secretary of the Treasury authority to do business under the Act of August 13, 1894 (28 Stat. 279), as amended by the Act of March 23, 1910 (36 Stat. 241); 6 U. S. C. 8; M. L. 1939, sec. 534. A list of the corporations approved by the Secretary of the Treasury is published semi-annually by the Treasury Department as Form No. 356 (Section of Surety Bonds). This list indicates the maximum penal sum in which any corporate surety may underwrite any one obligation. Any corporation whose name is on this list is acceptable within the limits of such approval. The chiefs of the supply services are responsible for distributing copies of the list. It may be procured through The Judge Advocate General to whom a requisition for the requirements of each supply service should be sent semi-annually on or before March 15 and September 15.

(b) *Qualifications of agents and corporate sureties.* Corporate sureties should forward to The Judge Advocate General, Washington, D. C. for filing: powers of attorney or certified copies of resolutions of their Boards of Directors or Trustees authorizing their officers or agents to execute bonds, and certificates evidencing the revocation of authority previously granted to execute bonds.

(c) *Corporate co-sureties.* More than one corporate surety may be accepted as surety upon any recognizance, stipulation, bond, or undertaking in connection with either supply or construction contracts, provided that in no case will the liability of any such co-surety exceed the maximum penal sum in which the corporate surety is qualified to underwrite any one obligation. On bonds covering supply contracts where the amount of the bond is greater than the underwriting limitation of the corporate surety, the latter may reinsure with a corporation on the acceptable list of corporate sureties and having the required underwriting capacity. Reinsurance agreements are not acceptable in connection with construction contracts. As indicated by the forms of bonds (see paragraphs (c) (5), (e) (4), and (f) (5) of § 804.496), it is not necessary that corporate co-sureties obligate themselves for the full amount of the bond. Each corporate surety may, by setting forth the limit of its liability in the bond as a definite and specified sum, limit such liability. In all cases the liability shall be limited to the maximum penal sum in which the corporate surety is qualified to underwrite any one obligation. As further indicated by the aforementioned forms, the sureties must, however, bind themselves "jointly and severally" for the purpose of allowing a joint action or actions against any or all of them.

§ 804.420 *Individual sureties.*—(a) *Acceptability.* Individual sureties are acceptable for all types of bonds other than fidelity and forgery bonds, provided that they meet the requirements specified in paragraph (c) and in paragraph (e) of this section.

(b) *Number.* If individual sureties are used there shall be at least two responsible individuals on each bond.

(c) *Citizenship.* (1) Except as prescribed in subparagraph (2) individual sureties will be citizens of the United States.

(2) Sureties on bonds executed in foreign countries, the Canal Zone, Porto Rico, Hawaii, Alaska or any other possession of the United States, to secure the performance of contracts entered into those places need not be citizens of the United States. However unless they are citizens of the United States they must be domiciled in the country, territory or possession where the contract is to be performed.

(d) *Extent of liability.* The liability of each individual surety shall extend to the entire penal amount of the bond, except that when more than two sureties are furnished, the Insurance Branch, Fiscal Division, Headquarters, Army Service Forces, may authorize special provision with respect to the extent of liability.

(e) *Justification.* Individual sureties will each justify in an amount not less than the penal amount of the bond.

(f) *Stockholders as sureties.* In connection with any bond of which a corporation is the principal obligor, a stockholder of that corporation is acceptable as a surety on the bond: *Provided,* That his net worth exclusive of his stock holdings in the corporation is equal to the amount for which he justified: *And provided further,* That such fact is expressly stated in his affidavit of justification.

§ 804.421 *Partnerships as sureties.* A partnership or other unincorporated association, as such, will not be accepted as a surety. The individual members of the partnership or association may, of course, if they meet the requirements of paragraphs (c) and (e) of § 804.420 qualify as sureties. Individual members of a partnership or association will not, however, be acceptable as sureties on bonds under which the partnership or association, or any co-partner or member thereof, is the principal obligor.

§ 804.422 *Substitution or replacement of a surety.* In case of financial embarrassment, failure or other disqualifying cause on the part of a surety under a bond the chief of the supply service concerned will require the substitution of a new surety satisfactory to him.

§ 804.423 *Options in lieu of sureties on bonds.* Under the conditions set forth in paragraphs (a) and (b), United States bonds or notes, certified checks, money orders or currency may be deposited in lieu of furnishing sureties on bonds.

(a) *United States bonds or notes.* (1) Under the provisions of the act of February 24, 1919, as amended, any person required to furnish a bond executed by him as principal obligor has the option, in lieu of furnishing sureties on his bonds, of depositing United States Liberty bonds or other bonds or notes of the United States except as provided in subparagraph (2) (iii) below at a sum equal at their par value to the penal amount of the bond (Act of February 24, 1919, ch. 18, sec. 1320, as amended; 6 U.S.C. 15; M.L. 1939, sec. 540).

(2) Procedure: The procedure for carrying out the authority conferred by the above mentioned act, is contained in Treasury Department Circular No. 154, issued under date of February 6, 1935. In general, the procedure is as follows:

(i) The contracting officer is the "bond approving officer" who will turn over the securities deposited with him to the local disbursing officer for safekeeping. The disbursing officer will receipt for the securities in duplicate on Form D, Treasury Department Circular No. 154.

(ii) Instead of retaining the securities turned over to him, the disbursing officer may deposit them with the Treasury of the United States, a Federal Reserve Bank, a branch of the Federal Reserve Bank, having the requisite facilities, or other depository duly designated for that purpose by the Secretary of the Treasury. The procedure is set forth in more detail in Treasury Department Circular No. 154.

(iii) United States Savings bonds may only be pledged in lieu of furnishing sureties, when the bond approving officer is the Secretary of the Treasury. The acceptance by a War Department contracting officer of United States savings bonds is thus precluded.

(iv) Treasury Certificates of Indebtedness are not acceptable in lieu of furnishing sureties.

(b) *Certified checks, money orders or currency.* Any person required to furnish a bond executed by him as principal obligor has the option in lieu of furnishing sureties on his bond, of depositing a certified check, a Post Office money order or currency provided that the penal sum of the bond is not in excess of $50,000. The following procedure will be followed:

(1) Certified checks or Post Office money orders will be drawn to the order of the Treasurer of the United States.

(2) Certified checks, Post Office money orders and currency accepted by the contracting officer in lieu of sureties on a bond will be promptly turned over to the local disbursing officer and deposited by him in a special deposit account. A certificate as to this action will be executed by the disbursing officer and attached to the original bond.

(3) The amount of the security deposited will be refunded to the contractor when the obligation of the bond has by its terms ceased.

SUBPART D—INSURANCE

General

§ 804.431 *General policy.* Insurance coverages will be authorized or required only in those instances where public policy or interest makes it desirable to use the organization, facilities or other services of the insurance industry, or where a commingling of property and operations or circumstances of ownership make the carrying of insurance reasonably necessary for the protection of the several interests concerned.

§ 804.432 *Exclusion of subrogation.* In every instance where a contract requires the United States to pay the premium either directly or by way of reimbursement on an insurance policy, the policy will contain an endorsement or other recital excluding by appropriate language any claim on the part of the insurer to be subrogated, on payment of a loss or otherwise, to any claim against the United States. For contract language see § 803.365 (c).

Insurance in Connection With Cost-Plus-a-Fixed-Fee Contracts

§ 804.434 *Insurance on Government-owned property.* (1) No insurance covering loss or destruction of or damage to property, legal title to which is in the United States and which is to be used in connection with a cost-plus-a-fixed-fee contract, will be required or authorized without the prior approval of the Contract Insurance Branch, Special Financial Services Division, Headquarters, Army Service Forces. To implement this policy of self-insurance on government-owned property, there shall be included in the contract, the clause set forth in § 803.365 (a). The policy of self-insurance rests to a large degree upon savings to the Government obtained by eliminating the cost of insurance which otherwise would be added to the contract price.

(2) Where it is considered advisable to impose specific standards of care such as an obligation to keep the facilities in good operating condition and repair and to make all necessary repairs and replacements, a clause to this effect may be included in the contract.

(a) *Procedure to be followed in the event of loss or destruction of or damage to property of the Government in the possession or control of contractors (or subcontractors).* (1) In the event of loss or destruction of or damage to property of the Government in the possession or control of contractors (or subcontractors), it is of the utmost importance that immediate action be taken so that the property will be conserved and production will suffer the least interruption. Contractors are generally not in a position to handle losses with maximum efficiency and War Department personnel may not be available or equipped to give all the required attention to such a problem.

(2) Accordingly, upon the happening of loss or destruction of or damage to Government property, the prescribed contract article § 803.365 (a) requires the contractor (or subcontractor) to give notice to and employ the services of a loss and salvage organization designated by the contracting officer (unless the contracting officer directs that no such organization be employed).

(3) The loss and salvage organizations referred to are the Fire Companies Adjustment Bureau, Inc., The Western Inspection and Adjustment Company, or the Underwriters Adjustment Company (hereinafter or elsewhere designated as loss and salvage organization). A list of the offices of these organizations with telephone numbers, is set forth in § 804.498. Their services will be rendered to contractors (or subcontractors) under a schedule of rates filed with the War Department and intended to cover costs without allowance for profit.

(4) Each office has been instructed to respond immediately to requests of contractors in connection with loss or destruction of or damage to Government property while at fixed locations or in course of transit, and thereafter investigate the damage or loss, prevent the accrual of further damage or deterioration, eliminate hazards to life or other property, clear debris, locate and remove property to appropriate places of storage or erect suitable shelter therefor and otherwise conserve and protect all possible salvage. In the event of catastrophic loss, the loss and salvage organizations may procure the services of others and temporarily augment their own staffs so that the loss may be handled with the utmost dispatch and efficiency. The organization so employed will report as may be appropriate to the contracting officer or to the contractor, and generally will operate under the regulations and the specific instructions of the contracting officer.

(5) The prevention of further and progressive loss to damaged property, its repair or disposal, are steps which are related and which are, in commercial practice, generally combined into one series of operations performed or directed by one organization. Where, under the prescribed contract article (§ 803.365 (a)), the contractor (or subcontractor) has undertaken, if and as directed by the contracting officer, to make repairs and renovations, it may be to the advantage of the Government to request the contractor to employ the loss and salvage organization to assist in repair and renovation. Similarly, under the contract clause set forth in § 803.363, assistance may be sought from the loss and salvage organization in respect to disposal of damaged Government property.

(6) In the event that the Government property is located in an area outside of the United States, where none of the above organizations has resident representatives reasonably accessible, there will be included in the contract the clause set forth in Note 4, § 803.365 (a) and in the event of loss, the contracting officer will supervise and enforce the discharge of the contractor's obligations.

§ 804.435 *Waiver of Defense Plant Corporation insurance requirements.* (a) Where cost-plus-a-fixed-fee contracts are being performed in facilities owned by the Defense Plant Corporation and leased to a contractor, the contractor is required by the terms of the lease to procure and maintain at his own expense fire and supplementary coverage on special forms. The Defense Plant Corporation is named as the insured on such policies. Inasmuch as the cost of

such insurance is ultimately borne by the Government as a reimbursable item of cost, arrangements have been made with the Defense Plant Corporation pursuant to which that corporation has agreed to waive its insurance requirements in specific cases where it is requested to do so by the War Department. In such cases the War Department agrees that neither the failure to carry insurance nor any ensuing damage to or destruction of the facility will relieve the War Department of its existing obligation to the Defense Plant Corporation under take-out letters.

(b) In all cases where a definite saving in cost to the Government can be effected by eliminating Insurance requirements of the Defense Plant Corporation, the Contract Insurance Branch, Special Financial Services Division, Headquarters, Army Service Forces, will be advised promptly of the following: (1) name of contractor; (2) number of contract; (3) type of contract; (4) location of facility involved; (5) the plancor or lease number; (6) the estimated saving, if the same can be estimated; and (7) the recommendation of the chief of the technical service. The Defense Plant Corporation will then be requested by the Contract Insurance Branch, in appropriate cases, to waive its insurance requirements.

§ 804.436 *Casualty insurance.* Cost-plus-a-fixed-fee contractors, including, but not limited to, constructors, architect-engineers, architect-engineer managers, operators, and suppliers will be required to procure and maintain the insurance specified in paragraphs (a) to (c) which, where practicable, will cover the operation of the prime contractor, cost-plus-a-fixed-fee subcontractor, and such other contractors or subcontractors for which provision is made in § 804.460.

(a) *Workmen's compensation insurance.* This coverage will be required as follows:

(1) In jurisdictions where there are workmen's compensation laws, either mandatory or elective:

(i) Statutory coverage, plus

(ii) In jurisdictions where the workmen's compensation law does not cover all occupational diseases, occupational disease coverage by endorsement for limits of $50,000 per person in any one case; and, subject to that limit for each person, for an aggregate limit of $100,000 for each year of the policy period;

(iii) In those jurisdictions where there is a "per accident" limitation of coverage under paragraph 1 (b) of the policy, an endorsement providing a $100,000 limit for each accident; and

(iv) In those jurisdictions where there is a "per person" limitation of coverage under paragraph 1 (b) of the policy, an endorsement providing a $50,000 limit for each person;

NOTE: In certain states the occupational disease aggregate limit is determined by the occupational disease premium. If such basic aggregate limit is less than $100,000 the lowest multiple thereof necessary to increase the aggregate limit to $100,000 will be used.

(2) In jurisdictions where there are no workmen's compensation laws, or where workmen's compensation insurance is carried in a State Fund, which Fund does not afford complete coverage as herein required, employers' liability insurance, including occupational diseases coverage for limits of $50,000 per person in any one claim and, subject to that limit for each person, $100,000 for two or more persons in any one accident and an aggregate limit of $100,000 for each year of the policy period for occupational disease claims.

(b) *General liability insurance.* This insurance will be required with limits of $50/100,000 for bodily injury liability on the comprehensive policy form. The policy will be endorsed to include coverage of aircraft and water craft operations by elimination of any exclusions of such coverage contained in the policy.

(c) *Automobile public liability and property damage insurance.* This insurance will be required with limits of $50/100,000 for bodily injury liability and $5,000 for property damage liability on the comprehensive policy form covering all owned, non-owned, and hired automobiles which will be used in connection with the work to be done under a cost-plus-a-fixed-fee contract and which are not used exclusively on the premises at which the work under such contract is performed.

(d) *Self-insurance.* Self-insurance by cost-plus-a-fixed-fee contractors, in lieu of the requirements outlined in paragraphs (a) to (c), will not be approved except in unusual circumstances and then only after approval is obtained from the Insurance Branch, Fiscal Division, Headquarters, Army Service Forces. Where the contractor requests and the chief of the technical service deems it desirable, that workmen's compensation insurance be provided by self-insurance, there will be submitted to the Insurance Branch the following:

(1) A duly authenticated copy of the authority to self-insure from the state or political subdivision having jurisdiction, if such authority is required by law;

(2) A detailed statement of the method or plan of self-insurance to be used and of the safety, claim and medical facilities which will be provided, including the cost thereof.

(e) *Insurance requirements for lump-sum subcontractors.* (1) Lump-sum subcontractors will provide the contractor and the contracting officer with a certificate of insurance evidencing the fact that workmen's compensation, public liability and automobile liability and property damage insurance are carried with an acceptable insurance carrier covering operations in connection with the project, and that termination or alteration of the coverages enumerated on the certificate of insurance will not be made without ten days' prior notice of such termination or alteration to the chief of the technical service concerned. Limits of insurance should be at least equal to those required of the prime contractor. Where authenticated evidence of authority to self-insure workmen's compensation and ability to respond in damages can be shown to the satisfaction of the chiefs of the technical services, the above requirements may be waived.

(2) For the purposes of subparagraph (1) the term "subcontractor" is defined as any individual, partnership, association, corporation, estate, trust or other business enterprise or legal entity which has undertaken, pursuant to a purchase order or by agreement with the prime contractor, to perform on the prime contractor's premises all or any part of the work or to make or furnish on such premises any article (other than raw materials or standard or commercial articles) required for the performance of the prime contract. By the term "prime contractor's premises" is meant the premises, under the control of the prime contractor, at which the work under the prime contract is to be performed.

§ 804.437 *Miscellaneous insurance.* The chiefs of the supply services may consider that other forms of insurance are necessary in special instances. The circumstances under which these forms of insurance may be authorized are described in paragraphs (a) to (j). In general, the authorization of any of these forms of insurance will be the exception rather than the rule.

(a) *Payroll robbery, hold-up, and safe burglary insurance.* This form of insurance will be approved only in those cases where substantial sums of money are in the care, custody, and control of the contractor in isolated areas where normal protection, which would be available in a stabilized situation, is lacking, or where a commingling of property and operations or circumstances of ownership make the carrying of insurance reasonably necessary for the protection of the several interests concerned.

(b) *General liability insurance for damage to property of others.* This form of insurance will be approved only in those cases where the operations conducted are of such a nature that an accident might reasonably involve extensive destruction of properly belonging to others, and it is considered desirable to obtain the experienced claims and investigating services of a reliable insurance carrier. When such insurance is authorized there will be provided a limit of $50,000 per accident and an aggregate limit of $100,000 for each year of the policy period. It is anticipated that this form of coverage will be necessary only for contractors engaged in the manufacture or handling of high explosives and in certain cases of aircraft operations.

(c) *Products liability insurance.* This form of insurance may be authorized in instances where a contractor under authority of its contract operates a commissary or other similar facility for dispensing food. Such insurance, when authorized, will be by endorsement to the general liability policy and will provide a limit of $50,000 per person in any one accident; and, subject to that limit for each person, $100,000 for injuries sustained by two or more persons in any one accident; and, subject to the foregoing limits, an aggregate limit of $100,000 for all accidents during each year of the policy period.

(d) *Contractual liability insurance.* This form of insurance is provided in the Comprehensive general liability policy where a contractor or subcontractor has assumed liability under:

(1) A lease of premises,
(2) An easement agreement,
(3) An agreement required by municipal ordinance,
(4) A sidetrack agreement, or
(5) An elevator or escalator maintenance agreement.

Where a contractor or subcontractor is authorized to assume and has assumed liability under an agreement other than one of those referred to in the preceding sentence and the chief of the technical service deems that insurance for the assumed liability is necessary, a copy of such agreement, together with full details and the recommendation of the chief of the technical service, will be forwarded to the Contract Insurance Branch, Special Financial Services Division, Headquarters, Army Service Forces for appropriate action.

(e) *Boiler and machinery insurance.* (1) This form of insurance will not be authorized. It may be desirable to arrange for boiler inspection service.

(2) *Boiler inspection service:* When a cost-plus-a-fixed-fee contractor is performing his contract in a plant containing a number of boilers or other pressure vessels, it is generally desirable that such boilers or other pressure vessels receive periodic inspections. This is in the interest of continuous and safe operation. Accordingly, the chief of the technical service may authorize the use of the boiler inspection service contract by such a contractor (for form see § 804.497 (aa)). When practicable the boiler inspection service of the insurance company carrying the workmen's compensation insurance of the contractor will be used provided that such carrier has a fully qualified and experienced boiler inspection department. Otherwise, some other qualified insurance carrier will be selected.

(f) *Ocean or inland marine insurance.* These forms of insurance will not be required or authorized except in those cases where the procurement of certain types of such insurance is desirable or necessary for the protection of the contractor or the Government. In such cases the chief of the technical service concerned will submit the following data to the Insurance Branch, Fiscal Division, Headquarters, Army Service Forces:

(1) Name of contractor.
(2) Number of contract.
(3) Type of contract.
(4) Full information and details of the facilities or property, including description, its use and the voyage or location.
(5) The type of insurance protection requested, the rates for same, and the reasons why deemed necessary.

(g) *Marine war-risk insurance.* See § 804.461 and following.

(h) *Fidelity bonds.* See § 804.407 (b).

(i) *Forgery bonds.* See § 804.407 (c).

(j) *License and permit bonds.* See § 804.407 (d).

§ 804.438 *Group insurance.* Group insurance plans and such other forms of insurance as are provided voluntarily to employees in order to indemnify them in the event of disabilities, dismemberments, hospitalizations or surgical treatments and to provide payments in the event of old age or death will be governed by the provisions set forth in paragraphs (a) to (f) of this section.

(a) All programs providing insurance of the character referred to in above in this section will be subject to the written authorization of the contracting officer.

(b) In determining proper standards for the type of group insurance benefits to be offered, unless there is substantial reason for providing otherwise, such plans will be consistent with the general employee relations policies existent throughout the contractor's organization or in conformity with approved agreements made as a result of collective bargaining with employees' representatives.

(c) If in the opinion of the chief of the technical service concerned the existing plan of group insurance is, in the light of paragraph (b), undesirable for the cost-plus-a-fixed-fee contractor, there shall be forwarded a full description of the plan desired by the contractor, together with the recommendation of the chief of the technical service to the Insurance Branch, Fiscal Division, Headquarters, Army Service Forces, for appropriate decision.

(d) If a particular cost-plus-a-fixed-fee contractor, because his organization is of recent origin or for any other reason, has not previously provided a plan of group insurance and now desires to take out such insurance the following information will be forwarded to the Insurance Branch, Fiscal Division, Headquarters, Army Service Forces: (1) A statement as to whether such insurance is common to the industry and to the community; (2) the purposes for which the group insurance plan is needed at the particular plant; (3) any other pertinent information; and (4) the recommendation of the chief of the technical service concerned.

(e) Different considerations are involved for group annuities, and for other insurance not purchased under a group insurance policy. When it is desirable in the opinion of the chief of the technical service concerned to provide such insurance, a request for prior approval will be forwarded to the Insurance Branch, Fiscal Division, Headquarters, Army Service Forces, together with the following information: (1) A complete outline of the hazards involved; (2) the number of personnel involved; (3) the nature and probable duration of the coverage; (4) any other pertinent information; and (5) the recommendation of the chief of the supply service concerned.

(f) War Department Group Insurance Rating Plan: The War Department Group Insurance Rating Plan, which is set forth in § 804.440, is to be applied as provided in said paragraphs on and after March 1, 1943, in accordance with § 804.439.

§ 804.439 *Procedure.* The chief of each supply service concerned will require cost-plus-a-fixed-fee contractors and their subcontractors to whom this plan is applicable to:

(1) Immediately request their insuring companies to attach to the policies involved a War Department Group Insurance Rating Plan Endorsement. Copies of all such requests will be obtained, and forwarded to the Insurance Branch, Fiscal Division, Headquarters, Army Service Forces.

(2) Request the insuring companies to furnish immediately to the Insurance Branch, Fiscal Division, Headquarters, Army Service Forces, all details pertinent to underwriting properly the policies involved.

(a) *Effective date of plan.* A careful review of the group insurance program which is involved in each case will be made by the Insurance Branch, Fiscal Division, Headquarters, Army Service Forces, and, upon completion of such review, the supply service concerned will be advised of the date on which the War Department Group Insurance Rating Plan is to be effective in each particular case.

(b) *Application for plan to be made immediately.* There will be certain cost-plus-a-fixed-fee contractors and subcontractors involved in this program, particularly those whose cost-plus-a-fixed-fee operations are commingled with lump sum or private operations, for whom it will be necessary to have the group insurance program carefully correlated with existing conditions; and there may be certain legal steps involved which will have to be fully explored. It is desired, therefore, that each contractor and subcontractor involved be required to make application immediately to the insuring companies for the War Department Group Insurance Rating Plan Endorsement, irrespective of the renewal dates of their policies.

(c) *Applicability of plan.* It is contemplated at this time that the War Department Group Insurance Rating Plan will be applied only in connection with policies covering cost-plus-a-fixed-fee contractors' employees when the work is either 100 percent cost-plus-a-fixed-fee or when the cost-plus-a-fixed-fee operations are physically separated from other operations of the contractor, either private or lump sum. There may be cases, however, where, pursuant to a review of the commingled operations, it will be possible to apply the rating plan.

(d) *Review by Insurance Branch.* Prior to the final acceptance of renewals or new purchases of group insurance, all such renewal or new purchase programs, together with the pertinent data, will be referred to the Insurance Branch, Fiscal Division, Headquarters, Army Service Forces, for approval.

§ 804.440 *Description of plan—(a) General requirements.* On and after March 1, 1943, renewal of existing group insurance policies or the purchase of new group insurance policies, so far as cost is concerned, for prime cost-plus-a-fixed-fee contractors and cost-plus-a-fixed-fee subcontractors thereof, will be authorized only if the factors which the insuring company uses for that portion

of such policies covering the cost-plus-a-fixed-fee contract are not greater than the maximum factors set forth in paragraphs (d) to (g), except that:

(1) The provisions of this section shall apply only to such policies under which more than 500 employees, operating under the cost-plus-a-fixed-fee contract, have been insured either on the effective date, if such policy is issued on or subsequent to March 1, 1943, or on any renewal date on or subsequent to that date irrespectve of when the policy was issued. irrespective of when the policy was issued.

(2) If the contractor desires to renew existing group insurance policies or to purchase new group insurance policies with or from an insuring company which uses factors greater than herein set forth, the United States shall not make, nor be liable for, reimbursement in an amount greater than would result from calculation in accordance with the provision of this section, but no authorization shall be granted in any case if the pool reserve (subparagraph (2) of paragraph (g)) is not established and maintained exactly as specified herein.

NOTE: If the contractor does not desire to renew existing group insurance policies with an insuring company which refuses to issue a War Department Group Insurance Rating Plan Endorsement, the contractor's cost for the terminating year will be reimbursed in accordance with his contract.

(b) *Experience refund.* When the amount resulting from use of all factors is less than the earned premium according to the premium rates in force for the period for which calculation is made, the excess shall be returned by the insuring company to the contractor within two months of the date of calculation, except as otherwise provided in the succeeding paragraphs.

(c) *Premium limitations.* Furthermore, anything contained herein to the contrary notwithstanding, the maximum charge by the insuring company to the contractor for such insurance in any period shall be determined by applying the premium rates in the policy in effect for such period.

(d) *Factor No. I; total losses.* Total losses shall be the amount of drafts issued during the period of calculation subject to the following modifications:

(1) An appropriate adjustment may be included for the amount of drafts issued during the succeeding period of two months on claims occurring during the period covered by the calculation (if corresponding adjustment is made at the beginning of the period) or, an insuring company which administers its business regularly on such basis may determine as its total losses for any policy period for the purposes of this section the drafts issued on claims occurring in such period or within the succeeding two months, plus an estimate of the drafts issued on unclosed claims occurring within such period.

(2) For death claims and for total and permanent disability claims approved for payment by the insuring company but for which either no payment or only partial payment has been made, an appropriate adjustment of losses may be included so as to include the face amount of claims approved for payment, with a deduction for the commuted value of any remaining installments on disability recoveries when the face amount of the claim approved for payment has previously been included in the losses charged under this plan.

(3) For waiver of premium total and permanent disability claims, losses may be appropriately adjusted to include, in lieu of actual payments at death, an amount of $850 for each $1,000 of such claims approved, and such amount shall be increased upon death by $150 and reduced upon recovery by $850 for each such $1,000 of insurance. Two years after the completion or termination of all cost-plus-a-fixed-fee contracts effective with each insuring company under this rating plan, or after the termination of the last insurance policy effective with each insuring company under this plan, whichever occurs sooner or at such earlier date as may be considered appropriate by the Insurance Branch, Fiscal Division, Headquarters, Army Service Forces, the reserves remaining on account of all such approved claims shall be subject to revaluation by an Arbitration Committee as provided in paragraph (k).

(e) *Factor No. II*—(1) *Expense and risk charges.* The maximum allowable charge for taxes, conversions, and claim administration shall be 3.75 percent of the premium at the rate effective for the period of calculation, subject to the following modifications:

(i) *Taxes.* If the estimated amount incurred by the insuring company on all its policies operating under this plan for taxes on premium, surplus, or income exceeds 2 percent of the premium, such estimated amount of taxes may be charged, subject to the approval by the Insurance Branch, Fiscal Division, Headquarters, Army Service Forces, of the items to be included and the method of calculation. With such approval, the insuring company may estimate as of January 1 of each calendar year what its average tax rate will be for the policy years ending in the coming calendar year and charge that rate on all the policy years ending in that calendar year. If the actual taxes incurred on renewals in that calendar year, computed on either an average or individual contract basis, whichever basis is used by the insuring company for charging such items on its business, generally differ from the amount produced by the estimated factor the difference shall be charged or credited by the insuring company in its calculation of the estimated average tax rate for renewal in the following calendar year. Any difference remaining after the completion or termination of the last cost-plus-a-fixed-fee contract effective with each insuring company under this rating plan, or after the termination of the last insurance policy effective with each insuring company under such plan, whichever occurs sooner, shall be credited or charged, as the case may be, before the final disposition of the pool reserve as set forth in paragraph (g) (2).

(ii) *Conversions.* An insuring company may elect to have the percentage of 3.75 percent reduced to 2.25 percent for life insurance and include in lieu of the difference the actual cost charged by the insuring company to its group department, for actual conversions under all policies operating under this plan, if such charge per $1,000 of insurance converted is no larger than such insuring company charges its group department during the period for all such conversions. However, an insuring company which so elects will be considered to have experienced a conversion rate in excess of normal, if during the period that each policy comes under this rating plan the ratio of the amount of insurance converted for such policy to the total of the amount of insurance terminated for such policy is greater than the corresponding ratio for the remainder of such insuring company's corresponding business for this period, and under such circumstances charges for insurance converted will be subject to the approval of the Insurance Branch, Fiscal Division, Headquarters, Army Service Forces. (Such elections will be made in writing to the Insurance Branch, Fiscal Division, Headquarters, Army Service Forces, and will apply to all such insuring company's business under this rating plan.)

(iii) *Claim expense.* If the actual amount incurred by the insuring company for claim expense on all its policies operating under this plan exceeds the amount otherwise determined by this paragraph, the actual amount of such claim expense may be charged only if the Insurance Branch, Fiscal Division, approves the calculation. With such approval, the insuring company may estimate as of January 1 of each calendar year what its average claim expense rate will be for renewals in the coming calendar year and charge that rate on all renewals in that calendar year. If the actual claim expense incurred on renewals in that calendar year, computed on either an average or individual contract basis, whichever basis is used by the insuring company for charging such items on its business, generally differs from the amount produced by the estimated factor the difference shall be charged or credited by the insuring company in its calculation of the estimated average claim expense rate for renewals in the following calendar year. Any difference remaining after the completion or termination of the last cost-plus-a-fixed-fee contract effective with each insuring company under this rating plan, or after the termination of the last insurance policy effective with each insuring company under such plan, whichever occurs sooner, shall be credited or charged, as the case may be, before the final disposition of the pool reserve as set forth in paragraph (g) (2).

(iv) *Plans self-administered.* Where claims drafts are issued by the contractor or the contractor's agent the amount of the maximum allowable charge for all coverages other than life insurance shall be reduced by 1.25 percent of the premium.

(2) *Other expenses and risk charges.* The maximum allowable charge for ex-

penses not included in subparagraph (1) above, or in paragraph (f), and for the insuring company's risk charges, shall be determined by Table I as follows;

TABLE I

Percentage of earned premium developed by applying standard rates with extras for industry, sex, race, or any other cause

Annual premium:	*1st Year*	*Renewal*
$10,000 or less	16	11
$25,000	12	7
$50,000	11	6.5
$100,000	10	5.5
$250,000	9	4.5
$500,000	7	3.5
$1,000,000	6	3
Over $1,000,000	5	2.5

(i) The annual premium in Table I shall be taken as the premium for each form of coverage under each insurance policy, except dependent coverage shall not be considered as a separate coverage.

(ii) If the annual premium lies between any two of the figures in the annual premium column, the percentage shall be interpolated to the nearest tenth of one percent.

(iii) The figures shown in the column headed "1st year" shall not be used on premiums other than those earned in the first 12 months that an insurance policy was effective on a company, plant, or unit.

(iv) For policies which are not operated on the so-called "self-accounting plan," all percentages in the above table may be increased by 1 percent of the premium.

(f) *Factor No. III; Commissions.* The maximum allowance for commission charges by the insuring company in connection with payments to soliciting agents or brokers will be:

(1) *Coverage in effect prior to March 1, 1943.* For insurance plans effective before March 1, 1943, not more in amount nor longer in duration than would be provided upon the basis of commission agreements applicable to such plans and consummated prior to March 1, 1943, *Provided:*

(i) That such agreements are pursuant to customary practice of the respective insuring companies.

(ii) That so-called "1st year" commissions shall not be paid on premiums other than those earned in the first 12 months that the insurance was effective on a company, plant, or unit, and that such "1st year commission treatment" was decided and entered in the home office records prior to March 1, 1943.

(iii) That renewal commissions shall not be paid for longer than nine years subsequent to the expiration of the first year commissions.

(2) *New coverage.* For insurance plans effective on or after March 1, 1943, not more than the percentages in the following table as applied to earned premiums without extras for industry, race, sex, or any other cause:

TABLE II

Total combined earned premium as calculated in accordance with this paragraph:	*Maximum soliciting agent's or broker's commission (percent)*
1st $10,000	7½
Next $40,000	4
Next $50,000	2
Next $400,000	1
Over $500,000	½

In determining the percentage from the above table, an insurance plan will be considered as including all coverages issued on and after the effective date of this rating plan covering the same group of employees working in operations to which a cost-plus-a-fixed-fee contract applies. If the insurance plan so defined is handled by more than one insuring company, the maximum allowance for commission charges for all coverages combined will be the same as that which would be allowed if the insurance plan were being handled by one insuring company. The maximum percentage allowance to be used by each insuring company concerned on that portion of the insurance plan which it is handling will be the percentage based on the combined premium for all the coverages included in the plan, regardless of what insuring company handles each coverage. Commissions on "extensions", "increases in coverages", and similar actions will be paid in accordance with the scale in Table II, but premiums on which first year or renewal commissions have been paid previously shall be counted in determining the proper place in the above premium column to commence the commission computation.

(3) *Commission savings.* Any savings which an insuring company may effect by reason of paying less commission on these insurance policies than are charged to these policies shall be credited to the contractors insured in accordance with this plan in the manner determined by the Insurance Branch, Fiscal Division.

(4) *Additional commissions.* Any charges above and beyond the agreements herein specified shall not be allowable as an item of reimbursable expense unless and until approved by the Insurance Branch, Fiscal Division.

(g) *Factor No. IV.* (1) Policy reserves:

(i) *Open claims.* As a maximum allowance for a reserve for claims incurred but for which no payment has been made, or for a reserve for additional payments on claims on which partial payment has been made (in addition to any amounts already charged as losses under paragraph (d)), the insuring company may retain the percentage of premiums in Table III (see subdivision (iii) of this subparagraph (1) below), calculated by using minimum rates with extras for industry, race, sex, or other cause.

(ii) *Final disposition.* Two years after the completion or termination of all cost-plus-a-fixed-fee contracts effective with each insuring company under this rating plan, or after the termination of the last insurance policy effective with each insuring company under this plan, whichever occurs sooner, or at such earlier date as may be considered appropriate by the Insurance Branch, Fiscal Division, the difference between the total amount charged under this rating plan by each insuring company for such reserves over the sum of (*a*) the amounts actually paid as the result of claims under this rating plan for which such reserves were held, and (*b*) the amounts required for subsequent payments (such latter amounts to be calculated by the insuring company and submitted for the approval of the Insurance Branch, Fiscal Division), shall be returned to the contractors or their successors or nominees (policies on which the insuring company has paid out an amount equal to or greater than the amount charged for policy reserves shall be excluded in making this calculation) according to the ratio that the difference between the amount of policy reserves charged on each such policy and the amount of policy reserves paid or required for subsequent payments on each such policy bears to the total of such differences, or shall be deducted by the insuring company from any settlement otherwise available from the pool reserve set forth in subparagraph (2) of this paragraph, as the case may be, but such charge shall be made to the pool reserve only if satisfactory proof is furnished the Insurance Branch, Fiscal Division, that the policy reserves, in the aggregate, set up by the insuring company at the time this rating plan became effective, were sufficient to pay all losses on claims occurring prior to the date this plan became effective with respect to such policies.

TABLE III

Forms of Insurance	*Percentages of earned premium as defined in paragraph (a) above*
Life insurance:	
(a) With permanent total disability benefit	30
(b) With premium waiver provision	15
(c) With extended death benefit	10
Indemnity for accidents or sickness	10
Indemnity for hospital confinement	[1] 10
Indemnity for surgical operations	[1] 10
Accidental death and dismemberment insurance	10

[1] For policies including maternity or obstetrical benefits for dependents of employees, an additional reserve of 25 percent of the premium for the dependent coverage (including the premium for the maternity coverage) may be held.

(iii) Subject to the limitations of this plan, the policy reserves maintained shall be in strict accordance with the general practice of the insuring company.

(2) *Pool reserve*—(i) *Final disposition.* Each insuring company shall create and maintain a pool reserve which shall be available for the payment of losses (as outlined in subdivision (ii) of this subparagraph (2)) under that portion of all of its policies to which a War Department Group Insurance Rating Plan Endorsement applies. Two years after the completion or termination of all cost-plus-a-fixed-fee contracts effective with each insuring company under this rating plan, or after the termination of the last insurance policy effective with each

insuring company under this plan, whichever occurs sooner, or at such earlier date as may be considered appropriate by the Insurance Branch, Fiscal Division, any portion of this reserve which has not been used for any of the purposes authorized by this rating plan shall be returned to the contractors or their successors or nominees. Such return shall be allocated to the various policies in proportion to the difference between each policy's contribution to the total pool reserve and the amounts withdrawn from such reserve to pay claims under such policy, but policies on which the insuring company has paid out an amount equal to or greater than the amount charged for the pool reserve shall be excluded in making this calculation.

(ii) *Use.* If the total losses under any contractor's policy for any policy year plus one-half the maximum increase in the policy reserve permitted for the period by reason of increase in premium, or minus the decrease in policy reserve by reason of decrease in premium, to the extent that the result is not less than the premium, as the case may be, shall exceed 100 percent of the earned premium for such year calculated on the basis of minimum rates with any extras for industry, race, sex, or other cause, the insuring company shall be entitled to reimbursement for all such amounts in excess of such premium and this amount shall be added to the contribution required of this policy to the pool reserve.

(iii) *Establishment and maintenance.* To establish and maintain this pool reserve, the insuring company shall, in calculating any experience refund for any year, be entitled to deduct the amount, if any, by which the larger of (*a*) 20 percent of the premium for the year for which such experience refund is applicable, such premium to be calculated on the basis set forth in the preceding paragraph, or (*b*) the extra premium for industry accumulated from the renewal date prior to March 1, 1943, to the date of calculation, exceeds any amount actually remaining in the pool reserve from previous contributions to such reserve by this contract. The amount of such deduction for any year shall in no event exceed the amount, if any, remaining after completing the operations set out in subparagraphs (1) to (8), inclusive, of paragraph (h).

(h) The insuring company shall maintain an experience rating account for the insurance under each policy to which this rating applies. As of each renewal date and within 60 days, this account shall be adjusted in the order indicated:

(1) Credit the actual premium.

(2) Charge losses as described in paragraph (d).

(3) Charge one-half the maximum increase in the policy reserve permitted for the period by reason of increase in premium in accordance with subdivision (iii) of subparagraph (1) of paragraph (g).

(4) Credit the decrease in policy reserve by reason of decrease in premiums to the extent that (2) exceeds (1).

(5) Credit from the pool reserve:

(i) In the event of an increase in policy reserve (2) plus (3) minus (1).

(ii) In the event of a decrease in policy reserve (2) minus (4) minus (1).

(6) Charge expenses not greater than the maximum allowable under paragraphs (e) and (f).

(7) Charge deficit carried over (if any) from previous period. (In first calculation under this plan (7) shall be taken as zero. For subsequent calculations, it shall be taken as (11)).

(8) Charge an amount, if available, which if added to (3) shall not be greater than sufficient to attain one-half the maximum policy reserve for the period as set forth in subparagraph (1) of paragraph (g).

(9) Charge an amount, if available, not greater than sufficient to establish and maintain the appropriate maximum amount in the pool reserve as of the end of the period in accordance with subparagraph (2) of paragraph (g).

(10) Charge an amount, if available, not greater than sufficient to attain the maximum policy reserve for the period as set forth in subparagraph (1) of paragraph (g).

(11) Deduct total charges from total credits. If result is positive, treat as experience refund; if result is negative, treat as deficit.

It is recommended that each insuring company maintain in connection with each policy an experience rating account, a policy reserve account, and a pool reserve account, showing the maximum allowable reserves under each account, the actual reserves set up, and all debit and credit transactions affecting these accounts.

(i) *Distribution of experience refund.* When an experience refund or reserve refund is made by the insuring company, the contractor shall proceed in the following manner unless approval for a different procedure is given by the Insurance Branch, Fiscal Division:

(1) Any such refund shall be credited to the contractor's charge to the War Department, except that the contractor may, with the consent of the Insurance Branch, Fiscal Division, continue any practice he may have had prior to March 1, 1943, as to the application of all or any part of such refund. In any event, if the refund exceeds the contractor's contribution to the cost of the plan, the excess shall be applied for the sole benefit of the employees.

(2) In the event that unforeseen circumstances prevent such division of any refund, any or all of such monies so affected shall be payable to the United States.

(j) *Minimum contribution by employees.* If any contractor has a group insurance policy under which the employees' contributions are at a rate lower than specified in this paragraph, the United States shall not make or be liable for reimbursement in an amount greater than the maximum reimbursement that could result under such plan of group insurance if the employees' contributions were at the rates herein set forth. If the group insurance was in force on March 1, 1943, the minimum rate of contributions for the purpose of this paragraph shall be the scale of contributions applicable at that time, and if the group insurance was not in force on March 1, 1943, the minimum contributions shall be the equivalent of 60¢ per month per $1,000 of group life insurance and 60¢ per month per $10 of weekly indemnity for accidents and sickness, unless a lower scale of contributions is approved by the Insurance Branch, Fiscal Division.

(k) *Establishment of arbitration committee.* For revaluation of the reserves described in subparagraph (3) of paragraph (d), and for decision relative to other reserves not returned within the time limits specified, an arbitration committee shall be selected consisting of three members, one selected by the insuring company, one by the contractor and the third by these two members, and the majority decision of this committee shall be final if approved by the Contract Insurance Branch, Special Financial Services Division.

(l) *Forwarding of data.* As soon as the insuring company has furnished to the contractor the renewal data required herein, it shall be forwarded to the Contract Insurance Branch, Special Financial Services Division, for examination.

(m) *Limitation of reimbursement.* There shall be no reimbursement, or liability for reimbursement, in excess of that developed by applying generally recognized extras for sex, industry, or race (except extra higher rates in effect prior to March 1, 1943), unless such reimbursement has had approval of the Contract Insurance Branch, Special Financial Services Division, prior to the effective date of any rates greater than above specified.

(n) *Termination of contract by the Government.* In the event the cost-plus-a-fixed-fee contract is terminated by the Government, all liabilities and assets of the contractor existing by reason of the operation of any group insurance policies during the period a cost-plus-a-fixed-fee contract was in force, shall become liabilities and assets of the Government.

(o) *Endorsement of policies.* All policies shall bear suitable identifying endorsement, in a form acceptable to the Contract Insurance Branch, Special Financial Services Division, as evidence that the War Department Group Insurance Rating Plan is applicable.

(p) *Effective date.* The effective date of this rating plan, as to any policy or portion thereof to which it is applicable, shall be determined by the Contract Insurance Branch, Special Financial Services Division, but shall not be earlier than March 1, 1943.

(q) If in the opinion of the Contract Insurance Branch, Special Financial Services Division, there are circumstances which would make the application of this plan inappropriate, it shall not become operative, anything contained herein to the contrary notwithstanding.

(r) Nothing contained herein shall be construed as regulating the charges which an insurance company can make under any policy or policies.

§ 804.441 *Benefits in event of capture or detention of employees.* Standards for the amount of benefits and the methods of providing payment to employees in the event of their capture or detention are set forth in Public Law 784, 77th Congress. This law sets forth the policy of Congress and provides that upon claims being filed as specified therein, payment or reimbursement will be negotiated through the United States Employees Compensation Commission. Where, in the opinion of the chief of the technical service concerned, it is necessary that the amount of benefits be increased over that prescribed in the statute above referred to, prior approval of the Contract Insurance Branch, Special Financial Services Division, Headquarters, Army Service Forces will be obtained. The following information will be forwarded to that Branch: (1) Reasons why such increase is necessary; (2) statement as to whether qualified employees can be obtained without providing increased benefits; (3) number of employees involved; (4) location of operations; (5) any special hazards; (6) any other pertinent information; (7) the recommendation of the chief of the technical service concerned.

§ 804.442 *Insurance in connection with cost-plus-a-fixed-fee contracts outside of the continental United States.* The foregoing §§ 804.434 to 804.441, inclusive, may not be applicable to cost-plus-a-fixed-fee contracts for work to be performed outside the continental United States. Such contracts involve questions of the applicable laws and local conditions which will be encountered in the country where the work is to be performed, as well as questions of the medical and hospital facilities for the treatment and care of employees of the contractor. Insurance companies generally are not equipped or licensed to underwrite insurance in foreign countries. In order to establish the required coordination in connection with such contracts, the chief of the technical service concerned will advise the Contract Insurance Branch, Special Financial Services Division, Headquarters, Army Service Forces, of all such contemplated work as far in advance as possible. Arrangements will then be made to have a representative of that Branch present, if practicable, during the negotiations with respect to the contract provisions pertaining to insurance liability, medical and hospital matters. The Contract Insurance Branch, Special Financial Services Division, Headquarters, Army Service Forces, will be responsible for the establishment and proper functioning of insurance facilities on such projects, and direct communication is authorized for this purpose.

Insurance in Connection With Lump Sum Contracts

§ 804.450 *General.* No insurance requirements, other than statutory requirements, will be imposed on the contractor unless in the opinion of the chief of the technical service concerned the imposition of certain insurance requirements will serve to safeguard the contractor's ability to perform the contract. If performance and payment bonds support the contract, the requirement of any insurance should be unnecessary.

§ 804.451 *Insurance on Government-owned property.* The same general policy exists with respect to Government-owned property in the possession, care, custody or control of the lump sum contractor as exists with respect to property in the possession, care, custody or control of cost-plus-a-fixed-fee contractors (see § 804.434). To implement this policy of self-insurance on Government-owned property, there shall be inserted in the contract the article set forth in § 803.365 (a–1), or in the case of facilities the article set forth in § 803.332. The policy to a large degree rests upon the savings to the Government obtained by elimination of insurance which savings are reflected in the contract price. Where, by reason of special circumstances, such savings are not practicable, are trivial in amount, are difficult of ascertainment or there is a commingling of values and interests, the chief of the technical service may in his discretion permit insurance. (This will ordinarily be done in the case of service contracts of the type of laundry and shoe repair contracts, and contracts with motor carriers for the transportation of Government-owned property.) In such cases there will be omitted from the contract the article set forth in §§ 803.365 (a–1) or 803.332.

(a) *Procedure to be followed in the event of loss or destruction of or damage to property of the Government in the possession or control of contractors (or subcontractors).* (1) Except when insurance is permitted, upon the happening of loss or destruction of or damage to property in the possession or control of contractors (or subcontractors) caused by an "excepted peril" (see §§ 803.365 (a–1) and 803.332) the procedure to be followed is the same as that described in § 804.434 (a).

(2) In connection with the disposal of damaged Government property, attention is invited to paragraph (d) of the article set forth in § 803.365 (a–1) and paragraph (F) (4) of article set forth in § 803.332, which are comparable with § 803.363.

§ 804.452 *Waiver of Defense Plant Corporation insurance requirements.* Inasmuch as the insurance costs are included in the contract price, the provisions of § 804.435 are also applicable to lump sum contracts.

§ 804.453 *Lump sum contracts excluding cost of insurance.* In certain cases contracts are awarded on a basis of a contract price exclusive of the cost of the forms of insurance specified in § 804.436 (a), (b) and (c). Such contracts contain a provision pursuant to which the Government agrees to reimburse the contractor on an actual cost basis for the cost of such insurance. In such cases, the provisions of §§ 804.434 to 804.442, inclusive, of this subpart, are applicable to such insurance. The contractor may purchase at his own expense such additional or other insurance protection as he may deem necessary.

Architect-Engineer-Management Contracts

§ 804.460 *Architect - engineer - management contracts.* (a) In the interest of security and in order to obtain the most suitable and efficient arrangements with respect to insurance, hospital, and medical, loss paying and safety engineering facilities, the chief of the technical service concerned will require the contractor under an architect-engineer-management contract to provide through one insurance company specified insurance for all cost-plus-a-fixed-fee contractors and subcontractors, lump sum contractors and lump sum subcontractors other than contractors and subcontractors under supply contracts and subcontracts. Such insurance will afford the contractors and subcontractors the coverage referred to in § 804.436 (a) to (c) (for contract provisions see § 803.365 (e) to (h)).

(b) The contractors or their subcontractors may purchase at their own expense such additional or other insurance protection as they deem necessary. When insurance carriers furnishing such additional protection request access to the site of the work for personnel engaged in servicing such insurance, the chief of the supply service concerned may deny such access, or restrict it to such of those personnel as it is, in his judgment, necessary to admit for the proper servicing of the insurance.

War Risk Insurance in Connection With Vessels or Other Floating Equipment

§ 804.461 *Master policy.* A master policy issued by the War Shipping Administration to the War Department permits the War Department to insure with the War Shipping Administration war risks or liabilities which it has assumed or for which it is obligated in connection with certain persons, vessels or other floating equipment. Declarations under this policy will be made through the Insurance Branch, Fiscal Division, Headquarters, Army Service Forces except that any supply service or representative thereof specifically authorized by The Commanding General, Army Service Forces, may make such declarations directly to the War Shipping Administration and will furnish copies thereof to the Insurance Branch, Fiscal Division, Headquarters, Army Service Forces.

(a) The master policy covers risks or liabilities that are assumed by or that may be imposed on the War Department:

(1) As owner, operator or owner and operator of vessels or other floating equipment;

(2) Under charters or other forms of contracts for the use by the War Department of privately owned vessels or other floating equipment;

(3) Under any form of agreement for the operation of such vessels or equipment;

(4) Under any form of agreement for the carriage by water of any person or property on a commercial basis; and

(5) Under any contract for the construction of vessels or other floating equipment for the War Department.

(b) The persons, vessels, property, or interests that may be insured under the master policy are those set forth in section 222 of Public Law 523, 77th Congress, namely:

(1) Vessels:

(i) American vessels (including vessels under construction);

(ii) Vessels registered under the law of the Philippine Islands;

(iii) Foreign-flag vessels owned by citizens of the United States (as said term "citizen" is used in Public Law, 173, 77th Congress, approved July 14, 1941) or owned or controlled by or made available as described in paragraph (a) (3) of this section but engaged in the waterborne foreign commerce of the United States or other transportation by water or other vessel services deemed by the Maritime Commission to be in the interest of the war effort or the domestic economy of the United States, while so engaged.

(2) Cargoes shipped or to be shipped on any vessels specified in subparagraph (1) above, including shipments by express or registered mail.

(3) The disbursements (including advances to masters and general average disbursements) and freight and passage moneys of such vessels.

(4) The personal effects of the masters, officers and crews of such vessels, and of other persons transported on such vessels

(i) Personal effects of licensed officers and other persons may be covered for $500; and of unlicensed crew members for $300;

(5) Master, officers and crews of such vessels and other persons employed or transported thereon against the loss of life, personal injury or detention by an enemy of the United States following capture. (i) Crew life: Personnel of vessels and other persons may be covered for $5,000 against loss of life and for scheduled benefits against injury. (ii) Wages and bonuses: Liability for wages and bonuses of personnel of vessels may be covered against loss resulting from internment or destruction or abandonment of vessels resulting from capture, seizure, etc.)

(6) Protection and indemnity: Statutory or contractual obligation or other liabilities of such vessels or of the owner or charterer of such vessels of the nature customarily covered by insurance. (If protection and indemnity is required, report should reflect value of the vessel or approximately $150 per gross ton subject to a minimum of $50,000 per vessel.)

(c) The master policy does not cover:

(1) Total or constructive total loss, or partial loss (particular average) of any vessels, equipment, or property owned by the War Department;

(2) Claims for damage or service of any nature asserted by any other Government Department or Agency, or barrel by decision of the Comptroller General;

(3) Liabilities of any nature toward personnel of the military forces of the United States and other United Nations;

(4) Any losses or liabilities existing or imminent at the time any vessel, property or other interest is reported to the War Shipping Administrtion for coverage under this policy;

(5) Losses or liabilities of any nature excluded by the provisions of War Shipping Administration policies.

(d) *Declarations.* The chief of the supply service concerned, except as provided in this section, will report to the Insurance Branch, Fiscal Division Headquarters, Army Service Forces risks coming within the provisions of the Master policy. For required form of report see § 804.497 (c).

Purchase of Insurance by Cost-Plus-a-Fixed-Fee Contractors

§ 804.470 *Acceptability of insurance carrier.* (a) The contractor will designate its own insurance carrier on all projects except where insurance is placed on a competitive bid basis as hereafter provided in paragraph (b). The insurance carrier selected must meet the following minimum standards of acceptability:

(1) At least 80% of the outstanding stock of the insurance carrier must be owned by citizens of either the United States or one or more of the other United Nations; and the carrier must be wholly controlled and operated by such citizens and free from any direct or indirect Axis or Pro-Axis connections or influence.

(2) The carrier must have an unobligated minimum surplus of $350,000.

(3) In the case of a contract of casualty insurance, other than Workmen's Compensation insurance, the financial condition of the insurance carrier must be such that the policy wil not expose it in a single accident or occurrence to a loss (i) in the case of a fixed-premium carrier of more than 10% of its total capital stock and surplus, or (ii) in the case of a dividend paying carrier of more than 10% of its net assets.

(4) In the case of workmen's compensation insurance, the insurance carrier shall have (i) in the case of fixed-premium carrier, a total capital and surplus of at least a million dollars, or (ii) in the case of a dividend paying carrier, at least a million dollars of net assets.

(b) The contractor will, in those cases where it selects its own insurance carrier as well as in those cases in which the insurance is purchased on a competitive bid basis, submit the following information through the chief of the supply service to the Insurance Branch, Fiscal Division, Headquarters, Army Service Forces:

(1) The name of the insurance carrier;

(2) The jurisdiction in which the insurance carrier is organized;

(3) Whether the insurance carrier is qualified to write the required insurance in the jurisdiction in which the project is located;

(4) A statement executed by an authorized official of the insurance carrier that the insurance carrier meets the standards of acceptability set forth in paragraph (a);

(5) The engineering, claims and medical facilities, if required, which will be provided at the project by the insurer;

(6) The latest financial statement of the insurance carrier;

(7) A separate letter which may be forwarded directly by the insurance carrier to the chief of the supply service concerned, setting forth the actual amount of each risk retained by the primary carrier and its reinsurance arrangements, including the names of all reinsurers and the amount of risk accepted by each. Such letter will embody a statement that the reinsurance arrangements will not be modified or cancelled until thirty days advance notice shall have been given to the Contract Insurance Branch. Where a reinsurer is a foreign company or a foreign controlled company, the letter outlining the reinsurance arrangements will include a statement that the primary carrier will not divulge the name, nature or location of the risk and that if such disclosure is required to obtain payment of a reinsured loss, prior approval will be obtained from the Contract Insurance Branch before any information is given to the foreign reinsurer or foreign controlled reinsurer.

Upon submission of the foregoing information, duly certified by an authorized official of the insurance carrier the chief of the technical service concerned may pass upon the acceptability of the insurance carrier or refer the matter to the Contract Insurance Branch, Special Financial Services Division, Office of the Fiscal Director, Headquarters, Army Service Forces, for determination.

§ 804.471 *Methods of purchase of casualty insurance.* Casualty insurance required or authorized under any paragraph of this part will be purchased in the manner specified in paragraphs (a) to (d) of this section.

(a) Where the premiums involved are estimated to amount to $300 or less the contractor will select the insurance carrier and procure the necessary insurance.

(b) Where the premiums involved are estimated to exceed $300, but not to exceed $5,000, the contractor will be required to purchase the insurance on a competitive bid basis. In order to secure a fair market price, at least four bids will be required, two of which will be from reliable fixed-premium carriers and two from reliable dividend paying carriers. If one bid is received from a fixed-premium paying association or syndicate and another from a dividend paying association or syndicate, such bids will be sufficient to comply with these requirements. The terms "associations" or "syndicates" refer to groups of insurance carriers which have joined together for participation in the risk involved on a predetermined basis which contemplates that they will be jointly and severally liable under the insurance policy. The chief of the technical service concerned will assure himself that all insurance purchased on a competitive bid basis is placed with the carrier or carriers offering the lowest net cost commensurate with sound protection and service before approving the policy or policies.

(c) (1) Except as provided in subparagraph (2), where the premiums in-

volved are estimated to exceed $5,000 the contractor will select its own insurance carrier and require the issuance of policies under the War Department Insurance Rating Plan described in §§ 804.473 to 804.489 below. An exception will be made to this requirement when the statutes of the jurisdiction involved expressly prohibits the use of this plan and permission cannot be obtained without modification of the statutes of the jurisdiction concerned.

(2) Where the operations of the contractor under a cost-plus-a-fixed-fee contract are commingled with its other operation, or where operations are being performed by the contractor under more than one cost-plus-a-fixed-fee contract with one or several of the technical services, the use of the War Department Insurance Rating Plan may not be appropriate. In such cases the chief of any technical service concerned will forward to the Contract Insurance Branch, Special Financial Services Division, Office of the Fiscal Director, Headquarters, Army Service Forces, his recommendations, and that Branch, after coordinating with any other technical services concerned, will advise as to the proper insurance requirements.

(d) Insurance coverages which cannot be written under the War Department Insurance Rating Plan will be purchased on the competitive bid basis or as set forth in § 804.436 (d).

War Department Insurance Rating Plan

§ 804.473 *Plan in general.* The War Department Insurance Rating Plan is a comprehensive retrospective rating formula for the determination of premium specially adapted to fit the needs of the War Department. The Plan was approved for use by the War Department on May 3, 1941, and is available for use in connection with the required casualty insurance coverage as outlined in § 804.436 (a) to (c). It may be extended to include the coverages outlined in § 804.437 (b) to (d). The plan will be used where the cost of insurance provided by the contractor is reimbursable under the contract. The clauses which are required to be attached to policies written in connection with the plan are enumerated in § 804.475.

§ 804.474 *Duration of coverage.* The insurance will be continuous and concurrent until completion of the project or operation except that if the project or operation is of indefinite duration, the insurance to be written under the plan shall be for an initial period of twenty-four (24) months. In such event, if the project or operation continues for a longer period than twenty-four months, the policies of insurance will be renewed at the expiration of the first twenty-four months by attachment of endorsement in accordance with forms set forth in § 804.499, to workmen's compensation, comprehensive general liability and comprehensive automobile policies, respectively.

§ 804.475 *Endorsements to be attached to policy.* The insurance carrier selected will be required to attach the following endorsement forms to the policies issued by it:

(a) War Department Insurance Rating Plan endorsement (see § 804.497 (d)).

(b) General endorsement for general liability policy (see § 804.497 (e)).

(c) General endorsement for automobile liability policy (see § 804.497 (f)).

(d) General endorsement for workmen's compensation and employers' liability policy (see § 804.497 (g)).

§ 804.476 *Rules and rates under War Department Insurance Rating Plan.* A Joint Committee representing the Association of Casualty and Surety Executives and the American Mutual Alliance established rules and rates set forth in §§ 804.477 to 804.482 (a) for use in connection with policies written under the War Department Insurance Rating Plan. These rules and rates were approved by the War Department on May 13, 1941.

§ 804.477 *Rules and rates with respect to workmen's compensation.* The rules and rates adopted as set forth in § 804.476 prescribe that the Manual Rules and Rates set forth in the following subparagraphs shall be used, in connection with the War Department Insurance Rating Plan, as the basis for determining the standard premium for workmen's compensation insurance with respect to projects located in the jurisdictions therein referred to:

(a) District of Columbia, Territories of Alaska and Hawaii and all states in which private insurance carriers may write insurance under the War Department Insurance Rating Plan, except the states enumerated in subparagraphs (2) to (14): Manual Rules and Rates published by the National Council on Compensation Insurance.

(b) Arizona: Manual Rules and Rates promulgated by the Industrial Commission of Arizona.

(c) California: Manual Rules and Rates promulgated by the California Inspection Rating Bureau.

(d) Delaware: Manual Rules and Rates promulgated by the Delaware Compensation Rating and Inspection Bureau.

(e) Louisiana: Manual Rules and Rates promulgated by the Louisiana Casualty and Surety Rating Commission.

(f) Massachusetts: Manual Rules and Rates promulgated by the Massachusetts Rating and Inspection Bureau.

(g) Minnesota: Manual Rules and Rates promulgated by the Minnesota Compensation Rating Bureau.

(h) New Jersey: Manual Rules and Rates promulgated by the Compensation Rating and Inspection Bureau of New Jersey.

(i) New York: Manual Rules and Rates promulgated by the Compensation Insurance Rating Board.

(j) North Carolina: Manual Rules and Rates promulgated by the Compensation Rating and Inspection Bureau of North Carolina.

(k) Pennsylvania: Manual Rules and Rates promulgated by the Pennsylvania Compensation Rating and Inspection Bureau.

(l) Texas: Manual Rules and Rates promulgated by the Board of Insurance Commissioners of Texas.

(m) Virginia: Manual Rules and Rates promulgated by the Workmen's Compensation Rating Bureau of Virginia.

(n) Wisconsin: Manual Rules and Rates promulgated by the Wisconsin Compensation Rating and Inspection Bureau.

§ 804.478 *Employers' liability insurance (Mississippi).* It is prescribed that the Manual Rules and Rates of the National Bureau of Casualty and Surety Underwriters shall be used as a basis for determining the standard premium for employers' liability insurance.

§ 804.479 *Employers' liability and voluntary compensation insurance (Oregon and Washington).* It is prescribed that the Manual Rules and Rates of the National Bureau of Casualty and Surety Underwriters shall be used as the basis for determining the standard premium for employers' liability and voluntary compensation insurance.

§ 804.480 In adopting the manual rules and rates of the existing rating organizations the Joint Committee specifically provided that experience rating should not be employed. Instead, in recognition of the differences in hazard, it adopted the following rule:

For the purpose of determining the amount of the "fixed charge" under the War Department Insurance Rating Plan, the standard premium for workmen's compensation and employers' liability insurance shall be discounted 10% before applying the appropriate percentage as prescribed in Table I of the Plan.

No discount which may be provided for in the manual rules and rates published by the National Council on Compensation Insurance or in any of the manual rules and rates referred to in §§ 804.477 to 804.480 to reflect any reduction in expense shall be applicable in determining the standard premium.

§ 804.481 *Automobile bodily injury and property damage liability insurance.* (a) For insurance on projects located in the District of Columbia, the Territories of Alaska and Hawaii and all states except Louisiana, Massachusetts, North Carolina and Texas, it is prescribed that the Manual Rules and Rates of the National Bureau of Casualty and Surety Underwriters shall be used as a basis for determining the standard premium for automobile bodily injury and property damage liability insurance subject to the following modifications:

(1) All commercial automobiles shall be rated as medium class 5 regardless of the class and load capacity to which such commercial car would ordinarily be assigned except in Massachusetts where light class 4 will be applicable.

(2) All automobiles classified as private passenger automobiles under the Manual Rules and Rates shall be classified as "Class C".

(3) In lieu of the rates appearing in the Manual Rules and Rates for non-ownership bodily injury and property damage liability, standard limits rates

applicable to this coverage shall be as follows, such rates to apply to the total payroll on the project:

(i) $0.06 per $1,000 for payroll for bodily injury liability effective for new and renewal policies written on or after 1 March, 1943, in all states except:

Kansas effective 30 April, 1943.

Indiana and North Carolina effective 5 May, 1943.

Washington effective 8 May, 1943.

Virginia effective 30 May, 1943.

(ii) $0.05 per $1,000 of payroll for property damage liability.

(4) All automobiles owned by the Federal government and furnished for the contractors' use on a project, and all automobiles hired or purchased under rental purchase contracts shall be classified and rated in the same manner as automobiles owned by the contractor. Hired automobiles other than those hired under a rental purchase contract shall be rated in accordance with the Rules and Rates prescribed in the Manual.

(5) Neither the Experience Rating Plan nor the Automobile Fleet Plan Discount nor any other individual risk rating plan shall be used but in lieu thereof, and in recognition of the reduced hazards on these risks the manual rates including the rates set forth above shall be subject to a uniform discount of 50%.

(b) For insurance on projects located in Louisiana, Massachusetts, North Carolina and Texas, it is prescribed that the rules and rates of the organizations set forth below shall be used as a basis for determining the standard premium for automobile bodily injury and property damage liability insurance subject to the modification set forth in subparagraphs (1) to (5) above:

(1) Louisiana: The Louisiana Casualty & Surety Rating Commission.

(2) Massachusetts: Massachusetts Automobile Rating and Accident Prevention Bureau.

(3) North Carolina: North Carolina Automobile Rate and Administrative Office.

(4) Texas: The Board of Insurance Commissioners.

(c) For insurance on projects located in the states of Illinois, New Hampshire, New York, Oklahoma, Virginia and Washington, the Manual Rules and Rates of the National Bureau of Casualty and Surety Underwriters referred to in paragraph (a) above, shall be used in the form in which they are filed with and approved by the state supervising authority having jurisdiction.

(d) In the event that coverage is required for any automobiles for which passengers are carried for a consideration, such automobiles are to be rated in accordance with the Manual Rules and Rates applicable to public automobiles, subject to the 50 percent discount applicable to other classes of automobiles.

§ 804.482 *Comprehensive bodily injury liability insurance.* For insurance on projects located in the District of Columbia, the Territories of Alaska and Hawaii and all states except Louisiana and New York it is prescribed that the Manual Rules and Rates of the National Bureau of Casualty and Surety Underwriters shall be used as a basis for determining the standard premium for comprehensive bodily injury liability insurance. For insurance on projects located in the state of New York the basis for determining the standard premium shall be the Manual Rules and Rates of the National Bureau of Casualty and Surety Underwriters as approved by the New York State Insurance Department; and for insurance on projects located in Louisiana, the basis for determining the standard premium shall be the Manual Rules and Rates of the Louisiana Casualty and Surety Rating Commission. Neither the Experience Rating Plan nor any other individual risk rating plan shall be used, but instead in consideration of the reduced hazards on these risks all manual rates shall be subject to a uniform discount of 50 per cent.

(a) Those classifications in the Manual for which no rates appear will be submitted by the insurance carrier to the appropriate rating authority if any, for the establishment of a rate. The rate so established will be submitted to the Insurance Branch, Fiscal Division, Headquarters, Army Service Forces. Any liability rate so established will be subject to the 50% discount applicable to other liability insurance classifications.

§ 804.483 *Insurance advisor.* (1) In connection with the War Department Insurance Rating Plan, each contractor performing a contract in one of the several States of the United States or the District of Columbia, will select a competent and responsible Insurance Advisor. This Advisor may be a licensed insurance agent or broker or other person of comparable competence and trustworthiness. He shall not, while so employed be employed or paid any remuneration whatsoever by any insurance carrier for services rendered or benefit conferred directly or indirectly in connection with the insurance on the project to which the Insurance Service Agreement relates (see § 804.497 (m)). The advisor selected will be requested to submit a detailed statement of the knowledge and experience which qualifies him to act as Insurance Advisor.

(2) On projects located in States having a resident agents law which requires an advisor to be a licensed agent or broker such law will be complied with.

(a) Paragraph 1 of the Insurance Service Agreement, when used in connection with projects located in Massachusetts must be amended by inserting the words "being a duly licensed advisor, agent, or broker as defined in section 163, 166, and 177b of the General Laws, Chapter 175," between the words "hereinafter called the Advisor" and the words "agreement(s), in consideration of a fee".

(b) If the contractor desires that his regular insurance agent or broker act as Advisor but the project is so far removed that the agent or broker (not qualified as set forth above) is unable to give complete service, the agent or broker may arrange with another person or firm sufficiently near the project to render a portion of the Advisor's services. The individual or firm will qualify as an Advisor as set forth above and both parties will execute jointly the Insurance Service Agreement.

(c) No Insurance Advisor will be appointed in connection with projects located outside the several States of the United States and the District of Columbia.

§ 804.484 *Assignment to Government of premiums due under policies written under War Department Insurance Rating Plan upon termination or completion of cost-plus-a-fixed fee contracts.* (a) The following form will be used for the purpose of assigning to the Government the interest of a cost-plus-a-fixed-fee contractor in return premiums, premium refunds, etc., on insurance policies written under the War Department Insurance Rating Plan upon termination or completion of the contract, when the Government has assumed the payment of the contractor's obligations for premiums under such policies (see § 804.490 (c)):

ASSIGNMENT TO GOVERNMENT

Under Cost-Plus-A-Fixed Fee Contract No. _____ dated _____, between the United States of America (hereinafter called the Government) and _____ (hereinafter called the Contractor).

The Government having assumed and become liable for the obligation of the contractor for premiums under Policies Nos. _____, and _____ issued by the _____ Insurance Company, the Contractor does hereby assign, transfer and set over to the Government as of the date hereof, all of its right, title and interest in and to all return premiums, premium refunds, dividends and any other moneys due or to become due the Contractor in connection with such policies.

In witness whereof, the Contractor has executed this assignment this _____ day of _____, 194_____.

[CORPORATE SEAL]

CONTRACTOR,

_____

By _____

Attest:

_____

Secretary

Accepted:

United States of America,

By _____

Contracting Officer

(b) Appropriate detailed instructions will be given by the chiefs of technical services to contracting officers and others concerned so that the form is executed and forwarded by registered mail, return receipt requested, to the home office of the insurance company involved. The letter accompanying the form will specify that all checks to cover return premiums, etc., are to be made payable to the Treasurer of the United States.

(c) In addition to whatever copies are required for the purposes of a technical service, one copy of the executed form will be forwarded to the Contract Insurance Branch, Special Financial Services Division, Office of the Fiscal Director, Headquarters, Army Service Forces.

Special Instructions for the Preparation of Policies

§ 804.485 *Workmen's compensation policies.* Policies to evidence workmen's compensation insurance taken out in accordance with this part, will be written

to provide the coverage required by this part and in accordance with the following regulations:

(a) The War Department Insurance Rating Plan is not available for use in connection with workmen's compensation insurance in the states of Nevada, North Dakota, Ohio and Washington, but the plan will be used in those states for comprehensive general liability and automobile liability and property damage if the premiums involved are estimated to exceed $5,000.

(b) In the state of Oregon the contractor will formally reject the workmen's compensation act and will then purchase insurance as prescribed in §§ 804.470 to 804.471 (d). The policy will provide on a voluntary basis the benefits of the workmen's compensation act and employer's liability insurance.

(c) In the state of West Virginia the contractor will qualify with the appropriate state authority as a self-insurer and will then purchase insurance as prescribed in §§ 804.470 to 804.471 (d). The policy will provide the benefits of the workmen's compensation act and employers' liability insurance.

(d) In the following states occupational diseases coverage in limits of $50/100,000 will be obtained by having this coverage endorsed on the compensation policy:

Alabama	New Jersey
Arizona	New Mexico
Colorado	Oklahoma
Delaware	Oregon
Florida	Pennsylvania
Georgia	Rhode Island
Iowa	South Carolina
Kansas	South Dakota
Kentucky	Tennessee
Louisiana	Utah
Maine	Vermont
Minnesota	Virginia
Montana	West Virginia
Nebraska	Wyoming
New Hampshire	

(e) Occupational disease coverage will be obtained in the states enumerated below, as follows:

(1) Illinois: by having the employer elect in writing to accept the terms of the Occupational Diseases Act;

(2) Indiana: by having the employer elect in writing to accept the terms of the Occupational Diseases Act;

(3) Missouri: by having the employer elect in writing to bring himself within the Workmen's Compensation Act with respect to occupational diseases; and the Workmen's Compensation policy will be endorsed to indicate the carrier's acceptance of the employer's election.

(f) In the state of Missouri the contractor will have the Missouri endorsement (see § 804.497 (h)) attached to the compensation policy. This endorsement will be cleared in each individual case by the chief of the technical service concerned or his authorized representative with the Superintendent of Insurance of the State of Missouri.

(g) Special endorsements will be attached to policies in the following states:

Delaware (See § 804.497 (i)).
Massachusetts (See § 804.497 (j)).
Pennsylvania (See § 804.497 (k)).
Texas (See § 804.497 (l)).

§ 804.486 *Average rates for construction projects insured under the War Department Insurance Rating Plan.* Because of the multiplicity of classifications which must be used in connection with construction projects, average rates will, in all instances where practicable, be used and the following procedure will apply:

(a) The rate will be established by the board or bureau having jurisdiction.

(b) Calculation of such rate will be on the basis of the Manual Rules, Classifications and Rates administered by the board or bureau having jurisdiction.

(c) Data for establishing such rate will be secured by the carrying company from the technical service concerned and will be subject to acceptance and verification by the board or bureau having jurisdiction.

(d) Pending the submission of complete data upon which to establish such average rate the board or bureau will establish a tentative average rate based upon such information concerning the operations as may be made available.

(e) The average rate computed in accordance with (b) and (c) above will be established and promulgated to the carrier as promptly as possible, and such rate will apply only if the carrier and the War Department agree to its use.

(f) Such rate will be effective as of the inception date of the policy and may not be changed except as follows:

(1) It will be subject to revision on the anniversary date of the policy.

(2) Whenever features or operations contemplated under the project are materially changed.

(3) Whenever work which was included in the establishment of the average rate is sublet to lump-sum subcontractors whose operations are not under the War Department Insurance Rating Plan.

(4) The amended rate as established under (1) and (2) above will be effective as of the inception date of the policy.

(5) In the event that the state rates are changed as a result of a change in the law, the average rate will be modified as of the effective date of the revised state rates.

Upon promulgation by the board or bureau having jurisdiction, all average rates will be submitted to the Insurance Branch, Fiscal Division, Headquarters, Army Service Forces, for approval. Complete supporting data and the recommendation of the chief of the technical service concerned will also be submitted.

§ 804.487 *Fire insurance*—(a) *Release form.* A non-interest release form will be used in all applicable cases where the contracting officer is required to execute an instrument in connection with fire insurance purchased pursuant to a provision contained in a War Department contract. For form see § 804.497 (a).

(b) Endorsement form. (1) Where a contract requires that the contractor shall provide and maintain fire insurance in a sum at least equal to the value of the property belonging to the United States which is in his possession, the form of endorsement set forth in § 804.497 (b) will be used. This endorsement is designed for the purpose of clearly defining the interest of the government and of providing the manner in which losses shall be settled. Its use will not eliminate the necessity of reviewing each insurance policy submitted in order to determine that the amount of insurance conforms to requirements and that the exclusions which appear in the policy do not deprive the United States of any of its rights.

(2) If any outstanding endorsement does not contain a provision with respect to cancellation substantially similar to that contained in paragraph 2 of the endorsement set forth in § 804.497 (b), such endorsement should be amended as promptly as practicable to conform to said paragraph 2.

§ 804.488 *Rules and regulations of the State of Massachusetts pertaining to use of War Department Insurance Rating Plan in that state.* The Emergency Construction and Expansion Comprehensive Insurance Rating Plan on Cost-Plus-a-Fixed-Fee Contracts, dated May 3, 1941, commonly known as the War Department Insurance Rating Plan, as amended by Endorsement Forms 2A, 10A, and 30A, of May 26, 1942, is hereby permitted for use in the Commonwealth of Massachusetts under the authority of Executive Order No. 18, subject to the following rules, regulations, and modifications:

(a) This plan shall be available only when requested by the United States Government, through the War Department, the Navy Department, the Maritime Commission, or the Defense Plant Corporation, or in cooperation therewith in connection with the operations of any assured undertaking a contract of which written notice has been given to the Commissioner of Insurance of the Commonwealth of Massachusetts by the procurement officer of the United States agency in charge of the project or his representative to be on a cost-plus-a-fixed-fee basis and on other projects in connection with the prosecution of the war wherein the cost of the insurance is a direct item of expense to the United States Government by reason of a contract reimbursement agreement.

(b) Requests for permission to use the plan shall be made by the insurance carrier to the Commissioner of Insurance of the Commonwealth of Massachusetts and shall be accompanied by the written request for the use of the plan by the procurement officer of the United States agency in charge of the project or his authorized representative and also a statement from the assured giving the name and address of the licensed insurance adviser, agent, or broker.

(c) The plan shall not be used where the estimated standard premium for the insurance is less than $5,000. In cases where the standard premium on war projects is less than $5,000, each carrier shall observe the rates and rules for Workmen's Compensation Insurance which have been approved by the Massachusetts Commissioner of Insurance. Rules, rates, and classification of risks and premium charges, promulgated by

the Commissioner of Insurance for Massachusetts Compulsory Motor Vehicle Insurance Policies and Bonds and Guest Occupant charges, shall be used in connection with risks involving standard premium of less than $5,000.

(d) The advisor provided for in the plan shall be a person who meets the requirements of Gen. Laws, Chapter 175, section 163, 166 or 177B, and who holds a license under one or more of said sections. No insurance carrier shall recognize an advisor unless such advisor is licensed as described above. Enclosed amendment must be attached to service agreement. (See § 804.497 (j) (5)).

(e) Policies in force on May 26, 1942, may be cancelled and rewritten under this plan with the approval of the Massachusetts Commissioner of Insurance, provided that no policy written under this plan may have an effective date prior to May 26, 1942.

(f) Permission to use the plan in Massachusetts may be discontinued by the Massachusetts Commissioner of Insurance by giving ten days' written notice to the War Department or other governmental agency authorized to use this plan and to the Massachusetts Rating and Inspection Bureau as a representative of the insurance companies.

(g) Endorsement Forms 2A, 10A, and 30A, copies of which are attached hereto, shall be attached to each policy contract issued under this plan. (See § 804.497 (e), (f) and (g)).

(h) Losses incurred under the plan are to be determined by the insurance carrier and approved by the Massachusetts Commissioner of Insurance and the Under Secretary of War or corresponding head of other governmental agency authorized to use this plan.

(i) Reserves on outstanding cases are to be determined by the insurance carrier and approved by the Massachusetts Insurance Department and the Under Secretary of War, or corresponding head of other governmental agency authorized to use this plan.

(j) The insurance carrier shall furnish to the Massachusetts Commissioner of Insurance and to the War Department a quarterly itemized statement of incurred losses.

(k) Payroll audits shall be made as soon as possible following the termination of the audit period as shown in the policy and a copy furnished to the Massachusetts Commissioner of Insurance. There shall be attached to each policy to which the War Department Insurance Rating Plan applies, War Project Endorsement form "D" shown below.

§ 804.489 *Rules and regulations pertaining to use of War Department Insurance Rating Plan in State of Texas.* (a) When policies written under the plan are submitted to the Casualty Insurance Commissioner for his approval they will be accompanied by a copy of the insurance service agreement signed by the insurance advisor and the contractor or architect-engineer. No policy will be approved unless accompanied by such agreement and such copy will be retained permanently by the Insurance Department.

(b) Workmen's Compensation insurance policies written under this plan may eliminate the wording "and elsewhere in Texas". Where such wording is eliminated the policy will not be approved until the Casualty Insurance Commissioner is submitted satisfactory evidence that the contractor and each subcontractor or the architect-engineer named in such policy will be insured by a separate Workmen's Compensation insurance policy written according to normal manual requirements for all the assured's contracting activities through Texas during the entire period of coverage under the Emergency Insurance Rating Plan. Concurrent policies carried by reason of this requirement may be combined for determination of premiums.

(c) Any Workmen's Compensation insurance policy concurrent with one extending coverage under the provisions of the War Department Emergency Rating Plan will provide by endorsement for a ten-day written notice by the insurance carrier or by the assured (whichever cancels the policy) to the Casualty Insurance Commissioner before such policy may be terminated by cancelation.

Settlement of Claims

§ 804.490 *Settlement under the War Department Insurance Rating Plan.* (a) The Rating Plan provides that within sixty days after the expiration of the policy (or within sixty days of the termination of the project) the carrier shall compute the aggregate earned standard premium and a preliminary settlement of the premium shall then be made (for form of preliminary settlement, see § 804.497 (o) through (u)). It is desired that this preliminary settlement be made prior to the termination of the contract.

(b) Insurance carriers will be required to submit to the contractor seven properly executed copies of the forms of preliminary settlement, together with any refund which may be called for by the settlement form. The contractor will be instructed to retain one copy and to submit the remaining six copies, together with the refund, to the contracting officer. The contracting officer will make the following distribution:

(1) One copy, together with the refund, to the disbursing officer.

(2) One copy to the General Accounting Office.

(3) Two copies to the chief of the technical service concerned.

(4) Two copies to be retained by the contracting officer. The chief of the technical service will forward one copy to the Contract Insurance Branch, Special Financial Services Division, Office of the Fiscal Director, Headquarters, Army Service Forces.

(c) Generally the contract in question will have been terminated by the time final settlement (see § 804.497 (o) to (u)) is in order (eight months after completion of the project). Therefore in terminating such contracts, the chief of the technical service concerned will issue appropriate instructions to the effect that any remaining credits due in connection with the insurance or any outstanding obligations of the contractor with respect to the insurance will be assumed by the United States Government.

(d) The insurance carriers will be notified to submit simultaneously (1) to the technical service concerned the number of properly completed copies of final settlement forms required by it and (2) directly to the Contract Insurance Branch, Special Financial Services Division, Office of the Fiscal Director, Headquarters, Army Service Forces one properly completed copy of such settlement form. The technical service concerned will promptly submit to the Contract Insurance Branch any information which it believes to be pertinent to the negotiations for settlement with the insurance carrier. The Contract Insurance Branch will take appropriate action to examine the final settlements, reach agreements with the carriers concerning the adjustment of losses and premiums, and secure Comprehensive Insurance Rating Plan Releases. If no changes are made in the settlement statement as submitted by a carrier, the Contract Insurance Branch will notify the technical service concerned of approval. In the event revised settlement statement is required, the Contract Insurance Branch will secure the necessary properly executed forms from the carrier and forward them to the technical service with the Contract Insurance Branch's approval of the settlement. When advised of approval by the Contract Insurance Branch, the technical service will take appropriate steps to close the account on the basis of the approved statement. The procedure prescribed in this paragraph will be followed on and after 29 April 1944.

(e) All appropriate action will be taken by the Contract Insurance Branch, Special Financial Services Division, Office of the Fiscal Director, Headquarters, Army Service Forces, with respect to the valuation and adjustment of losses and claims.

§ 804.491 *Claims, losses and claims service under the War Department Insurance Rating Plan*—(a) *Claims service by insurance carriers.* The carrier is required to provide sufficient claims facilities to afford prompt and adequate claims service to the contractor. Any complaints concerning the claims service which is rendered by a carrier in connection with a particular project will be referred for necessary action to the Contract Insurance Branch, Special Financial Services Division, Office of the Fiscal Director, Headquarters, Army Service Forces.

(b) *Claims settlements by insurance carriers.* (1) It is the duty of the insurance carrier to make all decisions with respect to the investigation, settlement and litigation of claims against contractors covered by its policies of insurance "to the extent of its coverage, said policies having been issued under the War Department Insurance Rating Plan."

(2) Medical benefits in excess of statutory limits: Medical benefits in excess of the statutory limits on compensation claims may be provided by the insurance carrier if in its best judgment, such extension of benefits will probably reduce disability and the ultimate cost of in-

demnity payments provided the carrier has received the prior written approval of the Contracting Officer or his representative; or receives the approval of the Contract Insurance Branch, Special Financial Services Division, Office of the Fiscal Director, Headquarters, Army Service Forces.

(c) *Insurance medical facilities, first aid and hospital (contract medical).* (1) An agreement has been effected with insurance carriers concerning the standard form endorsement and the maximum percentages to be used in the distribution of Project Site Medical (Contract Medical) cost between the contractor and the Insurance Carrier.

(2) The agreement provides for Project Site Medical Endorsement as follows:

It is agreed that "losses incurred" as defined in paragraph 1-b of the Insurance Rating Plan Endorsement, shall include —% of the amount paid as salaries to "medical personnel" employed at the project site: *Provided, however,* That such amount is subject to a maximum of —% of the Standard Premium for Workmen's Compensation and Employers' Liability coverages.

"Medical personnel" as used in this endorsement shall include: doctors, internes, nurses, technicians, and, if employed on a full-time basis to perform services normally rendered by a nurse, orderlies, and nurses' aides.

(3) The percentage of amount paid as salaries "to medical personnel" (first blank in above endorsement) is to be fixed by negotiation subject to the following maxima:

(i) Construction projects—66⅔% of such salaries.

(ii) Manufacturing projects—50% of such salaries.

(iii) Explosives risks—33⅓% of such salaries.

(4) The maximum percentages of Standard Premium for Workmen's Compensation and Employers' Liability coverages (second blank in above endorsement) are:

(i) Construction projects—7½% of standard premium.

(ii) Manufacturing projects—10% of standard premium.

(iii) Explosives risks—5% of standard premium.

(5) The endorsement set forth in subparagraph (2) above is to be used when the project is entirely a construction project, a manufacturing project or an explosive risk. If the project changes from a "construction project" to either a "manufacturing project" or an "explosive risk" two endorsements will be necessary. The first, effective as of the effective date of the policies, will be the same as the endorsement described in subparagraph (2) above, except that the phrase "applicable to construction operations" will be added at the end of the first paragraph of the endorsement. The second, effective as of the date of change of character of the risk, will be the same as the endorsement described in subparagraph (2) above, except that the percentage of salaries will be that applicable to the new operations, and the phrase "applicable to _____ (insert 'manufacturing' or 'explosives') Operations" will be added at the end of the first paragraph of the endorsement.

(6) If the project is at the same time in part a "construction project" and in part either a "manufacturing project" or an "explosive risk" or any combination of the above, the endorsement to be used effective as of the date and during the period the project includes more than one operation will be the same as the endorsement described in subparagraph (2) above except that:

(i) The percentage inserted in the first bracket will be determined on a pro rata basis determined by taking into account the existing and probable future situation as regards payroll expenditure with respect to each type of operation.

(ii) The phrase "the sum of ____% of the Standard Premium for Workmen's Compensation and Employers' Liability coverages applicable to _____ (construction or _____ operations and ____% of manufacturing) the Standard Premium for Workmen's Compensation and Employers' Liability coverages applicable to _____ (manufacturing or explosives) _____ operations" replaces the phrase "____% of the Standard Premium for Workmen's Compensation and Employers' Liability coverages". When mixed operations no longer exist the endorsement will be revised in accordance with the procedure hereinbefore outlined.

(7) All policies effective 15 July 1943 and thereafter will have endorsements affixed thereto in accordance with this paragraph (c). Immediate arrangements will be made by the technical service concerns to have the carriers execute and attach such endorsements to each Workmen's Compensation and Employers' Liability policy written under the War Department Insurance Rating Plan in effect prior to 15 July 1943. Copies of such endorsements will be forwarded to the Contract Insurance Branch, Special Financial Services Division, Headquarters, Army Service Forces, as soon as possible in order that final settlements now pending on a number of these contracts may be disposed of. The endorsements will be retroactive to the effective date of the policies.

(8) The percentage of Project Site Medical mentioned herein and the percentage of Standard Premium are maxima and subject to these maxima, the distribution of Medical salaries between the carrier and the contractor is subject to negotiation. If on any project arrangements were hitherto in effect whereby any carrier assumed a smaller percentage of the Project Site Medical than the maxima provided herein, the endorsements should not provide any greater percentage of such medical cost to be included by the carrier than the percentage heretofore agreed upon.

(9) In arriving at agreed percentages of medical salaries, consideration should be given to a proper allocation based upon industrial accident exposure.

(d) *Claims not covered by insurance policy; duty of insurance carrier.* The insurance carrier will notify the contractor promptly of any claim reported to it which, in its opinion, is not covered by the terms of the insurance policy. All such matters will be referred immediately for determination to the Insurance Branch, Fiscal Division, Headquarters, Army Service Forces.

(e) *Relationship of the claims representatives of the carriers to technical services.* The insurance carrier through its investigation of accidents and the handling of settlements frequently obtains and compiles data which will be helpful to the representatives of the technical service on the project. The relationship between these parties should be one of mutual assistance and cooperation. The claims representative of the insurance carrier is required to cooperate with the technical service representative when requested to do so and to supply him with such data as will be of assistance to the latter in carrying out his duties. The supply service concerned will not request the claims representative of the insurance carrier to fill out forms, copy reports, or prepare other clerical data not necessary in the performance of his duties in connection with the handling of claims.

(f) *Loss reports.*—(1) *Quarterly loss reports.* The insurance carrier is required to submit a quarterly loss report (for form see § 804.497 (w) and (x)) every three months during the term of the policy. The insurance carrier is required to furnish the contractor with five copies of the quarterly loss report. The contractor should retain two copies and send three copies to the contracting officer or his representative. The contracting officer will retain one copy unless the chief of the supply service concerned requires him to send it to a higher echelon within the supply service, and will forward two copies to the chief of the supply service concerned. The chief of the supply service will retain one copy and forward the other to the Insurance Branch, Fiscal Division, Headquarters, Army Service Forces. In order that maximum use may be made of these reports, they will be forwarded promptly through channels as set forth above.

(2) *Preliminary settlement.* The insurance carrier will use the approved form of preliminary settlement (See § 804.497 (o) to (u)). Distribution of these forms when completed will be made as set forth in § 804.490 (a). The chief of the supply service concerned will obtain the approval or disapproval of these statements by the Insurance Branch, Fiscal Division, Headquarters, Army Service Forces, before any final action is taken thereon. Refunds of premium may be accepted without reference to the approval or disapproval by the Insurance Branch. The chief of the supply service concerned will be notified of the action taken by the Insurance Branch.

(3) *Final settlement.* The same form shall be used for final settlement as is used for preliminary settlement statements (see § 804.497 (o) to (u)). If the final settlement statement is approved by the Insurance Branch, Fiscal Division, Headquarters, Army Service Forces, after its examination of the claims files, the chief of the supply service concerned will

be so notified. If settlement is deferred, the chief of the supply service concerned will be notified. In the event of a deferment of settlement, the carrier will submit an additional final settlement statement at the end of the deferred period as provided by the War Department Insurance Rating Plan Endorsement. Such additional final settlement statement will be acted upon by the Insurance Branch, Fiscal Division, Headquarters, Army Service Forces in the same manner as an original final settlement statement.

(4) No other reports by insurance carriers concerning insured losses will be required unless requested by the Insurance Branch, Fiscal Division, Headquarters, Army Service Forces.

(g) *Arbitration of losses.* If final settlement with a carrier is not feasible, by reason of dispute over losses claimed by such carrier, the Insurance Branch, Fiscal Division, Headquarters, Army Service Forces will arrange for arbitration in accordance with the provisions of the War Department Insurance Rating Plan, and will notify the chief of the supply service concerned of the pendency of such arbitration. Upon final settlement of such losses, the chief of the supply service concerned will be notified.

(h) *Claims under Missouri Voluntary Workmen's Compensation Endorsement.* An agreement and release will be taken at the time settlement is made by the insurance carrier with an employee and a receipt and release will be taken at the time final payment is made. These are necessary and are required by the Insurance Commissioner of Missouri (for forms see § 804.497 (y) and (z). The insurance carrier will be responsible for the execution of the forms.

Miscellaneous

§ 804.492 *War risk indemnity contracts.* With the passage of Public Law 784, 77th Congress, the execution of War risk indemnity contracts has become unnecessary. The authority heretofore granted in respect to the execution of such agreements is withdrawn.

§ 804.493 *Reports.* Copies of all policies, bonds, certificates of insurance, reports of insurance companies, and insurance advisors' boiler inspection contracts and all other data pertaining thereto will be forwarded promptly to the Insurance Branch, Fiscal Division, Headquarters, Army Service Forces.

SUBPART E—BONDS AND INSURANCE FORMS

§ 804.496 *Bond forms*—(a) *Bid bond.* Standard Form No. 24 (Standard Government Form of Bid Bond (construction or supply)) is the approved bid bond form. In the preparation of the form, contracting officers are authorized, when it is deemed by them to be in the best interests of the Government, to insert in the blank space on page one, following the words "in the penal sum of" and before the word "dollars," the following clause:

an amount equal to ____ per cent of the accompanying bid of said principal, but in no event shall said penalty exceed the sum of_____.

There should be inserted in the first blank space of the above clause the percentage deemed appropriate by the contracting officer, having regard to existing instructions of the chief of the supply service concerned, and in the second blank space the amount of the maximum penalty in dollars. Standard Form No. 24 reads as follows:

STANDARD GOVERNMENT FORM OF BID BOND (NO. 24)

(Construction or Supply)

Know all men by these presents, That we, as Principal, and_____ as Surety, are held and firmly bound unto the United States of America, hereinafter called the Government, in the penal sum of _____ dollars lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

The condition of this obligation is such, that whereas the principal has submitted the accompanying bid, dated _____, 19____, for _____.

Now, therefore, if the principal shall not withdraw said bid within the period specified therein after the opening of the same, or, if no period be specified, within sixty (60) days after said opening, and shall within the period specified therefor, or, if no period be specified, within ten (10) days after the prescribed forms are presented to him for signature, enter into a written contract with the Government, in accordance with the bid as accepted, and give bond with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such contract, or in the event of the withdrawal of said bid within the period specified, or the failure to enter into such contract and give such bond within the time specified, if the principal shall pay the Government the difference between the amount specified in said bid and the amount for which the Government may procure the required work and/or supplies, if the latter amount be in excess of the former, then the above obligation shall be void and of no effect, otherwise to remain in full force and virtue.

In witness whereas, the above-bounden parties have executed this instrument under their several seals this ____ day of _____, 19____, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(b) *Annual bid bond.* United States Standard Form No 34 (Revised) is the approved form of Annual Bid Bond. It reads as follows:

ANNUAL BID BOND (NO. 34)

(Supplies)

Know all men by these presents, that we _____, as Principal, and _____ as Surety, are held and firmly bound unto the United States of America, hereinafter called the Government, in such penal sum or sums, lawful money of the United States, as shall be sufficient to indemnify the Government in case of the default of the said principal as hereinafter set forth, for the payment of which sum or sums well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

The condition of this obligation is such, that whereas the principal contemplates submitting bids from time to time during the fiscal year ending June 30, 19____, to the _____ for furnishing materials and supplies to the Government, and desires that all such bids submitted for opening during said fiscal year be covered by a single bond instead of by a separate Bid Bond for each bid;

Now, therefore, if the principal shall not withdraw any such bid within the period specified therein after the opening of the same, or, if no period be specified, within sixty (60) days after said opening, and shall within the period specified therefor, or, if no period be specified, within ten (10) days after the prescribed forms are presented to him for signature, enter into a written contract with the Government, in accordance with the bid as accepted, and give bond with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such contract, or in the event of the withdrawal of any bid within the period specified, or the failure to enter into such contract and give such bond within the time specified, if the principal shall pay the Government the difference between the amount specified in said bid and the amount for which the Government may procure the required materials and supplies, if the latter amount be in excess of the former, then the above obligation shall be void and of no effect, otherwise to remain in full force and virtue.

In witness whereof, the above-bounden parties have executed this instrument under their several seals this _____ day of _____ 19____, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(c) *Performance bond.* (1) Standard Form No. 25, Revised is the approved form of performance bond for use when the bond is to be executed by individual sureties, or by one corporate surety. The form is set forth in subparagraph (4) below.

(2) Standard Form No. 25–B is the approved form of performance bond for use when the bond is to be executed by two or more corporate sureties. For cases involving more than six sureties, continuation sheets to sheets one and three of the form are provided. These bear the form designations, Standard Form No. 25–B1 and 25–B3. Standard Form No. 25–B is set forth in subparagraph (5) below.

(3) When the aforementioned Standard Forms of performance bonds are used, there may be inserted therein the following additional clause.

Provided, however, that the foregoing obligation of the surety shall not be applicable to the liability of the principal for the return of excessive profits under the provisions of the Sixth Supplemental National Defense Appropriation Act, 1942.

(4) Performance Bond (No. 25).

PERFORMANCE BOND (NO. 25)

(Construction or Supply)

Know all men by these presents, that we, _____ as Principal, and _____ as Surety, are held and firmly bound unto the United States of America, hereinafter called the Government, in the penal sum of _____ dollars for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

The condition of this obligation is such, that whereas the principal entered into a certain contract, hereto attached, with the Government, dated _____, 19____, for _____.

Now, therefore, if the principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term of said contract and any extensions thereof that may be granted by the Government, with or without notice to the surety,

and during the life of any guaranty required under the contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then, this obligation to be void; otherwise to remain in full force and virtue.

In witness whereof, the above-bounden parties have executed this instrument under their several seals this _____ day of _____, 19____, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(5) Performance Bond (No. 25–B).

PERFORMANCE BOND (NO. 25–B)

(Construction or Supply. Corporate Co-Surety Form)

Know all men by these presents, that we, _____ as Principal, and the corporations hereinafter designated as Surety A to Surety _____, inclusive, as Sureties, are held and firmly bound unto the United States of America, hereinafter called the Government, in the penal sum of _____ dollars, for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents: *Provided*, That we the sureties bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite its name in the following schedule:

Surety	*Name and State of incorporation*	*Limit of liability*
A		
B		
C		

Q		

The condition of this Obligation is such, that whereas the Principal entered into a certain contract, hereto attached, with the Government dated _____, 19____, for _____

Now, therefore, if the Principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term of said contract and any extensions thereof that may be granted by the Government, with or without notice to the Sureties, and during the life of any guaranty required under the contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the Sureties being hereby waived, then, this obligation to be void; otherwise to remain in full force and virtue.

In witness whereof, the above-bounden parties have executed this instrument under their several seals this _____ day of _____, 19____, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(d) *Annual performance bond.* United States Standard Form No. 35 (Revised) is the approved form of annual performance bonds. It reads as follows:

ANNUAL PERFORMANCE BOND (NO. 35)
(SUPPLIES)

Know all men by these presents, that we _____ as principal and _____ as surety are held and firmly bound unto the United States of America, hereinafter called the Government, in the penal sum of _____ dollars for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

The condition of this obligation is such, that whereas the principal contemplates entering into contracts from time to time during the fiscal year ending June 30, 19____, with the Government represented by _____ for furnishing materials and supplies to the Government and desires that all such contracts be covered by one bond instead of by a separate performance bond for each contract:

Now, therefore, if the principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all such contracts so entered into during the original term thereof and any extensions that may be granted by the Government, with or without notice to the surety, and during the life of any guaranty required under the contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of such contract and may hereafter be made, notice of which modifications to the surety being hereby waived, then this obligation to be void; otherwise to remain in full force and virtue.

In witness whereof, the above-bounden parties have executed this instrument under their several seals this _____ day of _____, 19____, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(e) *Payment bond.* (1) Standard Form No. 25–A is the approved form of payment bond for use when the bond is to be executed by individual sureties, or by one corporate surety. The form is set forth in subparagraph (3) below.

(2) Standard Form No. 25–C is the approved form of payment bond for use when the bond is to be executed by two or more corporate sureties. For cases involving more than six sureties, continuation sheets to sheets one and three of the form are provided. These bear the form designations, Standard Form No. 25–C1 and No. 25–C3. Standard Form No. 25–C is set forth in subparagraph (4) below.

(3) Payment Bond (No. 25–A).

PAYMENT BOND (NO. 25–A)

Know all men by these presents, that we, _____ as Principal, and _____ as Surety, are held and firmly bound unto the United States of America, hereinafter called the Government, in the penal sum of _____ dollars for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

The condition of this obligation is such, that whereas the principal entered into a certain contract, hereto attached, with the Government, dated _____, 19____, for _____

Now, therefore, if the principal shall promptly make payment to all persons supplying labor and material in the prosecution of the work provided for in said contract, and any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then this obligation to be void; otherwise to remain in full force and virtue.

In witness whereof, the above-bounden parties have executed this instrument under their several seals this _____ day of _____, 19____, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(4) Payment Bond (No. 25–C).

PAYMENT BOND (NO. 25–C)

(Corporate Co-Surety Form)

Know all men by these presents, that we, _____ as Principal, and the corporations hereinafter designated as Surety A to Surety ____, inclusive, as Sureties, are held and firmly bound unto the United States of America, hereinafter called the Government, in the penal sum of _____ dollars, for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents: *Provided*, That we the Sureties bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite its name in the following schedule:

Surety	*Name and State of incorporation*	*Limit of liability*
A		
B		
C		

Q		

The condition of this obligation is such, that whereas the Principal entered into a certain contract, hereto attached, with the Government, dated _____ 19____ for _____

Now, therefore, if the Principal shall promptly make payment to all persons supplying labor and material in the prosecution of the work provided for in said contract, and any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the Sureties being hereby waived, then this obligation to be void; otherwise to remain in full force and virtue.

In witness whereof, the above-bounden parties have executed this instrument under their several seals this ____ day of _____ _____ 19____, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(f) *Advance payment bond.* (1) The approved forms of advance payment bond for use when the bond is to be executed by individual sureties or one corporate surety are set forth in subparagraphs (3) and (4) below. These forms are Standard Form No. 25, Revised (Standard Government Form of Performance Bond (construction and supply)), amended by the insertion of the italicized clauses.

(2) The approved forms of advance payment bond for use when the bond is

to be executed by two or more corporate sureties are set forth in subparagraphs (5) and (6) below. These forms are Standard Form No. 25–B [Standard Government Form of Performance Bond (construction and supply)], amended by the insertion of the italicized clauses. For cases involving more than six sureties continuation sheets to sheets one and three of the form are provided bearing the designations "Standard Form No. 25–B1" and "Standard Form No. 25–B3."

(3) Advance Payment Bond.

ADVANCE PAYMENT BOND

(When the provisions for advance payments are contained in the basic contract)

Know all men by these presents, that we, _____ as Principal, and _____ as Surety, are held and firmly bound unto the United States of America, hereinafter called the Government, in the penal sum of _____ dollars for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

The condition of this obligation is such, that whereas the principal entered into a certain contract, hereto attached, with the Government, dated _____ 19__, for _____ *and whereas such contract authorizes advance payments to the contractor in the sums not to exceed $_____, or _____ per centum of the contract price, as it may be amended, whichever shall be the smaller.*

Now, therefore, if the principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said contract *relating to advance payments* during the original term of said contract and any extensions thereof that may be granted by the Government, with or without notice to the surety, and during the life of any guaranty required under the contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of said contract *relating to advance payments* that may hereafter be made, notice of which modifications to the surety being hereby waived, then, this obligation to be void; otherwise to remain in full force and virtue.

In witness whereof, the above-bounden parties have executed this instrument under their several seals this _____ day of _____ 19____, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(4) Advance Payment Bond.

ADVANCE PAYMENT BOND

(When the provisions for advance payments are contained in a supplemental agreement)

Know all men by these presents, that we _____ as the Principal, and _____ as Surety, are held and firmly bound unto the United States of America, hereinafter called the Government, in the penal sum of _____ dollars for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

The condition of this obligation is such, that whereas the principal entered into a certain contract, hereto attached, with the Government, dated _____ 19__, for _____ *and whereas the Government has entered into a contract supplemental to the aforesaid principal contract, such supplemental contract being dated _____, 19__, and authorizing advance payments to the contractor of sums not to exceed $_____ or _____ per centum of the contract price, as it may be amended, whichever shall be the smaller.*

Now, therefore, if the principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said *supplemental contract relating to advance payments* during the original term of said *supplemental contract relating to advance payments* and any extensions thereof that may be granted by the Government, with or without notice to the surety, and during the life of any guaranty required under the contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of said *supplemental contract relating to advance payments* that may hereafter be made, notice of which modifications to the surety being hereby waived, then, this obligation to be void; otherwise to remain in full force and virtue.

In witness whereof, the above-bounden parties have executed this instrument under their several seals this ____ day of _____, 19__, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(5) Advance Payment Bond.

ADVANCE PAYMENT BOND

(Corporate Co-Surety Form)

(When the provisions for advance payments are contained in the basic contract)

Know all men by these presents, That we, _____ as Principal, and the corporations hereinafter designated as Surety A to Surety ____, inclusive, as Sureties, are held and firmly bound unto the United States of America, hereinafter called the Government, in the penal sum of _____ dollars, for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents: *Provided,* That we the Sureties bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite its name in the following schedule:

Surety	*Name and State of incorporation*	*Limit of liability*
A		
B		
C		

Q		

The condition of this obligation is such that whereas the Principal entered into a certain contract hereto attached, with the Government, dated _____ 19____, for_____ *and whereas such contract authorizes advance payments to the contractor in the sums not to exceed $_____, or _____ per centum of the contract price, as it may be amended, whichever shall be the smaller.*

Now, therefore, if the Principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said contract *relating to advance payments* during the original term of said contract and any extensions thereof that may be granted by the Government, with or without notice to the Sureties, and during the life of any guaranty required under the contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of said *supplemental contract relating to advance payments* that may hereafter be made, notice of which modifications to the Sureties being hereby waived, then, this obligation to be void; otherwise to remain in full force and virtue.

In witness whereof, the above-bounden parties have executed this instrument under their several seals this _____ day of _____ 19____, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(6) Advance Payment Bond.

ADVANCE PAYMENT BOND

(Corporate Co-Surety Form)

(When the provisions for advance payments are contained in a supplemental agreement)

Know all men by these presents, that we, _____ as Principal, and the corporations hereinafter designated as Surety A to Surety ____, inclusive, as Sureties, are held and firmly bound unto the United States of America, hereinafter called the Government, in the penal sum of _____ dollars, for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents: *Provided,* That we the Sureties bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite its name in the following schedule:

Surety	*Name and State of incorporation*	*Limit of liability*
A		
B		
C		

Q		

The condition of this obligation is such, that whereas the Principal entered into a certain contract, hereto attached, with the Government, dated _____, 19__, for _____ *and whereas the Government has entered into a contract supplemental to the aforesaid principal contract, such supplemental contract being dated _____ and authorizing advance payments to the contractor of sums not to exceed $_____ or _____ per centum of the contract price, as it may be amended, whichever shall be the smaller.*

Now, therefore, if the Principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said *supplemental contract relating to advance payments* during the original term of said *supplemental contract relating to advance payments* and any extensions thereof that may be granted by the Government, with or without notice to the Sureties, and during the life of any guaranty required under the contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of said *supplemental contract relating to advance payments* that may hereafter be made, notice of which modifications to the Sureties being hereby waived,

then, this obligation to be void; otherwise to remain in full force and virtue.

In witness whereof, the above-bounden parties have executed this instrument under their several seals this _____ day of _____ 19___, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(g) *Patent infringement bond.* The following is the approved form of patent infringement bond:

Know all men by these presents, that we, _____ as Principal, and _____, as Surety, are held and firmly bound unto the United States of America, hereinafter called the Government, in the penal sum of _____ dollars, lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

The condition of this obligation is such, that whereas the principal entered into a certain contract, hereto attached, with the Government, dated _____, 19____, for _____

and whereas the said principal has specifically obligated himself in said contract to hold and save the Government, its officers, agents, servants, and employees, harmless from liability of any nature or kind, including cost and expenses, for or on account of any patented or unpatented invention, article, or appliance manufactured or used in the performance of that contract, including their use by the Government of the articles therein contracted for.

Now, therefore, if the principal shall well and truly perform and fulfill the above undertaking and agreement, and shall promptly make payment of any judgment and costs obtained against the United States under the provisions of the Act of June 25, 1910 (36 Stat. 851) as amended by the Act of July 1, 1918 (40 Stat. 705) or expenses incident thereto, then this obligation to be void; otherwise to remain in full force and virtue.

In witness whereof, the above-bounden parties have executed this instrument under their several seals this ____ day of _____ 19____, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(h) *Consent of surety.* (1) The following form is authorized for use in all cases other than those specified in subparagraphs (2) and (3) below.

Consent of Surety is hereby given to the foregoing Supplemental Agreement, and the Surety agrees that its bond or bonds shall apply to and cover the due performance of the contract as modified and extended thereby.

(2) The following form is authorized for use in cases where only payment bonds are involved.

Consent of Surety is hereby given to the foregoing Supplemental Agreement and the surety agrees that its bond or bonds shall apply and extend to the contract as modified or amended thereby.

(3) The following form is authorized for use when advance payments are added by supplemental agreement after the original contract has been executed and the performance bond given.

The undersigned surety company (or companies), surety (or sureties) on the performance bond supporting Contract No. _____ dated _____ with _____ (principal) of _____ (city and state) _____ hereby consent to the alteration of the contract effected by the execution of the agreement supplemental thereto dated _____ providing for advance payments, upon the condition that it (or they) shall not be liable under such performance bond for any portion of the advance payments which is not used by the contractor for the purposes of the contract.

If, in the event of default under the contract, the surety company (or companies) is (are) permitted to perform, and in case the additional funds for full performance are not available, it is understood and agreed that the number of articles to be delivered or the services to be performed under said contract shall be reduced in the proportion that the amount of advance payment moneys not used for the purposes of the contract bears to the total contract price.

In witness whereof, the respective sureties have executed this instrument under their several seals this _____ day of _____ 19____, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

(4) In appropriate cases, the words "Supplemental Agreement" contained in the above forms may be changed to "Change Order".

(i) *Fidelity bond.* The primary commercial blanket form of fidelity bond as standardized by the Surety Association of America or its equivalent is the approved form of fidelity bond. There should be attached thereto the following:

(1) A rider providing for retroactive reinstatement for prior losses.

(2) A rider excluding any claim on the part of the surety company to be subrogated, on payment of loss or otherwise, to any claim against the United States.

(3) A rider providing for pro rata refund of premium in event of cancellation by the Insured.

(4) A rider providing for notice to the technical service concerned in the event of any change in or cancellation of the bond.

(5) A rider providing for investigation of all Class A employees.

(6) A rider providing for investigation of all claims.

(7) (Optional) A rider eliminating a premium charge for restoring the bond penalty after losses.

(j) *Forgery bond.* The depositor's form of forgery bond or policy as standardized by the Surety Association of America or its equivalent is the approved form of forgery bond. There should be attached thereto the following:

(1) A rider providing for retroactive reinstatement for prior losses.

(2) A rider excluding any claim on the part of the surety company to be subrogated, on payment of loss or otherwise, to any claim against the United States.

(3) A rider providing for pro rata refund of premium in event of cancellation by the Insured.

(4) A rider providing for notice to the technical service concerned in the event of any change in or cancellation of the bond.

(5) A rider providing for the investigation of all claims.

(6) (Optional) A rider eliminating premium charge for restoring the bond penalty after losses.

(k) *License or permit bond.* The form of license or permit bond prescribed by statute or ordinance of the public authority having jurisdiction is the approved form of bond.

(l) *Bond data sheet.* The following form of bond data sheet is authorized for use:

Date _____
Headquarters, Army Service Forces,
Fiscal Division,
Insurance Branch,
Washington, D. C.
Name of Principal _____
(Vendor, Contractor, Subcontractor, or Architect-Engineer)
Contract No. _____
Name of project _____
Location of project _____
Amount of contract _____
Description of contract _____
Penalty of bond _____
Type of bond _____
Name of surety _____
Bond number _____
Effective date of bond _____
Premium _____
Rate of premium per thousand _____
_____
(Technical Service)

§ 804.497 *Insurance forms*—(a) *Release form.*

_____
(Date)
To the _____
(Name of Contractor)
_____
(Location)

This is to certify that the United States of America has no interest under
(Type) _____ Contract No. _____
(Type) _____ Contract No. _____
_____ Contract No. _____
_____ Contract No. _____
with your Company in the property damaged by _____ on _____,
(Cause) (Date)
and situate on the premises at _____ as described in policy No. _____ of the _____ Company; except as follows:—

The interest of the United States in the losses involved in the above mentioned contract(s) and covered by the above mentioned insurance policy amounts to $_____
(Write appropriate figure or word "None")

_____
(Title)

(b) *Fire insurance endorsement.*

Dated_____
To be attached to Policy No. _____

1. This policy covers all property owned wholly or in part by the United States or in which the United States has any interest, legal or equitable, by way of lien, mortgage, pledge, or otherwise, while said property is on the premises of the assured as described in the policy to which this endorsement is attached. Loss if any under this policy shall be payable to the contractor and to the Treasurer of the United States as their respective interests may appear, provided, however, that the United States is entitled to indemnity, in preference and priority, on all property insured hereunder and in which it has an interest.

2. This policy, with respect to the interests of the United States, shall not be altered, cancelled, or further endorsed, transferred or assigned, unless written notice to that effect shall be given, at least twenty days in advance, to the United States of America, through _____

_____

(Insert name or names and addresses of Contracting Officer of the technical service involved);

except that, upon written request of the United States to the contractor, this policy may be cancelled at any time by the contractor upon mailing copy of such request to the company, and the company shall refund the excess of the paid premium above the pro rata premium for the expired time.

3. Since this policy is hereby endorsed primarily to afford protection to the United States, and since the United States is not in a position to determine whether the assured under this policy is under-insured, any co-insurance clause of this policy as far as the interest of the United States is concerned is hereby declared to be inoperative and of no effect.

4. Inasmuch as the United States is not in control of the insured property, this policy, with respect to the interest of the United States, shall not be impaired or affected by the failure of the assured to comply with any condition or warranty contained therein.

_____

(Name of insurance company)

By_____

(c) *War risk insurance report.* A report on the following form should be executed in triplicate and forwarded to the Insurance Branch, Fiscal Division, Headquarters, Army Service Forces, Room 5D461 The Pentagon, Washington, D. C.

The following data are submitted pursuant to the terms of the master policy with coverage commencing_____

1. Name of vessel_____
2. Owners_____
3. Value of hull_____ $_____
4. Crew life_____ $_____
5. Crew effects_____ $_____
6. Wages and Bonuses (annual)_____ $_____
7. Protection and Indemnity_____ $_____
8. Quote excerpt from Contract, Rental Agreement or Charter Parties, delineating responsibility of War Department.

_____

_____

_____

Technical Service or Command

(e) *War Department Insurance Rating Plan endorsement.*

Amending Policy Numbered_____

1. It is agreed that the premiums for the policies numbered: _____

_____

_____

issued by the Company affording insurance in connection with the War Department Cost-Plus-A-Fixed-Fee Contract No. _____,

(Name of Contractor)

to _____

_____

_____

and all subcontractors performing operations on a Cost-Plus-A-Fixed-Fee basis in connection with a project at_____

_____

shall be a fixed charge plus modified losses plus all actual allocated claim expense, all multiplied by the tax multiplier, subject to a maximum premium equal to the amount obtained by the application of the tax multiplier to 90% of the standard premium.

a. The premium computed in accordance with the provisions of the policies, other than this endorsement, shall be known as the "standard premium" and shall be computed in accordance with manual rules and rates which have been approved by the Under Secretary of War.

b. "Losses incurred" as used in this endorsement shall mean the sum of all losses (indemnity and medical) actually paid plus reserves for unpaid losses as determined by the Company and approved by the insured and the Under Secretary of War.

c. "Modified losses" as used in this endorsement shall mean the losses incurred converted by the application of the factor 1.12.

d. "Allocated claim expense" as used in this endorsement shall mean actual payments and reserves for legal expenses, excluding the cost of investigation and adjustment of claims by salaried employees and fee adjusters, but including attorney's fees, court costs, interest, expense for expert testimony, examination, X-ray, autopsy or medical expenses of any kind not incurred for the benefit of the injured or any other expenses incurred under the policy other than payment of indemnity or medical treatment, provided that only those items of expense which can be directly allocated to a specific claim involving litigation or possible litigation when necessary to determine the Company's liability shall be included.

e. "Fixed charge" as used in this endorsement shall mean the amount provided for fixed expenses and for losses in excess of the maximum. The fixed charge shall be determined by applying the appropriate percentage as set forth in Table I, to the sum of 90% of the standard premium for Workmen's Compensation and Employers' Liability and 100% of the standard premium for Automobile Bodily Injury Liability and Property Damage Liability coverages and all other bodily injury liability and property damage liability coverages combined.

f. TABLE I—TABLE OF FIXED CHARGES

(1) Standard Premium:[1]	(2) *Fixed charge*[2]
$5,000 or less	37.
$10,000	29.
$25,000	24.
$50,000	18.4
$100,000	12.5
$150,000	11.5
$200,000	10.5
$250,000	9.7
$300,000	9.
$350,000	7.5
$400,000 to $700,000	6.5
$700,000 and over	6.3

[1] Standard Premium to be used in determining applicable fixed Charge percentage (90% of Standard Premium for Workmen's Compensation and Employers' Liability and 100% of Standard Premium for all bodily injury liability and property damage liability coverages).

[2] Fixed charge (expressed as a percentage of standard premium stated in column 1).

If the standard premium lies between any two of the figures in the standard premium column, the Fixed Charge shall be interpolated.

g. "Tax Multiplier" as used in this endorsement shall mean the factor as set forth in Table II, to be applied to the fixed charge, to the modified losses and to the allocated claim expense in order to increase these amounts sufficiently to provide for those taxes which are levied as a percentage of premium and for assessments for industrial commissions, rating boards and bureaus.

h. TABLE II—TABLE OF TAX MULTIPLIERS

State	Workmen's compensation and employers' liability—Tax multiplier applicable to total insurance costs	Automobile bodily injury liability and property damage liability—Tax multiplier applicable to total insurance costs	Other bodily injury liability and property damage liability—Tax multiplier applicable to total insurance costs
All States except as noted below	1.029	1.024	1.024
Alabama	1.024	1.029	1.029
Arkansas	1.030	1.024	1.024
California	1.035	1.030	1.030
Delaware	1.030	1.024	1.024
Florida	1.026	1.024	1.024
Georgia	1.023	1.024	1.024
Hawaii	1.024	1.029	1.029
Idaho	1.040	1.034	1.034
Iowa	1.024	1.029	1.029
Kansas[1]	1.029	1.024	1.024
Louisiana	1.037	1.031	1.031
Maryland[2]	1.029	1.024	1.024
Mississippi	----------	1.034	1.034
New Jersey	1.042	1.024	1.024
New York[3]	1.040	1.024	1.024
N. Carolina	1.062	1.029	1.029
N. Dakota	----------	1.029	1.029
Ohio	----------	1.029	1.029
Oklahoma	1.05	1.045	1.045
Oregon	----------	1.026	1.026
Pennsylvania	1.040	1.024	1.024
S. Carolina	1.036	1.034	1.034
S. Dakota	1.024	1.029	1.029
Tennessee	1.030	1.029	1.029
Texas	1.053	1.053	1.051
Utah	1.031	1.026	1.026
Virginia	1.024	1.031	1.031
Washington	----------	1.026	1.026
Wyoming	----------	1.029	1.029

[1] Kansas Compensation Act provides for levying varying fees per claim which are paid into a fund for the support of the Industrial Commission. All such fees must be added to the modified losses before applying the tax multiplier.

[2] Maryland Compensation Act provides for levying assessment per $100 of payroll for expenses of Industrial Commission. An amount equal to 3.4 cents per $100 of payroll must be added to the fixed charges before applying the tax multiplier.

[3] New York Compensation Act provides for levying an assessment on indemnity losses for expenses of the Department of Labor. An amount equal to 4.5% of the indemnity losses incurred must be added to the modified losses before applying the tax multiplier.

2. If Table II fails to provide the proper tax multiplier, the multiplier will be obtained by using the following formula:

$$\text{Tax Multiplier} = \frac{1}{1.0 - (\text{the tax loading plus } 0.8\%)}$$

In any case where the tax multiplier is obtained by use of the formula and not the table, it will not be used in the premium computation until approved by the insured and the Under Secretary of War.

3. The deposit premium shall be 15% of the estimated annual standard premium.

4. The Company shall be paid 50% of the earned standard premium on policies written on a payroll basis determined monthly by audit of the expended payrolls and 50% of the earned standard premium on all other policies determined monthly on the basis of the actual monthly exposures.

5. The Company shall furnish to the insured and to the War Department a quarterly itemized statement of incurred losses.

6. Within sixty days after termination of the policies, the Company shall compute the aggregate amount of modified losses plus all allocated claim expense times the tax multiplier, the aggregate fixed charge times the tax multiplier and the aggregate earned standard premium, and a preliminary settlement of premium shall be made.

7. Within eight months after termination of the policies, based upon a determination of loss reserves made not earlier than six months after such termination, the final settlement of premium computed in accordance with the provisions of this endorsement shall be made. If the losses so determined are not approved by the insured and the Under Secretary of War and agreement cannot be reached as to any modification thereof, the final settlement shall be deferred for a further period of six months or such further period up to twenty-four months as may be necessary to produce an approved determination of such loss reserves. In the event an approved determination of loss reserves cannot be reached by this method, the matter shall be referred for arbitration to a committee of three, one member of which shall be selected by the insured, one by the Company, and the third by those two members, and the decision of this committee shall be final upon approval by the Under Secretary of War.

8. If the policies are canceled, the earned standard premium shall be determined on a pro rata basis, but if such cancelation is effected by the insured—except for cancelation on termination of the project—the maximum premium shall be 90% of the standard premium for the original policy period, obtained by extending the earned standard premium on a pro rata basis, all increased by the provision for taxes.

ATTACHMENT

The Company may use its usual attachment clause.

NOTE: The method set forth below is to be followed in stating the Name of Employer in Item 1 of the Declarations:

Name of Employer: _____, C.P.F.F. contractor with U.S.A., and others, as described in endorsement _____
(Insert "attached" or number)

(d-1) *Mandatory endorsement amending War Department Insurance Policy Plan regarding approval of losses.* It is agreed that the War Department Insurance Rating Plan endorsement is hereby amended as follows:

(1) The words "the insured and" are deleted from Division b. of paragraph 1, from paragraph 2 and from the second sentence of paragraph 7.

(2) The words "Under Secretary of War" are substituted for the word "insured" in the third sentence of paragraph 7.

Accepted By _____
(Name of Insured)

(e) *General endorsement for general liability policy.*

Amending Policy Numbered_____
It is agreed that:

1. *Name of insured.* The name and address of the Insured are: _____

(Name and address of Contractor)
prime cost-plus-a-fixed-fee contractor under Government Contract No. _____ with the United States of America and_____

(Names and addresses of subcontractors)

cost-plus-a-fixed-fee subcontractors and all other cost-plus-a-fixed-fee subcontractors under such contract.

The prime contractor agrees to notify the Company as soon as practicable of the names of all cost-plus-a-fixed-fee subcontractors under such contract not named herein. Failure so to notify the Company shall not invalidate the insurance.

Any notice relating to this insurance mailed or delivered by the Company to the prime contractor and to the subcontractors named in the policy shall be deemed notice to all subcontractors not named in the policy.

2. *Operations covered.* Such insurance as is afforded by the policy applies to all operations in connection with the contract designated in paragraph 1 of this endorsement and all subcontracts thereunder and does not apply to any other operations of the insured.

3. *Waiver of subrogation against the United States.* The Company waives any right of subrogation against the United States of America which might arise by reason of any payment under the policy.

4. *Rate adjustment.* The rules and rates upon which the standard premium for the policy is based are subject to change at the end of each year of the policy to accord with rules and rates then in use by the Company, subject to the approval of the Under Secretary of War.

5. *Cancelation.* The cancelation condition of the policy is amended as follows:

a. The reference therein to a specified number of days is changed to thirty days.

b. This policy may be canceled by the named insured by mailing written notice to the Company stating when not less than thirty days thereafter such cancelation shall be effective.

c. Cancelation by the Company shall not be effective unless a copy of the notice of cancelation is mailed to_____

(Insert name or names and addresses of Contracting Officers of the technical service involved)

on the same day that notice of cancelation is mailed or delivered to the named insured.

d. In the event of cancelation by the named insured the Company will as soon as practicable mail notice thereof to the officer or officers named in the preceding paragraph.

6. *Aggregate limits.* As respects insurance afforded under the policy for which an aggregate limit of liability is set forth therein such limit of liability shall apply to each year of the policy period.

7. *Interpretation of cross liability.* As respects claims against any insured under this policy other insureds or the employees of other insureds shall be deemed to be members of the public.

8. *Exclusion of products liability.* The policy does not apply.

a. To the handling or use of, the existence of any condition in or a warranty of goods or products manufactured, sold, handled or distributed by the named insured, other than equipment rented to or located for use of others but not sold, if the accident occurs after the insured has relinquished possession thereof to others and away from premises owned, rented or controlled by the insured or on premises for which the classification is stated in the declarations as subject to this exclusion;

b. To operations, other than pick-up and delivery and the existence of tools, uninstalled equipment and abandoned or unused materials, if the accident occurs after such operations have been completed or abandoned at the place of occurrence thereof and away from premises owned, rented or controlled by the insured.

9. *Malpractice.* It is agreed that malpractice, error or mistake in rendering of medical, surgical, nursing or hospital services or treatment or the omission thereof shall be deemed an accident, and that all malpractice, error or mistake in the rendering or omission of such services or treatment to any one person shall be deemed one accident.

10. *Definition of "cost".* When used as a premium basis the word "cost" shall mean the total cost of all operations performed for the named insured during the policy period by independent contractors not on a cost-plus-a-fixed-fee basis, including materials used or delivered for use, except maintenance or ordinary alterations and repairs on premises owned or rented by the named insured; any other provision of the policy relating to the meaning of the word "cost" when used as a premium basis is eliminated.

11. *Premium adjustment.* The premium for this policy is to be computed in accordance with the provisions of the War Department Insurance Rating Plan Endorsement forming a part of Policy No. _____
(Insert number of Workmen's Compensation Policy)

ATTACHMENT

The Company may use its usual attachment clause.

NOTE: The method set forth below is to be followed in stating the Name of Insured in Item 1 of the Declarations:

Name of Insured_____,
C. P. F. F. contractor with U. S. A., and others, as described in endorsement_____
(Insert "attached" or number)

(f) *General endorsement for automobile liability policy.*

Amending Policy Numbered_____
It is agreed that:

1. *Name of Insured.* The name and address of the Insured are: _____

(Name and address of Contractor)
prime cost-plus-a-fixed-fee contractor under Government Contract No. _____ with the United States of America and _____

(Names and addresses of subcontractors)
cost-plus-a-fixed-fee subcontractors and all other cost-plus-a-fixed-fee subcontractors under such contract.

The prime contractor agrees to notify the Company as soon as practicable of the names of all cost-plus-a-fixed-fee subcontractors under such contract not named herein. Failure so to notify the Company shall not invalidate the insurance.

Any notice relating to this insurance mailed or delivered by the Company to the prime contractor and to the subcontractors named in the policy shall be deemed notice to all subcontractors not named in the policy.

2. *Automobiles covered.* Such insurance as is afforded by the policy applies with respect to all automobiles owned or hired by the named insured if maintained for use principally in connection with the contract designated in paragraph 1 of this endorsement or any subcontract thereunder and applies with respect to all other automobiles only while used in connection with such contracts. Such insurance does not apply, however, to automobiles used exclusively on the premises and the ways immediately adjoining at which the work under such contracts is performed.

Automobiles owned by the named insured shall for the purposes of this insurance include automobiles owned in full or in part by the named insured or purchased or hired under bailment lease or owned by the United States of America and furnished to the named insured for his use.

Any exclusion with respect to use of an owned or hired automobile as a taxicab, pub-

lic bus, public or livery conveyance or in the business of trucking for others, or beyond the limitations of restricted use endorsement is waived.

Any provision of the policy relating to fleet discounts is eliminated.

The premium for non-ownership coverage shall be determined by the application of the rates per $1,000 of remuneration for bodily injury liability and for property damage liability stated in the Declarations. The term "remuneration" as used herein shall include the remuneration earned by all employees of the named insured while engaged in operations in connection with such contracts. Any other provision of the Policy relating to premium for such coverage is eliminated.

3. *Waiver of subrogation against the United States.* The Company waives any right of subrogation against the United States of America which might arise by reason of any payment under the policy.

4. *Rate adjustment.* The rules and rates upon which the standard premium for the policy is based are subject to change at the end of each year of the policy to accord with rules and rates then in use by the Company, subject to the approval of the Under Secretary of War.

5. *Cancelation.* The cancelation condition of the policy is amended as follows:

a. The reference therein to a specified number of days is changed to thirty days.

b. This policy may be canceled by the named insured by mailing written notice to the Company stating when not less than thirty days thereafter such cancelation shall be effective.

c. Cancelation by the Company shall not be effective unless a copy of the notice of cancelation is mailed to _____

_____

_____

_____

_____

_____

_____

(Insert name or names and addresses of Contracting Officers of the Supply Service involved)

on the same day that notice of cancelation is mailed or delivered to the named insured.

d. In the event of cancelation by the named insured the company will as soon as practicable mail notice thereof to the officer or officers named in the preceding paragraph.

6. *Interpretation of cross liability.* As respects claims against any insured under this policy other insureds or the employees of other insureds shall be deemed to be members of the public.

7. *Premium adjustment.* The premium for this policy is to be computed in accordance with the provisions of the War Department Insurance Rating Plan Endorsement forming a part of Policy No. _____

_____

(Insert number of Workmen's Compensation Policy)

ATTACHMENT

The Company may use its usual attachment clause.

NOTE: The method set forth below is to be followed in stating the Name of Insured in Item 1 of the Declarations:

Name of Insured: _____

C. P. F. F. contractor with U. S. A., and others, as described in endorsement _____

_____

(Insert "attached" or number)

(g) *General endorsement for workmen's compensation and employers' liability policy.*

Amending Policy Numbered _____

It is agreed that:

1. *Name of employer.* The name and address of this Employer are: _____

_____

_____

(Name and address of contractor)

prime cost-plus-a-fixed-fee contractor under Government Contract No. _____ with the United States of America and _____

_____

_____

_____

(Names and addresses of subcontractors) cost-plus-a-fixed-fee subcontractors and all other cost-plus-a-fixed-fee subcontractors under such contract.

The prime contractor agrees to notify the Company as soon as practicable of the names of all cost-plus-a-fixed-fee subcontractors under such contract not named herein. Failure so to notify the Company shall not invalidate the insurance.

Any notice relating to this insurance mailed or delivered by the Company to the prime contractor and to the subcontractors named in the policy shall be deemed notice to all subcontractors not named in the policy.

2. *Operations covered.* Such insurance as is afforded by the policy applies to all operations in connection with the contract designated in paragraph 1 of this endorsement and all subcontracts thereunder and does not apply to any other operations of the Employer.

3. *Waiver of subrogation against the United States.* The Company waives any right of subrogation against the United States of America which might arise by reason of any payment under the policy.

4. *Rate adjustment.* The rules and rates upon which the standard premium for the policy is based are subject to change at the end of each year of the policy to accord with rules and rates then in use by the Company, subject to the approval of the Under Secretary of War. This provision applies in addition to any other provision in the policy with respect to changes in rules and rates.

5. *Cancelation.* The cancelation condition of the policy is amended as follows:

a. The reference therein to a specified number of days is changed to thirty days.

b. Cancelation by the Company shall not be effective unless a copy of the notice of cancelation is mailed to _____

_____

_____

_____

_____

_____

_____

(Insert name or names and addresses of Contracting Officer of the Supply Service involved)

on the same day that notice of cancelation is mailed or delivered to the Employer.

c. In the event of cancelation by the Employer the Company will as soon as practicable mail notice thereof to the officer or officers named in the preceding paragraph.

6. *Aggregate limits.* As respects insurance afforded under the policy for which an aggregate limit of liability is set forth therein such limit of liability shall apply to each year of the policy period.

7. *All States coverage.* In the event the Employer is obligated to pay compensation benefits under any Workmen's Compensation law of any state or district of the United States other than a Workmen's Compensation law cited in an endorsement made a part of the policy because of injuries sustained by employees while engaged in operations for the Employer in connection with the contract designated in paragraph 1 of this endorsement and all subcontracts thereunder, the Company agrees to pay such compensation benefits under the law of any such state other than the law of a state which does not permit the writing of Workmen's Compensation insurance by private carriers.

ATTACHMENT

The Company may use its usual attachment clause.

NOTE: The method set forth below is to be followed in stating the Name of Employer in Item 1 of the Declarations:

Name of Employer: _____, C. P. F. F. contractor with U. S. A., and others, as described in endorsement _____

_____

_____

(Insert "attached" or number)

(h) *Special endorsement for Missouri compensation policies written under the War Department Insurance Rating Plan.*

It is agreed that:

1. The provisions of this endorsement are applicable solely with respect to persons in the employ of this Employer who are engaged in the business operations covered by the policy and whose average annual earnings exceed $3,600.

2. In the event of personal injury or death of any such person arising out of and in the course of his employment, the company will pay, subject to the provisions of paragraphs 3, 4 and 5 hereof, on behalf of this Employer, the same compensation and the same medical, surgical, hospital and other statutory benefits to or for such injured person or to any person claiming by, through, or under him in the event of death resulting from such injury, as would be payable under the Workmen's Compensation Law of Missouri if the injury or death had been that of an employee of this Employer whose average annual earnings were $3,600.

3. In consideration of these payments and as a condition precedent thereto the injured person or any persons claiming by, through or under him shall execute a full release of all claims for damages against this Employer in the manner required by the Company and shall in addition execute an assignment to the Company of any right of action available to any of them against any person, firm, corporation or estate other than this Employer which is or may be liable for such injury or death. If death of the injured shall result after a period of disability, death being due to such injuries and any one claiming by, through or under the injured shall accept any payment provided for in this endorsement which accrues after such death, with notice or knowledge of said release and assignment, the acceptance of such payment shall operate to estop the person so accepting from asserting that such release or assignment is not binding upon him.

4. If the Company proceeds upon such assignment and recovers and collects an amount from the party at fault in excess of the amount of the payments made hereunder, the Company shall first take the necessary expenses of the procedure and shall pay any remaining balance of such excess so obtained to the person or persons executing the assignment. The Company shall have power and discretion to proceed against the party at fault or to settle with said party upon such terms as may seem desirable to the Company, either without litigation or during the pendency thereof.

5. If the injured person or any person claiming by, through or under him shall refuse to accept the payments offered under the provisions of the preceding paragraphs, then the Company may withdraw the foregoing proposal without notice, under which circumstances the Company will be no longer bound by the undertakings expressed in the preceding paragraphs. If any claim, suit or demand is made or prosecuted against this Employer or any other person or organization for damages for such injuries or death, such claim, suit or demand shall be considered as a refusal to accept such payments and the obligations of the Company as expressed in Paragraph One (b) of the Policy as well as all parts of the Policy having reference thereto, subject however, to such limitations or modifications as may be endorsed thereon, shall be available to this Employer and shall be and remain the obligations of the Company as fully and completely as if this endorsement had not been written.

THE _____ INSURANCE COMPANY.

(i) *Special endorsement for Delaware compensation policies written under the War Department Insurance Rating Plan.*

The insurance shall be continuous until completion of the project or operation, except that if the project or operation is of indefinite duration and continues for a longer period than twenty-four months, at the expiration of the first twenty-four months the Rating Plan shall be applied and the policy shall be renewed and the Rating Plan again applied at the end of each twenty-four months' period, as though it were a new project or operation.

It is agreed that except for cancelation under the War Department Insurance Rating Plan Endorsement this policy shall remain in effect for a period of twelve months and shall be renewed from year to year to the completion of the contract described in this policy.

It is also agreed that the Workmen's Compensation Rules and Rates which have been approved by the Industrial Accident Board of the State of Delaware and the Under Secretary of War shall be applicable to this policy and that the rates expressed in this policy shall be subject to change in accordance with the Rate Manuals promulgated by the Delaware Compensation Rating and Inspection Bureau and approved by the Industrial Accident Board of the State of Delaware and the Under Secretary of War.

It is agreed that Workmen's Compensation losses will be valued by the Delaware Compensation Rating and Inspection Bureau in accordance with the instructions of the Industrial Accident Board of the State of Delaware as approved by the Under Secretary of War.

It is further agreed that the named insured will undertake, and the insurance carrier hereby assumes, all of the liability under the Delaware Compensation Law because of injury or death resulting therefrom to employees of subcontractors who perform any part of the work described in this policy under cost-plus-a-fixed-fee contracts. To this end the named insured agrees to notify all subcontractors that he has assumed this liability and has provided the insurance thereof.

This endorsement forms a part of Compensation

Policy No. ---------

Issued to ----------

(Insurance Carrier)

Revised Draft. Nov. 5, 1941. Incl. #2.

(j) *Special endorsements for Massachusetts compensation policies written under the War Department Insurance Rating Plan*—(1) *War Project Endorsement Form (D).*

The insurance company shall audit the payroll for the purpose of computing premiums under this policy as soon as possible after its final expiration and, in any event, within eight months. Payroll audits shall not be waived.

(2) *War Department Insurance Rating Plan Endorsement Form (2A).* Amending revised Form 2 (see paragraph (d)).

Clause 1 (a) is hereby amended to read as follows:

The premium computed in accordance with the provisions of the policies, other than this endorsement, shall be known as the "standard premium" and shall be computed in accordance with manual rules and rates which have been approved by the *Massachusetts Commissioner of Insurance* and the Under Secretary of War.

Clause 1 (b) is hereby amended to read as follows:

"Losses incurred" as used in this endorsement shall mean the sum of all losses (indemnity and medical) actually paid plus reserves for unpaid losses as determined by the Company and approved by the *Massachusetts Commissioner of Insurance* and the Under Secretary of War.

Clause 2 is hereby amended to read as follows:

In any case where the tax multiplier is obtained by use of the formula and not the table, it will not be used in the premium computation until approved by *insurance company* and the Under Secretary of War.

Clause 5 is hereby amended to read as follows:

The Company shall furnish to the *Massachusetts Commissioner of Insurance* and to the War Department a quarterly itemized statement of incurred losses.

Clause 7 is hereby amended to read as follows:

Within eight months after termination of the policies, based upon a determination of loss reserves made not earlier than six months after such termination, the final settlement of premium computed in accordance with the provisions of this endorsement shall be made. If the losses so determined are not approved by the *Massachusetts Commissioner of Insurance* and the Under Secretary of War and agreement cannot be reached as to any modification thereof, the final settlement shall be deferred for a further period of six months or such further period up to twenty-four months as may be necessary to produce an approved determination of such loss reserves. In the event such an approved determination of loss reserves cannot be reached by this method, the matter shall be referred for arbitration to a Committee of three, one member to be selected by the insured, one by the carrier and a third by those two members and the decision of this committee shall be final upon approval by the Massachusetts Commissioner of Insurance and the Under Secretary of War.

(3) *General Endorsement for Workmen's Compensation and Employers' Liability Policy,* Amending Workmen's Compensation Endorsement 10 (see paragraph (g)).

The second sentence of paragraph 2, clause 1, is hereby amended so as to read as follows:

Failure so to notify the Company shall not invalidate the insurance but the insurance company shall be entitled to all premiums due on account of the operations of such subcontractor.

Clause 4, is hereby amended so as to read as follows:

The rules and rates upon which the standard premium for the policy is based are subject to change at the end of each year of the policy to accord with rules and rates which the Massachusetts Commissioner of Insurance permits the Company to use, subject to the approval of the Under Secretary of War. This provision applies in addition to any other provision in the policy with respect to changes in rules and rates.

(4) *General Endorsement for Automobile Liability Policy.* Amending Automobile Liability Endorsement 30 (see paragraph (f)).

The second sentence of paragraph 2 of clause 1 is hereby amended so as to read as follows:

Failure so to notify the Company shall not invalidate insurance but the insurance company shall be entitled to all premiums due on account of the operations of such subcontractor.

(5) *War Department Amended Insurance Service Agreement (see paragraph (l)).*

Paragraph 1 of the War Department Insurance Service Agreement is hereby amended by striking out said paragraph 1 and inserting in its place the following new paragraph.

I (We) ----------, [1] Insurance Advisor licensed under Gen. Laws, Chap. 175, Sec. 177B, [1] Insurance Agent licensed under Gen. Laws, Chap. 175, Sec. 163, [1] Insurance Broker licensed under Gen. Laws, Chap. 175, Sec. 166, hereinafter called the Party of the First Part, agree, in consideration of a sum of money to be determined as hereinafter set forth, to render complete insurance advisory service to ----------, hereinafter called the Party of the Second Part, on all insurance upon which a fixed charge is based, during the construction or operation of ----------, located at ---------- from the effective date of this Agreement continuously until final settlement of all premiums has been made.

(k) *Special endorsement for Pennsylvania compensation policies written under the War Department Insurance Rating Plan.*

XXIV.—SPECIAL ENDORSEMENT FOR PENNSYLVANIA COMPENSATION POLICIES WRITTEN UNDER THE WAR DEPARTMENT INSURANCE RATING PLAN

The insurance shall be continuous until completion of the project or operation, except that if the project or operation is of indefinite duration and continues for a longer period than twenty-four months, at the expiration of the first twenty-four months the Rating Plan shall be applied and the policy shall be renewed and the Rating Plan again applied at the end of each twenty-four months' period, as though it were a new project or operation.

It is agreed that except for cancelation under the War Department Insurance Rating Plan Endorsement this policy shall remain in effect for a period of twelve months and shall be renewed from year to year to the completion of the contract described in this policy.

It is also agreed that the Workmen's Compensation Rules and Rates which have been approved by the Pennsylvania Insurance Commissioner and the Under Secretary of War shall be applicable to this policy and that the rates expressed in this policy shall be subject to change in accordance with the rate Manuals promulgated by the Pennsylvania Compensation Rating and Inspection Bureau and approved by the Pennsylvania Insurance Commissioner and the Under Secretary of War.

It is agreed that Workmen's Compensation losses will be valued by the Pennsylvania Compensation Rating and Inspection Bureau in accordance with the instructions of the Pennsylvania Insurance Commissioner as approved by the Under Secretary of War.

It is further agreed that the named insured will assume liability in connection with Section 302 (b) of the Compensation Act and the Occupational Disease Act, for employees of subcontractors performing any part of the construction described in this endorsement under cost-plus-a-fixed-fee contracts, and to this end the named insured agrees to notify all subcontractors that he has assumed the position of "statutory employer" for the employees of all such subcontractors.

This endorsement forms a part of Compensation Policy No. ----------

Issued to ----------

(Insurance Carrier)

(l) *Texas National Defense Projects—(1) Control Endorsement.*

Amending:

Policy No. ----------

and all endorsements thereto.

Whereas, the Board of Insurance Commissioners of Texas is vested with the sole and exclusive power and authority to make, fix, prescribe, establish, and promulgate insurance rates and classifications of hazards gov-

[1] Strike out this line if inapplicable.

erning premiums for Workmen's Compensation and Motor Vehicle Insurance as authorized by the laws of the State of Texas, now therefore:

It is agreed that the standard premium as used in this policy or any endorsement attached to it or relating thereto shall mean a premium calculated according to the Manual rules and rates of the Board of Insurance Commissioners of Texas and the special rules and rates promulgated in connection with the War Department Emergency Insurance Rating Plan adopted by the said Board of Insurance Commissioners for use in Texas.

All premium computations provided for in this policy or in any endorsement attached to it or relating thereto shall be promptly submitted by the insurer to the Texas Casualty Insurance Commissioner and shall take effect only upon their promulgation by such Commissioner.

This endorsement, together with the policy to which it is attached and all other endorsements attached or pertaining thereto, is in the form prescribed by the Texas Board of Insurance Commissioners in accordance with statutory direction. Any contract or agreement written under the provisions of the hereinabove mentioned Rating Plan which conflicts in any wise whatsoever with the provisions of this endorsement or with the provisions of Texas law shall be void and of no effect to the extent of such conflict, except as these requirements may conflict with statutes of the United States relating to functions of the United States of America under the Constitution.

(2) *Attachment.* A company may use its usual attachment clause.

(3) *War Department Insurance Service Agreement for use in the State of Texas.*

I (We), _____, hereinafter called First Party, agree, in consideration of a sum of money to be determined as hereinafter set forth, to render complete insurance advisory service to _____ hereinafter called Second Party, on all insurance upon which a fixed charge is based, during the construction or operation—or both—(as the case may be) of_____ located at_____, from the effective date of this Agreement continuously until final settlement of all premiums has been made.

The complete insurance advisory service to be rendered by the First Party shall include a review of all policies of insurance; verification of all statements of premiums, losses and loss reserves submitted to the Second Party by the carrier; verification of all payroll classifications assigned to the policies, a determination that payrolls are assigned to proper classifications; and the rendering of detailed reports of findings to the Second Party, monthly.

The Second Party agrees to pay to the First Party, in consideration of the services to be rendered, a fixed charge, as hereinafter provided, which shall be determined by applying the fixed charge (expressed as a percentage of standard premiums), found in the following table to 50% of the standard premium for all policies issued to the Second Party on the War Department comprehensive rating plan.

FIXED CHARGE TABLE

A *50% of the standard premium as hereinabove defined*	*B* *Fixed charge expressed as a percentage of standard premiums stated in column A*
1st $10,000	7½
Next $40,000	4
Next $50,000	2
Next $400,000	1
Over $500,000	½

The First Party shall submit monthly to the Second Party a detailed statement of the aggregate earned standard premium and the aggregate earned fixed charge less all monthly payments of earned fixed charge to date; except that if this Agreement supercedes a previous agreement which has been terminated, the First Party shall submit to the Second Party, monthly, a detailed statement of the aggregate earned standard premium less that portion earned prior to the date of this Agreement and the aggregate earned fixed charge which shall be determined by applying to the amount of standard premium earned since the effective date of this Agreement, the earned fixed charge percent applicable to the total earned standard premium, less all payments of earned fixed charge made under this Agreement. Upon approval, the Second Party shall pay to the First Party the unpaid portion of the earned fixed charge. A final detailed statement shall be submitted the First Party upon receipt of final audit statements from the carrier and final settlement shall then be made upon approval of such audit by the War Department and the Second Party.

This agreement may be terminated by either of the parties, upon notice in writing to the other party and to the Texas Casualty Insurance Commissioner, and the termination shall be effective immediately upon notice being sent to said Commissioner. The fixed charge shall be determined in accordance with the terms of this Agreement, as of the effective date of termination, and final settlement shall then be made.

This agreement shall be effective and binding on the undersigned from and after _____

_____

Executed this _____ day of _____, A. D., 19____.

_____
First Party

_____
Attest

_____
Second Party

_____
Attest

Approved: United States War Department
By _____
(Contracting Officer)

(m) *War Department Insurance Service Agreement.*

1. _____
(Name of Advisor)
an individual, a partnership, a corporation organized and existing under the laws of _____, _____
(strike out inapplicable designations and/or add appropriate designation)
of _____
(Address of Advisor)
hereinafter called the "Advisor", agree(s), in consideration of a fee to be determined in the manner hereinafter set forth, to render complete insurance advisory service to _____
_____
(Name of Contractor)
of _____,
(Address of Contractor)
contractor with the United States of America under Contract No. _____ hereinafter called the "Contractor", on all insurance procured under the War Department Insurance Rating Plan with respect to the construction or operation (or both, as the case may be) of _____, located at or near _____, from the effective date of this agreement continuously until final settlement of all premiums for such insurance has been made.

2. The Advisor agrees that he will:

a. Upon request, assist the Contractor in the selection of an insurance carrier;

b. Procure insurance binders and policies and examine to determine that they are correctly written and that the required coverages are provided;

c. Upon request, assist the Contractor in establishing proper procedure and records for determining payroll classifications and for other units of exposure upon which insurance premiums are based;

d. Examine all insurance audit statements and premium invoices;

e. Visit the project or location of operations at least once each month to determine that insurance matters are being properly handled;

f. Render any other assistance of an insurance nature which the Contractor may require; and,

g. Submit to the Contractor monthly a detailed report of findings and of services performed.

3. The Contractor agrees to pay the Advisor a fee for his services, the amount of which shall be determined by applying the applicable percentages set forth in Column B below to 50% of the standard premium accruing during the period of this agreement on policies issued to the Contractor under the War Department Insurance Rating Plan. "Standard Premium" as used herein shall mean the premium for such policies computed on the basis of the manual rules and rates approved by the War Department for use in connection with the policies issued to the Contractor under the War Department Insurance Rating Plan.

FEE SCHEDULE

A *50% of the standard premium as hereinabove defined*	*B* *Fee, expressed as a percentage of standard premiums stated in column A*
1st $10,000	7½
Next $40,000	4
Next $50,000	2
Next $400,000	1
Over $500,000	½

4. The Advisor shall submit monthly a statement of the aggregate earned standard premium and the aggregate earned advisor's fee, less the amount of all fees previously earned. If, however, this agreement supercedes a previous insurance service agreement or agreements, the Advisor shall submit monthly a statement of (a) the aggregate standard premium earned during the term of all agreements; (b) the aggregate standard premium earned during the term of all previous agreements; and (c) the fee earned during the term of this agreement less all fees previously earned under this agreement. The fee earned under this agreement shall be computed by applying the basis of computation as set forth in this agreement to the aggregate standard premium earned during the term of all agreements, and deducting from the total fee thus computed, the portion thereof applicable to the aggregate standard premium earned during the term of all previous agreements. Upon approval by the Contractor of each such monthly statement, the Advisor shall be paid the earned fee. A final statement shall be submitted by the Advisor upon receipt of final audit statements from the insurance carrier and final settlement of the Advisor's fee shall be made as soon as practicable thereafter.

5. The Advisor agrees that he will neither accept employment by nor any remuneration directly or indirectly from the insurance carrier for services rendered in connection with the insurance written under the War Department Insurance Rating Plan covering operations under the contract referred to in paragraph 1 hereof.

6. This agreement may be terminated by either of the parties hereto upon notice in writing mailed to the other party stating when, not less than ten days thereafter, such termination shall be effective. Delivery of such notice shall be equivalent to mailing.

In the event of termination a copy of such notice shall immediately be mailed to_____

_____
(Contracting Officer)

_____If this Agreement
(Address)

is terminated as herein provided, the Advisor's fee shall be computed in the manner provided herein on the standard premium accrued to the effective date of termination.

This agreement, executed this_____ day of _____, 194__, shall be effective and binding on the undersigned from and after _____

Attest: _____
(Insurance Advisor)

By_____
Title_____

_____
Title_____
(Affix Corporate Seal)

Witnesses as to Advisor:

_____ _____
(Name) (Address)

_____ _____
(Name) (Address)

Attest: _____
(Contractor)

By_____
Title_____

_____
Title_____
(Affix Corporate Seal)

Witnesses at to Contractor:

_____ _____
(Name) (Address)

_____ _____
(Name) (Address)

Approved:

_____
_____
(Contracting Officer)

NOTE: If a corporation, signature should be attested by a corporate officer and corporate seal affixed. In all other cases two witnesses are required.

(n) *Reports to be furnished by Insurance Advisors.*

(1) *Insurance advisor's monthly statement of earned fee.*

Advisor _____
Address _____
Date _____
Contractor _____ Contract No. _____
Project _____ Location _____
Insurance Carrier _____
Policy Period: From _____ to _____
Effective date of Insurance Service Agreement _____

	Aggregate Earned Standard Premium
Period _____ to _____	
Workmen's Compensation and O. D. Policy _____	$_____
Comprehensive Public Liability Policy _____	$_____
Comprehensive Auto Liability Policy _____	$_____
Total _____	$_____
Less 50% _____	$_____
Net Earned Premium Upon Which Advisor's fee is based _____	$_____

(2) *Computation of advisor's fee.*

(1st $10,000) $_____ @ 7½%_____	$_____
(Next $40,000) $_____ @ 4%_____	$_____
(Next $50,000) $_____ @ 2%_____	$_____
(Next $400,000) $_____ @ 1%_____	$_____
(Over $500,000) $_____ @ ½%_____	$_____
Total Earned Fee _____	$_____
Less: Fee Previously Earned ___	$_____
Fee Due Advisor _____	$_____

(The Insurance Advisor's Monthly Report of Services Rendered should follow the following topical outline and should be complete, clear and concise.)

(3) *Insurance advisor's monthly report of services rendered.*

Period _____ to _____

1. Insurance Placed and Policies Procured.
2. Policies, Binders, Endorsements, etc., Examined—Conditions Found and Action Taken.
3. Rating Procedures and Records Established.
4. Audit Statements and Premium Invoices Examined—Conditions Found and Action Taken.
5. Other Data Procured from Carriers—Comments.
6. Visits to Project.
   (a) Date.
   (b) Report of Safety Engineering Service and Facilities.
   (c) Report of Claim Service and Facilities.
   (d) Report of Hospital and Medical Service and Facilities.
   (e) Other visits—Date, Purpose and Results.
7. Other Services Rendered.
8. Recommendations: (List and be specific).

_____
(Insurance advisor)

By _____
Title _____

(o) *Computation of Earned Premium; Comprehensive Insurance Rating Plan; Exhibit 1.*

_____
(Name of Carrier)

COMPUTATION OF EARNED PREMIUM

Policy Numbers _____ Name of Risk _____
_____ Location of Operations _____
Policy Period: from _____ to _____ Government Agency _____
Valuation Date _____ Government Contract Number _____

Item		(a) Compensation and employers' liability	(b) Automobile bodily injury and property damage	(c) General liability	(d) Total (a)+(b)+(c)
1	Standard Premium				
2	Premium Base for Determination of Fixed Charges	(1)×.90	(1)	(1)	
3	Fixed Charge Percentage				XXXX
4	Fixed Charge Amount (2)×(3)				
5	Incurred Losses				
6	Modified Losses (5)×1.12				
7	Allocated Claims Expense				
8	Industrial Commission Assessments Kans., Md., or N. Y. Show Computation below.				
9	Indicated Premium (4)+(6)+(7)+(8) Excluding Tax Multiplier				
10	Maximum Premium Including Tax Multiplier				
11	Tax Multipler				XXXX
12	Gross Adjusted Premium (9)×(11) or (10)×(11) whichever is the less in total [Col. (d)].				
13	Premium Previously Billed				
14	Additional Premium due and now Payable (12)—(13) Return (13)—(12)				

CERTIFICATION FOR FINAL SETTLEMENT

This is to certify that the above bill is correct and just; that payment therefor has not been received; that the amount of this bill represents the insurance premium computed in accordance with the _____ Insurance Rating Plan attached to and made a part of the policy described therein; that _____ dollars is the correct and proper charge for premium on said policies due at this time in final settlement on said policies and excludes the amounts heretofore paid as deposit and periodical premiums; that the fixed charge, modified losses, allocated claims expense, together with the application of the proper tax multiplier as applied to the proper computation of premium as prescribed in the _____ Insurance Rating Plan Endorsement are based upon only the work done under the contractor's obligations to the Government under contract No. _____.

_____
(Name of Insurance Company)

By _____
Vice President

(p) *Comprehensive Insurance Rating Plan.*

COMPREHENSIVE INSURANCE RATING PLAN

.....
(Name of carrier)

SUMMARY OF PREMIUM PREVIOUSLY BILLED

Policy Nos. .....
.....
.....
Policy period: from.....to.....
Valuation date.....

Name of risk.....
Location of operations.....
Government agency.....
Government contract No.....

Audit periods billed	Amounts previously billed at 60 percent of standard premium			
	Compensation and employers liability	Automobile bodily injury and property damage	General liability	Total
Total premium previously billed				
Standard Premium—(Previously billed)÷.60				

(q) *Comprehensive Insurance Rating Plan.*

Exhibit H

COMPREHENSIVE INSURANCE RATING PLAN

.....
(Name of carrier)

SUMMARY—REPORT OF LOSSES INCURRED

Name of risk .....
.....
Location of operations.....
.....
Government agency .....
Government contract No. .....

Policy period: from ..... to .....
Valuation date .....

Line of insurance and Policy Nos.	Type of claims	Number of claims	Losses incurred				
			Compensation or liability	Medical	Total losses (4)+(5)	Allocated expense	Total losses and expense (6)+(7)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Workmen's compensation.	Open cases						
	Closed cases						
	Contract medical*		XXXX				
	Total—Workmen's compensation						
Automobile.....	Open cases			XXXX			
	Closed cases			XXXX			
	Total—Automobile			XXXX			
General liability	Open cases			XXXX			
	Closed cases			XXXX			
	Total—General liability			XXXX			
Total—All lines							

*Analysis of Contract Medical as reported in column (5):

Cost incurred for	No.	Amount
Doctors		
Nurses and technicians		
Medical supplies	XXX	
Total		

I hereby certify that the above statement of losses, paid and outstanding, is correct and just; that it includes all medical and allocated claims expense; that the claims referred to therein are properly chargeable to the policy of insurance and the insured(s) enumerated in said policy, and that such claims arose out of no operations other than those described in said policy.

..... (*Company*)
By .....
Vice President.

(r) *Comprehensive Insurance Rating Plan*

COMPREHENSIVE INSURANCE RATING PLAN

Exhibit III Page

Name of risk
Location of operations
Government agency
Government contract No
Policy No
Valuation Date

(Name of Carrier)
Itemized statement of workmen s compensation and employers liability losses incurred

Policy period: from to

Carrier s claim No	Name of injured or claimant	Date of accident	Description of accident for closed cases only	Losses incurred				
				Com pensa tion	Med ical	Allo cated expense	Total (5)+(6)+(7)	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	
Totals			Number of claims					

(s) *Comprehensive Insurance Rating Plan*

COMPREHENSIVE INSURANCE RATING PLAN

Exhibit IV Page

Name of risk
Location of operations
Government agency
Government contract No
Policy No
Valuation date

(Name of Carrier)
Itemized statement of losses incurred
Automobile☐ General liability☐

☐Policy period: from to

Carrier's claim No	Name of injured or claimant	Date of accident	Description of accident for closed cases only	LOSSES INCURRED			
				Bodily injury	Property damage	Allocated expense	Total (5)+(6)+(7)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Totals			Number of Claims				

(t) *Individual Report; Open Loss*

NDIVIDUAL REPORT—OPEN LOSS

WORKMEN S COMPENSATION AND EMPLOYERS LIABILITY

Valuation date

Claim No	Policy No	Carrier		Project No	Accident rate
Claimant			Average weekly wage	Weekly compensation	Estimated disability
Indemnity paid	Medical paid	Indemnity outstanding	Medical outstanding	Allocated expense incurred	Total losses and allocated ex penses incurred

Detailed report of accident injury or damage and allocated claim expense

Prospects regarding subrogation and action taken

For use by Government agency only

War award or judgment entered in the case?

If so name Court or Commission

Fatal loss data

Date of death

Dependents

Name	Relationship	Date o birth	No. of weeks	Rate of compen sation	Amount

(u) *Individual Report; Open Loss*

INDIVIDUAL REPORT—OPEN LOSS

Valuation Date

Automobile ☐
General Liability ☐

Claim No	Policy Number	Carrier	Project Number	Accident Date

Claimant

Incurred Loss—Bodily Injury	Incurred Loss—Property Damage	Allocated Expense Incurred	Total Loss and Allocated Expenses Incurred

Detailed Report of Accident Injury or Damage and Allocated Claim Expense

Prospects Regarding Subrogation and Action Taken

Was an award or judgment entered in the case?

If so name Court

For Use by Government Agency only

(v) *Comprehensive Insurance Rating Plan Release*

COMPREHENSIVE INSURANCE RATING PLAN RELEASE

This release executed this ___ day of ___ 194 by the ___ here
(Insurance Company)
inafter referred to as the insurance company
Witnesseth that:
Whereas the said insurance company entered into certain policies of insurance numbered ___, with the ___, the fixed fee contractor with the United States of America under Government Contract No ___ and
Whereas, the premiums for such insurance policies are to be computed on the ___ Insurance Rating Plan Endorsement which is made a part of such policies and
Whereas, the contract between the United States of America and the fixed fee contractor provides that the United States of America can settle any and all claims arising thereunder including insurance premiums and
Whereas it is provided in the ___ Insurance Rating Plan Endorsement that all losses loss reserves and premiums claimed by said insurance company to be due by said contractor are to be approved by the ___ as a prerequisite to their payment by the said fixed fee contractor, and
Whereas, the said premium has been computed in accordance with the aforementioned ___ Insurance Rating Plan Endorsement and the losses loss reserves and premiums have been approved by the ___ or his duly authorized representative;
Now, therefore in consideration of the sum of ___ Dollars, the said ___ does by these presents
(Insurance Company)
release quitclaim and forever discharge the said ___ fixed fee contractor, and the United States of America from any and all premiums, or claims therefor under the aforesaid insurance policies.
In Witness whereof the ___
(Insurance Company)
has caused its name to be signed and executed by ___, its Vice President, and its seal affixed and attested by ___, its Secretary, pursuant to a resolution of its Board of Directors
Attested:

___
(Name of Insurance Company)

___
(Assistant Secretary)

(w) *Comprehensive Insurance Rating Plan; Quarterly Report of losses incurred*

Carrier .....
Effective data .....
Period covered by report ... to ...

U. S. Government agency
Insured .....
Valuation date .....

Name of project .....
Location of operations
Nature of operations

Line of insurance and policy numbers	Type of claims	Number of claims	Incurred indemnity losses	Incurred medical losses	Total incurred losses	Total incurred allocated expense	Total incurred losses and expense
Workmen's Compensation	Non serious closed claims						
	Non-serious-open claims						
	Serious closed claims						
	Serious-open claims						
	Contract medical		xxxxxx				
	Total workmen's comp.						
Automobile	Non-serious-closed claims		xxxxxx	xxxxxx			
	Non-serious-open claims		xxxxxx	xxxxxx			
	Serious-closed claims		xxxxxx	xxxxxx			
	Serious-open claims		xxxxxx	xxxxxx			
	Total automobile		xxxxxx	xxxxxx			
Other lines	Non-serious-closed claims		xxxxxx	xxxxxx			
	Non-serious-open claims		xxxxxx	xxxxxx			
	Serious-closed claims		xxxxxx	xxxxxx			
	Serious-open claims		xxxxxx	xxxxxx			
	Total other lines		xxxxxx	xxxxxx			
Total all lines			xxxxxx	xxxxxx			

Amount of reimbursement of contract medical actually received: $...
Subrogation recoveries actually received: Workmen's Compensation $ ... Automobile $ ... and other lines $

(x) *Comprehensive Insurance Rating Plan; Quarterly Report of Losses Incurred*

COMPREHENSIVE INSURANCE RATING PLAN QUARTERLY REPORT OF LOSSES INCURRED

(Itemized statement of serious claims)

Carrier .....
Period covered by report

Name of project
to

Policy number

Page

Carrier's claim number	Name of injured	Date of accident	Cause and nature of injury	Closed or open	Losses incurred			
					Indemnity	Medical	Allocated expense	Total

(y) *Missouri agreement and release.*

Agreement made the _____ day of _____ 194____, by and between _____ hereinafter referred to as the injured person, residing at _____ in _____ State of _____ and _____ Insurance Company of _____, hereinafter referred to as insurer.

Whereas, the average annual earnings of said injured person computed under the workmen's compensation law of the State of Missouri exceed $3,600 so that such law would not be applicable, and

Whereas, the injured person alleges he suffered personal injuries by accident on the _____ day of _____ 194____ at or about _____ in _____ State of _____ while in the employ of _____ of _____ State of _____ hereinafter referred to as employer, and

Whereas, the employer has provided for payment of voluntary workmen's compensation benefits, herein enumerated, by contract with the insurer; *It Is Agreed:*

1. That the insurer will pay to the injured person the sum of $_____ weekly, starting as of the _____ day of _____, 194____, payable bi-weekly and continuing until such time as the insurer shall have paid to the injured person an amount equal to that sum which the injured person would receive had his average annual earnings been $3,600 and had he a valid and enforceable claim for workmen's compensation benefits under the workmen's compensation law of the State of Missouri on account of the aforesaid occurrence.

2. That the insurer will provide the injured person with such medical, surgical and hospital attention as the nature of his injuries resulting from the aforesaid occurrence may require to the extent that the injured person would receive had he a valid and enforceable claim for workmen's compensation benefits under the workmen's compensation law of the State of Missouri.

3. That any difference or controversy arising between the parties with respect to this agreement shall be settled by arbitration. In such event, the injured person shall appoint one arbitrator, and the insurer shall appoint another. The arbitrators thus appointed shall agree upon and appoint a third. All parties hereby agree to be bound by the decision of any two of said arbitrators and hereby waive all rights to take any legal measures except to enforce the arbitrators' award. If the difference or controversy is essentially a medical question the arbitrators so selected shall be duly licensed physicians.

4. That in consideration of the undertakings of the insurer and the payments to be made and benefits to be provided as hereinbefore set forth, the injured person for himself, his heirs, assigns and legal representatives does hereby forever release, discharge, and acquit the aforesaid employer and the insurer, their successors and assigns, heirs and legal representatives of and from any and all causes of action, rights, remedies, claims, suits or judgments the injured person or his heirs, assigns or legal representatives now have or hereafter may have by reason of the aforesaid occurrence.

In witness whereof the parties have hereunto set their hands and seals on the date above mentioned.

_____
(Witness)

[L. S.] _____
(Injured person)

INSURANCE COMPANY,

[L. S.] By_____

_____
(Witness)

STATE OF _____,
County of _____, *ss:*

On the _____ day of _____ 194____, before me personally came _____, to me known and known to me to be the individual who executed the foregoing instrument and he acknowledged to me that he duly executed the same.

_____[1]

(z) *Final receipt and release; Missouri.*

I, _____, residing at _____, in _____, state of _____, hereby acknowledge receipt of ($_____) _____ dollars paid me this day by _____ Insurance Company under an agreement dated the _____ day of _____, 194____

I hereby acknowledge that to this date, including the amount mentioned above, _____ Insurance Company has paid me the total sum of ($_____) _____ dollars; that _____ Insurance Company has fulfilled and carried out in all respects the terms of the aforesaid agreement and that all obligations thereunder, including any obligation to provide medical or other services, have terminated.

In consideration of all said payments and benefits and in conformity with the abovementioned agreement I, for myself, my heirs and legal representatives do hereby forever release, discharge and acquit_____ _____ Insurance Company and _____ MY employer at the time of the accident or occurrence described in said agreement, of and from any and all causes of action, rights, remedies, claims, suits or judgments I now have or which I or my heirs or legal representatives hereafter may have by reason of the aforesaid agreement, or the accident or occurrence described therein, or under any policy of insurance _____ Insurance Company issued to my said employer.

In witness whereof I have hereunto set my hand and seal on this _____ day of _____, 194____.

[L. S.] _____
Injured person

STATE OF _____,
County of _____, *ss:*

On the _____ day of _____, 194____, before me personally came _____, to me known and known to me to be the individual who executed the foregoing instrument and he acknowledged to me that he duly executed the same.

_____
Notary Public

(aa) *Boiler inspection contract.* The following is the approved form of boiler inspection contract:

The _____ of _____ (hereinafter called the Company) hereby agrees with _____, a contractor with the United States, (hereinafter called the Contractor) to inspect boilers and pressure vessels owned, or operated, or under the control of the Contractor and contained in a plant owned, or operated, or controlled by said Contractor in its capacity as contractor with the United States, as aforesaid, under Contract No. _____ with the United States.

The location of such plant and the location of the Company's Inspection Headquarters designated for the particular plant at which said pressure vessels and boilers are to be inspected are as follows:

Name and location of plant	*Company's inspection headquarters*
Name	Person
Location	Office
Mailing Address	Mailing Address
Telephone Number	Telephone Number

This agreement is subject to the following stipulations and conditions:

1. Such inspections shall be made by duly qualified inspectors regularly employed by the Company, employing methods at least equal to the requirements of the American Society of Mechanical Engineers' Code.

2. The Contractor at its own expense shall make necessary preparations and arrangements for the making of such inspections. The Contractor shall send a written request therefor, at least ten days in advance, to the Company's Inspection Headquarters designated herein for the plant containing the object to be inspected, specifying the kind of inspection desired in each instance, and specifying the time when said inspection is to be made and describing the object to be inspected.

3. Following each inspection the Company will mail a copy of a report of such inspection to the Contractor and _____ copies thereof to the Contracting Officer of the United States at the address of the plant at which the inspection was made, which report shall set forth the conditions found as a result of the inspections.

4. Fees for such inspection service shall be as follows: The Company shall bill the Contractor on the first day of the month following the month in which the report of such inspection was rendered and such fees shall be payable on the tenth day of the month following the month in which the bill was submitted.

(a) $10.00 for each internal inspection of a water tube boiler having a rated heating surface of over 10,000 sq. ft.;

(b) $5.00 for each internal inspection of a water tube boiler having a rated hearing surface of not more than 10,000 sq. ft.;

(c) $3.00 for each internal inspection of any other boiler or pressure vessel;

(d) $2.00 for each external inspection of any boiler or pressure vessel;

(e) $1.00 in District No. 1; $2.00 in District No. 2; $3.00 in District No. 3 for each visit made by the Company's Inspector to a plant at the Contractor's request whether or not an inspection is made, which "visit" fees shall be in addition to the fees specified in Sections (a), (b), (c), and (d) of this paragraph. A list of the states comprising each such district is annexed hereto.

(f) The "visit' shall mean a call at any one plant, by any one Inspector, in any one day; if one Inspector calls at one plant more than once in any one day, such calls will be considered as only one "visit".

(g) A "day" shall mean each period of twenty-four hours commencing at the time the inspector arrives at the plant.

(h) "External Inspection" shall mean an examination of a boiler or pressure vessel in operation and under pressure.

(i) "Internal Inspection" shall mean a complete internal and external examination of a boiler or pressure vessel when not in operation or under pressure.

[1] The matter in brackets is optional.

5. The Company shall not be liable directly or indirectly for any loss or injury to property or persons resulting from any accident to, or defect in, any object; nor shall the Company be liable directly or indirectly for loss or damage of any kind arising from an inspection or a report thereof, or from the omission of an inspection or of a report whether or not such inspection or report or omission was at the request of the Contractor.

6. Either party hereto may terminate this agreement by mailing written notice thereof to the other party at the address set out herein, and, at the same time, a copy to the contracting officer at the address of the plant at which the inspection was made, at least thirty days before the effective date of such termination.

In witness whereof, The parties hereto have executed this agreement at _____ on the _____ day of _____ 194__.

The _____ Company,

By _____
Vice President.

Attest: _____
Secretary.

_____
Contractor.

By _____
(Title)

Approved:

_____
Contracting Officer's Representative.

LIST OF STATES WITH DISTRICT CLASSIFICATION

	District No.
Alabama	2
Arizona	3
Arkansas	2
California	3
Colorado	3
Connecticut	1
Delaware	1
District of Columbia	1
Florida	2
Georgia	2
Idaho	3
Illinois	1
Indiana	1
Iowa	1
Kansas	3
Kentucky	2
Louisiana	2
Maine	1
Maryland	1
Massachusetts	1
Michigan	1
Minnesota	1
Mississippi	2
Missouri	1
Montana	3
Nebraska	3
Nevada	3
New Hampshire	1
New Jersey	1
New Mexico	3
New York	1
North Carolina	2
North Dakota	3
Ohio	1
Oklahoma	3
Oregon	3
Pennsylvania	1
Rhode Island	1
South Carolina	2
South Dakota	3
Tennessee	2
Texas	3
Utah	3
Vermont	1
Virginia	2
Washington	3
West Virginia	2
Wisconsin	1
Wyoming	3

§ 804.498 *List of offices of loss and salvage organizations.* (See § 804.431 (a)).

Fire Companies Adjustment Bureau, Inc. ..... FCAB
Western Adjustment and Inspection Company ..... WAIC
Underwriters Adjusting Company ..... UAC

City and State	Organization	Office location	Telephone No.
Alabama:			
Birmingham	FCAB	213 North 21st St.	7-1121
Dothan	FCAB	103½ North Foster St.	695
Hunstville	FCAB	104 West Clinton St.	504
Mobile	FCAB	First National Annex, St. Francis St.	2-0771
Montgomery	FCAB	Shepherd Bldg.	5271
Arizona:			
Phoenix	FCAB	Luhrs Tower Bldg.	2-3157
Tucson	FCAB	501 East Congress St.	4523
Arkansas:			
El Dorado	FCAB	Marks Bldg.	1424
Fort Smith	FCAB	Kennedy Bldg.	5161
Jonesboro	FCAB	112½ West Washington St.	650
Little Rock	FCAB	Hall Bldg.	7125
Texarkana	FCAB	Texarkana National Bank Bldg.	1-340
West Memphis	FCAB	229 Broadway	83
California:			
Bakersfield	FCAB	Professional Bldg.	5-5763
Chico	FCAB	Merchead Bldg.	917
El Centro	FCAB	Bank of America Bldg.	173
Fresno	FCAB	Brix Bldg.	2-2191
Long Beach	FCAB	Ocean Center Bldg.	692-39
Los Angeles	FCAB	Fidelity Bldg.	Madison 1341
Oakland	FCAB	Bank of America Bldg.	Higate 2063
Riverside	FCAB	Bennett Bldg.	6224
Sacramento	FCAB	Farmers & Mechanics Bldg.	2-5831
Salinas	FCAB	Bank of America Bldg.	5556
San Bernardino	FCAB	Citizens National Bank Bldg.	2157
San Diego	FCAB	First National Bank Bldg.	Franklin 3158
San Francisco	FCAB	320 Montgomery St.	Garfield 0332
San Jose	FCAB	Bank of America Bldg.	Ballard 6083
San Luis Obispo	FCAB	Security First National Bank Bldg.	1568
Stockton	FCAB	California Bldg.	5-5776
Vallejo	FCAB	719 Florida St.	3-7639
Colorado:			
Colorado Springs	FCAB	Burns Bldg.	Main 6121
Denver	FCAB	Gas & Electric Bldg.	Cherry 5451
Durango	FCAB	575 Fourth Ave.	103
Grand Junction	FCAB	215 Grand Ave.	1239
Pueblo	FCAB	Thatcher Bldg.	2079
Trinidad	FCAB	First National Bank Bldg.	288M
Connecticut:			
Hartford	FCAB	410 Asylum St.	7-7115
New Haven	FCAB	205 Church St.	7-3134
Delaware: Wilmington	FCAB	Equitable Bldg.	4-2421
District of Columbia: Washington	FCAB	1311 K St. NW.	National 0870
Florida:			
Fort Myers	FCAB	1239 Crawford St.	737
Gainesville	FCAB	Professional Bldg.	254
Jacksonville	FCAB	112 West Adams St.	5-3337
Miami	FCAB	117 Northeast 1st Ave.	3-0701
Orlando	FCAB	207 South Orange Ave.	7125
Pensacola	FCAB	American National Bank Bldg.	6179
Tampa	FCAB	Wallace S. Bldg.	M-8337
West Palm Beach	FCAB	Citizens Bldg.	6478
Georgia:			
Albany	FCAB	Albany Theatre Bldg.	1207
Atlanta	FCAB	Trust Co. of Georgia Bldg.	Walnut 3824
Augusta	FCAB	Herald Bldg.	2-5585
Columbus	FCAB	Hill Bldg.	3-6381
Macon	FCAB	616 Mulberry St.	3335
Savannah	FCAB	35 Bull St.	2-3179
Waycross	FCAB	Bunn Bldg.	20
Idaho:			
Boise	FCAB	First National Bank Bldg.	139
Pocatello	FCAB	Carlson Bldg.	40
Illinois:			
Aurora	WAIC	Terminal Bldg.	9103-9109
Bloomington	WAIC	114½ North Main St.	6003-5
Carbondale	WAIC	Carbondale National Bank Bldg.	Main 600
Centralia	WAIC	Smith Bldg.	2455
Champaign	WAIC	Lincoln Bldg.	2400
Chicago	WAIC	175 West Jackson Blvd.	Wabash 6400
Danville	UAC	Temple Bldg.	Main 2297
Decatur	WAIC	Citizens Bldg.	5383
East St. Louis	WAIC	Goldman Bldg.	Hemlock 200
Galesburg	WAIC	Bondi Bldg.	1611 Main
Joliet	UAC	Morris Bldg.	5405
Kankakee	WAIC	City National Bank Bldg.	Main 339
La Salle	WAIC	La Salle State Bank Bldg.	La Salle 680
Marion	UAC	204 Market St.	433
Peoria	UAC	Alliance Life Bldg.	8139
Quincy	WAIC	W. C. U. Bldg.	285
Rockford	UAC	Rockford Trust Bldg.	Main 4050
Springfield	WAIC	Myers Bldg.	4254
Waukegan	WAIC	168 South Genesee St.	Majestic 1410
Indiana:			
Anderson	WAIC	Anderson Bank Bldg.	8084
Bloomington	WAIC	Citizens Trust Bldg.	2341
Evansville	WAIC	Hulman Bldg.	5241-2-3
Fort Wayne	WAIC	Old First Bank Bldg.	Anthony 1472
Gary	UAC	Gary Trust Bldg.	5257
Greensburg	WAIC	Decatur County National Bank Bldg.	4241
Hammond	WAIC	Lloyd Bldg.	6020-6021
Indianapolis	UAC	Fletcher Trust Bldg.	Market 1451
Kokomo	WAIC	Armstrong-Landon Bldg.	7012

List of offices of loss and salvage organizations—Continued

City and State	Organization	Office location	Telephone No.
Indiana—Continued.			
Lafayette	WAIC	Lafayette Loan & Trust Bldg	2277
Muncie	WAIC	Johnson Block	5527
New Albany	WAIC	Elsby Bldg	772
Richmond	WAIC	Second National Bank Bldg	4858
South Bend	UAC	Sherland Bldg	3-3126
Terre Haute	UAC	641 Ohio St	Crawford 2317
Vincennes	WAIC	LaPlante Bldg	740
Iowa:			
Burlington	WAIC	Tama Bldg	113
Cedar Rapids	UAC	Merchants National Bank Bldg	8352
Council Bluffs	WAIC	City National Bank Bldg	2589
Davenport	WAIC	Kahl Bldg	2-5371
Des Moines	WAIC	Liberty Bldg	3-8144
Dubuque	WAIC	Dubuque Bldg	990 and 978
Fort Dodge	UAC	State Bank Bldg	Walnut 3381
Mason City	UAC	Forresters Bldg	648
Ottumwa	WAIC	Phoenix Trust Bldg	3030
Sioux City	UAC	Badgerow Bldg	8-3720
Waterloo	UAC	Marsh Place Bldg	3337
Kansas:			
Dodge City	WAIC	First National Bank Bldg	1767
Great Bend	WAIC	Cox Bldg	289
Hutchinson	WAIC	Wolcott Bldg	375
Kansas City	WAIC	Occidental Life Bldg	Drexel 0660
Leavenworth	WAIC	Axa Bldg	807
Norton	WAIC	611 North Grant St	740
Parsons	WAIC	115½ South 18th St	917
Salina	WAIC	National Bank of America Bldg	475
Topeka	WAIC	Insurance Bldg	5684-568
Wichita	UAC	Petroleum Bldg	4-7333
Kentucky:			
Ashland	WAIC	Second National Bank Bldg	Main 931
Bowling Green	WAIC	The Armory	787
Covington	WAIC	First National Bank Bldg	Hemlock 3313
Lexington	UAC	First National Bank Bldg	809
Louisville	WAIC	Starks Bldg	Jackson 5211
Madisonville	WAIC	108 North Main St	151
Middlesboro	WAIC	Peoples Bldg	73
Paducah	WAIC	Citizens Savings Bank Bldg	3618
Louisiana:			
Alexandria	FCAB	Guaranty Bank Bldg	7752
Baton Rouge	FCAB	Louisiana National Bank Bldg	3-1784
Lake Charles	FCAB	Weber Bldg	5786
Monroe	FCAB	Bernhardt Bldg	5600
New Orleans	FCAB	Maritime Bldg	MA 6381
Shreveport	FCAB	City Bank Bldg	2-7151
Maine:			
Bangor	FCAB	84 Harlow St	7348
Portland	FCAB	Masonic Temple Bldg	3-5695
Maryland:			
Baltimore	FCAB	Garrett Bldg	Plaza 6224
Cumberland	FCAB	Liberty Trust Bldg	1475
Hagerstown	FCAB	74 West Washington St	725
Salisbury	FCAB	Colonial Bldg	2220
Massachusetts:			
Boston	FCAB	141 Milk St	Hancock 6050
Lawrence	FCAB	Bay State Bldg	6050
New Bedford	FCAB	First National Bldg	6-8559
Springfield	FCAB	1337 Main St	6-1836
Worcester	FCAB	340 Main St	3-8127
Michigan:			
Ann Arbor	WAIC	First National Bldg	2-5663, 5664
Battle Creek	WAIC	Michigan National Bank Bldg	2-5557
Bay City	WAIC	Bay City Bank Bldg	4524
Benton Harbor	WAIC	139 Pipestone St	6112
Dearborn	WAIC	Calvin Theatre Bldg	Dearborn 4400
Detroit	WAIC	National Bank Bldg	Cadillac 2932
Flint	WAIC	Union Industrial Bldg	2-3145, 3146
Grand Rapids	UAC	Assn. of Comm. Bldg	93108
Ishpeming	WAIC	Bell Bldg	467
Jackson	UAC	Jackson City Bank Bldg	5657
Kalamazoo	WAIC	American National Bank Bldg	6163-4
Lansing	UAC	Hollister Bldg	5-7233
Muskegon	WAIC	Hackley Union National Bank Bldg	23-184
Petoskey	WAIC	Achenbach Bldg	3581
Pontiac	UAC	Community Bank Bldg	2-5110
Port Huron	WAIC	Michigan National Bank Bldg	8141
Saginaw	WAIC	Second National Bank Bldg	2-2126, 2137
Traverse City	WAIC	State Bank Bldg	412

List of offices of loss and salvage organizations—Continued

City and State	Organization	Office location	Telephone No.
Minnesota:			
Brainerd	WAIC	Citizens State Bank Bldg	846
Duluth	WAIC	Lonsdale Bldg	Melrose 863, 864
Hibbing	UAC	Merchants & Miners Bank Bldg	2068
Mankato	WAIC	Medical Block Bldg	4022
Minneapolis	UAC	Northwestern Bank Bldg	Atlantic 0494
St. Paul	WAIC	Pioneer Bldg	Garfield 7405
Virginia	WAIC	First National Bank Bldg	500
Mississippi:			
Clarksdale	FCAB	McWilliams Bldg	436
Greenville	FCAB	Leyser Bldg	321
Gulfport	FCAB	Bank of Gulfport Bldg	346
Hattiesburg	FCAB	Ross Bldg	583
Jackson	FCAB	Standard Life Bldg	3-2446
Meridian	FCAB	Threefoot Bldg	1840
Tupelo	FCAB	Bank of Tupelo Bldg	1071
Missouri:			
Cape Girardeau	WAIC	110 Themis St	1438
Chillicothe	WAIC	601 Locust St	150
Independence	WAIC	First National Bank Bldg	Clifton 1777
Jefferson City	WAIC	Central Trust Bldg	2093
Joplin	UAC	Joplin National Bank Bldg	4124
Kansas City	UAC	Chambers Bldg	Harrison 3860
Springfield	WAIC	Landers Bldg	1401
St. Joseph	UAC	Corby Bldg	4-1151
St. Louis	WAIC	Pierce Bldg	Chestnut 0510
Montana:			
Billings	FCAB	Treasure State Bldg	3101
Butte	FCAB	Rialto Bldg	3281
Great Falls	FCAB	Ford Bldg	4320
Missoula	FCAB	Montana Bldg	5344
Nebraska:			
Grand Island	UAC	Masonic Bldg	578
Hastings	WAIC	Madgett Bldg	1113
Lincoln	UAC	Stuart Bldg	2-3367
Norfolk	WAIC	Bishop Block	506
North Platte	WAIC	Dickey Bldg	1568
Omaha	WAIC	Brandeis Theatre Bldg	Atlantic 6485
Scottsbluff	WAIC	Burr Bldg	323
Nevada:			
Reno	FCAB	25 East 1st St	5124
Las Vegas	FCAB	19 Boggs Bldg	1515
New Hampshire: Manchester	FCAB	1008 Elm St	5950
New Jersey:			8440
Asbury Park	FCAB	601 Bangs Ave	Journal Sq.
Jersey City	FCAB	26 Journal Square	2-3664
Newark	FCAB	31 Clinton St	Market 2-0322
Paterson	FCAB	5 Colt St	Sherwood 2-7234
New Mexico:			
Albuquerque	FCAB	Sunshine Bldg	8833
Roswell	FCAB	J. P. White Bldg	238
Clovis	FCAB	708 Axtell Ave	328-J
New York:			
Albany	FCAB	90 State St	4-7181
Binghamton	FCAB	19 Chenango St	2-4244
Buffalo	FCAB	Chamber of Commerce Bldg	Washington 0720
Elmira	FCAB	Hulett Bldg	6171
Jamaica	FCAB	161-19 Jamaica Ave	6-6292
Jamestown	FCAB	Wellman Bldg	7185
Malone	FCAB	36 West Main St	357
New York	FCAB	116 John St	Cortland 7-4074
Niagara Falls	FCAB	United Office Bldg	3336
Poughkeepsie	FCAB	25 Market St	2926
Rochester	FCAB	Lincoln Alliance Bank Bldg	Stone 817
Syracuse	FCAB	O. O. S. B. Bldg	2-2117
Utica	FCAB	First National Bank Bldg	2-5151
White Plains	FCAB	31 Mamaroneck Ave	9560
North Carolina:			
Asheville	FCAB	Flat Iron Bldg	2368
Charlotte	FCAB	Commercial Bank Bldg	3-3761
Goldsboro	FCAB	Bank of Wayne Bldg	232
Greensboro	FCAB	Dixie Bldg	2-0177
Raleigh	FCAB	Capital Club Bldg	2-2041
Wilmington	FCAB	Murchison Bldg	4119
Winston-Salem	FCAB	Reynolds Bldg	3-3316
North Dakota:			
Bismark	WAIC	First National Bank Bldg	466
Fargo	WAIC	First National Bank Bldg	2-2509
Grand Forks	WAIC	Widlund Block	1360
Minot	WAIC	First National Bank Bldg	851

List of offices of loss and salvage organizations—Continued

City and State	Organization	Office location	Telephone No.
Ohio:			
Akron	WAIC	Akron Savings & Loan Bldg	Franklin 4147-48
Ashtabula	WAIC	4035 Main Ave	6505
Cambridge	WAIC	Central National Bank Bldg	2205
Canton	WAIC	Renkert Bldg	6301-02
Cincinnati	UAC	Schmidt Bldg	Main 4830
Cleveland	UAC	Swetland Bldg	Cherry 5071
Columbus	WAIC	Huntington National Bank Bldg	Adams 3285
Dayton	UAC	Mutual Home Bldg	Fulton 5163
Defiance	WAIC	Savings & Loan Bldg	384
Findlay	WAIC	First National Bank Bldg	307
Hamilton	WAIC	First National Bank Bldg	1710
Lorain	WAIC	Broadway Bldg	6021-22
Mansfield	WAIC	Richland Trust Co. Bldg	2407-6
Marion	UAC	118 South State St	2240
Portsmouth	WAIC	Masonic Temple	1696
Sandusky	WAIC	Folck Bldg	1407
Springfield	WAIC	Tecumseh Bldg	3727
Steubenville	WAIC	National Exchange Bank Bldg	21205
Toledo	UAC	Richardson Bldg	Main 0245
Youngstown	WAIC	Mahoning Bank Bldg	4-2151-52
Oklahoma:			
Ada	FCAB	Cummings Bldg	1420
Ardmore	FCAB	Gilbert Bldg	499
Clinton	FCAB	First National Bank Bldg	630
Lawton	FCAB	Kochler Bldg	3374
McAlester	FCAB	Arnote Bldg	1276
Muskogee	FCAB	Barnes Bldg	2420
Oklahoma City	FCAB	Mercantile Bldg	3-1406
Ponca City	FCAB	First National Bank Bldg	511
Tulsa	FCAB	Hunt Bldg	4-4176
Oregon:			
Eugene	FCAB	Miner Bldg	2107
Klamath Falls	FCAB	First National Bank Bldg	4144
Portland	FCAB	Yeon Bldg	Broadway 3545
Pennsylvania:			
Allentown	FCAB	Dime Bldg	9535
Altoona	FCAB	Central Trust Bldg	9411
Du Bois	FCAB	Deposit National Bank Bldg	394
Erie	FCAB	Marine National Bank Bldg	23-707
Harrisburg	FCAB	240 North 3d St	8277
Hazleton	FCAB	Markle Bank Bldg	4694
Philadelphia	FCAB	The Insurance Exchange	Lombard 0353
Pittsburgh	FCAB	Arrott Bldg	Court 5950
Reading	FCAB	Ganster Bldg	4-5171
Scranton	FCAB	125 Adams Ave	7247
Wilkes-Barre	FCAB	Miners National Bank Bldg	2-5161
Williamsport	FCAB	First National Bank Bldg	4935
Rhode Island: Providence	FCAB	Turks Head Bldg	Gaspee 0721
South Carolina:			
Charleston	FCAB	Southern Home Bldg	7770
Columbia	FCAB	Liberty Life Bldg	6915
Florence	FCAB	Florence Trust Co. Bldg	1775
Greenville	FCAB	Woodside Bldg	4670
South Dakota:			
Aberdeen	UAC	Capital Bldg	3015
Huron	WAIC	Farmers & Merchants Bank Bldg	3434
Rapid City	WAIC	Rapid City National Bank Bldg	346
Sioux City	WAIC	National Bank of South Dakota Bldg	211
Watertown	WAIC	Woolworth Bldg	521
Tennessee:			
Chattanooga	FCAB	Provident Life Bldg	6-0434
Jackson	FCAB	Commercial Bldg	3940
Knoxville	FCAB	Hamilton Bank Bldg	3-0441
Memphis	FCAB	Sterick Bldg	5-2781
Nashville	FCAB	Nashville Trust Bldg	5-2703
Texas:			
Abilene	FCAB	Mims Bldg	6251
Amarillo	FCAB	Oliver-Eakle Bldg	2-2234
Austin	FCAB	Norwood Bldg	8-6408
Beaumont	FCAB	Goodhue Bldg	4005
Bryan	FCAB	First State Bank Bldg	2-8705
Corpus Christi	FCAB	Jones Bldg	7737
Dallas	FCAB	Liberty Bank Bldg	7-0901
El Paso	FCAB	Bassett Tower Bldg	Main 1173
Fort Worth	FCAB	Petroleum Bldg	3-3295
Harlingen	FCAB	Rio Grande Bldg	803
Houston	FCAB	Esperson Bldg	Charter 4-5033
Lubbock	FCAB	1313½ Avenue J	7463
Midland	FCAB	Thomas Bldg	1658
Paris	FCAB	First National Bank Bldg	1720

List of offices of loss and salvage organizations—Continued

City and State	Organization	Office location	Telephone No.
Texas—Continued.			
Port Arthur	FCAB	Adams Bldg	2-4231
San Angelo	FCAB	2213 Houston St	4071
San Antonio	FCAB	Gibbs Bldg	CA-0351
Texarkana	FCAB	Texarkana National Bank Bldg	1340
Tyler	FCAB	Citizens National Bank Bldg	4720
Waco	FCAB	Professional Bldg	44
Wichita Falls	FCAB	Waggoner Bldg	15
Utah:			6940
Ogden	FCAB	Eccles Bldg	7787
Salt Lake City	FCAB	Walker Bank Bldg	3-3928
Vermont: Rutland	FCAB	120 Merchants Row	2026
Virginia:			
Bristol	FCAB	112 Piedmont Ave	1047
Danville	FCAB	Masonic Bldg	2847
Harrisonburg	FCAB	The National Bank Bldg	784
Lynchburg	FCAB	Allied Arts Bldg	4249
Newport News	FCAB	Chapin Bldg	6-1626
Norfolk	FCAB	Citizens Bldg	4-8331
Richmond	FCAB	American Bldg	3-3521
Roanoke	FCAB	Boxley Bldg	5589
Washington:			
Seattle	FCAB	Colman Bldg	Main 4244
Spokane	FCAB	Mohawk Bldg	Main 3136
Tacoma	FCAB	Washington Bldg	Broadway 2223
Yakima	FCAB	Larson Bldg	6109
West Virginia:			
Beckley	FCAB	Raleigh County Bank Bldg	6941
Bluefield	FCAB	Bradmann Bldg	1890
Charleston	FCAB	Peoples Exchange Bldg	Capital 30-101
Clarksburg	FCAB	Union Bank Bldg	695
Huntington	FCAB	West Virginia Bldg	28366
Wheeling	FCAB	Riley Law Bldg	1856
Wisconsin:			
Appleton	WAIC	Gloudemans Bldg	7000
Eau Claire	WAIC	Market Square Bldg	21653
Fond du Lac	UAC	National Exchange Bank Bldg	6000
Green Bay	WAIC	Columbus Bldg	Adams 241
La Crosse	WAIC	Exchange Bldg	2270
Madison	WAIC	Insurance Bldg	Badger 978
Milwaukee	UAC	611 North Broadway	Daly 0572
Racine	WAIC	423 Main St	Prospect 2444
Rhinelander	WAIC	Merchants State Bank Bldg	1122
Wausau	WAIC	First American State Bank Bldg	7474
Wyoming:			
Casper	FCAB	101 West 1st St	45
Cheyenne	FCAB	Boyd Bldg	4911
Rock Springs	FCAB	Rock Springs National Bank Bldg	32
Thermopolis	FCAB	Mountain States Power Bldg	271

§ 804.499 *Extension of policy period endorsement for workmen's compensation and employers' liability policy.*

Amending Policy Numbered _____

It is agreed that:

1. Item 2 of the Declarations is amended to read:

Policy Period: From _____ to _____ 19__, 12:01 A. M., standard time, at the address stated in Item 1, but if the operations in connection with the project insured have not been completed by the date stated above as the end of the policy period such date is amended, as of such time, to be a date two years beyond said date and successive similar amendments are likewise made, severally effective as of the last previous date fixed for the end of the policy period, until a date is so fixed for the end of the policy period which is beyond the time the said operations have been completed.

2. Paragraph 6 of the _____ Insurance Rating Plan Endorsement is deleted and the following substituted therefor:

Within 60 days after the date two years from the effective date of the policies the company shall compute the aggregate amount of modified losses plus all allocated claim expenses times the tax multiplier and the aggregate fixed charge times the tax multiplier and the aggregate earned standard premium (all based upon the insurance in effect for the two-year period), and a preliminary settlement of premium shall be made.

Subsequent cumulative settlements of premium shall be made within 60 days after the anniversary, as of each annual anniversary of the date two years from the effective date of the policies (each based upon modified losses, allocated claim expenses, tax multipliers, the aggregate fixed charge and the aggregate earned standard premium for the

entire period of insurance up to the last anniversary), so long as the policies remain in effect.

Within 60 days after termination of the policies the company shall compute the aggregate amount of modified losses plus all allocated claim expenses times the tax multiplier, the aggregate fixed charge times the tax multiplier and the aggregate earned standard premium (all based upon the entire period of insurance), and a cumulative preliminary settlement of premium shall be made.

(a) *Extension of policy period endorsement for general liability policy and automobile liability policy.*

Amending Policy Numbered ------

It is agreed that Item 2 of the Declarations is amended to read:

Policy Period: From ---------- to ------- 19-- 12:01 A. M., standard time, at the address stated in Item 1, but if the operations in connection with the project insured have not been completed by the date stated above as the end of the policy period such date is amended, as of such time, to be a date two years beyond said date and successive similar amendments are likewise made, severally effective as of the last previous date fixed for the end of the policy period, until a date is so fixed for the end of the policy period which is beyond the time the said operations have been completed.

[Procurement Reg. 5]

PART 805—FOREIGN PURCHASES

Sec.

805.501 Rescission of regulations.
805.502 Buy American Act.
805.503 Applicable only to food and clothing.
805.504 Procedure for complying with the Acts.
805.505 Clearance through customs.
805.506 Drawback.
805.507 Marking of shipments.
805.509 Purchases from Canadian suppliers.
805.510 War production policy for Canada and the United States.

§ 805.501 *Rescission of regulations.* Army Regulations 5-340, August 10, 1936, as amended, and all other prior directives and instructions relating to the Buy American Act and foreign purchases are hereby rescinded.

§ 805.502 *Buy American Act.* Quoted.

SEC. 1. That when used in this title—

(a) The term "United States", when used in a geographical sense, includes the United States and any place subject to the jurisdiction thereof;

(b) The terms "public use", "public building", and "public work" shall mean use by, public building of, and public work of, the United States, the District of Columbia, Hawaii, Alaska, Puerto Rico, the Philippine Islands, American Samoa, the Canal Zone, and the Virgin Islands.

SEC. 2. Notwithstanding any other provision of law, and unless the head of the department or independent establishment concerned shall determine it to be inconsistent with the public interest, or the cost to be unreasonable, only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States, shall be acquired for public use. This section shall not apply with respect to articles, materials, or supplies for use outside the United States, or if articles, materials, or supplies of the class or kind to be used or the articles, materials, or supplies from which they 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.

SEC. 3. (a) Every contract for the contruction, alteration, or repair of any public building or public work in the United States growing out of an appropriation heretofore made or hereafter to be made shall contain a provision that in the performance of the work the contractor, subcontractors, material men, or suppliers, shall use only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States except as provided in section 2: *Provided, however,* That if the head of the department or independent establishment making the contract shall find that in respect to some particular articles, materials, or supplies it is impracticable to make such requirement or that it would unreasonably increase the cost, an exception shall be noted in the specifications as to that particular article, material, or supply, and a public record made of the findings which justified the exception.

(b) If the head of a department, bureau, agency, or independent establishment which has made any contract containing the provision required by subsection (a) finds that in the performance of such contract there has been a failure to comply with such provisions, he shall make public his findings, including therein the name of the contractor obligated under such contract, and no other contract for the construction, alteration, or repair of any public building or public work in the United States or elsewhere shall be awarded to such contractor, subcontractors, material men, or suppliers with which such contractor is associated or affiliated, within a period of three years after such finding is made public. * * * Title III, Act March 3, 1933 (47 Stat. 1520; 41 U. S. C. 10a, b, and c; M. L., 1939, sec. 742).

(a) *Restriction created by Appropriation Act.* (1) The Military Appropriation Act, 1944 approved 1 July 1943 (Public Law 108—78th Congress) contains a proviso that no part of any appropriation contained in that Act "shall be available for the procurement of any article of food or clothing not grown or produced in the United States or its possessions, except to the extent that the Secretary of War shall determine that articles of food or clothing grown or produced in the United States or its possessions cannot be procured of satisfactory quality and in sufficient quantities and at reasonable prices as and when needed, and except procurements by vessels in foreign waters and by establishments located outside the continental United States, except the Territories of Hawaii and Alaska, for the personnel attached thereto."

(2) The restriction created by the provision quoted in subparagraph (1) will, for convenience, be referred to hereafter as the appropriation restriction.

§ 805.503 *Applicable only to food and clothing.* The Secretary of War has authority, subject to certain limitations, to make exemptions from both the Buy American Act and the appropriation restriction. Under date of 13 March 1942, the Under Secretary of War exempted from the provisions of the Buy American Act everything except certain articles of food and clothing. The appropriation restriction is applicable only to food and clothing. Hence, preference for domestic over foreign items, may be completely disregarded with respect to items other than food and clothing.

(a) *Exempt items of food and clothing.* In addition to exempting from the Buy American Act, all items other than food and clothing, the Under Secretary of War has exempted from both the Buy American Act and the appropriation restriction certain types of food and clothing. These are set forth in the succeeding paragraphs.

(b) *Canadian purchases.* All items of food or clothing which have been mined, produced or manufactured, as the case may be, in the Dominion of Canada have been exempted.

(c) *Items of food and clothing exempt without regard to country of origin.* The following items of food and clothing have been exempted without regard to country of origin.

Bananas.	Molasses.
Brazil nuts.	Orange and lemon peel.
Canned corned beef.	Spices.
Chocolate.	Sugar.
Citron.	Tapioca.
Cocoa.	Tea.
Coffee.	Vanilla.
Fish oils.	
Green olives.	

(d) *Items of food exempt when purchased from specified countries.* The following items of food have been exempted when purchased from the countries specified.

Canned fish—Mexico.
Fish Fillet—Bahama Islands.
Fresh fish—Mexico and Iceland.
Frozen fish—Iceland.
Fresh fruits—Cuba, Mexico and Puerto Rico.
Fresh vegetables—Cuba, Mexico and Puerto Rico.
Guava Puree—Cuba.

(e) *Exemption of certain types of clothing.* It has been determined by the Under Secretary of War that clothing shall not be subject to the restrictions of the Buy American Act or the appropriation restriction merely because it has been manufactured from one of the following materials produced abroad.

Asbestos.	Mohair.
Cork.	Rayon.
Cotton linters	Rubber.
Cotton, long staple.	Silk.
Flax.	Sisal.
Flaxseed.	Tanning materials.
Hemp.	Hides (and skins).
Jute, unmanufactured.	Hog bristles.
Kapok.	Jute burlaps.
Leather.	Wool.
Manila fiber.	

(f) *Contract clause.* The contract clause set forth in § 803.327, will be inserted in all contracts for food or clothing except contracts for the items of food or clothing enumerated in paragraphs (b) to (e) of this section.

§ 805.504 *Procedure for complying with the acts.* In making purchases of articles of food or clothing which are still subject to the restrictions of the "Buy American" Act, or any cognate act, the chief of the technical service concerned should make every effort to satisfy his requirements for such articles out of domestic production. In any case where the chief of the technical service finds it essential to purchase articles of food or clothing of foreign production, a recommendation should be submitted to the Director, Purchases Division, Headquarters, Army Service Forces.

§ 805.505 *Clearance through customs.* The procedure for clearing through customs materials imported by the War Department is set forth in detail in Circular No. 407, War Department, 1942. That circular also describes the circumstances under which such materials may be admitted free of duty. All personnel concerned with procurement of materials abroad should familiarize themselves with the contents of the circular.

(a) In connection with Circular No. 407, attention is invited to the following points:

(1) Except as indicated in subparagraph (2) below, materials imported by the War Department will be consigned to the War Department or to an official of the War Department acting in his official capacity (where necessary or convenient, in care of a commercial plant or firm). In such cases the bill of lading or carrier's certificate will show the War Department or an official of the War Department as consignee.

(2) War Department Lend-Lease materials imported through an inland border point and destined to a United States port for waterborne export will be consigned as follows:

To War Shipping Administrator, as principal, for account of _____
(Authorized agency of Lend-Lease government)
Send arrival notices to _____
(Name and address of appropriate War Shipping Administration forwarding corporation at port of export)
and
United States Army Port Agency
_____
_____
(Address and port of export)

The carrier's certificate will show the War Department as owner or consignee of the materials.

(3) Materials consigned as indicated in subparagraph (1) or (2) above will not be held at ports of entry for the filing of entry papers, but in all cases entries will be prepared as soon after release as possible and filed at the ports of entry. Materials so consigned will in no instance be forwarded in bond.

(4) All entries of materials imported by the War Department will be made in the name of the War Department.

(5) In the event materials held in customs bonded warehouse at a point within the United States are purchased by the War Department, the warehouse withdrawal will be properly endorsed to show the War Department as authorized to make withdrawal, and the withdrawal from warehouse will be made in the name of the War Department.

§ 805.506 *Drawback*—(a) *Provisions of Tariff Act.* Under the provisions of the Tariff Act of 1930 (see Chapter 4, Title 19, U. S. Code) it is provided that under certain circumstances the amount of customs duties paid on merchandise imported shall be refunded as a "drawback". The most usual circumstance under which this right arises is when there are exported out of the United States articles which were manufactured or produced in the United States with the use of merchandise imported from abroad. It is provided that the full amount of the duties paid on the merchandise so used, less 1% of such duties, shall be refunded as a "drawback".

(b) *Customs regulations.* The problem frequently arises as to who is entitled to claim the drawback. Assume, for example, that an importer manufactures with the imported merchandise an end product which he sells to an exporter. Under the act referred to in paragraph (a), someone is entitled to a refund of the import duties. The rule for determining whether the manufacturer or the exporter is entitled to this refund is stated in Article 1070 of the Customs Regulations. This regulation provides that a manufacturer of articles with respect to which there is a right to a drawback is not entitled to the drawback unless, on the sale or consignment of the articles, he has reserved to himself the right to claim the drawback and produces evidence that such reservation was made with the knowledge and consent of the exporter.

(c) *Purchase price to include custom duties.* Whenever the Government purchases articles, with respect to which there might arise a claim to a drawback, the price paid shall include the customs duties, and accordingly the manufacturer will have no claim to a drawback.

§ 805.507 *Marking of shipments.* (a) All materials procured abroad will be marked as prescribed in memorandum issued under date of 1 June 1943, by the Office of The Adjutant General, file 400.161 (5-19-43 OB-S-SPMOT-M), except that materials imported through an inland border point and destined for an interior point within the United States will be marked as prescribed in paragraph (b) below.

(b) In all cases of materials imported through an inland border point and destined for an interior point within the United States, each container included in a less than carload lot (LCL), less than truck load lot (LTL), express, parcel post, or other shipment where markings are required will be marked to indicate that the U. S. War Department or an official of the U. S. War Department acting in an official capacity is the consignee.

§ 805.509 *Purchases from Canadian suppliers*—(a) *No contracts to be made directly.* The technical services shall not directly enter into contracts with contractors domiciled in the Dominion of Canada for the delivery of supplies to be produced in Canada. All such contracts will be entered into with War Supplies Limited through its Washington representatives, or, under the circumstances set forth in paragraph (i), with North West Purchasing Limited. Such corporation will then arrange with the Canadian Department of Munitions and Supply for the purchase by that Department from Canadian contractors of the supplies covered by the contracts between the War Department and War Supplies Limited or North West Purchasing Limited, as the case may be.

(b) *War Supplies Limited.* War Supplies Limited is a corporation wholly owned and controlled by the Government of Canada and created under the laws of the Dominion of Canada with its principal office in the city of Ottawa, Province of Ontario. A Washington office is maintained at 1205 Fifteenth Street, N. W., (Marshall Building), telephone Executive 2020, Extensions 120, 121, 196 and 556. The representatives of the Corporation in Washington are Mr. F. G. Rounthwaite, President, and Acting General Manager and Mr. D. C. Cullen, Treasurer and Assistant Secretary.

(c) *Purpose of organization of War Supplies Limited.* At the time that War Supplies Limited was organized it was recognized that if the various agencies of this government were to purchase directly from Canadian manufacturers competition for supplies produced in Canada would arise between this government and the Canadian government. The result would, in all probability, be that both governments would be obliged to pay more for the supplies so obtained than would otherwise be necessary. Such competition likewise would give rise to complications with respect to the precedence of the two governments with regard to the production of Canadian plants. It was also recognized that unless orders for the account of the United States government were placed through some agency of the Canadian government, the control over costs and profits which the Canadian Government exercises would not be effective with regard to orders so placed by this government. Accordingly War Supplies Limited was organized to centralize purchases by this government from Canadian manufacturers.

(d) *Procedure for negotiating contract.* If practicable, arrangements should be made through War Supplies Limited to have a representative of the subcontractor, who, it is contemplated, will actually produce the item desired, present in Washington to participate in the negotiation of the contract. In this way the prime contract and the contract with the producer can be prepared simultaneously.

(e) *Administration of contract.* On matters pertaining to contracts with War Supplies Limited, contact should be had with said corporation and not with the Canadian subcontractor. The only exception to this would be in those cases

where the technical service is represented at the plant through inspectors or other officers, in such instances communication with the subcontractor through the resident representative is in order on inspection and technical matters. Payment checks should be issued to War Supplies Limited and addressed to that corporation at its Washington office.

(f) *Contract form.* The contract form set forth in § 813.1313 should be used for executing supply contracts with War Supplies Limited, subject to such additions and deletions as may be necessary in any particular case. It will be noted that no provision relative to progress or advance payment is made in the form. This matter will be considered individually in each case. In accordance with § 805.505 no duty will be paid and accordingly no duty should be included in the purchase price. If it is necessary in a particular case, there may be added to the contract form a statement to the effect that the United States Government will pay any duties necessarily imposed for the entrance of articles into the United States.

(g) *Guarantee by Canadian Government.* The Canadian Government, through its Secretary of State for External Affairs, has guaranteed to the United States Government all commitments, obligations and covenants which War Supplies Limited may give to any department or agency of the United States Government in connection with any contracts or orders which may be given to said corporation by any department or agency of the United States Government. The Canadian Government has likewise waived notice of any change or modification which may be made from time to time in these commitments, obligations or covenants.

(h) *Excess profits on contracts with War Supplies Limited.* In a letter dated September 10, 1942, addressed to the Under Secretaries of War and Navy and to the Chairman of the Martime Commission, War Supplies Limited, stipulated in part as follows:

> All contracts with the War Department will be treated collectively and not individually, and if the aggregate profits realized by private corporations under such contracts are in excess of ten percent of cost, the amount of the excess will be refunded.
>
> * * * * *
>
> The Canadian Government will not make any profit on the aggregate of the transactions. However, it is understood that any losses to the Canadian Government on individual contracts may be recovered out of profits realized on other contracts.

The standard renegotiation clause will not be included in contracts with War Supplies Limited.

(i) *North West Purchasing Limited.* (1) In connection with various War Department projects in the Canadian Northwest, including the Alcan Highway and associated projects, there has been organized a Canadian Crown Company known as North West Purchasing Limited. This company has been incorporated by the Department of Munitions and Supply, Ottawa, Canada.

(2) Contracts for the purchase of materials, machinery, machine tools and equipment necessary in connection with the construction and maintenance of the above-mentioned projects will not ordinarily be entered into directly with contractors domiciled in the Dominion of Canada, but will be entered into with Northwest Purchasing Limited. However, direct contracts may be made with contractors domiciled in the Dominion of Canada in accordance with such regulations as may be issued by the Commanding General of the Northwest Service Command.

(3) In a leter dated 12 April 1943 from the Department of Munitions and Supply to the President of War Supplies Limited, which was forwarded to the War Department, it was stated in part:

> It is not the intention of this Department to enter into an agreement with the Government of the United States regarding profit limitations, etc., as North West Purchasing Limited has already undertaken to purchase stores required by the Northwest Service Command at prices no higher than those charged the Department of Munitions and Supply, and all purchase allocation orders placed by North West Purchasing Limited are confirmed by the Northwest Service Command.

(4) The standard renegotiation clause will not be included in contracts with North West Purchasing Limited.

§ 805.510 *War production policy for Canada and the United States.* Having regard to the fact that Canada and the United States are engaged in a war with common enemies, the President of the United States and the Canadian War Cabinet have, upon the recommendation of the Joint War Production Committee of Canada and the United States, approved a declaration of policy calling for a combined, all-out war production effort and the removal of any barriers standing in the way of such a combined effort. Such declaration of policy follows:

> Victory will require the maximum war production in both countries in the shortest possible time; speed and volume of war output, rather than monetary cost, are the primary objectives.
>
> An all-out war production effort in both countries requires the maximum use of the labor, raw materials and facilities in each country.
>
> Achievement of maximum volume and speed of war output requires that the production and resources of both countries should be effectively integrated, and directed towards a common program of requirements for the total war effort.
>
> Each country should produce those articles in an integrated program of requirements which will result in maximum joint output of war goods in the minimum time.
>
> Scarce raw materials and goods which one country requires from the other in order to carry out the joint program of war production should be so allocated between the two countries that such materials and goods will make the maximum contribution toward the output of the most necessary articles in the shortest period of time.
>
> Legislative and administrative barriers, including tariffs, import duties, customs and other regulations or restrictions of any character which prohibit, prevent, delay or otherwise impede the free flow of necessary munitions and war supplies between the two countries should be suspended or otherwise eliminated for the duration of the war.
>
> The two Governments should take all measures necessary for the fullest implementation of the foregoing principles.

(a) The President of the United States has directed the affected departments and agencies of the Government to abide by the letter and spirit of the foregoing policy so far as lies within their power. It is directed that the chief of each technical service whole-heartedly cooperate in an effort to make such policy effective in action. Manufacturing facilities available in the United States and in Canada should be placed upon an equal basis so far as awards of production orders are concerned, having in mind that time is of the essence and that, other things being equal, production of essential war materials at the earliest practicable date is the immediate aim of the Army Service Forces.

(b) Under the provisions of the Act of March 3, 1933 (see § 805.502), it has been determined by the Under Secretary of War to be inconsistent with the public interest to limit procurement of essential defense articles to those manufactured, mined or produced within the United States.

[Procurement Reg. 6]

PART 806—INTERBRANCH AND INTERDEPARTMENTAL PURCHASES

SUBPART A—GENERAL

Sec.
806.601 Rescission of regulations.
806.602 Definitions.

SUBPART B—INTERBRANCH PROCUREMENT

806.603 Authority of Procurement Assignment Board.
806.604 Report of actions of the Procurement Assignment Board.
806.605a Indefinite quantity contracts executed by various technical services.
806.605b Contracts for recapping and retreading tires and repairing tires and tubes.
806.605c Standard master ship repair contract.
806.605d Indefinite quantity contracts executed by the Office of the Quartermaster General.

SUBPART C—INTERDEPARTMENTAL PURCHASES

806.606 Purchases under contract of Procurement Division, Treasury Department.
806.606a Blind made products.
806.607 Purchases under contracts of Navy Department.
806.608 Purchases from Federal Prison Industries, Inc., Department of Justice.
806.608a Purchases from State prisons and other correctional institutions.
806.609 Purchases under contracts of Post Office Department.
806.610 Purchases from Government Printing Office.
806.611 Purchases from other agencies of the Government.
806.612 Purchase of property pursuant to Public Law 670.

Sec.

806.613 Purchases of property of other agencies through the Procurement Division, Treasury Department.
806.614 Form of order to be used in making Interdepartmental and Interbranch purchases.

SUBPART A—GENERAL

§ 806.601 *Rescission of regulations.* Army Regulations 5–300, December 10, 1936, as amended; Army Regulations 5–320, October 10, 1936, as amended; and all other prior directives and instructions relating to interbranch and interdepartmental procurement inconsistent herewith are hereby rescinded.

§ 806.602 *Definitions*—(a) *Procurement.* The term "procurement" as used in this part refers to the procedure necessary to obtain a given item or class of items and includes the execution of the following functions:

(1) *Specification (Abbr. Spec.).* This function involves the responsibility for the preparation or supply of specifications in accordance with the provisions of AR 850–25 to be used in the procurement of the item or items.

(2) *Determination of requirements (Abbr. Reqs.).* This function involves the determination by a technical service of its own requirements as well as the requirements of the using arms for which the technical service is responsible under existing Army Regulations. When only one service is indicated as having responsibility for determination of requirements for an item it shall be understood that said service is responsible for consolidating the requirements of all arms and services.

(3) *Provision of funds (Abbr. Funds).* This function involves the preparation of estimates, defense of estimates, and custody of funds.

(4) *Purchase (Abbr. Pur.).* This function consists of buying a given item or class of items or manufacturing such items in government owned establishments under the jurisdiction of a technical service, and includes final acceptance.

(5) *Inspection (Abbr. Insp.).* This function consists of making the inspections necessary for final acceptance of any item from the contractor.

(b) *Interbranch and interdepartmental procurement.* The term "inter branch procurement" refers to the procurement of items by one technical service for another technical service. The term "interdepartmental procurement" refers to the purchase of items by one department or agency of the government from another department or agency thereof.

SUBPART B—INTERBRANCH PROCUREMENT

§ 806.603 *Authority of Procurement Assignment Board.* The Procurement Assignment Board, Headquarters, Army Service Forces, is authorized to assign responsibility for all functions of procurement enumerated in § 806.602 (a) in regard to any item or class of items subject to the following limitation: Prior to the assignment by the Procurement Assignment Board of the "specification" function the Board will obtain the concurrence of the Production Division, Headquarters, Army Service Forces, and prior to the assignment of the "provision of funds" function the Board will obtain the concurrence of the Budget Officer for the War Department. The Director of the Production Division and the Budget Officer will each designate a representative to participate in meetings of the Procurement Assignment Board. With respect to a given item or class of items all functions may be assigned to one technical service or apportioned among different technical services. Unless and until action is taken by the Procurement Assignment Board the responsibility for the performance of the functions enumerated in § 806.602 (a) in respect to an item or class of items will remain with the technical service or technical services exercising such responsibility.

(a) *Army Air Forces.* When action by the Board is to be taken in regard to an item in which the Army Air Forces have a substantial interest, it will be understood that the Army Air Forces will be given an opportunity to be heard on the matter, and that if the Army Air Forces disagree with any action proposed to be taken by the Procurement Assignment Board, an effort will be made by the Board to reconcile the disagreement by a conference with a representative designated by the Commanding General, Army Air Forces; and that in the event a satisfactory agreement cannot be reached in this manner, the Board and the representative of the Army Air Forces will jointly prepare a brief setting forth their respective views on the matter, which brief will be submitted to the Under Secretary of War, who will make the final decision.

(b) *Purchase of an item by other than the service assigned such responsibility.* (1) Purchase of item shall be made by the services assigned responsibility for purchase of such item except under the circumstances indicated in subparagrap (2), (3) and (4) below.

(2) When an item is required within a brief period of time and, in the judgment of the service requiring the item, cannot be provided in such time by the service having responsibility for purchasing such item, the item may be purchased by the requiring service.

(3) Purchase may be made by a service other than the service to which responsibility for purchase of an item has been assigned, if the latter service has granted authority. This may be done by the issuance of general instructions or by consent granted with respect to a specific transaction.

(4) When items are purchased on behalf of a lump sum contractor on the understanding that an appropriate reduction will be made in the contract price, or when an item is purchased for a cost-plus-a-fixed-fee contractor which would normally be obtained by the cost-plus-a-fixed-fee contractor itself, purchase may be effected by a service other than the service having responsibility for purchasing the item.

(5) In the event that any purchase made pursuant to subparagraph (2) above involves an expenditure in excess of $5,000, a prompt report of the transaction will be made to the chief of the technical service having responsibility for the purchase of the item and a copy of such report will be sent to the Procurement Assignment Board, Headquarters, Army Service Forces.

(c) *Clearance of instructions with Board.* All instructions by Army Service Forces, Staff Divisions thereof, or Army Air Forces to be issued in War Department or Army Service Forces publications concerning:

(1) Transfer of any of the functions of procurement from one technical service to another or to or from the Army Air Forces, or

(2) Assumption of any of the functions of procurement by a technical service or the Army Air Forces;

shall be submitted for concurrence and clearance to the Procurement Assignment Board, Headquarters, Army Service Forces, before publication.

(d) *Assignment by classes.* Insofar as practicable, the Procurement Assignment Board, in assigning responsibility for procurement of all items and groups of items will classify items according to the Federal Standard Stock Catalog classes for storage and issue. The determinations of the Board will be published in § 806.605 and following.

(e) *Transfer of responsibility for purchase.* When action by the Board centralizes the responsibility for the purchase of a given item or class of items in a technical service:

(1) Any other technical service having such an item or class of items on order will promptly compile and transmit to the service assigned such responsibility a list of all outstanding orders for such items. These lists will indicate the following:

(i) Number and adequate description of items including specifications and applicable funds;

(ii) Name and address of supplier;

(iii) Unit price;

(iv) Delivery dates;

(v) Status of deliveries, to be supplemented monthly;

(vi) Contract or purchase order symbol; and

(vii) Partial payments or advance payments already made.

(2) Unless both services agree that such transfer is undesirable, all existing contracts shall be transferred to the service to which responsibility for purchase has been assigned, effective upon a date mutually agreed upon by the participating services, but not later than 60 days after notification to the services by the Board of its action.

(3) Signed instruments and other contractual documents shall be delivered to the service to which responsibility for purchase has been assigned not later than the effective date determined in subparagraph (2) above.

(4) The transfer shall be effected by the execution by the original contracting service of a supplemental agreement changing the allotment number and making any other necessary changes, or by such other means as may be determined by the service to which responsibility for purchase has been assigned.

(f) *Procedure.* (1) All technical services requiring an item for which determination of requirements and provisions of funds therefor have been assigned to another service, will assist the responsible technical service by furnishing to it statements of their requirements at such times as may be called for by the responsible technical service.

(2) The technical service or services having responsibility for determination of requirements will forward requisitions for requirements and allotment of applicable funds to the technical service having responsibility for purchase at such times and for such periods as may be specified by the latter.

(3) Emergency requirements will be forwarded by the most expeditious method available through the service responsible for the determination of requirements to the service responsible for purchase and will be confirmed by a formal requisition.

(4) Each requisition will contain a certificate of availability of funds and citation of the applicable allotment number.

(g) *Procurement within the United States for armed forces abroad.* It is to be noted that the action of the Procurement Assignment Board governs procurement within the United States for armed services abroad (see § 801.108 (g)). When an item is to be purchased for the armed forces abroad it should be purchased by the technical service to which responsibility for purchasing the item has been assigned by the Procurement Assignment Board.

(h) *Spare parts.* The assignments of responsibility for procurement of items or classes of items by the Procurement Assignment Board will be deemed to define in identical manner the responsibility for procurement of spare parts for all such items or classes of items, unless otherwise specifically indicated herein.

§ 806.604 *Report of actions of the Procurement Assignment Board.* (1) There is contained in Appendix I to this part[1] a condensed record of the assignments made by the Board since the beginning of the calendar year 1942. Actions taken by the Board will be reported in weekly memoranda published by the Office of The Adjutant General. From time to time, these memoranda will be consolidated in the Appendix. Reference is made to the first page of the Appendix for a more complete statement as to what is covered therein.

(2) Certain actions of the Board are set forth in the paragraphs immediately following. The Appendix, however, contains cross references to these paragraphs.

[1] Filed with the Division of the Federal Register.

(a) *Assignment of fuel: charcoal, coal, coke, dust fuels, gas, gasoline, oil (fuel), wood, etc. (FSSC Class 7).*

Items	Spec.[1]	Req	Funds	Pur.	Insp.
Army Air Forces Aircraft—All Fuels	AAF	AAF	AAF	AAF	AAF
Automotive, excluding fire apparatus, and vehicles required for construction activities of the Corps of Engineers:					
Gasoline	ORD	QMC	QMC	QMC	QMC
Fuel Oil Diesel	ORD	QMC	QMC	QMC	QMC
Railway:					
Gasoline	ORD	TC	TC	QMC	QMC
Fuel Oil	ORD	TC	TC	QMC	QMC
Fuel Oil Diesel	ORD	TC	TC	QMC	QMC
Coal, Coke, Firewood, etc	TC	TC	TC	QMC	TC
Marine, except for tactical equipment not operated by the Transportation Corps:					
Gasoline	ORD	TC	TC	QMC	QMC
Fuel Oil	ORD	TC	TC	QMC	QMC
Fuel Oil Diesel	ORD	TC	TC	QMC	QMC
Coal, Coke, Firewood, etc	TC	TC	TC	QMC	TC
Utility.—For Space Heating, Power, Incineration, Refrigeration, Utility Plants, Maintenance Equipment, Pumping, Fire Apparatus, Utility Shops, Cooking, Baking, Smithing, Water Heating, Process Steam, and incidental industrial uses (except for Manufacturing Arsenals, Manufacturing Depots, and for Technical Requirements at Proving Grounds):					
Gasoline	ORD	ENG	ENG	QMC	QMC
Fuel Oil	ORD	ENG	ENG	QMC	QMC
#1 Fuel Oil (Kerosene)	ORD	ENG	ENG	QMC	QMC
Coal, Coke, Charcoal, Dust Fuels, Firewood, etc	ENG	ENG	ENG	QMC	ENG
Gas, Natural or Mfgd	ENG	ENG	ENG	ENG	ENG
Construction, for activities of the Corps of Engineers:					
Gasoline	ORD	ENG	ENG	QMC	QMC
Fuel Oil	ORD	ENG	ENG	QMC	QMC
Coal, Coke, Charcoal, Dust Fuels, Firewood, etc	ENG	ENG	ENG	QMC	ENG
Gas, Natural or Mfgd	ENG	ENG	ENG	ENG	ENG
Manufacturing, for Arsenals, Manufacturing Depots, and for Technical Requirements at Proving Grounds; including all operational equipment:					
Gasoline	ORD	ALL	ALL	QMC	QMC
Fuel Oil	ORD	ALL	ALL	QMC	QMC
Coal, Coke, Charcoal, Dust Fuels, Firewood, etc	ALL	ALL	ALL	QMC	ALL
Gas, Natural or Mfgd	ENG	ALL	ALL	ALL	ALL
Fog Oil, and Incendiary Oil for Incendiary Bombs, Flame Throwers and Smoke	CWS	CWS	CWS	QMC	QMC
All Other Uses:					
Gasoline (All Types)	ORD	QMC	QMC	QMC	QMC
Fuel Oil	ORD	QMC	QMC	QMC	QMC
Fuel Oil, Diesel	ORD	QMC	QMC	QMC	QMC
Coal, Coke, Charcoal, Dust Fuels, Firewood, etc	QMC	QMC	QMC	QMC	QMC

[1] The service or services (other than the Army Air Forces) assigned the function of "Specification" for the petroleum products listed above shall coordinate and clear this function with the War Department Committee on Liquid Fuels and Lubricants through the Fuels and Lubricants Division, Office of the Quartermaster General.

To the extent that the assignments of responsibility for the functions of procurement set forth in this paragraph are inconsistent with the provisions of Circular No. 33, Headquarters, Army Service Forces, 1943, the provisions of said Circular No. 33 are superseded hereby.

The assignment of responsibility for Determination of Requirements and Provision of Funds applies both to the Zone of the Interior and to the Theatres of Operation.

(b) *Assignment of boats, vessels and floating equipment (FSSC Class 9).*

Items	Spec.	Req.	Funds	Pur.	Insp.
All Boats, Vessels and Floating Equipment: Except those listed below	TC	TC	TC	TC	TC
Boats, Vessels and Floating Equipment: Required for river, harbor and fortification works	ENG	ENG	ENG	ENG	ENG
Barrage Balloon Equipment:					
Boats, Power Driven BB	ENG	ENG	ENG	TC	TC
Boats, Catamaran BB	ENG	ENG	ENG	TC	TC
Barges, Double End BB	ENG	ENG	ENG	TC	TC
Barges, Power Driven BB	ENG	ENG	ENG	TC	TC
Corps of Engineers Tactical Equipment:					
Boats, Assault	ENG	ENG	ENG	ENG	ENG
Boats, Reconnaissance	ENG	ENG	ENG	ENG	ENG
Boats, Storm	ENG	ENG	ENG	ENG	ENG
Boats, Pneumatic	ENG	ENG	ENG	ENG	ENG
Boats, Power, Utility w/Trailer	ENG	ENG	ENG	ENG	ENG
Floats, Pneumatic	ENG	ENG	ENG	ENG	ENG
Pontons, Equipage	ENG	ENG	ENG	ENG	ENG
Pontoon Gear, Navy Type:[1]					
Barges and Pontoons for Bridge and Wharf Construction and Corps of Engineers Lighterage	ENG	ENG	ENG	TC	TC
Barges and Pontoons, all Other Uses	TC	TC	TC	TC	TC
Rafts, Life for Aircraft	AAF	AAF	AAF	AAF	AAF

[1] All boats, barges, vessels and floating equipment, excluding pneumatic boats, purchased by the Army from the Navy, shall be purchased from the Navy by the Transportation Corps.

Vessels over 1,000 tons D. W. are procured by Maritime Commission, with Transportation Corps responsible for determination of requirements.

(c) *Assignment of oils (illuminating and lubricating) greases and all lubricants (FSSC Class 14).*

Items	Spec.[1]	Req.	Funds	Pur.	Insp.
All oils, greases, lubricants, cleaning solvents (except petroleum solvents), rust preventive compounds, corrosion preventives, and hydraulic fluids for Army Aircraft, except oils, greases, and lubricants for AGF Aircraft	AAF	AAF	AAF	AAF	AAF
Agricultural sprays, including petroleum oils required for all insect and pest control	QMC[2]	QMC	QMC	QMC	QMC

See footnotes at end of table.

Assignment of oils (illuminating and lubricating) greases and all lubricants (FSSC Class 14)—Continued

Items	Spec.[1]	Req.	Funds	Pur.	Insp.
Cattle Spray	QMC	QMC	QMC	QMC	QMC
Compound, rust preventives	ORD	ORD	ORD	ORD	ORD
Corrosion preventives	ORD	ORD	ORD	ORD	ORD
Cutting Oils	ORD	ALL	ALL	ALL	ALL
Kerosene (illuminating and cleaning)	ORD	QMC	QMC	QMC	QMC
Oils, greases and lubricants for all motor, armored and track laying vehicles, excluding fire apparatus and vehicles required for construction activities of the Corps of Engineers	ORD	QMC	QMC	QMC	QMC
Special oils, greases and lubricants for locomotives, other rolling stock, and marine use, except for tactical equipment not operated by the Transportation Corps	ORD	TC	TC	QMC	QMC
Special lubricants and greases for Weapons, including Railroad Artillery Equipment	ORD	ORD	ORD	ORD	ORD
Recoil and hydraulic fluids	ORD	ORD	ORD	ORD	ORD
Oils, lubricants and greases for construction activities of the Corps of Engineers	ORD	ENG	ENG	QMC	QMC
Oils, lubricants and greases for Manufacturing Arsenals, Manufacturing Depots, and for all technical requirements at Proving Grounds; including all operational equipment	ORD	ALL	ALL	QMC	QMC
Oils, lubricants and greases for Utilities—For Space Heating, Power, Incineration, Refrigeration, Utility Plants, Maintenance Equipment, Pumping, Fire Apparatus, Utility Shops, Cooking, Baking, Smithing, Water Heating, Process Steam, and incidental industrial uses (except for Manufacturing Arsenals, Manufacturing Depots, and for technical requirements at Proving Grounds)	ORD	ENG	ENG	QMC	QMC
Oil, transformer and insulating	ORD	QMC	QMC	QMC	QMC
Oil, tempering	ORD	QMC	QMC	QMC	QMC
Oil, floor	ENG	QMC	QMC	QMC	QMC
Paraffine Wax—Amorphous, refined and crude, and manufactured articles	ORD	QMC	QMC	QMC	QMC
Petrolatum (medicinal)	MED	MED	MED	QMC	MED
Paraffine, refined for histological and pharmaceutical use	MED	MED	MED	QMC	MED
Solvents, petroleum	ORD	QMC	QMC	QMC	QMC
Oils, lubricants and greases,—all other uses	ORD	QMC	QMC	QMC	QMC

[1] The service or services (other than the Army Air Forces) assigned the function of "Specification" for the petroleum products listed above shall coordinate and clear this function with the War Department Committee on Liquid Fuels and Lubricants through the Fuels and Lubricants Division, Office of the Quartermaster General.

To the extent that the assignments of responsibility for the functions of procurement set forth in this paragraph are inconsistent with the provisions of Circular No. 33, Headquarters, Army Service Forces, 1943, the provisions of said Circular No. 33 are superseded hereby.

[2] Except responsibility for specification for Oil, Fuel Diesel No. 2 or equal, (FSSC Class 7) which is the responsibility of the Ordnance Department.

The assignment of responsibility for Determination of Requirements and Provision of Funds applies both to the Zone of the Interior and to the Theatres of Operation.

§ 806.605a *Indefinite quantity contracts executed by various technical services.* In the succeeding sections there is set forth information with respect to certain indefinite quantity contracts executed by various technical services under which all of the technical services are obliged to purchase their requirements.

§ 806.605b *Contracts for recapping and retreading tires, and repairing tires and tubes*—(a) *General.* (1) The Ordnance Department has executed a number of contracts for recapping and retreading tires and repairing tires and tubes. Detailed information with respect to these contracts is contained in a pamphlet entitled "Instructions relating to indefinite quantity contracts for recapping and retreading tires and repairing tires and tubes". Copies of this pamphlet may be obtained by interested services from the Administrative Branch, Supply Section, Office of Chief of Ordnance, Washington, D. C. The same information also appears in paragraph 6,030 of Ordnance Procurement Instructions.

(2) The contracts referred to in subparagraph (1) are not applicable to the recapping and retreading of tires and the repairing of tires and tubes by the Army Air Forces, when such tires and tubes are to be used on aircraft and special purpose vehicles.

(b) *Procedure for placing orders.* The same type of delivery order as is used for placing orders under the General Schedule of Supplies (see § 806.614) will be used for placing orders under the Ordnance contracts, except that there will be added a certificate reading as follows:

None of the supplies or services covered by this instrument are to be used in violation of legal restrictions quoted in Circular No. 175, War Department, 1943.

(c) A blanket tax exemption certificate is issued covering Federal excise taxes on all purchases made under the contracts referred to in paragraph (a). Accordingly no tax exemption certificates will be issued in connection with specific purchases made under such contracts. It is not necessary that the purchase order contain a reference to the number of the blanket tax exemption certificate. It is sufficient that it contain a reference to the contract number.

(d) The pamphlet referred to in paragraph (a) contains a price list and other details and special provisions applicable to particular contracts. In any case where the price for repairing, recapping or retreading tires of a particular size is not listed, the price may be fixed by the contracting officer at a price not lower than the price quoted for the same service on the next smaller size tire quoted in such price list and contracting officer's decision shall be final and binding. The prices quoted do not include Federal taxes for which exemption is granted, nor any tax imposed by a State, County or municipality upon the transaction of purchasing materials or services in question.

(e) In the event that the contractor is unable to provide or arrange for facilities to perform any services ordered under the contract within ten days from the receipt of such order, the contracting officer is released to that extent from any obligation to procure such services under the contract. He may then procure them from any available source.

§ 806.605c *Standard Master Ship Repair Contract.* (a) A form of contract for the repair and alteration of vessels has been approved as a standard form of contract and assigned the number "TC Form No. 103" (see § 803.304 (a) (3). TC Form No. 103 is the War Department version of a master contract for the repair and alteration of vessels devised jointly by the War Department, the Navy Department and the War Shipping Administration.

(b) When executed with a particular contractor, TC Form No. 103 establishes the basis upon which that contractor will perform such repair and alteration work on vessels within the jurisdiction of the War Department as may be assigned to the contractor by means of job orders issued pursuant to the contract. All such work will be assigned to the contractor by means of job orders under the contract, unless the Chief of Transportation or his authorized representative grants prior approval to the use of a different method of contracting.

(c) Colonel Harold S. Wright, T. C., Commanding Officer, Army War Ship Repair Contract Agency, 25 Broad Street, New York 4, N. Y. (see Memorandum No. S55–15–43, 7 June 1943, creating this Agency), has been appointed contracting officer for the execution and administration of contracts written on TC Form 103, and authority has been delegated to the Chief of Transportation to appoint a successor and additional contracting officers for the same purpose. Contracts on TC Form No. 103 will be executed only by contracting officers appointed pursuant to this paragraph.

(d) Contracting officers appointed pursuant to paragraph (c) above have authority to designate officers and civilian officials of the War Department as their representatives and to empower such representatives to take all action under particular contracts or groups of contracts on TC Form No. 103 which could lawfully be taken thereunder by the contracting officers themselves, including the power to issue and administer job orders.

(e) Colonel Wright has designated the following as his representatives, with power to issue and administer job orders, subject to various conditions and limitations:

(1) The officer certified for the purpose by or under the direction of the Commanding General of each Service Command, the Commanding General, Army Air Forces, and the Chief of Engineers, for each installation under their respective commands.

(2) The officer certified for the purpose by the commanding officer of each port of embarkation and by each Zone and District Transportation Officer.

Certification of a contracting officer's representative may be made by name or official title. Certification is effective upon acknowledgment of receipt by Colonel Wright.

(f) From time to time the Chief of Transportation will cause to be published information concerning the contracts on TC Form No. 103 which have been executed for the War Department, including the contract numbers, names and addresses of contractors, location of shipyards, contract periods, "billing rates," etc. The publications will also name the contracting officer's representatives who have been authorized to issue job orders under the contracts, and set forth instructions applicable to the issuance and administration of job orders.

(g) A Joint Board, consisting of one representative each for the Secretary of War, the Secretary of the Navy and the War Shipping Administrator, has been constituted to perform certain functions in connection with the master contracts for repair and alteration of vessels executed by the three agencies. The Joint Board endeavors to obtain uniformity of interpretation and administration of these contracts. It also makes recommendations regarding the quarterly revision of "billing rates" in order that the same rate may be in force under the contracts with a particular contractor executed by the three agencies.

§ 806.605d *Indefinite quantity contracts executed by the Office of the Quartermaster General.* The tabulation set forth below contains certain information with respect to all indefinite quantity contracts executed by the Office of the Quartermaster General, which are applicable to purchases made by activities outside the jurisdiction of the Quartermaster General. More complete information as to these contracts is contained in the bulletins referred to in the tabulation. Some of these bulletins are Office of the Quartermaster General Contract Bulletins, referred to in the tabulation as Contract Bulletins. The last contract bulletin published was No. 2, dated 11 January 1944. Instructions and information theretofore published in contract bulletins have been published since 11 January 1944 in War Department supply bulletins, referred to in the tabulation as supply bulletins. If contract bulletins are not available at an Adjutant General Depot, they may be obtained by communicating with the General Administrative Services Division, Office of the Quartermaster General, Washington 25, D. C.

INDEFINITE QUANTITY CONTRACTS EXECUTED BY OFFICE OF QUARTERMASTER GENERAL

Bulletin number	Date	Commodity	Contract period	Contract symbol number	Contractor	Area serviced	Tax information	Applicability
Contract Bulletin No. 81	1 July 1943	Books	Fiscal Year 1944	See Contract	Bulletin No. 81	Continental United States.	Tax exclusive	General utilization by the War Department except the Medical Corps.
Contract Bulletin No. 95	26 July 1943	Compressed Yeast	Fiscal Year 1944	W 199 qm-33843	Standard Brands Incorporated, 595 Madison Ave., N. Y., N. Y.	1st, 4th, 8th and 9th Service Commands	Tax inclusive; in the event of an increase, decrease or elimination of the tax or charge which must be borne by the contractor, the contract price is increased or decreased, accordingly and any amount due the contractor as a result of such change is charged to the government, provided, however, that the government reserves the right to issue to the contractor, in lieu of such payment a tax exemption certificate	All Branches of the War Department
				W 199 qm-33845	National Grain Yeast Corp., 800 Mill St., Belleville, N. J.	3rd Service Command Military District of Washington		
				W 199 qm-33846	Red Star Yeast & Products Co., 221 E. Buffalo St., Milwaukee, Wis.	5th and 6th Service Commands		
				W 199 qm-33844	Anheuser-Busch, Inc., 721 Pestalozzi St., St. Louis, Mo.	2nd and 7th Service Commands		
Contract Bulletin No. 133	25 Oct. 1943	Paper Rolls, for Cash Registers	Fiscal Year 1944	W 1913 qm-16081	Bradner Smith & Co., 33 So. Desplaines St., Chicago, Ill.	Regions VII, VIII and IX as defined in Contract Bulletin	Tax exclusive	All posts, camps and stations
				W 1913 qm-16082	The National Cash Register Co., Dayton, Ohio	Regions I through VII as defined in Contract Bulletin and Brooklyn (for overseas shipment) Oakland, California (for overseas shipment) New Orleans (for overseas shipment) Charleston (for overseas shipment)		
Contract Bulletin No. 142	1 Jan. 1944	Oil, Engine, Lubricating All purpose	1 Jan. 1944 to 30 June 1944	49-001-qm-274	The Texas Company	Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia.	Tax exclusive; Contractor obtains Blanket Tax Exemption Certificate upon application to Washington Quartermaster Depot.	All War Department activities within continental United States for domestic consumption, exclusive of maneuvers ordered by Army Ground Force Headquarters
				W 49-001 qm-276	Standard Oil Co. of California	Arizona, California, Idaho, Nevada, Oregon, Utah, Washington		
				W 49-001 qm-277	Shell Oil Co., Inc.	Ohio		
				W 49-001 qm-275	Standard Oil Co. (Indiana)	Colorado, Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Montana, North Dakota, South Dakota, Wisconsin, Wyoming.		
				W 49-001 qm-278	Standard Oil Company of Nebraska	Nebraska		

INDEFINITE QUANTITY CONTRACTS EXECUTED BY OFFICE OF QUARTERMASTER GENERAL—Continued

Bulletin number	Date	Commodity	Contract period	Contract symbol number	Contractor	Area serviced	Tax information	Applicability
Supply Bulletin 10-28	14 Mar. 1944	Malt	1 Apr. 1944 to 30 June 1944	11-009 qm-14070	Malt-Diastase Company, Wyckoff Ave. & Decatur St., Brooklyn, N. Y.	1st, 2nd and 3rd Service Commands; Military District of Washington; Ashford Gen. Hospital, West Virginia	Tax exclusive	All Branches of the War Department
				11-009 qm-14067	Anheuser-Busch, Inc., 721 Pestalozzi St., St. Louis, Mo.	4th Service Command		
				11-009 qm-14069	Pabst Sales Co., 221 No. LaSalle St., Chicago, Ill.	5th Service Command		
				11-009 qm-14071	Birk Bros. Brewing Co., Webster Wayne Avenues, Chicago, Ill.	6th Service Command		
				11-009 qm-14068	The Wander Co., 360 No. Michigan Ave., Chicago, Ill.	7th Service Command		
				11-009 qm-14072	Standard Brands, Inc., War Prod. & Supply Dept., 595 Madison Ave., New York, N. Y.	8th and 9th Service Commands		

[1] Attention is invited to contract Bulletin No. 1, 1 January 1944, for the period 1 January 1944 to 31 December 1944, listing contracts executed by Treasury Department, Procurement Division, for War Department requirements of greases and gear lubricants under Class 14 of Federal Standard Stock Catalogue.

SUBPART C—INTERDEPARTMENTAL PURCHASES

§ 806.606 *Purchases under contracts of Procurement Division, Treasury Department*—(a) *Basic law.* The act of March 3, 1933 provided in part as follows:

* * * Accordingly, the President shall investigate the present organization of all executive and administrative agencies of the Government and shall determine what changes therein are necessary to accomplish the following purposes: * * * To group, coordinate, and consolidate executive and administrative agencies of the Government, as nearly as may be, according to major purposes; * * * To eliminate overlapping and duplication of effort; * * * (47 Stat. 1517; 5 U. S. C. 124).

Pursuant to the above act there was issued under date of June 10, 1933, Executive Order Number 6166 which provides in part as follows:

The function of determination of policies and methods of procurement * * * of property, facilities, structures, improvements, machinery, equipment, stores, and supplies exercised by any agency is transferred to a Procurement Division in the Treasury Department, at the head of which shall be a Director of Procurement. * * * In respect of any kind of procurement * * * for any agency the Procurement Division may, with the approval of the President, (a) undertake the performance of such procurement * * * itself, or (b) permit such agency to perform such procurement * * * or (c) entrust such performance to some other agency, or (d) avail itself in part of any of these recourses, according as it may deem desirable in the interest of economy and efficiency. When the Procurement Division has prescribed the manner of procurement * * * of any thing, no agency shall thereafter procure * * * such thing in any manner other than so prescribed. The execution of work now performed by the Corps of Engineers of the Army shall remain with said corps, subject to the responsibilities herein vested in the Procurement Division. * * *

Under date of April 12, 1935 there was issued by the Procurement Division, Treasury Department, with the approval of the President, a regulation which provides in part as follows:

* * * Those supplies of which the procurement * * * is to be controlled (by the Procurement Division) * * * will be listed and communicated to the executive departments as may be necessary, and thereafter no individual procurement * * * of these articles shall take place except in emergencies. * * *

(b) *Requirement.* Purchases will be made from contracts of the Procurement Division, Treasury Department (General Schedule of Supplies), when so directed by the chief of the technical service concerned or when required by the terms of the contracts unless the item can not be furnished under such contracts within the time that the item is required by the technical service concerned.

(c) *Emergency purchases.* In any case where, pursuant to the provisions of paragraph (b), purchase of an item listed in the General Schedule of Supplies is not made under a General Schedule of Supplies contract because the item could not be furnished under such a contract within the time that the item was required, the voucher submitted to the disbursing officer for payment shall contain a finding that:

(1) The purchase was justified because the item could not be furnished under the General Schedule of Supplies Contract within the time in which the item was required; and

(2) The purchase outside the General Schedule of Supplies Contract was necessary to facilitate the prosecution of the war and was authorized under the First War Powers Act and Executive Order No. 9001.

Such finding shall be final and conclusive. The authority to make such a finding is vested in the chiefs of the technical services and may be delegated to any officer or civilian official under their jurisdiction, including the contracting officer. It is to be emphasized that this authority is only to be used when necessary, and that it should not be construed to authorize disregard of the requirements of the General Schedule of Supplies. In all cases, the finding should consist of more than a mere conclusion. It should set forth the specific reasons why the time element made the purchase necessary.

(d) *Procedure.* (1) Chiefs of technical services (and commanding generals of service commands) are responsible for advising contracting officers under their jurisdiction as to the terms and conditions of all mandatory General Schedule of Supplies contracts. The commanding generals of the service commands should assume this responsibility as promptly as is practicable. In the past, the schedules have been distributed to the posts, camps and stations under the jurisdiction of the various service commands by the chiefs of certain of the technical services. This practice should not be discontinued until such time as the commanding generals of the service commands have had an opportunity to set up procedures to enable them to assume the responsibility.

(2) The schedules may be obtained from the Editorial Section, Procurement Division, Treasury Department. That Section will not, however, honor requests from posts, camps or stations or other installations, but only from the offices of the chiefs of technical services or the headquarters of the commanding generals of the service commands. Accordingly, all requests should be forwarded through channels to the appropriate headquarters.

(e) *Ratification of purchases not made under contracts of the Procurement Division, Treasury Department.* When it appears to his satisfaction that an item listed in the General Schedule of Supplies was not purchased under a contract of the Procurement Division, Treasury Department because the contracting officer overlooked the necessity of purchasing under such a contract the chief of the technical service concerned

may ratify such purchase. This will be done, however, only where it appears that the oversight represents an isolated instance and not a continued course of neglect. A statement should be presented to the chief of the technical service setting forth all of the facts including the contract price paid as compared to that payable under the Treasury Department contract and all facts which tend to excuse the failure to purchase under the Treasury Department contract.

(f) [Deleted.] See § 806.614.

(g) *Mandatory schedules.* The following is a list of the classes of the General Schedule of Supplies which are mandatory on the field services of the War Department:

Description of item	Schedule of supplies	Period
Explosives and blasting accessories	4, Supp. No. 1	July 1 to Dec. 31, 1944.
Gasoline: Tank wagon and drum deliveries, tank-car, transport-truck, and marine deliveries.	7 and Supps., Regions 1 to 6, inclusive.	July 1, 1944, to June 30, 1945.
Fuel oil-tank-wagon and drum deliveries, tank-car, transport-truck, and marine deliveries.	7 and Supps., Regions 1 to 6, inclusive.	July 1, 1944, to June 30, 1945.
Gasoline, Diesel oil, and lubricating oil, service-station deliveries.	7 and 14	July 1, 1944, to June 30, 1945.
Tire chains	8, Supp. No. 3	July 1, 1944, to June 30, 1945.
Automotive storage batteries	17, Supp. No. 2 (Revised)	Mar. 16 to Sept. 15, 1944.
Telephones and parts	17, Supp. No. 6	Sept. 1, 1941, to Aug. 31, 1942 (portion extended to Aug. 31, 1944).
Electric lamps	17, Supp. No. 3A	Sept. 1, 1942, to Aug. 31, 1943 (extended to Aug. 31, 1944).
Wood furniture	26, Part I	Jan. 1 to Dec. 31, 1942 (portion extended to Dec. 31, 1944).
Wood furniture	26, Part I	Jan. 1 to Dec. 31, 1944.
Steel furniture	26, Part II	Jan. 1 to Dec. 31, 1942 (portion extended to Dec. 31, 1944).
Steel insulated filing cabinets	26, Part II, Supp. No. 1	July 1, 1943, to Dec. 31, 1943 (extended to Dec. 31, 1944).
Floor and window coverings	27	Apr. 1 to Sept. 30, 1944.
Books	35	Dec. 1, 1943, to Nov. 30, 1944.
Machine tools (only the following items: 40-M-9-100, and 40-P-22 to 40-P-37, incl.).	40	Mar. 1 to Aug. 31, 1944.
Woodworking saws	40, Supp. No. 1	July 1, 1944, to June 30, 1945.
Paper drinking cups	53, Supp. No. 2	July 1, 1944, to June 30, 1945.
Office equipment	54	July 1, 1944, to June 30, 1945.
Offset duplicating supplies and certain office equipment.	54	July 1, 1944, to June 30, 1945.
Portable drinking fountains	63, Supp. No. 1	Mar. 1, 1944, to Feb. 28, 1945.
Airplane tires and tubes	83	Apr. 24 to June 30, 1942 (extended to Aug. 31, 1944).
Recording and transcription service	103, Supp. No. 2	Sept. 15, 1942, to Aug. 31, 1943 (extended to Aug. 31, 1944).
Household and quarters furniture	(Part 1)	Jan. 1 to July 31, 1944.
Household and quarters furniture	(Part 2)	Jan. 1 to July 31, 1944.
Household and quarters furniture	(Part 3)	Jan. 1 to July 31, 1944.

NOTE (1): Some of the schedules listed above are mandatory only upon some of the activities of the War Department. In case of doubt as to whether it is mandatory that a particular item be procured under a schedule, the schedule itself should be consulted and provisions of the schedule should be regarded as controlling.

NOTE (2): Attention is called to the provisions of § 811.1187. Items, the purchase of which is restricted by that paragraph, shall not be purchased except in accordance with the provisions of that paragraph even though they may be listed on the General Schedule of Supplies.

(h) *"Schedule of Stock Items."* This publication of the Procurement Division of the Treasury Department lists the items which are carried in stock in the warehouse of that Division in Washington, D. C., primarily to supply the needs in that city. Field agencies of the War Department will not place orders on the Procurement Division for items which are stocked in the warehouse in Washington, D. C., for shipment outside the District of Columbia. This publication should not be distributed to War Department field agencies outside of Washington, D. C.

§ 806.606a *Blind-made products*—(a) *Basic law.*

* * * All brooms and mops and other suitable commodities hereafter procured in accordance with applicable Federal specifications by or for any Federal department or agency shall be procured from such nonprofit making agencies for the blind in all cases where such articles are available within the period specified at the price determined by the committee to be the fair market price for the article or articles so procured; * * * Act June 25, 1938 (52 Stat. 1196; 41 U. S. C. 46; M. L., 1939, sec. 1951).

(b) *Schedule of blind-made products.* Schedule of Blind-Made Products, effective January 1, 1943, or later date, prepared under the direction of Committee on Purchases of Blind-Made Products, and issued by the Procurement Division, Treasury Department. This schedule is obtained in the same manner as other schedules of the General Schedule of Supplies (see § 806.606 (d)). The basic law does not apply in cases where brooms and mops are procured for use outside continental United States.

(c) *General clearance.* The following general clearance dated June 3, 1942, which covers purchases until further notice is quoted for information and guidance.

Effective as of this date and continuing until rescinded, blanket clearance is hereby granted to purchase from commercial sources any item listed in the Schedule of Blind-made Products where military necessity may require the delivery of the articles needed within a period of two weeks.

Very truly yours,

ROBT. LEFEVRE,
Secretary,
Committee on Purchases of Blind-made Products.

(d) *Attaching clearance to voucher.* It is to be noted that it is not necessary to attach a copy of this general clearance to the contract or voucher. It is sufficient in pertinent cases to make reference on either the contract or the voucher to General Clearance dated June 3, 1942.

§ 806.607 *Purchases under contracts of Navy Department*—(a) *Requirement.* Purchases will be made from contracts of the Navy Department when so directed by the chief of the technical service concerned or when required by the terms of the contracts.

(b) *Procedure.* Chiefs of technical services are responsible for advising contracting officers as to the terms and conditions of all such contracts and as to whether purchases therefrom are mandatory.

§ 806.608 *Purchases from Federal Prison Industries, Inc., Department of Justice*—(a) *Basic Law.* The Act of May 27, 1930 provides in part as follows:

The several Federal departments and independent establishments and all other Government institutions of the United States shall purchase at not to exceed current market prices, such products of the industries herein authorized to be carried on as meet their requirements and as may be available * * * (46 Stat. 392; 18 U. S. C. 744g; M. L., 1939, Sec. 1936).

Under date of December 11, 1934, there was issued Executive Order Number 6917 which provides in part as follows:

It is hereby ordered that a corporation of the District of Columbia be and is hereby created, said corporation to be named as Federal Prison Industries, Inc. * * * The principal office of said corporation shall be in the City of Washington, District of Columbia, * * * The heads of the several executive departments, independent establishments and Government owned and Government controlled corporations shall cooperate with the corporation in carrying out its duties and shall purchase, at not to exceed current market prices, the products or services of said industries, to the extent required or permitted by law.

(b) *Requirement.* It is required that all items manufactured by and all services rendered by, Federal Prison Industries, Inc. be purchased from that agency except where a general or special clearance for the purchase of the items from commercial sources has been granted.

(c) *General clearance.* The following general clearance, dated 18 May 1944, which covers purchases for the period 1 July to 31 December 1944, indicates not only the items as to which such clearance has been granted but also those items which are available, and, which, accordingly, must be purchased from Federal Prison Industries, Inc.:

THE UNDER SECRETARY OF WAR,
Washington, D. C.

DEAR SIR: Subject to applicable conservation and limitation orders, the following articles and services are available and can be furnished by Federal Prison Industries, Inc., from industries established under the Act of Congress approved May 27, 1930 (46 Stat. 391):

Brushes: All brushes for delivery after October 1, 1944.

Canvas goods: Shell covers, tarpaulins, truck covers, truck curtains, barracks bags, shower curtains, bags, bandoleers.

Cargo nets.

Castings: Bomb noses; also manhole frames and covers, grates and grate bars, and gutter drains for delivery in Wisconsin, Michigan, Illinois, Indiana, Ohio, Pennsyl-

vania, New York, New Jersey, Maryland, West Virginia, Virginia, Kentucky, and the District of Columbia.

Fibre furniture.

Laundry services required by posts and stations within 25 miles of the Federal Correctional Institution, Tallahassee, Fla.; and by posts and stations within 100 miles of the United States Penitentiary, Alcatraz, Calif., the Federal Detention Headquarters, New York City, and the Federal Reformatory for Women, Alderson, W. Va.

Mattresses: Cotton felt.

Milk: 1,000 lbs. per day for delivery to Ft. Bliss, Texas, only.

Sheet metal products: Storage shelving, transfer cases, food trays, tool boxes, tool cabinets, tool racks, fin assemblies, and stops for bomb storage.

Other metal products: Bomb dunnage racks; welded metal specialties.

Printing: See Section 610.9, Army Procurement Regulation No. 6.

Wood furniture and specialties: Douglas, 4C, wide arm and side chairs; all stools except rotary type; desk trays; costumers; tool handles; pallets.

Boats, wooden, not in excess of 100' long, to be procured in the Ninth Service Command.

Clearance

C–24706

1. *Clearance is granted to purchase* from other sources *articles* manufactured *or services* rendered by Federal Prison Industries, Inc., *not listed above.*

2. *Clearance is granted to purchase* from other sources *articles* manufactured *or services* rendered by Federal Prison Industries, Inc., *including the items listed above,* in the following cases:

(a) By contractors or contracting officers under cost-plus-a-fixed-fee construction or supply contracts;

(b) By contracting officers under fixed-price (lump sum) construction or supply contracts, wherein the Government is required to furnish certain Government materials;

(c) When immediate delivery or performance is required by the public exigency;

(d) When suitable second hand or used articles can be procured;

(e) When required in small quantities and for delivery within ten days.

3. This clearance is to cover purchases made by the War Department only, and is effective for the period July 1 to December 31, 1944, inclusive.

4. Copy of this clearance should be attached to your contract or voucher when transmitted to the General Accounting Office, or reference made thereon to this clearance number.

Very truly yours,

FEDERAL PRISON INDUSTRIES, INC.

By (Signed) A. H. CONNER,
Associate Commissioner.

(d) *Attaching clearances to vouchers.* It is to be noted that it is no longer necessary to attach a copy of the clearance to the contract or voucher. It is sufficient to make reference on either the contract or the voucher to Clearance No. C–24706.

(e) *Procedure.* Chiefs of technical services are responsible for advising contracting officers as to the detailed procedure for placing orders with Federal Prison Industries, Inc. In general, purchase orders should be forwarded in duplicate to Federal Prison Industries, Inc., Department of Justice, Washington, D. C. Requests for special clearances should also be directed to the above agency which, in an emergency, will grant telegraphic clearance.

§ 806.608a *Purchases from State prisons and other correctional institutions.* Purchases of items manufactured or produced by State prisons may be made directly from such institutions (Op. Att. Gen. 37739, May 6, 1942, and Let. Pres. May 10, 1942. See also Executive O. 9196 dated July 9, 1942, and § 809.902 and following of these regulations). Likewise, purchases of services rendered by State prisons may be made directly from such institutions. No purchase, however, from a State prison or other correctional institution will be made of a mandatory item or service appearing in the schedules of the Federal Prisons Industries, Inc. (See § 806.608) without a prior clearance (general or special) from that agency. For purchases by Government contractors and subcontractors from Federal, State and territorial prisons or prison industries, see § 803.345.

§ 806.609 *Purchases under contracts of Post Office Department.* (a) *Requirement.* Envelopes required by the military service (other than by the departmental service, War Department, Washington, D. C.) will be procured under the contracts entered into by the Post Office Department unless it is impracticable to do so.

(b) *Envelopes authorized for supply to the military service.* (1) The following envelopes only are authorized for supply to the military service (excluding the departmental service, War Department, Washington, D. C.) on requisitions, the item numbers corresponding to those in "Award of Contracts for Envelopes", Post Office Department:

Item No.	*Description*
17.	4⅛ by 9½ inches, Kraft, open side.
36.	5 by 11½ inches, Kraft, open side.
49.	6½ by 9½ inches, Kraft, open side.
68.	8½ by 11½ inches, Kraft, open side or open end.
93.	10 by 15 inches, Kraft, open side or open end, 5-inch flap.
111.	2½ by 4¼ inches, Kraft, open end.
122.	3¾ by 5⅞ inches, Kraft, open end.
123.	3⅞ by 7½ inches, Kraft, tag, strong eyelet at bottom, open end.
169.	3⅞ by 8⅞ inches, White, open side.
192.	4⅛ x 9½ inches, White, open side.
203.	3⅞ by 8⅞ inches, White, open side, with Opaquing Design inside.
204.	4⅛ by 9½ inches, White, open side, with Opaquing Design inside.
405.	3⅜ by 8¾ inches, Kraft, open side, window.
435.	4⅛ by 9½ inches, White, open side, window.
504.	4⅛ by 9½ inches, White, Air Mail, red and blue border.
514.	4⅛ by 9½ inches, White, Air Mail, red and blue border, lightweight with opaquing design inside.
[1]	4⅜ by 8⅛ inches, Kraft, open side, window (for War Bonds).

(2) Orders for envelopes should be placed with the contractors specified in the pamphlet "Awards of Contracts for Envelopes". Such orders may be sent to the contractor directly and need not be sent through the office of the chief of the technical service concerned.

(c) The foregoing does not affect in any way the present methods of procuring jackets, open end, thumb notched, as required by the various technical services, the same being procured on approved requisitions as are other supplies.

§ 806.610 *Purchases from Government Printing Office.* (a) All blank envelopes, blank paper, ink, glues and other supplies manufactured or carried in stock by the Government Printing Office, and which are required for use within the District of Columbia, will be purchased from that office.

(b) All printing and blankbook work other than that referred to in paragraph (c), shall be obtained from the Government Printing Office unless a clearance is obtained from the Public Printer to have the work done elsewhere.

(c) (1) Under the regulations of the Joint Committee on Printing relative to Periodicals and Field Printing, printing, binding and blankbook work which it is impracticable to have done at the Government Printing Office and which is necessary for the exclusive use of any field service outside of the District of Columbia may be procured elsewhere than at the Government Printing Office in the District of Columbia without the necessity of obtaining a clearance from the Public Printer. Such work shall be done either:

(i) By local Army-owned reproduction facilities;

(ii) At United States Army Field Printing Plants authorized by the Joint Committee on Printing;

(iii) By commercial firms, or

(iv) By field plants, Justice Department, described under paragraph (i) of this section.

A list of authorized War Department Field printing plants is contained in the aforementioned regulations. These regulations are distributed by The Adjutant General, Field Printing Branch, Publication Division, and should be requested through the chief of the technical service (or commanding general of the service command).

(2) Said regulations further provide that: No field printing, even though authorized by the committee, shall be done at any field plant, * * * having machinery or equipment (including motors) which has been or may be purchased, exchanged, or transferred since May 1, 1920, without specific approval by the Joint Committee on Printing of such purchase, exchange, or transfer: *Provided,* That this regulation shall not be construed as applying to minor replacements of type or material or parts necessary in making repairs to machinery and equipment.

(d) The cost of the jobs produced either in Army-owned reproduction facilities or in authorized U. S. Army Field Printing Plants should be absorbed in the operating cost of such installations to be charged against the specific funds made available for their operation.

(e) The cost of work procured from commercial sources should be charged against the specific funds available therefor to the respective technical service expenditure of which has been

[1] There has been no Item No. assigned to this envelope.

authorized by The Adjutant General. Obligations for field contract printing procured from commercial concerns may be incurred, to the extent that authority has been delegated and funds made available, in accordance with the provisions of the Fiscal Code. All allotments must carry the appropriate purpose number and decimal suffix prescribed in finance circulars. AR 35-1040 prescribes the form of certificate which is required to be placed on purchase orders and vouchers involving payments for printing, binding, and blank-book work procured commercially in the field. Information relative to reports required by the Joint Committee on Printing together with forms required, will be furnished by The Adjutant General to the chiefs of technical services.

(f) The Adjutant General is charged with the responsibility of coordinating all Army field printing. Questions concerning policies and propriety of field contract printing will be referred to The Adjutant General.

(g) As specified in section II, Circular No. 8, War Department, 1939, Decision A-99850 of the Comptroller General of the United States dated December 22, 1938, is construed as subjecting to the Regulations of the Joint Committee on Printing (1) stenographer's books or other articles in book form which require printing, binding or ruling operations for their manufacture, and (2) any item which requires any printing and binding operation after the receipt of the order by the vendor to fit it for the particular needs of the Government service.

(h) The chiefs of technical services only are authorized to communicate directly with the Government Printing Office through their properly appointed representatives.

(i) Federal Prison Industries, Inc., has available facilities for performing printing work for the War Department. It is to be noted that these facilities are not listed in the letter set forth in § 806.608 (c) and so the use of the printing services is not mandatory. However, wherever practicable, it is desirable that use be made of these facilities. The facilities are available at three prisons and may be made use of by sending a purchase order directed to one of the following:

Warden of Federal Reformatory, El Reno, Oklahoma.

Superintendent of Industries, Leavenworth Penitentiary, Leavenworth, Kansas.

Business Manager of Industries, Atlanta Penitentiary, Atlanta, Ga.

Where the form of purchase order contains the standard convict labor clause, that clause should, of course, be deleted (§ 809.903 (a) (1)).

(j) Bureau of the Budget Regulation No. 4 (revised) January 18, 1944, (as reprinted in Circular 69, War Department, 10 February 1944) for the purpose of conserving critical materials, establishes standards of grade, colors, copy and size for letterheads, manifold (tissue) sheets, memorandum forms, and envelopes, and sets forth numerous suggestions to promote conservation, which will be observed by all agencies to the fullest practicable extent.

§ 806.611 *Purchases from other agencies of the Government.* Property may be acquired from other agencies of the Government either in the manner set forth in § 806.612 or in the manner set forth in paragraphs (a) to (i), inclusive, of § 806.613. Section 806.612 explains the circumstances under which the two procedures can be followed.

§ 806.612 *Purchase of property pursuant to Public Law 670.* The act of July 20, 1942 (Public Law 670–77th Congress; 31 U.S.C. 686) amended section 7 (a) of the act of May 21, 1920 (41 Stat. 613), as amended by section 601 of the act of June 30, 1932 (47 Stat. 417) to read as follows:

Any executive department or independent establishment of the Government, or any bureau or office thereof, if funds are available therefor and if it is determined by the head of such executive department, establishment, bureau, or office to be in the interest of the Government so to do, may place orders with any other such department, establishment, bureau, or office for materials, supplies, equipment, work, or services, of any kind that such requisitioned Federal agency may be in a position to supply or equipped to render, and shall pay promptly by check to such Federal agency as may be requisitioned, upon its written request, either in advance or upon the furnishing or performance thereof, all or part of the estimated or actual cost thereof as determined by such department, establishment, bureau, or office as may be requisitioned; but proper adjustments on the basis of the actual cost of the materials, supplies, or equipment furnished, or work or services performed, paid for in advance, shall be made as may be agreed upon by the departments, establishments, bureaus, or offices concerned: *Provided*, That the War Department, Navy Department, Treasury Department, Civil Aeronautics Administration, and the Maritime Commission may place orders, as provided herein, for materials, supplies, equipment, work, or services, of any kind that any requisitioned Federal agency may be in a position to supply, or to render or to obtain by contract: *Provided further*, That if such work or services can be as conveniently or more cheaply performed by private agencies such work shall be let by competitive bids to such private agencies. Bills rendered, or requests for advance payments made pursuant to any such order, shall not be subject to audit or certification in advance of payment.

The chiefs of the technical services are authorized, pursuant to the foregoing statute, to purchase property from other Federal agencies on payment of the estimated or actual cost thereof, but proper adjustments on the basis of the actual cost of the material, supplies, or equipment furnished, paid for in advance, shall be made as may be agreed upon mutually. This may not be done, however, if the property has been reported to the Procurement Division, Treasury Department as surplus by the holding agency or if the property has been declared surplus to the needs of the holding agency by the Director of the Bureau of the Budget pursuant to subparagraph (c) of Executive Order No. 9235.

(a) *Powers of War Food Administration and Reconstruction Finance Corporation under Public Law 670.* The functions, powers, and duties, with respect to placing orders for materials, supplies, equipment, work, or services of any kind that any requisitioned Federal agency may be in a position to supply, or to render or to obtain by contract, which are vested in the War Department, Navy Department, Treasury Department, Civil Aeronautics Administration and the Maritime Commission under Public Law 670 (above) may also be exercised (1) by the War Food Administration, and by any constituent agency or corporation thereof, designated by the War Food Administrator (Executive Order 9418; 9 F.R. 1073, 1 Feb. 1944) and (2) by the Reconstruction Finance Corporation, and by any constituent, subsidiary or controlled agency or corporation thereof designated by the Reconstruction Finance Corporation. (Executive Order 9440; 9 F.R. 4999, 12 May 1944.)

§ 806.613 *Purchases of property of other agencies through the Procurement Division, Treasury Department*—(a) *Executive Order No. 9235.* Under date of August 31, 1942 there was issued Executive Order No. 9235 providing for the effective utilization of supplies and equipment by government agencies (See 7 F.R. 6987). This order provides in part as follows:

The Director of the Bureau of the Budget, acting through such assistants as he may designate, shall:

(a) Survey supplies and equipment in possession of Government agencies and the utilization thereof. For this purpose he may require the Government agencies to submit reports and estimates in such form and at such times as he may find necessary: *Provided*, That in making such surveys he shall utilize, subject to the approval of the Secretary of the Treasury, the services and facilities of the Procurement Division of the Treasury Department;

* * * * *

(c) Require, when, in his opinion, such action is necessary or expedient, the transfer from one Government agency to another, for permanent or temporary use, of such supplies and equipment as he may determine to be surplus to the needs of one agency and essential to the needs of another agency;

* * * * *

(e) Issue such regulations and directives as may be necessary to effectuate this order.

(b) *Regulation No. 1 of the Director of the Bureau of the Budget.* Under date of November 16, 1942, the Director issued Regulation No. 1 under Executive Order No. 9235. It reads in part as follows:

(c) * * * all equipment or supplies determined to be surplus by the head of an agency * * * having control thereof or by the Director of the Bureau of the Budget shall be declared surplus by submission of Procurement Division Form No. 812, "Declaration of Property" to the Procurement Division, Treasury Department, which will thereupon assume temporary custody thereof. Procedures covering appraisal, rehabilitation, storage, request for transfer, transfer and payment for equipment or supplies transferred under this paragraph will be issued in the form of instructions by the Procurement Division.

2. The Director of the Bureau of the Budget may cause excess equipment and supplies to be declared surplus to the activity having custody thereof without regard to the method by which custody was obtained. Surplus equipment or supplies found in any administrative unit and held by that unit on loan from some other unit will be considered as surplus to the needs of both the unit in possession and the unit accountable therefor.

3. Compliance by the Procurement Division with a request for the transfer of surplus equipment or supplies will be dependent upon the availability to the requesting unit of an appropriation or allocation for the procurement of the equipment or supplies desired, and such other criteria as may be deemed necessary by the Director of the Bureau of the Budget.

(c) *Regulation No. 2 of the Director of the Bureau of the Budget.* Under date of November 16, 1942, the Director issued Regulation No. 2 under Executive Order No. 9235. It reads in part as follows:

1. All equipment and supplies recovered by the Procurement Division, Treasury Department, as surplus to the requirements of any activity shall be transferred to agencies * * * requesting same, in accordance with instructions issued by the Procurement Division, at market or appraisal value at the time of transfer and, except, as provided in paragraph 3 hereof, payment therefor shall be covered into the Treasury as Miscellaneous Receipts.

2. Where the value of equipment and supplies transferred is less than the amount set forth in the justification of the applicable budget schedule, savings shall be set up as a reserve and reported on line 15 (c) of Budget-Treasury Form 2 and described as "savings through purchase of surplus equipment and supplies."

* * * * *

4. The Procurement Division will publish once each month, or more frequently if stock on hand or volume of requests justify, a schedule of items on hand in surplus stores. These schedules will be circulated to all agencies within distribution areas to be served by the surplus stores. No agency shall enter the commercial market for the purpose of procuring any items of equipment or supply contained in the then current surplus schedule without advance clearance from the Procurement Division: *Provided,* That when immediate delivery is required by the public exigency, the articles required may be procured by open market purchase or contract, in accordance with existing law, at the places and in the manner in which such articles are usually bought and sold between individuals.

5. Requests for items listed in such surplus equipment and supply schedules will, as a general rule, be honored as received. However, in cases where, before shipment is made, more than one agency requests identical items, priority shall be determined in accordance with criteria as provided for in Regulation 1, Paragraph 3.

6. Equipment and supplies recovered by the Procurement Division, which are of such a character or in such condition as to be unusable or to preclude rehabilitation, shall be disposed of under regulations prescribed by the Procurement Division.

(d) *Procedure for acquiring property which is surplus to the needs of another agency.* The procedure for the transfer of surplus property has been set forth in Circular Letter No. 675 (November 18, 1942) of the Procurement Division, Treasury Department, as amended by Circular Letter No. 675, Supplement No. 1, issued under date of January 15, 1943.

(e) *Regional property offices of Procurement Division.* Pursuant to Circular Letter No. 675, Supplement No. 1, the operations of the Procurement Division, Treasury Department, which had previously been centralized in Washington, D. C. were decentralized. The following regional offices were established:

Region I

Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont. Regional Procurement Officer, U. S. Treasury Department, Park Square Building, Boston, Massachusetts.

Region II

Pennsylvania, New Jersey, New York. Regional Procurement Officer, U. S. Treasury Department, 76 Ninth Avenue, New York, New York.

Region III

District of Columbia, Delaware, Maryland, North Carolina, Virginia. Regional Procurement Officer, U. S. Treasury Department, 7th & D Streets, S. W., Washington, D. C.

Region IV

Indiana, Kentucky, Ohio, West Virginia. Regional Procurement Officer, U. S. Treasury Department, 235 West 12th Street, Cincinnati, Ohio.

Region V

Illinois, Michigan, Minnesota, No. Dakota, So. Dakota, Wisconsin. Regional Procurement Officer, U. S. Treasury Department, 222 West North Bank Drive, Chicago, Illinois.

Region VI

Alabama, Florida, Georgia, Mississippi, So. Carolina, Tennessee. Regional Procurement Officer, U. S. Treasury Department, 10 Forsyth Street Building, Atlanta, Georgia.

Region VII

Arkansas, Louisiana, Oklahoma, Texas. Regional Procurement Officer, U. S. Treasury Department, 609 Nell P. Anderson Building, Fort Worth, Texas.

Region VIII

Iowa, Kansas, Missouri, Nebraska. Regional Procurement Officer, U. S. Treasury Department, 6th Fl., Porter Building, Kansas City, Missouri.

Region IX

Colorado, New Mexico, Utah, Wyoming. Regional Procurement Officer, U. S. Treasury Department, 1630 Wazee Street, Denver, Colorado.

Region X

Arizona, California, Nevada. Regional Procurement Officer, U. S. Treasury Department, 335 Fell Street, San Francisco, California.

Region XI

Idaho, Oregon, Montana, Washington. Regional Procurement Officer, U. S. Treasury Department, Alaska Building, Seattle, Washington.

(f) *Catalog of available property.* Once each month, and more frequently if necessary, the Procurement Division through its regional offices, will issue catalogs showing the location, description, and transfer price of property reported to it as surplus within specified areas. It is the responsibility of the chief of each technical service to see that all stations under his command, which would be interested in obtaining equipment surplus to the needs of other agencies, is supplied with the current catalog relating to the region where the station is located. Such catalogs will, if requested, be mailed directly to any station making a request of the appropriate regional office of the Procurement Division, Treasury Department.

(g) *Surplus property not as yet reported.* When information is obtained as to the existence of property surplus to the needs of another Government agency, a technical service should, if it desires such property, communicate with the holding agency and establish definitely that the property is available. If the property has not yet been reported by the holding agency to the regional office of the Procurement Division, Treasury Department, in the region where the property is located, and has not been declared surplus to the needs of the holding agency by the Director of the Bureau of the Budget pursuant to subparagraph (c) of Executive Order No. 9235 (see paragraph (a)), the property may be purchased directly from the holding agency pursuant to Public Law No. 670—77th Congress (see § 806.612)). If, however, the holding agency desires to effect the transfer through the Procurement Division, Treasury Department, it should be requested to declare the property as surplus on the forms prescribed by the Procurement Division, Treasury Department. The declaration should be forwarded to the appropriate regional office with a statement that the property is wanted by the station concerned. The property should then be requested by the technical service in accordance with paragraph (h).

(h) *Direct communication with Procurement Division authorized.* The chiefs of the technical services are authorized to communicate directly with the Procurement Division, Treasury Department, with reference to any property which has been reported to that Division by other agencies of the Government; and are authorized to make requests for any such property directly to the appropriate regional office of the Procurement Division, Treasury Department. The request will be made on Purchase Authority Form (issued by the Procurement Division, Treasury Department) or on such other document or form as is customarily used for ordinary purchases. Whatever form is used should carry the capitalized heading "Request for transfer of property." The request should contain the following information:

(1) Complete and specific reference as to date of Catalog of Available Property in which property appeared. If property has not yet been listed in a catalog there should be substituted the present location of the property, the transferring agency's declaration number, and a complete description of the property.

(2) Shipping instructions or information that the property will be picked up.

(3) The symbol and title of the appropriation, appropriations, or fund from which the costs of acquisition and any transportation charges incident to delivery to the technical service will be paid.

The chiefs of the technical services will decentralize to their field agencies the authority to communicate with the regional offices of the Procurement Division, Treasury Department, to the greatest extent consistent with efficiency and the proper safeguarding of the public interest.

(i) *Redistribution and Salvage Branch.* Although direct communication by the technical services with the Procurement Division, Treasury Department is au-

thorized, the Redistribution and Salvage Branch, Production Division, Headquarters, Army Service Forces, is available for consultation when the technical services desire assistance in their negotiations with the Procurement Division, Treasury Department. That Branch should be promptly advised whenever it comes to the attention of a technical service that property desired by such service has been requested by an agency of the Government other than the War Department.

(j) *Disposition of surplus property to other Government agencies.* It is to be noted that the foregoing paragraphs relate only to the acquistion of property from another Government agency and not to the disposition of surplus property to another Government agency. As to the latter, see § 807.714 (b) et seq.

§ 806.614 *Form of order to be used in making interdepartmental and interbranch purchases.* (a) There is contained in § 813.1317e, a suggested form of delivery order. This form has been prepared for use in placing orders:

(1) Against already existing contracts executed by another department of the government (see §§ 806.606, 806.606a, 806.607 and 806.609);

(2) Against indefinite quantity contracts executed by other technical services (see § 806.605a and following); and

(3) With other agencies of the government which render particular services or supply certain supplies (see §§ 806.608, 806.608a, 806.610 and 806.611).

(b) The suggested form contained in § 813.1317e is particularly designed for placing orders of the types described in subparagraphs (1) and (2) above. If it is used for placing orders of the types described in subparagraph (3), there will of course be no basic purchase agreement; and so it will be necessary to modify the form appropriately.

(c) It is to be noted that the suggested form of delivery order set forth in § 815.1317e does not contain any "General Provisions" such as those contained in § 813.1317b. Such provisions are unnecessary in connection with interbranch and interdepartmental purchases.

Orders placed under General Schedule of Supplies contracts are frequently referred to as "Purchase Orders." Inasmuch as a binding contract already exists between the Government and the TPS contractor, it is evident that the order serves a different function than that served by an ordinary purchase order. Accordingly, the term "delivery order" has been used throughout these Procurement Regulations as being a term more descriptive of orders placed under already existing contracts.

[Procurement Reg. 7]

PART 807—DISPOSITION OF PROPERTY

SUBPART A—GENERAL

Sec.
807.100 Rescission of instructions.
807.101 Subjects not covered.
807.102 Definitions.
807.103 Statement of War Department policy.
807.104 Designation of Redistribution and Salvage Officer.
807.105 Establishment of Disposal Boards.
807.106 Disposal Board at chief of service level.
807.107 Extraordinary cases.
807.108 Reports.
807.109 Direct correspondence authorized.
807.110 Methods of sale.
807.111 Compliance with OPA and WPB regulations.
807.112 Federal excise taxes on property sold.
807.113 Contract formalities including numbering and distribution.
807.114 Coordination with Property Officer.
807.115 Information as to sales of War Department property.
807.116 Sales to War Department Personnel.

SUBPART B—DISPOSITION OF TERMINATION INVENTORIES

807.200 Scope of subpart.
807.201 Circularization not required.
807.202 Disposition by contracting agency.
807.203 Redistribution assistance at chief of service level.
807.204 Redistribution assistance by War Production Board.
807.205 Pricing policies.
807.206 Specific price regulations.
807.207 General pricing regulations.
807.208 Review and approval of sales.
807.209 Disposition of surplus.
807.210 Action to be taken on stock pile items.

SUBPART C—DISPOSITION OF PROPERTY FOR PURPOSES DIRECTLY RELATED TO THE PROSECUTION OF THE WAR

807.300 Scope of subpart.
807.301 Sale to war contractors.
807.302 Sales to Red Cross and U. S. O.
807.303 Other sales.
807.304 Leases.
807.305 Leases under other statutes.
807.306 Disposition by contractors.
807.307 Transfer to other Federal agencies.
807.308 Transfer to other War Department Components.
807.309 Transfers to and from Navy.
807.310 Transfers to Civil Aeronautics Administration.
807.311 Transfers with reimbursement.
807.312 Transfers without reimbursement.
807.313 Procedure for transfers without reimbursement.
807.314 Gifts and loans of drawings and other property.
807.315 Exchange of property.

SUBPART D—DISPOSITION OF NON-REPAIRABLE PROPERTY

807.400 Scope of subpart.
807.401 Non-military property other than current production scrap.
807.402 Current production scrap.
807.403 Sale of non-repairable property by or to contractors.
807.404 Military property, and non-military property not certified under § 807.401.
807.405 Designation of salvage officer.
807.406 Disposition by salvage officers.
807.407 Special procedure.
807.408 Review and approval of scrapping.
807.409 Review at chief of service level.
807.410 Pricing policies on sales of non-repairable property included in termination inventory.

SUBPART E—DISPOSITION OF SERVICEABLE MILITARY PROPERTY

807.500 Scope of subpart.
807.501 Declaration of surplus.
807.502 Mutilation and disposition of certain military property that is unsuitable for civilian use.
807.503 Disposition of surplus.

SUBPART F—DISPOSITION OF SERVICEABLE NON-MILITARY PROPERTY OTHER THAN TERMINATION INVENTORY

807.600 Scope of subpart.
807.601 Circularization.
807.602 Disposition during circularization period.
807.603 Disposition after circularization period.
807.604 Deviation from regulations in exceptional cases.
807.605 Non-military property peculiar to Army Air Forces.

SUBPART G—DISPOSAL OF SURPLUS PROPERTY

807.700 General.
807.701 Disposition of nominal quantities.
807.702 Reporting to disposal agency.
807.703 Report forms.
807.704 Transmittal of reports.
807.705 Action after reporting.
807.706 Withdrawal for further use.
807.707 Disposal by disposal agency.
807.708 Shipment after disposal.
807.709 Fiscal procedures.
807.710 Clearance for sale by War Department.

APPENDIX

807.901 Items to be included in lists of Part 4 property.
807.902 Offices to receive Part 1 and 3 circularization lists.
807.903 Regional Offices of War Production Board.
807.904 Assignment of property to disposal agencies.
807.905 Surplus War Property Administration Report Forms.
807.906 Regional Offices of War Food Administration.
807.907 Regional Offices of Reconstruction Finance Corporation.
807.908 Regional Offices of Procurement Division, Treasury Department.
807.909 Stockpile materials.
807.910 Monthly report of redistribution and disposal of excess and surplus serviceable property.

SUBPART A—GENERAL

§ 807.100 *Rescissions of instruction.* The regulations in this part and the regulations, manuals and other instructions to which it makes reference, include all outstanding instructions of the War Department on the subject of the disposition of personal property, title to which is in the Government, or to which the Government has the contractual right to acquire title. All other instructions are hereby rescinded. Instructions of the technical services are not affected hereby, but will be promptly conformed to this part.

§ 807.101 *Subjects not covered.* This part does not rescind or otherwise affect TM 38-220 or other publications concerning Stock Control for military property. It does not relate to the disposition of real property, which is governed by War Department Circular No. 8, 1944, and section II ASF Circular No. 28, 1944. It does not relate to the repair or reclamation of personal property, which is governed by War Department Circular No. 7, 1944. It does not relate to the disposition of the proceeds of sales of property, as to which see AR 35-780 and AR 35-6660. It does not relate to the redistribution or disposition of any property located outside of the continental limits of the United States. The policies and procedures governing the disposition of property which has been turned over to a salvage officer or salvage organization, are covered by AR 700-25 and TM 38-505.

§ 807.102 *Definitions.* The following terms, when used in this regulation, have the meanings indicated:

"Military property" consists of all supplies and equipment held for issue or

issued, to or for troops, military posts within the United States, and theaters of operation; and includes tactical supplies and equipment, subsistence items and property required by tables of allowances, tables of basic allowances, and tables of equipment.

"Non-military property" is all property other than military property.

"Serviceable property" is property other than scrap or waste which is suitable for use in its existing condition.

"Non-repairable property" is unserviceable property which cannot in the best interests of the Government be mended or restored to serviceability, and scrap and waste; and includes, but is not limited to, any obsolete non-military items, and industrial materials, industrial equipment, components, and assemblies (whether partially or completely fabricated, processed or assembled and whether new, used or deteriorated), which have no reasonable use except as scrap.

"Excess property" in the case of military property, is any property in excess of the maximum stock level authorized for a particular organization, supply point or technical service; and, in the case of non-military property, is any property in excess of the immediate and definitely foreseeable needs of a particular industrial installation or other function, activity, project or industrial operation in connection with which the property was acquired.

"Surplus property" is property declared by competent authority to be, or deemed to be, in accordance with the provisions of this Regulation, in excess of the immediate or definitely foreseeable needs of the entire War Department.

"Termination inventory" means all personal property (including a proper part of any common materials) properly allocable to a terminated war contract or subcontract of any tier, property excess to the requirements of a cost-plus-a-fixed-fee contractor, and any property in the possession of a fixed-price contractor or subcontractor which the War Department is obligated to take over as the result of a design modification or change order, except any machinery or equipment subject to a separate contract or contract article specifically governing the use or disposition thereof. "Termination inventory" includes contractor-owned property in the hands of a fixed-price contractor or subcontractor, Government owned property in the hands of a cost-plus-a-fixed-fee contractor or subcontractor and Government owned property furnished to any contractor.

"Negotiation" means any method of reaching an agreement on the terms of sale, except the formal sealed bid procedure contemplated by section 3709, R. S. with respect to purchases. (There is no statutory requirement for the formal sealed bid procedure in the case of sales of government property. See Opinions of The Judge Advocate General, dated March 19, 1941, SPJGC 1941, and March 30, 1943, SPJGC 1943, 3449).

§ 807.103 *Statement of War Department policy.* The demands of the war production program require that the material resources of the nation be used with the utmost efficiency. This can only be accomplished if the accumulation of excess property is avoided and if idle property is put to productive use at the earliest possible moment. Accordingly, it is the policy of the War Department to prevent the acquisition or retention of excess property by the War Department. It is likewise the policy of the War Department to effect the prompt return of temporarily idle non-military property to productive use. In furtherance of the policy of effecting prompt clearance of the plants of contractors whose contracts have been terminated (see § 815.351) every effort will be made to effect prompt disposition of termination inventories. In this connection, attention is called to the letter of the Under Secretary of War set forth in § 815.350(b) and to the statement of the Surplus War Property Administrator set forth in § 807.205. The guiding policy of the War Department is to employ all the material resources at its command in the manner which will most effectively facilitate the prosecution of the war. To this end property will be freely redistributed under the authority granted in Subpart C of this part. In any event, excess property will be redistributed as promptly as possible. Accordingly, the chiefs of technical services will comply with existing provisions for the review of military property. All affected thereby will strictly observe the requirements of section II, Army Service Forces Circular No. 67, 1944. In addition, chiefs of technical services will maintain constant and active review of all non-military property on hand or in the process of manufacture, to determine the essentiality of such property for the prosecution of approved functions, activities, projects or industrial operations.

§ 807.104 *Designation of redistribution and salvage officer.* The chief of each technical service will designate a redistribution and salvage officer in his office who will have responsibility for coordinating the activities of the technical service as to salvage activities; as to the determination of what items of non-military property are excess within the technical service; as to the determination of what items of military property should be processed for declaration by competent authority as surplus; and as to the acquisition and use by the technical service of military and non-military items available from other technical services. The Director, Readjustment Division, Headquarters, Army Service Forces, will be promptly notified of the appointment, or change in the appointment of such officer.

§ 807.105 *Establishment of disposal boards.* (a) The chiefs of the technical services will establish in their field installations, disposal boards for reviewing and taking appropriate action with respect to proposed transactions required to be reviewed by this Regulation.

(b) Disposal boards will consist of not less than three members. The members thereof may perform other functions, provided the prompt review of property disposal matters is not hindered and the personnel are qualified by training and experience to afford adequate review with respect to such matters.

(c) Records of the proceedings of disposal boards will be maintained by the offices or installations in which they are established. Cases submitted for review will be accompanied by information pertinent to the transaction, particularly as to the following: number of offers or bids solicited and reviewed, and the amounts thereof; condition of the property; status of the buyer with respect to the use to be made of the property, and any other information necessary to show that the market has been adequately tested and that the sale should be made at the price and in the quantities stated.

§ 807.106 *Disposal board at chief of service level.* Disposal boards may be established in the offices of the chiefs of technical services to review and take appropriate action with respect to property transactions as to which review at that level is authorized by this part (see §§ 807.208 (b) and 807.409).

§ 807.107 *Extraordinary cases.* Proposed sales or scrapping determinations involving unusual problems or difficulties may be presented for the consideration and advice of the Director, Readjustment Division, Headquarters, Army Service Forces.

§ 807.108 *Reports*—(a) *Monthly report of redistribution and disposal of excess and surplus serviceable property.* (1) Commanding generals of each numbered service command and the Military District of Washington will submit to the Director, Readjustment Division, Headquarters, Army Service Forces, a consolidated monthly report on redistribution and disposal of excess and surplus serviceable property.

(2) Each procurement office reporting to the chief of a technical service will submit to the chief of the technical service a monthly report of redistribution and disposal of excess and surplus serviceable property. Chiefs of technical services will issue instructions as to the omission of certain sections of the form not applicable to their procurement offices.

(3) The chief of each technical service will submit to the Director, Readjustment Division, Headquarters, Army Service Forces, a consolidated monthly report on redistribution and disposal of excess and surplus serviceable property, together with reports for each procurement office reporting to him.

(b) *Report form.* Reports will be submitted on W.D., A.G.O. Form No. 256. For the first report, local reproduction in the field is authorized. Information will be submitted in substantially the form indicated by W.D., A.G.O. Form No. 256 (see § 807.910). A limited quantity of the form is now available at the Pentagon Adjutant General Depot for use of chiefs of technical services in consolidating reports. For subsequent reports, supplies of this form will be available at all adjutant general depots. Control Approval Symbol RCS–5 has been assigned to this report. This form will be used by all echelons required to submit the report.

(c) *Date for submitting report.* Report will submitted monthly and will be filed with the Director, Readjustment Division, Headquarters, Army Service Forces, on or before the 12th day of the month following that for which the report is made. The first report will be filed on or before 12 July 1944 covering the month of June 1944.

(d) *Preparation of the report.* Record costs may be used without inclusion of amounts for storage, transportation, handling, or other overhead costs. In the absence of record costs, estimates may be made on the basis of known costs of similar items or other available information. All dollar amounts should be reported to the nearest full dollar with cents omitted. Specific instructions as to preparation of the report together with a sample of the report form are included in § 807.910.

§ 807.109 *Direct correspondence authorized.* Direct correspondence is authorized among all levels of the technical services and representatives of other government agencies in respect of redistribution of available property under this part.

§ 807.110 *Methods of sale.* All sales of property under this Regulation, including sales made by cost-plus-a-fixed-fee contractors pursuant to § 807.306, will be made by negotiation in a manner to assure such competition (by taking written bids, making oral inquiry, or otherwise) as is practicable in the circumstances, and consistent with economy, efficiency and the expeditious completion of the proposed sale. The negotiating officer will make every effort to effect the sale in such manner and for such further uses as will most effectively facilitate the prosecution of the war. Sales at ceiling or established market prices and sales under § 807.301, need not be delayed for the purpose of soliciting competitive bids.

§ 807.111 *Compliance with OPA and WPB regulations.* All sales or other transfers (except transfers within the Government) of property made under the authority of this Regulation or otherwise shall conform to applicable orders and regulations of the War Production Board and the Office of Price Administration. Officers responsible for disposal of War Department property may rely upon a representation by the buyer to the effect that the purchase is being made in compliance with all War Production Board regulations affecting the buyer, unless they have knowledge or reason to believe that such representation is false. Such a representation should be incorporated in each written contract of sale. War Department representatives are not responsible, however, for compliance with such regulations in the case of sales by a contractor.

§ 807.112 *Federal excise taxes on property sold.* Where property which is subject to Federal excise tax is sold, provisions governing the collection of such taxes found in Subpart F of Part 608 will be observed.

§ 807.113 *Contract formalities including numbering and distribution.* (a) All contracts for the sale of property made under the authority of Subpart C of this part, all contracts for an amount in excess of $1,000 and all contracts for an amount in excess of $500 which are not to be performed within sixty days shall be evidenced by a written contract prepared in substantially the form set forth in § 813.1326, or in such other form as may be approved by the Director, Readjustment Division, Headquarters, Army Service Forces, or, in the case of sales by salvage officers, in the form authorized or required by applicable regulations. All other sales shall be evidenced on accounting forms now or hereafter prescribed by the chiefs of technical services concerned, subject to the approval of the Fiscal Director, Headquarters, Army Service Forces.

(b) The provisions of §§ 803.309 and 803.318b (e) and relating to the numbering of contracts are applicable to contracts for the sale of property except that in connection with such contracts a separate series of numbers will be used in which the letter "s" will be added immediately after the letters representing the technical service concerned.

(c) Contracts for the sale of property will be distributed in the same manner as other contracts (see Subpart D of Part 803) except that (1) when a sale of War Department property is made under a contract or agreement the officer or agent of the War Department by whom funds are received as a result thereof will, in turning the funds over to a disbursing officer, accompany such remittance with a copy of the contract or agreement covering the terms of the sale; and (2) the original signed number of each unnumbered contract of sale will be forwarded to the General Accounting Office instead of being sent to the disbursing officer, as in the case of unnumbered contracts of purchase.

(d) A copy of each contract of sale of military property, the original cost of which exceeded $2,000 will be distributed to the Chairmen of the Military Affairs Committees of the House and Senate within twenty-four hours after a contract has been made.

§ 807.114 *Coordination with Property Officer.* All transfers or sales of property under authority herein contained must be coordinated with the Property Officer involved for compliance with applicable property accountability regulations.

§ 807.115 *Information as to sales of War Department property.* It is the policy of the War Department to have the facts on all public sales of War Department property kept available at the point of sale for public inspection during normal business hours for any proper purpose. The facts on sales to war contractors will likewise be kept available for inspection by the interested parties; but it is not intended that there should be general publicity as to such sales.

(a) *Furnishing information to periodicals.* When sales are made on written invitations to bid, copies of invitations and information as to awards may be transmitted to periodicals for publicity purposes, or to persons who request invitations for the purpose of advising their clients. In any event, copies of written invitations to bid and information as to awards will be kept available at the point of sale for inspection by representatives of periodicals or other interested parties during normal business hours for any proper purpose.

§ 807.116 *Sales to War Department personnel.* Except as authorized by Subpart C of this part, or by AR 30-2200, AR 700-25, TM-38-505, or other War Department publication, no sales of Government-owned property will be made to any official or employee of the War Department nor any officer, enlisted man, or civilian employee of the Army.

SUBPART B—DISPOSITION OF TERMINATION INVENTORIES

§ 807.200 *Scope of subpart.* This subpart provides authority and procedures for the disposition of termination inventories.

§ 807.201 *Circularization not required.* The policy of the War Department is stated in § 807.103. The objectives of that policy can best be obtained by vigorous action of the contracting officer and his local aids in redistribution of termination inventories, prior to reporting such property to a Disposal Agency as surplus, with the fullest cooperation of the district organization and any industry organization involved (such as the Ordnance Industry Integrating Committees), and the assistance of the Redistribution Offices of the War Production Board. The greatest freedom of action is therefore accorded these local agencies of the War Department and circularization of termination inventories is not required.

§ 807.202 *Disposition by contracting agency.* The following methods of disposition will be employed to effect the redistribution of termination inventories prior to reporting the property as surplus in accordance with § 807.209.

(a) Any property which is used or damaged beyond economical repair or is of such a nature that it has no reasonable use except as scrap will be classified as nonrepairable and disposed of in accordance with the provisions of Subpart D of this part. The Under Secretary of War has pointed out that "in many instances work in process must and should be sold as scrap for scrap prices." (See § 815.350 (b)).

(b) Any serviceable Government-owned property may be used to meet authorized requirements for military supply or industrial purposes and any contractor-owned property may be acquired for such purposes in accordance with the provisions of the contract.

(c) The contractor may be permitted to retain any property at a price agreed upon in accordance with the provisions of §§ 807.206, 807.207, and 807.208.

(d) Any Government-owned property may be transferred to the Navy Department, the Civil Aeronautics Administration, or other governmental agency in accordance with the provisions of Subpart C of this part.

(e) The sale of any property to any purchaser may be made or approved in

accordance with the provisions of §§ 807.206, 807.207, and 807.208.

§ 807.203 *Redistribution assistance at chief of service level.* Although chiefs of technical services will assist the local agencies under their jurisdiction in the redistribution of termination inventories, it is intended that the local agencies be given the greatest possible freedom of disposition in accordance with § 807.202. Accordingly, local agencies responsible for property disposition will refer significant items included in termination inventories to the chiefs of their respective technical services promptly upon receipt of property lists from the contractor. Such reference will not, however, be permitted to delay local disposition, nor will it limit local disposition, nor will it limit local disposition authority, except as may be specifically directed by the chief of the technical service concerned. Chiefs of technical services will give prompt consideration to the utilization of such items for military supply or industrial purposes within their own service, and may informally bring selected items to the attention of other technical services which might be expected to have an interest therein.

§ 807.204 *Redistribution assistance by War Production Board.* In order that the availability of industrial property may be broadly published to manufacturers and other prospective users, significant items included in termination inventories submitted to War Department representatives (other than items for which special disposition arrangements have been made) will be listed with the Regional Offices of the War Production Board. The War Production Board will maintain in its Regional Offices an inventory file of items so reported and will advertise items of general use in the "Redistributor", a weekly bulletin published by its Regional Offices, which is distributed to a large list of manufacturers and dealers. The War Production Board will refer inquiries of prospective purchasers to the contractor or to a War Department representative, as requested. Listing of termination inventories with War Production Board imposes no additional restrictions upon the movement of the property that are not applicable to property not so listed and the reference of prospective buyers by War Production Board imposes no obligations to sell the property to such persons or to accord them any favored treatment whatever.

(a). *Procedure for listing.* The local authority responsible for disposition of termination inventory will transmit, or cause the contractor to transmit, to the Regional Office of the War Production Board for the region in which the property is located (see § 807.903 for the addresses of these offices and the territories within their jurisdiction) a listing of the significant items of raw materials, purchased parts and supplies included in termination inventory lists (Schedule C–1) as soon as practicable after the submission of such lists by the contractor. The listing so transmitted may be either in the form of (1) a copy of the complete list of raw materials, purchased parts and supplies (Schedule C–1, § 815.939 (a)) submitted by the contractor, or (2) a transcript of all items (i. e., any quantity of like products, materials, etc.—usually indicated by a single entry in the termination inventory list) for which the cost or estimated cost is $1,000 or more. In either case, the listing transmitted to the War Production Board should contain the following information:

General information:
- Name of contractor.
- Location of property.
- Name and address of person with whom negotiations for purchase can be conducted.

Specific information for each item:
- Adequate description in commercial terms.
- Quantity available.
- Cost per unit (as indicated by contractor).
- Condition, if other than new and excellent.

This information will generally be contained in the termination lists submitted by the contractor. Each listing transmitted to the War Department Board should be dated and assigned an identifying number by the transmitting contractor or establishment.

Although not required, significant items of jigs, tools, dies and fixtures (Schedule C–3, § 815.939 (c)) that have general use, may be listed with War Production Board under the procedure stated above. Items of work-in-process (Schedule C–2, § 815.939 (b)) will not be so listed.

(b) *Advice of disposal.* For each item that it regards as significant, War Production Board will prepare an inventory slip (WPB Form 2206) and return a copy to the contractor or War Department representative who transmitted the listing. When items for which an inventory slip has been returned by the War Production Board are disposed of or otherwise withdrawn from availability, the inventory slip will be promptly sent to the Regional Office of the War Production Board with appropriate notation in accordance with the instructions printed thereon. If a part only of the item has been disposed of, that fact will be noted on the inventory slip and the War Production Board will return a new inventory slip for the remainder. When the items remaining undisposed of are reported to a Disposal Agency as surplus (see § 807.702) the remaining inventory slips will be returned to the Regional Office of the War Production Board under cover of a memorandum stating the name and address of the Regional Office of the Disposal Agency to which reported, and the date and serial number of the report.

§ 807.205 *Pricing policies.* The following statement of general policy applicable to the sale of termination inventories has been issued by the Surplus War Property Administrator:

> There is one matter of great urgency • • • with respect to which an immediate declaration of policy, is believed to be required. This concerns the disposal by or under the authority of a contracting agency of the government, of property becoming available as the result of the termination of a war contract by that agency.
>
> Such termination inventories are becoming available for sale in considerable quantities at the present time. The opportunity to dispose of much of this property is certainly more favorable now than it will be later, and the public interest will be served if it can be sold now and directly from the plant of the contractor where it is located.
>
> I understand that these termination inventories are not now being sold as rapidly or in as large quantities as is desirable, and that this stems in large part from a feeling on the part of contracting and termination officers in the field that they lack a definable policy for making such sales and that they may be criticized for the exercise of boldness and initiative in turning over the property, which results in unwillingness to authorize sales except at prices so high as to be often unobtainable.
>
> Being satisfied that the Government and the public should give the fullest measure of support and encouragement to the disposal of termination inventories at this time, so that they will not both occupy valuable storage space and complicate the future surplus problem at a time when the supply will be greater and the demand smaller, I have issued a statement of policy which I enclose. It is designed to give the strongest impetus to prompt sales of termination inventories to or by contractors consistent with intelligent protection of the public interest. It presupposes a reasonable effort to ascertain and obtain going market values, but makes it clear that where the circumstances preclude this, as they very often will, contracting officers are not subject to criticism for selling, subject to the reasonable requirements set forth in the policy statement, at the best prices reasonably obtainable, even though this may sometimes require going far below cost or nominal market.

The regulations pertaining to sales of termination inventories other than scrap prescribed by the Surplus War Property Administrator are set forth in § 807.206. The pricing and review regulations set forth in §§ 807.206, 807.207 and 807.208 apply to the approval of retention of property by the contractor, as well as to sales.

§ 807.206 *Specific price regulations—*(a) *Sale of termination inventories where total amount of termination claim is less than $10,000.* Sales of any property included in termination inventories, in any case where the entire amount involved in the termination claim before disposal credits is less than $10,000, will be made or approved at the best price obtainable in the judgment of the officer approving the sale, or, in the case of subcontracts as to which the power of approving the termination settlement has been delegated to a contractor of a higher tier, in the judgment of such contractor.

(b) *Sales of nominal quantities.* Sales of any items or groups of items may be made or approved at the best price obtainable when the estimated cost of all substantially similar items available for sale at any one location at any one time does not exceed $1,000.

(c) *Other sales of termination inventories—*(1) *Crude or simple raw materials.* Sales of crude or simple raw materials (such as raw cotton, pig iron, electrolytic copper or sulphur) which are freely traded in, and for which there is a recognizable market price, will not be made or approved at less than the going market price, as nearly as it can be de-

termined by reasonable effort within a reasonable time, taking in account packing, handling, and transportation costs. A list of such materials is being prepared by the Surplus War Property Administration and will be published in this part when available.

(2) *Other property.* Sales of property other than crude or simple raw materials, may be made or approved to any buyer at the best price obtainable in excess of 75 per cent of (i) cost, estimated if not known or (ii) the price which the buyer would have to pay for an equivalent quantity from a normal source of supply, whichever is lower.

(3) Sales of property, other than crude or simple raw materials, which cannot be disposed of within a reasonable time on the terms stated in subparagraph (2) above, may be made or approved at the best price obtainable to any buyer who will use or consume the property in the United States for manufacturing, construction, maintenance or repair purposes, and who will agree that if he does not use or consume it, he will not resell it at a profit. Written contracts of sale made under the authority of this subparagraph will contain such an agreement.

§ 807.207 *General pricing regulations.* To the extent authorized by the foregoing regulations of the Surplus War Property Administrator, termination inventories will be disposed of at fair and reasonable prices within the ceiling prices established by the Office of Price Administration and consistent with the expeditious disposal of property. In determining whether a price is fair and reasonable, the officer making or approving the sale should consider all pertinent factors, including such of the following as he deems relevant in the particular case:

(1) Physical condition of the property.
(2) Obsolescence.
(3) Freight necessary to be absorbed by purchaser to permit resale or use of the property, over amount which would be paid in normal commercial purchase.
(4) Value of the property for a converted use.
(5) Distributing commissions, handling charges, or profit allowances necessary to effect disposition through dealers or distributors.
(6) In case of sales to original suppliers, allowances to cover profit and cost of handling and resale.
(7) Cost of storage and amount of depreciation or deterioration if property is not sold.
(8) Market prices and price trends.
(9) Volume of similar property offered at the time.
(10) Effect of purchases from the Government upon prices which buyer must pay to other suppliers for the balance of his requirements.
(11) Value of post-sale services or guarantees offered by commercial suppliers and not obtainable from the Government.
(12) Inventory hazards and carrying charges of the purchaser.

In determining whether to make or approve a sale, consideration will be given to the present value, resale value, and probable demand for the property in all the circumstances, rather than to cost. Officers making or approving sales must be realistic about values and should recognize that disposal prices will, in many instances, bear little if any relationship to cost to the Government.

Officers making and approving sales and Disposal Boards will be supported by higher authority in the exercise of their honest judgment.

§ 807.208 *Review and approval of sales.* Sales made or approved under this section will be subject to prior review and approval by a disposal board established in accordance with § 807.105, in all cases where:

(1) The cost (estimated if not known) of the property to be disposed of in the sale exceeds $100,000 and it is proposed to sell such property below such cost or estimated cost, less freight and handling charges.

(2) The cost (estimated if not known) of the property to be disposed of in the sale exceeds $10,000 and it is proposed to sell at more than 25% below such cost, or estimated cost, less freight and handling charges.

For the purposes of determining whether or not a sale shall be submitted for the review and approval of a disposal board, sales of a single item and simultaneously negotiated sales of different items to a single buyer or of the same item to several buyers shall be considered as a single sale.

(a) *Sales and transfers which need not be reviewed.* The review and approval required by § 807.208 applies only to sales of serviceable property. The following transfers and sales may be made or approved without review:

(1) Sales made at specific prices established by, or with the approval of, the Surplus War Property Administrator;

(2) Sales to a cost-plus-a-fixed-fee contractor for the account of the Government:

(3) Sales of termination inventories to a Government agency;

(4) Transfers between War Department components or to the Navy Department, the Civil Aeronautics Administration or other Government agency, whether or not the transfer of funds is required.

(5) Transfers of surplus property to a Disposal Agency for purposes of disposal;

(6) Sales of nonrepairable property or salvage under applicable War Department Regulations.

(b) *Review at chief of service level.* Chiefs of technical services may require or permit review by Diposal Boards established in their offices pursuant to § 807.106 where the cost (estimated, if not known) of the property to be disposed of exceeds $500,000 and it is proposed to sell at more than 25% below such cost.

(c) *Disposition of surplus.* Any termination inventory transferred to the Government or for which the Government assumes storage responsibility pursuant to Subpart F–1 of Part 15, which has not been disposed of under § 807.202 at the time of such transfer or assumption of storage responsibility will be deemed surplus, and, with the exception of stockpile materials, will be promptly disposed of in accordance with Subpart G of this part.

§ 807.210 *Action to be taken on stockpile materials*—(a) *Report of stockpile materials.* When any of the materials listed in § 807.909 (herein referred to as "stockpile materials") are included in termination inventories in quantities equal to or in excess of the "minimum quantities" therein indicated and are not disposed of prior to transfer to the Government or assumption of storage responsibility by the Government, they will be reported to the chief of technical service having jurisdiction over the property, and held for disposition instructions. Such request for instructions will be made in triplicate by the field installation concerned on W.D., A.G.O. Form 257. A sample of this form, together with instructions for preparation, is set forth in § 807.909 (a). Copies of the form may be requisitioned from Adjutant General's Depots.

(b) *Action by chief of service.* Upon receipt of W.D., A.G.O. Form 257 covering any lot of stockpile materials, the chief of technical service concerned will take the following action:

(1) Execute First Indorsement thereto and forward two copies to the Director, Production Division, Headquarters, Army Service Forces, who has been designated by the Under Secretary of War as the administrator of War Department stockpile materials, for disposition instructions.

(2) If the Director, Production Division, issues instructions to hold the material for stockpile, the chief of technical service concerned will:

(i) Arrange for permanent storage of the material;

(ii) Issue appropriate instructions to the field installation concerned to accomplish permanent storage;

(iii) Advise the Director, Production Division, of the location and manner of storage;

(iv) Dispose of the material only upon specific authorization of the Director, Production Division.

(3) If the Director, Production Division, issues instructions not to hold the material for stockpile, the chief of technical service concerned will issue instructions to the field installation of origin to dispose of the material in accordance with Subpart G.

(c) *Action to be expedited.* It is imperative that action under paragraphs (b) and (c) be expedited in all echelons in order that double handling of stockpile materials may be avoided.

SUBPART C—DISPOSITION OF PROPERTY FOR PURPOSES DIRECTLY RELATED TO THE PROSECUTION OF THE WAR

§ 807.300 *Scope of subpart.* This subpart relates to the disposition of property for the purpose of enabling it to be used directly in the prosecution of the war. Such disposition may be made of both military and non-military property, without regard to its serviceability or state of supply. The authority herein granted may be exercised without first obtaining from the Chief of Staff a certificate under the Act of June 28, 1940, Title I, section 14–a (54 Stat. 681, 10 U. S. C. 1262a). The authority to dispose of property under this subpart is subject to

the provisions of Subpart G which limit the disposition of property after reporting to a disposal agency as surplus.

§ 807.301 *Sale to war contractors.* The chiefs of the technical services are authorized, when it is determined by them that such action will facilitate the prosecution of the war, to make contracts by negotiation for the sale of, and to sell to manufacturers and suppliers having war contracts, including employees and suppliers of war contractors, and to employees of the Government engaged in war production, any machine tool equipment, processing equipment, uniforms, safety clothing and equipment, plant protective clothing and other special articles necessary to persons employed in or otherwise connected with war industries or establishments, manufacturing aids, raw materials, manufactured materials or other materials or facilities presently owned or hereafter acquired by the Government. Such sales shall, however, be made only for the purpose of facilitating the performance of such war contracts or war production. All such contracts will recite that they are entered into pursuant to the First War Powers Act and Executive Order No. 9001.

(a) *Pricing policies.* Any sale made under § 807.301 shall be made in compliance with the provisions of §§ 807.206 and 807.207.

(b) *Review of sale.* Any sale made under this section shall be made in compliance with the provisions of § 807.208.

§ 807.302 *Sales to Red Cross and U. S. O.* The chiefs of the technical services are authorized to make contracts by negotiation and to sell to the Red Cross and the United Service Organization any military, subsistence, or other supplies or property which the chief of the technical service finds is needed by such institution in connection with its activities with the Army, provided that no such sale of military property will be made without the prior approval of the Commanding General, Army Service Forces (Stock Control Division), or in the case of the Army Air Forces property, the Commanding General, Army Air Forces, or his delegate or delegates. All such contracts will recite that they are entered into pursuant to the First War Powers Act and Executive Order No. 9001.

§ 807.303 *Other sales.* Sales for purposes directly related to the prosecution of the war, other than those authorized by §§ 807.301 and 807.302, may be made by the chiefs of the technical services provided that the approval of the Director, Readjustment Division, Headquarters, Army Service Forces, is first obtained.

§ 807.304 *Leases.* Under the First War Powers Act, 1941, and Executive Order No. 9001, and section 1 of the act of July 2, 1940 (Public No. 703, 76th Congress) as continued in effect by section 13 of the act of June 5, 1942 (Public No. 580, 77th Congress), the chiefs of the technical services are authorized, when it is determined by them that such action will facilitate the prosecution of the war:

(a) To include in supply contracts the Government-Owned Facilities article prescribed in § 803.332, subject to the regulations set forth as notes to § 803.332 and to other applicable sections of these procurement regulations (see Part 810 for approvals of higher authority which must be obtained in certain cases);

(b) To enter into separate lease agreements (i. e., agreements not made part of supply contracts), as authorized by Part 810.

§ 807.305 *Leases under other statutes.* Authority for the execution of lease agreements may be found in certain statutes other than those mentioned in § 807.304. See AR 850-30 for the terms of those statutes.

§ 807.306 *Disposition by contractors.* The chiefs of the technical services are authorized, when it is determined by them that insertion of such provision will facilitate the prosecution of the war or is necessary to carry out the purposes specified in section 1 of the act of July 2, 1940 (Public Law 703, 76th Congress, 54 Stat. 712), to insert in cost-plus-a-fixed-fee contracts and subcontracts heretofore or hereafter executed, the clause set forth in § 803.363, and any property may be disposed of by contractors pursuant to such clause.

§ 807.307 *Transfer to other Federal agencies.* Any property not declared or deemed surplus, may upon the requisition of another Federal agency made pursuant to section 7 (a) of the act of May 21, 1920 (41 Stat. 613) as amended by section 601 of the act of June 30, 1932 (47 Stat. 417) and by the act of June 20, 1942 (Public Law 670, 77th Congress, 56 Stat. 661, 31 U. S. C. 686), be transferred to such agency in accordance with said section: *Provided,* That military property will be transferred only with the approval or pursuant to regulations of the Commanding General, Army Service Forces (Stock Control Division), or, in the case of the Army Air Forces, the Commanding General, Army Air Forces, or his delegate or delegates.

§ 807.308 *Transfer to other War Department components.* Any property may, by direction of the chief of the technical service having control thereof, be transferred to another War Department component which has need of such property and makes request therefor: *Provided,* That military property will be transferred only with the approval or pursuant to regulations of the Commanding General, Army Service Forces (Stock Control Division), or, in the case of military property of the Army Air Forces, the Commanding General, Army Air Forces, or his delegate or delegates. Regulations prescribed by the Commanding General, Army Service Forces, governing the transfer of military property of Army Service Forces between War Department components are set forth in ASF AG Letter SPX 300.8 (13 November 1943) OB-P-SPDDP-MB-A, 18 November 1943, Subject: Policy Governing Transfer of Military Property between Technical Services.

§ 807.309 *Transfers to and from Navy.* Upon request from the Navy, any property may be transferred to the Navy with the approval of the chief of the technical service concerned and any property requested by the chief of the technical service concerned may be accepted from the Navy. Such transfers of property to the Navy will be made only with the approval or pursuant to regulations of the Commanding General, Army Service Forces (Stock Control Division), as to military property of Army Service Forces, and the Commanding General, Army Air Forces, or his delegate or delegates, as to military property of the Army Air Forces.

§ 807.310 *Transfers to Civil Aeronautics Administration.* Any property may, by direction of the chief of the technical service having control thereof, be loaned or transferred to the Administrator of Civil Aeronautics upon written request from him stating that the property will be used in carrying out the purposes of the Civilian Pilot Training Act of 1939 as amended (49 U. S. C. sec. 756). Such transfers will be made only with the approval or pursuant to regulations of the Commanding General, Army Service Forces (Stock Control Division), as to military property of Army Service Forces, and the Commanding General, Army Air Forces, or his delegate or delegates, as to military property of the Army Air Forces.

§ 807.311 *Transfers with reimbursement.* Transfers of property under § 807.307 will be effected with reimbursement pursuant to the statutes therein cited. Transfers of property permitted under §§ 807.308 and 807.309 will be effected with reimbursement of, or transfer or allotment of funds to, the transferor by the transferee,

(a) Where property is transferred to any War Department agency for use in connection with civil functions administered by the War Department, or,

(b) In any case where the property is procured by the transferor for the transferee:

(1) By assignment of sole purchase responsibility;

(2) Under procurement pooling arrangements;

(3) Under any arrangement for procurement by the transferor expressly upon the prior requisition of the transferee.

§ 807.312 *Transfers without reimbursement.* Transfers of property permitted under §§ 807.308 and 807.309 under circumstances other than those specified under § 807.311, and transfers of property permitted under § 807.310, will be effected without any reimbursement of, or transfer or allotment of funds to, the transferor by the transferee, for either the cost of the property or of packing, handling, or transportation.

§ 807.313 *Procedure for transfers without reimbursement.* Officers authorized to transfer or direct the transfer of property without reimbursement under § 807.312 will prepare written orders, listing in detail the property to be transferred, copies of which will be furnished to the Accountable Property Officer and the receiving officers. Such orders will contain a request that the authority directing the transfer be advised of any

discrepancies between the order and the property shipped or received. A copy of such orders will be used as a valid debit or credit voucher to property accounts. It will not be necessary to list for fiscal or property accounting purposes dollar values of property transferred without reimbursement.

§ 807.314 *Gifts and loans of drawings and other property.* (a) The chiefs of the technical services are authorized, without further approval, to 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 the use of the War Department under approved production plans.

(b) Whenever they determine that such action will facilitate the prosecution of the war, the chiefs of technical services are authorized to give or lend, by appropriate written agreement reciting such determination, to organizations engaged in experimental research, testing, or developing, such items and any other material, supplies or equipments for use in connection therewith, provided that if in the case of a gift the estimated value of the property in question exceeds $1,000, or, in the case of a loan, $50,000, the approval of the Director, Readjustment Division, Headquarters, Army Service Forces, will first be obtained.

(c) The Commanding General, Army Air Forces, whenever he determines that such action will facilitate the prosecution of the war, may authorize the transfer, loan, bailment or lease, by appropriate written agreement reciting such determination, of aircraft, aircraft engines, or aircraft equipment or matériel, without limitation as to the value thereof, to Army Air Forces contractors for the purpose of experimental research, testing or development, training of contractor's personnel, or urgent transportation requirements of such contractors in connection with the performance of their war contracts.

§ 807.315 *Exchange of property.* The chiefs of technical services are authorized to make any exchanges of property which are authorized by the following statutes: 39 Stat. 635, 10 U.S.C. 1271; 40 Stat. 43, 849, 10 U.S.C. 1272; 38 Stat. 1064, 10 U.S.C. 1273; 38 Stat. 1161, 41 U.S.C. 26; 50 Stat. 64, 5 U.S.C. 118d; 53 Stat. 739, 10 U.S.C. 1271(a); 44 Stat. 680, 10 U.S.C. 1209, 1210, act of July 2, 1940, Public 703, 76th Congress, as extended by the act of June 5, 1942, Public 580, 77th Congress; section 203 of the act approved June 26, 1943, Public Law No. 90, 78th Congress. Any other exchanges will be submitted for the approval of the Director, Readjustment Division, Headquarters, Army Service Forces.

SUBPART D—DISPOSITION OF NON-REPAIRABLE PROPERTY

§ 807.400 *Scope of subpart.* This subpart provides the authority and procedures for disposing of nonrepairable property. It is of special importance in connection with the disposition of termination inventories as it covers the disposal of property classified as scrap. The memorandum of the Under Secretary of War set forth in § 815.350 (b) and the provisions of § 815.855 state the policy of the War Department with respect to the scrapping of termination inventory.

§ 807.401 *Non-military property other than current production scrap.* (a) Government-owned non-military property other than current production scrap may be classified as non-repairable by the submission of a list of the property involved to an authorized officer and the execution thereon by such officer of the following certificate:

> It is my opinion that the property listed hereon is (include (1) or (2), whichever is appropriate)
>
> (1) used or damaged beyond economic repair
>
> (2) obsolete or so specialized in design or otherwise of such a nature that it has no reasonable use except as scrap
>
> and is therefore properly classified as non-repairable non-military property in accordance with the provisions of Procurement Regulation No. 7, and that its condition is not due to fault or neglect.

Where the property is new but nevertheless properly classified as non-repairable, as will be the case with many obsolete items and items of work in process, the phrase following the last comma may be omitted.

The certifying officer will inspect the property or require the submission of such statement of fact and report of inspection as he deems necessary as a basis for the execution of the certificate.

(b) A copy of such list with the certificate will be furnished to the accountable property officer, and will operate as a credit voucher discharging accountability.

(c) Property so certified, except property in the possession of a contractor which is to be disposed of under § 807.403, will be turned over to a salvage officer with a copy of the list and certificate.

(d) Non-repairable property in the possession of a cost-plus-a-fixed-fee contractor may be either (1) sold to or by the contractor in accordance with the provisions of § 807.403 below, or (2) turned over to a salvage officer for disposal. In either case the certificate prescribed in paragraph (a) above will not be required. In such cases, the credit voucher to the property account will consist of a copy of the list of property turned over to a salvage officer or approved by the contracting officer for sale by the contractor, supported by the contracting officer's written advice to the accountable property officer as prescribed in paragraph 1004 (a) of the War Department Industrial Property Accounting Manual, or, if there is no question as to the responsibility of the contractor for the condition of the property, supported by written order of the contracting officer directing transfer to the salvage officer or approving the sale by the contractor.

(e) Non-repairable Government-owned property in the possession of fixed price contractors may be disposed of in the same manner as non-repairable property in the possession of cost-plus-a-fixed-fee contractors under paragraph (d), in all cases where application of the War Department Industrial Property Accounting Manual to property in the possession of fixed-price contractors has been authorized.

§ 807.402 *Current production scrap.* Current production scrap, which is industrial scrap resulting from the fabricating or processing of raw materials (such as chips, cuttings, borings, and short ends of ferrous and non-ferrous metals, clippings and cuttings from wool and cotton fabric, residues from chemicals and plastics, rubber and treated fabric offal, glass, paper and lumber offal, damaged and unsuitable packing materials and containers), other than that disposed of by a cost-plus-a-fixed-fee contractor under contract provisions, will be turned over to a salvage officer, without the certification required under § 807.401.

§ 807.403 *Sale of non-repairable property by or to contractors.* Any non-military property in the possession of a cost-plus-a-fixed-fee contractor, which has been classified as non-repairable pursuant to § 807.401 above, and any contractor-owned property included in termination inventory as to which a determination to scrap has been made, may be sold by the contracting officer to the contractor, or retained or sold by the contractor with the approval of the contracting officer.

§ 807.404 *Military property, and non-military property not certified under § 807.401.* Military property, and non-military property which cannot be certified under § 807.401, may be classified as non-repairable and turned over to a salvage officer in accordance with the provisions of AR 35-6640, and War Department Circular No. 7, 1944.

§ 807.405 *Designation of salvage officer.* Chiefs of technical services may designate the salvage officer to receive and dispose of non-repairable non-military property.

§ 807.406 *Disposition by salvage officers.* All property turned over to a salvage officer in accordance with this subpart will be disposed of in accordance with AR 700-25, TM 38-505, and any other applicable regulations.

§ 807.407 *Special procedure.* Non-repairable property included in termination inventory may be disposed of by contracting officers under regulation prescribed by the chief of the technical service concerned, in lieu of being turned over to a salvage officer, provided the approval of the Director, Readjustment Division, Headquarters, Army Service Forces, is first obtained.

§ 807.408 *Review and approval of scrapping.* Government-owned non-military property (other than that worn out through fair wear and tear) will not be certified as non-repairable property under § 807.401, nor will a determination to scrap contractor-owned property included in termination inventory be made, without the prior review and approval of a local disposal board if the cost (estimated if not known) of the property covered by the certificate or

determination exceeds $50,000. Property will not be subdivided for the purpose of avoiding this limitation.

§ 807.409 *Review at chief of service level.* Disposal Boards established in the office of a chief of a technical service pursuant to § 807.106 may review certification of Government-owned non-repairable property under § 807.401, or determination to scrap contractor-owned property included in termination inventory, where the cost of the property involved (estimated if not known) exceeds $500,000.

§ 807.410 *Pricing policies on sales of non-repairable property included in termination inventory.* The following pricing policies prescribed by the Surplus War Property Administrator will apply to (1) the retention or sale by the contractor of non-repairable property included in termination inventory, and (2) the sale by contracting officers of such property when approval for such procedure has been obtained under § 807.407.

(a) *Where total amount in settlement is less than $10,000.* Sales of any non-repairable property included in termination inventories, in any case where the entire amount involved in the contract settlement before disposal credits is less than $10,000, will be made or approved at the best price obtainable in the judgment of the officer approving the sale, or in the case of subcontracts as to which the power of approving the termination settlement has been delegated to a contractor of a higher tier, in the judgment of such contractor.

(b) *Large termination inventories.* Sales of non-repairable property included in termination inventories where the entire amount involved in the contract settlement before disposal credits is $10,000 or more will be made in accordance with the following policies:

(1) The officer making or approving the sale or his representative shall determine, as nearly as may be possible by reasonable effort within a reasonable time, the going price of the type of scrap in question by reference to published trade indicators or inquiry among Government agencies, dealers, or other informed sources, taking into account transportation cost and sundry other charges.

(2) If it is possible to realize this price without competitive bidding the contracting officer may approve the sale.

(3) If it is not possible to obtain this price the contracting officer will arrange for sale of the property after competitive bids, reserving the right to reject all bids if in his judgment an adequate price is not offered.

(4) All sales of scrap, whatever method of sale is adopted, shall be subject to the following warranty:

> The purchaser represents and warrants to the United States that the property covered by this agreement was offered as scrap, purchased by him as scrap, and that he will sell or ship or use it as scrap either in its existing condition or after further preparation and only in conformity with all applicable regulations and orders of the Office of Price Administration and the War Production Board.

In the case of contractor sales, the phrase "to the United States" should be omitted.

SUBPART E—DISPOSITION OF SERVICEABLE MILITARY PROPERTY

§ 807.500 *Scope of subpart.* This subpart provides authority and procedures in addition to those in Subparts C and D for the disposition of military property. In this connection, attention is called to the policy of the War Department requiring prompt disposition of excess property as stated in § 807.103.

§ 807.501 *Declaration of surplus.* The chiefs of the technical services are authorized to declare serviceable military property surplus with the approval of, or subject to regulations prescribed by, the Commanding General, Army Service Forces (Requirements Division), or the Commanding General, Army Air Forces, or his delegate or delegates, as to property of the Army Air Forces, and to dispose of such property in the manner provided in this subpart notwithstanding the provisions of section 14a, Chapter 440, of Title 1 of the act of June 28, 1940 (54 Stat. 681, 10 U.S.C. 1262a). The regulations prescribed by the Commanding General, Army Service Forces, governing the declaration of military property as surplus are set forth in ASF Circulars Nos. 67 (section I) and 101 (section II), 1944.

§ 807.502 *Mutilation and disposition of certain military property that is unsuitable for civilian use.* Because of their peculiarly military characteristics, certain items such as lethal weapons, ammunition, certain aeronautical equipment, classified articles (see AR 380-5), and distinctive articles of the uniform, cannot be released for civilian use when they are declared surplus, but must be mutilated and scrapped, disarmed, stripped of their military characteristics, altered and declassified, or otherwise made suitable for nonmilitary use before they are disposed of. When such items are declared surplus, the authority declaring them surplus will give specific directions for the mutilation, alteration, disarming, stripping, cannibalization or other action to be accomplished before disposal; and will give further specific directions as follows:

(a) If, in his judgment, the items, or the residue thereof, will have no reasonable use except as scrap after such mutilation, etc., he will direct that the items, or the residue thereof, be turned over to the local salvage officer for disposal as scrap in accordance with applicable salvage regulations. (See AR 35-6520, par. 5b (5), for accounting procedure.)

(b) If, in his judgment, the items or any part thereof will have value for civilian use after such mutilation, etc., he will direct that they be disposed of as surplus after the accomplishment of such mutilation, etc.

§ 807.503 *Disposition of surplus.* Military property declared surplus and not directed to be disposed of as scrap will be disposed of in accordance with Subpart G. (See AR 35-6520, par. 5b (4) for accounting procedure.)

SUBPART F—DISPOSITION OF SERVICEABLE NON-MILITARY PROPERTY OTHER THAN TERMINATION INVENTORY

§ 807.600 *Scope of subpart.* This subpart provides authority and procedures for disposing of non-military property other than termination inventories, in addition to those set forth in Subparts C and D. In this connection attention is called to the policy of the War Department set forth in § 807.103 requiring constant and active review of non-military property on hand and in the process of manufacture and prompt disposition of excess property.

§ 807.601 *Circularization.* When it has been determined that items of non-military property are not required for an immediately or definitely forseeable need at the point of use, action will be immediately taken to redistribute such items within the technical service concerned or to return the property to a direct war use in accordance with Subpart C. When such items cannot be so redistributed promptly to fill known requirements or requirements that can be ascertained by informal inquiry (which should be localized and expedited to the greatest extent practicable), the circularization procedures established in this subpart will be promptly instituted and vigorously pursued. It is intended that circularization will be effected contemporaneously within the technical service of origin and among other technical services, to the fullest extent practicable. The chiefs of the technical services will designate the offices within their respective services which will originate circularization lists and the intervals of time at which circularization lists will be originated. In no event will any item of production or utility equipment (see § 807.601 (a) (1)) be withheld from circularization for a period in excess of 60 days after it becomes idle, unless (1) it is comprised in a complete industrial installation that has been reported as excess under War Department Circular No. 8, 1944, (see § 807.601 (e)) or that has been authorized to be held as standby, or (2) it has been placed on a schedule of items authorized to be held as War Reserve, or (3) the Director, Readjustment Division, Headquarters, Army Service Forces, has been advised that the equipment is being withheld from circularization for a stated future use, or for other stated reasons.

(a) *Circularization lists.* Circularization lists will be divided into Part 1, Part 2, Part 3, Part 4, and Part X. Property listed under the respective subdivisions will be referred to as "part 1 property", "part 2 property", and so forth.

(1) Part 1 will include all items of production equipment and utility equipment.

(i) Production equipment includes the following:

Machine tools.
Metal working machinery.
Cleaning and spraying equipment.
Compressors and vacuum pumps.
Industrial pumps.
Industrial conveying machinery.
Engines and turbines, general purpose.
Heat exchangers.
Optical machinery.
Industrial cranes and hoists.
Thermal driers and dehydraters.

Fans, blowers and exhausters, industrial types.
Pressure and vacuum filters.
Pressure vessels (other than boilers).
Electric motors, integral horsepower, and electric motor controls.
Power conversion equipment.
Foundry equipment.
Heat treating equipment.
Welding and cutting equipment, industrial types.
Crushing, pulverizing, screening and mixing equipment and machinery, industrial types.
Special industry machinery (specialized machinery for food products, pulp and paper, printing trades, rubber working, petroleum, ceramics, glass, shoemaking, textile, tanning, pharmaceutical, chemical and other special industries).

(ii) Utility equipment includes major items of equipment used in the generating, processing, transmission or distribution of electricity, gas and water, and in the disposal of sewage.

(2) Part 2 will include all construction equipment of a standard type not so restricted in design as to render it unsuitable for non-military use of a recurring nature. Such construction equipment includes, but is not limited to, drilling and boring equipment, earth and rock, including core drills, rock drills, churn drills, earth bores and horizontal augers; power cranes and shovels, drag lines, buckets, stiff-leg derricks, and dredges; scrapers, maintainers, and graders; tractors, track-laying and wheel types; tractor-mounted construction equipment including angledozers, bulldozers, and power control units; winches and hoists, contractors elevating, road brooms, concrete buggies and carts, bins, centerline marking equipment, road discs, ditchers, aggregate dryers, joint and crack filling machinery, road forms, form tamping machines, mud jacks, portable snow loaders, tamping rollers, scarifiers, concrete towers, contractors' crawler wagons, and similar equipment; construction material mixers, spreaders, pavers, surfacers, finishers, tampers, vibrators, and related construction machinery; construction material processing equipment, including asphalt plants and portable crushers.

(3) Part 3 will include all items not included in Parts 1, 2 or 4, which, in the judgment of the technical service concerned, have a reasonably foreseeable use for industrial or military purposes or for civilian supply and which cannot practicably and expeditiously be redistributed without wide circularization.

(4) Part 4 will include controlled materials in the forms and shapes and in the minimum quantities set forth in § 807.901. Part 4 will be subdivided into

Part 4A, consisting of steel;
Part 4B, consisting of copper and copper base alloy; and
Part 4C, consisting of aluminum.

Circularization lists of Part 4 property will be prepared substantially in the form set forth in § 807.901 (a), (b) and (c).

(5) Part X will include all items not included in Parts 1, 2, 3, and 4.

(b) *Description and coding.* (1) Circularization lists will be on 8 x 10½ paper and will contain the following information:

(i) Name of issuing office together with the station identification number and appropriate letter symbol of the technical service concerned.

(ii) Serial number of list. Each issuing office will serially number each list circularized beginning with the number 1.

(iii) Date of circularization, which will be the date of transmittal required under § 807.601 (c).

(iv) Serial number of items or lots. Items or lots will be serially numbered under each part of each list.

(v) Description of items or lots. Descriptions will comprise such information as would be required by the controlling technical service if it were procuring the property, including, when pertinent, name of manufacturer, manufacturer's catalog number if available, identification numbers, location, age, condition, quantity and cost per unit if available.

(vi) Specific instructions by which an interested agency may be guided in negotiating sale or transfer of property reported. Names, mail and telephone addresses of officers authorized to carry on negotiations, may be either included in each list circularized or published in bulletin form by the technical service concerned to all recipients of the lists.

(2) For the purpose of convenient abbreviation in communications regarding property circularized, items may be identified by code, which will include in sequence, the station identification number and the letter symbol of the issuing office, serial number of list, part of list, serial number of item. For example a particular heat exchanger listed as the second item of Part 1 of the third list circularized by an office of Ordnance Department; having station identification number "12345" would be identified as "12345-Ord-3-1-2."

(c) *Transmittal of lists.* Circularization will be accomplished by transmitting copies of Circularization Lists as follows:

(1) Parts 1 and 3 to the offices listed in § 807.902.

(2) Part 2 to the Redistribution and Salvage Officer, Office of the Chief of Engineers (3 copies) and to Readjustment Division, Headquarters, Army Service Forces (3 copies).

(3) Part 4 to Readjustment Division, Headquarters, Army Service Forces (3 copies), and to the Regional Office of War Production Board for the region in which the property is located. The addresses of such Regional Offices and the territories within their jurisdiction are set forth in § 807.903.

(4) Part X to Readjustment Division, Headquarters, Army Service Forces, to procurement offices of other technical services at such levels and within such geographical areas as the technical service concerned deems desirable, and to the Regional Office of War Production Board for the region in which the property is located.

(5) Transmittal of Circularization Lists to War Production Board is required for the sole purpose of advertising the availability of excess property to military agencies, war contractors and others to whom disposition is permitted under Subpart C of this part. Such transmittal does not impose any restrictions upon the movement of the property included therein that are not otherwise imposed by applicable regulations of War Production Board, nor does it impose any obligation to sell or transfer to any prospective purchaser or transferee referred by the War Production Board to the War Department representative responsible for disposal or to accord them any favored treatment whatever.

(d) *Certain items as to which circularization may be limited or eliminated.* The following types of non-military property (in addition to termination inventories) may be omitted from general circularization lists:

(1) Items that are peculiar to a technical service and which, in the judgment of the chief of the technical service concerned, have no value to other technical services or their contractors. Such items, when determined, by means of limited circularization or otherwise, to be excess to the technical service concerned, will be deemed surplus without further action and disposed of in accordance with Subpart G.

(2) Single items or groups of items, where the cost, estimated if not known, of all substantially similar items in excess at any one time and at any one place does not exceed $100. Such items will be deemed surplus without further action and disposed of in accordance with § 807.701.

(e) *Certain equipment not to be circularized without prior approval.* Part 1 property comprised in a complete industrial installation reported as excess under War Department Circular No. 8, 1944, will not be circularized under this subpart unless such circularization has been approved or directed by the Director, Readjustment Division, Headquarters, Army Service Forces.

(f) *Certain equipment that may be turned over to another technical service for redistribution.* Production equipment may be turned over to Ordnance Department, and utility equipment and construction equipment may be turned over to the Corps of Engineers, when such equipment is determined, by means of limited circularization or otherwise, to be excess to the technical service concerned. The Chief of Ordnance and the Chief of Engineers, respectively, will accept physical delivery, accountability and responsibility for utilization, storage as necessary, redistribution and disposal of equipment so turned over. If general circularization under § 807.601 has been

initiated by the technical service of origin prior to turning over the property, the action required by this subpart will be completed by the Chief of Ordnance or the Chief of Engineers, as the case may be. If general circularization under § 807.601 has not been initiated by the technical service of origin prior to turning over the property, the action required by this subpart will be promptly initiated by the Chief of Ordnance as to items turned over to Ordnance Department for which requirements cannot be promptly ascertained, and by the Chief of Engineers as to items turned over to the Corps of Engineers for which requirements cannot be promptly ascertained. The procedure for turning over such equipment to Ordnance Department is set forth in section VIII, ASF Circular No. 4, 1944, and to the Corps of Engineers in section III, ASF Circular No. 28, 1944.

(g) *Circularization period.* The period of 60 days after transmittal of Circularization Lists is established as the circularization period for Part 1 property, and the period of 30 days after the transmittal of Circularization Lists is established as the circularization period for Parts 2, 3 and 4, and X property.

§ 807.602 *Disposition during circularization period.* Before the termination of the circularization period, the technical service concerned will determine what property included in Circularization Lists should be retained for present or definitely forseeable needs within such service for military or industrial purposes, or for authorized stockpile or War Reserve, and will withdraw such property from availability. Property which is not so withdrawn may be disposed of during the circularization period in accordance with the provisions of Subpart C of this part. The Chief of Engineers is specifically charged with acquiring items of Part 2 property not withdrawn under the first sentence of this paragraph which are suitable for troop use or tactical operations.

§ 807.603 *Disposition after circularization period.* Upon the termination of the circularization period, non-military property which has not been withdrawn or disposed of under § 807.602 will be deemed surplus, without further action, and, with the exception of stockpile materials, will be promptly disposed of in accordance with Subpart G.

(a) *Action to be taken on stockpile materials.* Stockpile materials in excess of the minimum quantities indicated in § 807.909 at any one location will be reported by the chief of technical service concerned to the Director, Production Division, Headquarters, Army Service Forces, for disposition instructions. W.D., A.G.O. Form 257 will be used for this purpose. After reporting, the chief of technical service concerned will take action in accordance with the provision of § 807.210 (b).

§ 807.604 *Deviation from regulations in exceptional cases.* When adherence to the regulations prescribed in this subpart would impede the expeditious return of unneeded industrial property to use in the war effort, the Director, Readjustment Division, Headquarters, Army Service Forces, is authorized to permit deviation therefrom with respect to the disposition of classes or particular items of industrial property. Applications under this section will include the following:

(a) A description of the class of items, or in the case of particular items, a reference to the list in which the items have been listed, or a description of the items in accordance with § 807.601(b) (1) (v) if they have not been listed.

(b) A statement of the circumstances indicating the desirability of deviation from the procedures established in this subpart.

§ 807.605 *Non-military property peculiar to Army Air Forces.* This subpart does not apply to non-military property peculiar to aircraft production to the extent that any of the provisions hereof may be inconsistent with procedures established for the redistribution of such property by or under the direction of the Aircraft Resources Control Office of the Aircraft Production Board or the Surplus War Property Administration.

SUBPART G—DISPOSAL OF SURPLUS PROPERTY

§ 807.700 *General.* Under its Regulation No. 1, effective 15 May 1944, the Surplus War Property Administration has assigned responsibility for disposal of surplus property among disposal agencies as indicated in § 807.904 and has established procedures for reporting surplus property to these disposal agencies. When property has been determined to be surplus under the procedures established under Subparts B, E and F of this part, action will be promptly taken to dispose of nominal quantities of property in accordance with § 807.701 and to report the remaining surplus property to the appropriate disposal agencies in accordance with § 807.702.

§ 807.701 *Disposal of nominal quantities.* Single items or groups of items of surplus property, where the cost, estimated if not known, of all substantially similar items in surplus at any one time and at any one place does not exceed $100, will be turned over to the local salvage officer (or to the contracting officer, where there is no local salvage officer) for sale. Sales of such property by the local salvage officer will be made in accordance with regulations applicable to the sale of salvage, except that all documents relating to such sales will be clearly marked to indicate sale of surplus property. Sales of such property by the contracting officer will be made in accordance with regulations prescribed by the chief of the technical service concerned.

§ 807.702 *Reporting to disposing agency.* Surplus property other than that required to be disposed of under § 807.701 will be promptly reported to disposal agencies as follows:

(a) *Ships, small watercraft and related property.* Surplus ships of commercial design or susceptible to commercial use will be reported to the United States Maritime Commission, Attention: Captain R. J. Moran, Director, Division of Small Vessel Procurement, Washington 25, D. C. Before reporting, detailed instructions as to descriptive matter and other information to be supplied will be obtained from that office. Small watercraft and other property assigned to the Maritime Commission as set forth in § 807.904 will be reported to the United States Martime Commission, Attention: Mr. E. W. Gorman, Assistant to the Director of the Procurement Division, Washington 25, D. C.

(b) *Aircraft and related property.* Surplus aircraft and gliders, aircraft engines, propellers, and spare parts, special components, and subassemblies of aircraft and gliders, will be reported to the Reconstruction Finance Corporation, Attention: Surplus Property Director, Washington 25, D. C.

(c) *Food and related property.* Surplus food and related property assigned to War Food Administration as set forth in § 807.904 will be reported to the Regional Office of the War Food Administration for the region in which the property is located. The addresses of the Regional Offices of the War Food Administration and the territories within their jurisdiction are set forth in § 807.906.

(d) *Military property other than aircraft, food and ships.* Military property other than aircraft, food and commercial ships will be reported to Reconstruction Finance Corporation or Procurement Division, Treasury Department, in accordance with the assignments set forth in § 807.904. By far the greater part of such property will consist of items of the type assigned to Procurement Division, Treasury Department for disposal. Where it is considered impracticable to segregate items of military property assigned to Reconstruction Finance Corporation, they may be included in reports to the Procurement Division, Treasury Department.

Reports will be made to the Regional Office of the appropriate Disposal Agency for the region in which the property is located. The addresses of the Regional Offices of the Reconstruction Finance Corporation and Procurement Division, Treasury Department, respectively, and the territories within their jurisdiction, are set forth in §§ 807.907 and 807.908.

Surplus military property under the jurisdiction of technical services of Army Service Forces (see ASF Circular No. 67, section I, 1944) which is in stock at depots and at installations below depot level will be reported by the depot. Installations below depot level will furnish the appropriate depot with information necessary for the reporting of surplus property in stock below depot level. Surplus military property under the jurisdiction of commanding generals of Army Service Forces service commands (see ASF Circular No. 101, section II, 1944) will be reported by the service commander.

(e) *Non-military property other than termination inventories*—(1) *Part 1 property; production and utility equipment.* Surplus Part 1 property will be

reported to the Reconstruction Finance Corporation, Attention: George F. Buskie, 811 Vermont Avenue, N.W., Washington 25, D. C. As an interim procedure, reports of surplus Part 1 property will be submitted through Readjustment Division, Headquarters, Army Service Forces. Three copies will be transmitted to Readjustment Division, two of which will be forwarded to the Reconstruction Finance Corporation, and one retained for information purposes.

(2) *Part 2 property; construction equipment.* Surplus Part 2 property will be reported to the Regional Office of the Procurement Division, Treasury Department, for the region in which the property is located.

(3) *Part 4 property; controlled materials.* Surplus Part 4 property will be reported to the Regional Office of Reconstruction Finance Corporation for the region in which the property is located.

(4) *Part 3 and X property.* Surplus Part 3 and X property other than aircraft, food and commercial ships, will be reported to Reconstruction Finance Corporation or Procurement Division, Treasury Department in accordance with the assignments set forth in § 807.904. Reports will be transmitted to the Regional Office of the appropriate Disposal Agency for the region in which the property is located. The assignments of those items likely to be included in Parts 3 and X are as follows:

Procurement Division, Treasury Department:
- Paper and paper products.
- Cotton, wool and linen basic textiles, and fabricated textile products.
- Basic metal products as follows:
  - Barbed and twisted wire.
  - Woven wire and chain link fencing and fence posts.
  - Insect screening.
  - Wire springs.
  - Wire hoops.
  - Chain and attachments.
  - Nails, tacks and staples.
  - Bolts, nuts, screws, rivets, washers, turnbuckles, eyelets and grommets.
  - Strapping.
  - Builders basic hardware and casket, furniture, and trunk and luggage hardware.
- Glass, pottery and ceramic basic materials and products.
- Rubber fabricated materials and products.
- Containers, closures and packing materials.
- Industrial trucks, tractors, trailers, stackers and accessories.
- Agricultural machinery and implements.
- Motor vehicles, engines, parts, components, assemblies and accessories.
- Plumbing and heating materials and equipment.
- Commercial and household electric appliances, lamps and dry cell and storage batteries.
- Commercial and domestic air-conditioning and refrigerating equipment.
- Hand tools and mechanics measuring tools.
- Office machines, typewriters, cash registers, calculating and computing scales.
- Furniture and fixtures.
- Professional and scientific instruments and apparatus.
- Apparel and footwear.

Reconstruction Finance Corporation:
- Leather, and boot and shoe cut stock and findings.
- Lumber, veneer, plywood and millwork.

Reconstruction Finance Corporation—Con.
- Petroleum and petroleum products.
- Chemicals.
- Paints, varnishes, lacquers, japans, thinners, pigments, driers, fillers and related products.
- Ferro and nonferrous additive alloys.
- Nonferrous metals (except aluminum, copper and copper-base alloy).
- Fabricated structural iron and steel and architectural metal work.
- Power boilers.
- Storage tanks.
- Insulated wire and cable.
- Basic non-metallic structural products.
- Abrasives.
- Asbestos basic products.
- Graphite and carbon basic products.
- Refractories.
- Mechanical power-transmission equipment and bearings.
- Electric motors, fractional horsepower.
- Electrical building supplies.
- Communication equipment.
- Railroad transportation equipment.
- Indicating, recording and controlling instruments.

(f) *Termination inventory.* Surplus termination inventory will be reported to the Regional Office of Reconstruction Finance Corporation for the region in which the property is located.

§ 807.703 *Report forms.* All reports of surplus property to disposal agencies will be made on Forms SWPA–1 and SWPA–1 (A). Copies of these forms, together with instructions for preparation, are set forth in § 807.905. These forms will be available in Adjutant General's Depots after 1 July 1944. Optional use of Treasury Department Form 812 is permitted on reports to Procurement Division, Treasury Department, until Forms SWPA–1 and SWPA–1 (A) are available.

§ 807.704 *Transmittal of reports.* Reports of surplus property will be transmitted to Procurement Division, Treasury Department, in triplicate and to other disposal agencies in duplicate, with information copy to the Director, Readjustment Division, Headquarters, Army Service Forces.

§ 807.705 *Action after reporting.* After the property has been reported to a disposal agency, the field installation concerned will hold the property subject to disposition instructions from the disposal agency.

§ 807.706 *Withdrawal for further use.* Property which has been reported to a disposal agency may be withdrawn for further use by the technical service of origin or for transfer to another component of the War Department, with the consent of the disposal agency to which the property was reported. Immediately upon the withdrawal of property under this paragraph, a withdrawal report will be transmitted to the disposal agency to which the property was originally reported as surplus. Withdrawal reports will be prepared and transmitted in the same manner as surplus reports, except that the word "withdrawal" will be entered conspicuously at the top right hand margin of the report form.

§ 807.707 *Disposal by disposal agency.* The disposal agencies will dispose of all property reported as surplus that is not withdrawn under § 807.706 (except as provided in § 807.710)). Disposal may be effected directly from War Department storage or after removal to storage facilities of the disposal agencies. All echelons will extend the fullest cooperation to the disposal agencies in this connection. Liaison will be promptly established between field establishments handling surplus property and the field agencies of the disposal agencies. Provisions will be made for furnishing additional information to disposal agencies and exhibiting the property to the fullest extent practicable upon request of a disposal agency.

§ 807.708 *Shipment after disposal.* When property has been disposed of by a disposal agency, or when the disposal agency takes custody of the property prior to disposal, the disposal agency will issue appropriate shipping instructions to the office designated in the surplus report as the "shipping office." The War Department is not required to, and should not, repair, recondition or reprocess surplus property, nor assume the expense of transportation, although the use of War Department transportation facilities in moving surplus property into storage facilities of a disposal agency is authorized when the convenience of the War Department will be served thereby and when the use of such transportation facilities will not interfere with the normal military functions of the installation concerned. Although the disposal agency, or the consignee to whom delivery is directed, will ordinarily bear the expenses of preparation for shipment, the field installation concerned may prepare the property for shipment without reimbursement, if it so desires. When requested by the disposal agency, copies of bills of lading or other shipping documents and advice as to date of shipment will be furnished the disposal agency.

§ 807.709 *Fiscal procedures.* The War Department will not be reimbursed for surplus property delivered to or upon the direction of a disposal agency. A copy of the shipping document, together with a copy of the shipping instructions received from the disposal agency will constitute a valid credit voucher to property accounts.

§ 807.710 *Clearance for sale by War Department.* When special circumstances, such as danger of deterioration or sanitary or other hazard, or urgent requirement for storage space for military supplies, make immediate sale by the War Department desirable, application may be made to the appropriate disposal agency for clearance of the property for direct sale by the War Department. Such applications will only be made through or with the approval of the Director, Readjustment Division, Headquarters, Army Service Forces.

(a) *Sale after clearance.* Property which a disposal agency has cleared for sale may be sold by negotiated sale.

The chief of the technical service obtaining clearance may direct that the property be sold by a particular officer or that it be sold in a particular manner. In the absence of such directions, sales will be made by the local salvage officer in accordance with regulations applicable to the sale of salvage, except that all documents relating to such sales will be clearly marked to indicate sale of surplus property.

APPENDIX

§ 807.901 *Items to be included in lists of Part 4 property.*

PART 4A—CARBON AND ALLOY STEEL

Forms and Shapes	*Minimum quantity per item of a single size and grade*
Carbon steel:	
Bars, cold finished	2,000 pounds.
Bars, hot rolled	
Ingots, billets, blooms, slabs, tube rounds, skelp and sheet and tin bar.	
Pipe (new only)	
Plates	
Sheets and strip	
Structural shapes and piling	
Tin plate, terne plate, and tin mill black plate.	
Wire rods, wire .0475 inch diameter and up, and other wire products.	
Tubing, 1½ inch diameter and up (new only).	
Tubing under 1½ inch diameter (new only).	1,000 feet.
Wire under .0475 inch diameter.	500 pounds.
All tool steel	100 pounds.
Alloy steel:	
Bars, cold finished	2,000 pounds.
Bars, hot rolled	
Ingots, billets, blooms, slabs, tube rounds, sheet bar.	
Pipe (new only)	
Plates and structural shapes	
Sheets and strip	
Wire rods, wire .0475 inch diameter and up, and other wire products.	2,000 pounds.
Tubing 1½ inch diameter and up.	
Tubing under 1½ inch diameter.	1,000 feet.
Wire under .0475 inch diameter.	500 pounds.
All stainless steel	
All tool steel	100 pounds.

PART 4B—COPPER AND COPPER BASE ALLOY

Brass Mill Copper Base Alloy Products:	
Sheet and strip	500 pounds.
Rods, bars and wire (including extruded shapes, not including slugs).	
Tubing and Pipe	
Brass Mill Copper Products:	
Plate, sheets and strip	
Rods, bars and extruded shapes (excluding wire bars and ingots bars).	
Tube and pipe	
Wire Mill Copper Products:	
Wire and cable (including insulated wire and cable).	
Foundary Copper and Copper Base Alloy Products:	
Castings	

PART 4C—ALUMINUM

Rod, bar, wire and cable	300 pounds.
Forgings, pressings and impact extrusions.	
Castings	
Shapes, rolled or extruded	
Sheet, strip, plate and foil	
Tubing	
Ingot and powder	
Rivets	

NOTE: Smaller quantities than those above listed, but not less than the following, may be included in Part 4, if desired by the Technical Service concerned:

Carbon Steel:	
Structural and plates	500 pounds.
Bar, sheet and strip, pipe and tube, and wire.	100 pounds.
Tool steel	25 pounds.
Alloy Steel:	
Tool steel	25 pounds.
All other	100 pounds.
Copper and Copper Base Alloy	100 pounds.
Aluminum	100 pounds.

(a) *Form of Circularization List for Part 4A property.*

Report of excess steel Part 4A
Reporting station
Station No. Address
Officer in charge of disposition

List No. Page
Date transmitted to WPB
Reported to (Regional office, WPB)
Location of property

(On additional pages show Part 4A, list number and page number only)

Code No. (1)	Pieces	Total weight (lbs.)	Size	Length (L) or coil (C)	Form and shape	Alco, NE, SAE, WD, or brand	Finish (2)	Physical properties (3)	Clean or rusty

(1) Show station, service, list and part code at top of column (e. g. 123-Ord-4A-12-), followed by item numbers only.
(2) (3) Use Symbols: CDG&P—Cold Drawn Ground, Polished (2); HRA&P—Hot Rolled Annealed, Pickled (2); HRT&P—Hot Rolled Turned, Polished (2); HR—Hot Rolled (2); HRA—Hot Rolled Annealed (2); CR—Cold Rolled (2); CD—Cold Drawn (2); FQ—Forging Quality (3); HT—Heat Treated (3).

(b) *Form of Circularization List for Part 4B property.*

Report of excess *copper and copper base alloy* Part 4B
Reporting station
Station No. Address
Officer in charge of disposition

List No. Page
Date transmitted to WPB
Reported to (Regional Office, WPB)
Location of property

(On additional pages show Part 4B, list number and page number only)

Code No. (1)	Item and specification	Pieces	Total weight (lbs.)	Size	Lgth (L) or Coil (C)	Form	Temper	Original manufacturer

(1) Show station, service, list and part code at top of column (e. g. 123-Ord-4B-12-), followed by item number only.

(c) *Form of Circularization List for Part 4C property.*

Report of excess aluminum part 4C
Reporting station
Station No. Address
Officer in charge of disposition

List No. Page
Date transmitted to WPB
Reported to (Regional Office, WPB)
Location of property

(On additional pages show Part 4C, list number and page number only)

Code No. (1)	Alloy and temper	Pieces	Total weight (lbs.)	Dimensions and/or standard extrusion dia No.	Form and shape	Specification	Original manufacturer

(1) Show station, service, list and part code at top of column (e. g. 123-Ord-4C-12-), followed by item numbers only.

§ 807.902 *Offices to receive Part 1 and 3 circularization lists.*

	Number of copies
Readjustment Division, Headquarters, Army Service Forces, The Pentagon, Washington 25, D. C.	2
OFFICE OF THE CHIEF OF ORDNANCE	
Redistribution and Salvage Officer, Office of the Chief of Ordnance, Room 2-E-424, The Pentagon, Washington 25, D. C.	3
Birmingham Ordnance District, 700 Frank Nelson Building, Birmingham 1, Alabama	1
Boston Ordnance District, Room 1501—1516 Federal Street, Boston 10, Massachusetts	1
Chicago Ordnance District, 38 South Dearborn Street, Chicago 3, Illinois	1
Cincinnati Ordnance District, The Big Four Building, Cincinnati 1, Ohio	1
Cleveland Ordnance District, 1006 Terminal Tower Building, Cleveland 13, Ohio	1
Detroit Ordnance District, 1832 National Bank Bldg., Detroit 32, Michigan	1
New York Ordnance District, Room 1815, 80 Broadway, New York 5, New York	1
Philadelphia Ordnance District, 150 South Broad Street, Philadelphia 2, Pennsylvania	1
Pittsburgh Ordnance District, 1202 Chamber of Commerce Bldg., Pittsburgh 19, Pennsylvania	1
Rochester Ordnance District, 1238 Mercantile Building, Rochester, New York	1
San Francisco Ordnance District, 402 Empire Hotel, San Francisco, California	1
St. Louis Ordnance District, 3663 Lindell Blvd., St. Louis 8, Missouri	1
Springfield Ordnance District, 95 State Street, Springfield 3, Massachusetts	1
Commanding Officer, Frankford Arsenal, Philadelphia 2, Pennsylvania	1
Commanding Officer, Picatinny Arsenal, Dover, New Jersey	1
Commanding Officer, Redstone Arsenal, Huntsville, Alabama	1
Commanding General, Rock Island Arsenal, Rock Island, Illinois	1
Commanding Officer, Springfield Armory, Springfield 1, Massachusetts	1
Commanding Officer, Watertown Arsenal, Watertown, Massachusetts	1
Commanding General, Watervliet Arsenal, Watervliet, New York	1
Tank Automotive Center, Union Guardian Building, Detroit 32, Michigan	1
Field Director of Ammunition Plants, 3637 Lindell Blvd., St. Louis 8, Missouri	1
Small Arms Ammunition Sub-Office, N. Y. Ayer Bldg., West Washington Square, Philadelphia 6, Pennsylvania	1
OFFICE OF THE CHIEF OF ENGINEERS	
Redistribution and Salvage Officer, Office of the Chief of Engineers, Room 6257 New War Bldg., 21st and Virginia Avenue NW., Washington 25, D. C.	3
Division Engineer, Great Lakes Division, 20 North Wacker Drive, Chicago 6, Illinois	1
Division Engineer, Lower Mississippi Valley Division, P. O. Box 80, Vicksburg, Mississippi	1
Division Engineer, Middle Atlantic Division, Room 909, 101 East Fayette Street, Baltimore 2, Maryland	1
Division Engineer, Missouri River Division, Farm Credit Building, 19th and Douglas, Omaha 1, Nebraska	1
Division Engineer, New England Division, 75 Federal Street, Boston 10, Massachusetts	1
Division Engineer, North Atlantic Division, 21st Floor, 270 Broadway, New York 7, New York	1
OFFICE OF THE CHIEF OF ENGINEERS—Con.	
Division Engineer, Northwest Division, 114, #12 128th Street, Edmonton, Alberta, Canada	1
Division Engineer, Ohio River Division, 1120 Huntington Bank Bldg., Columbus 16, Ohio	1
Division Engineer, Pacific Division, 222 South West Temple Street, Salt Lake City 1, Utah	1
Division Engineer, South Atlantic Division, 50 Whitehall Street, Atlanta 2, Georgia	1
Division Engineer, Southwestern Division, Santa Fe Building, 1114 Commerce Street, Dallas 2, Texas	1
Division Engineer, Upper Mississippi Valley Division, Syndicate Trust Bldg., 915 Olive Street, St. Louis 1, Missouri	1
Area Engineer, P. O. Box 1111, Clinton, Tennessee	1
Area Engineer, P. O. Box 265, Church Street, New York, New York	1
Area Engineer, P. O. Box 1712, Wilmington, Delaware	1
Area Engineer, P. O. Box 2277, Boston, Massachusetts	1
Area Engineer, P. O. Box 550, Pasco, Washington	1
OFFICE OF THE CHIEF OF CHEMICAL WARFARE SERVICE	
Redistribution and Salvage Officer, Office of the Chief of Chemical Warfare Service, Room 2207, Building T-7, Annex 1, Gravelly Point, Virginia	2
Commanding General, Edgewood Arsenal, Edgewood, Maryland	1
Commanding General, Pine Bluff Arsenal, Pine Bluff, Arkansas	1
Commanding General, Rocky Mountain Arsenal, 4th floor, Cooper Building, 17th and Curtis Streets, Denver 2, Colorado	1
Commanding Officer, Huntsville, Arsenal, Huntsville, Alabama	1
Commanding Officer, Boston CW Procurement District, Room 500, 75 Federal Street, Boston 10, Massachusetts	1
Commanding Officer, Chicago CW Procurement District, Room 1506, Civil Opera Building, 20 North Wacker Drive, Chicago, Illinois	1
Commanding Officer, Dallas CW Procurement District, Mercantile Bank Building, 106 Ervay Street, Dallas 1, Texas	1
Commanding Officer, Pittsburgh CW Procurement District, American Bank Building, Sixth Avenue and Grant Street, Pittsburgh 19, Pennsylvania	1
Commanding Officer, New York CW Procurement District, 292 Madison Avenue, New York, N. Y.	1
Commanding Officer, San Francisco CW Procurement District, Room 201, 1355 Market Street, San Francisco, California	1
Deputy Commanding Officer, Atlanta Sub-Office, Dallas CW Procurement District, 430 West Peachtree Street, N. W., Atlanta, Georgia	1
OFFICE OF THE CHIEF OF TRANSPORTATION	
Redistribution and Salvage Officer, Office of the Chief of Transportation, Room 4 D 727, The Pentagon, Washington 25, D. C.	2
Commanding Officer, Voorheesville Holding & Reconsignment Point, Voorheesville 2, New York—Attn.: Transportation Corps Supply Officer	1
Commanding Officer, Marietta Holding & Reconsignment Point, Marietta 2, Pennsylvania—Attn.: Transportation Corps Supply Officer	1
Commanding Officer, Montgomery Holding & Reconsignment Point, Montgomery 4, Alabama—Attn.: Transportation Corps Supply Officer	1
OFFICE OF THE CHIEF OF TRANSPORTATION—Con.	
Commanding Officer, Lathrop Holding & Reconsignment Point, Lathrop 9, California—Attn.: Transportation Corps Supply Officer	1
Redistribution & Salvage Officer, Field Service Group, TC, Procurement Division, 6th and Sycamore Sts., Cincinnati 5, Ohio	2
Commanding General, Boston Port of Embarkation, Army Base, Boston 10, Massachusetts	1
Commanding General, Charleston Port of Embarkation, Army Base, North Charleston, So. Carolina	1
Commanding General, Hampton Roads Port of Embarkation, Post Office Building, Newport News, Virginia	1
Commanding General, Los Angeles Port of Embarkation, Wilmington, California	1
Commanding General, New Orleans Port of Embarkation, Poland and Dauphine Sts., New Orleans 12, Louisiana	1
Commanding General, New York Port of Embarkation, 1st Avenue & 58th Street, Brooklyn, New York	1
Commanding General, San Francisco Port of Embarkation, Fort Mason, Calif	1
Commanding General, Seattle Port of Embarkation, 1519 South Alaskan Way, Seattle 4, Wash	1
OFFICE OF THE CHIEF SIGNAL OFFICER	
Director, Requirements Division, Procurement & Distribution Service, Office of the Chief Signal Officer, Washington 25, D. C., Attn.: Equipment Branch	1
Commanding Officer, Storage and Issue Agency, 128 N. Broad Street, Philadelphia 2, Pa., Attn.: Redistribution & Salvage Officer	1
Officer in Charge, Plant Engineering Agency, SPSLP-82, Architects Building, 17th and Sanson Sts., Philadelphia, Pa.	1
Commanding Officer, Philadelphia Sig. C. Procurement District, 128 North Broad Street, Philadelphia 2, Pa., Attn.: Production Division	1
Commanding Officer, Monmouth Sig. C. Procurement District, Bradley Beach, N. J., Attn.: Production Staff	1
Commanding Officer, Dayton Sig. C. Procurement District, 225 South Main Street, Dayton, Ohio, Attn.: Production Staff	1
Officer in Charge, Los Angeles Signal Corps, Production Field Office, Rm. 1009, Pacific National Bldg., 315 West Ninth Street, Los Angeles 15, Calif	1
Officer in Charge, New York Signal Corps, Production Field Office, 165 Broadway, New York 6, N. Y.	2
Officer in Charge, Philadelphia Signal Corps, Production Field Office, 117 South 17th Street, Philadelphia 3, Pa.	1
Officer in Charge, Chicago Signal Corps, Production Field Office, 1 North La-Salle Street, Chicago 2, Illinois	1
Commanding General, Eastern Signal Corps Training Center, Fort Monmouth, New Jersey	1
Commandant, Southern Signal Corps School, Camp Murphy, Florida	1
Commanding Officer, Holabird Signal Depot, Baltimore, Maryland—Attn.: Training Branch	1
Commanding Officer, Signal Corps Aircraft Signal Agency, Wright Field, Dayton, Ohio—Attn.: Redistribution & Salvage Officer	1
Commandant, Western Signal Corps Training Center, Camp Kohler, California	1
Commanding Officer, Dayton Signal Corps Supply Agency, 225 South Main Street, Dayton 2, Ohio—Attn.: Redistribution and Salvage Officer	1

	Number of copies
OFFICE OF THE CHIEF SIGNAL OFFICER—Con.	
Commanding Officer, Signal Corps Ground Signal Agency, Shark River Hotel, Bradley Beach, New Jersey—Attn.: Redistribution and Salvage Officer	1
Officer in Charge, Signal Corps Ground Signal Maintenance Br., Architects Building, 17th and Sansom Streets, Philadelphia 3, Pennsylvania	1
OFFICE OF THE QUARTERMASTER GENERAL	
Redistribution and Salvage Officer, Office of the Quartermaster General, Room 1049 Temporary A Building, 2nd and T Streets, S. W., Washington 25, D. C.	7
OFFICE OF THE SURGEON GENERAL	
Redistribution and Salvage Officer, Army Medical Purchasing Office, 52 Broadway, New York 4, New York	1
ARMY AIR FORCES	
Redistribution and Salvage Officer, Office, Asst. Chief of Air Staff, M. M. & D., Army Air Forces, Room 5–C–867, The Pentagon, Washington 25, D. C.	1
Redistribution and Salvage Officer, Matériel Command, Wright Field, Dayton, Ohio	3
District Supervisor, Eastern Procurement District, Attention: Redistribution & Salvage Officer, 67 Broad Street, New York, New York	1
District Supervisor, Central Procurement District, Attention: Redistribution & Salvage Officer, 8505 West Warren Avenue, Detroit, Michigan	1
District Supervisor, Midwestern Procurement District, Attention: Redistribution & Salvage Officer, Municipal Airport, P. O. Box 117, Wichita, Kansas	1
District Supervisor, Western Procurement District, Attention: Redistribution & Salvage Officer, 3636 Beverly Blvd., Los Angeles, California	1
District Supervisor, Midcentral Procurement District, Attention: Redistribution & Salvage Officer, 111 West Jackson Blvd., Chicago, Illinois	1
District Supervisor, Southeastern Procurement District, Attention: Redistribution & Salvage Officer, 86 Edgewood Avenue, N. E., Atlanta, Ga.	1
Redistribution and Salvage Officer Air Service Command, Patterson Field, Fairfield, Ohio	11
NAVY DEPARTMENT	
Chief of the Bureau of Supplies and Accounts, Navy Department, Attention: S.P.D.–17, Washington 25, D.C.	20
WAR PRODUCTION BOARD	
Redistribution Division, War Production Board, New Municipal Building, 3rd and Indiana Avenue, N.W., Washington 25, D.C.	10

§ 807.903 *Regional Offices of War Production Board.*

REGION I

Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island. Regional Manager, Redistribution Division, War Production Board, 17 Court Street, Boston, Massachusetts.

REGION II

New York, Northern New Jersey (Sussex, Passaic, Bergen, Warren, Morris, Essex, Hudson, Hunterdon, Somerset, Union, Middlesex and Monmouth counties). Regional Manager, Redistribution Division, War Production Board, Empire State Building, New York City.

REGION III

Maryland, Virginia, Delaware, Eastern Pennsylvania (Tioga, Bradford, Susquehanna, Wayne, Lycoming, Sullivan, Wyoming, Pike, Union, Northumberland, Montour, Columbia, Luzerne, Lackawanna, Monroe, Mifflin, Juniata, Perry, Snyder, Cumberland, Adams, Dauphin, Schuylkill, York, Lebanon, Lancaster, Berks, Lehigh, Northampton, Chester, Delaware, Montgomery and Bucks counties), Southern New Jersey (Mercer, Ocean, Burlington, Camden, Gloucester, Atlantic, Salem, Cumberland and Cape May counties). Regional Manager, Redistribution Division, War Production Board, 1617 Pennsylvania Blvd., Philadelphia, Pa.

REGION IV

Tennessee, North Carolina, Mississippi, Alabama, Georgia, South Carolina, Florida. Regional Manager, Redistribution Division, War Production Board, Candler Building, Atlanta, Georgia.

REGION V

Kentucky, West Virginia, Ohio (except Lucas county), Western Pennsylvania (Erie, Crawford, Warren, McKean, Potter, Mercer, Venango, Forest, Elk, Cameron, Clinton, Lawrence, Butler, Clarion, Armstrong, Jefferson, Indiana, Clearfield, Centre, Beaver, Allegheny, Westmoreland, Cambria, Blair, Huntington, Washington, Greene, Fayette, Somerset, Bedford, Fulton and Franklin counties). Regional Manager, Facilities Department, War Production Board, Union Commerce Bldg., Cleveland, Ohio.

REGION VI

Indiana, Illinois, Iowa, Wisconsin, Upper Peninsula of Michigan (Gogebic, Ontonagon, Houghton, Keweenaw, Baraga, Iron, Marquette, Dickinson, Menominee, Delta, Alger and Schoolcraft counties only). Regional Manager, Redistribution Division, War Production Board, 226 West Jackson Blvd., Chicago, Illinois.

REGION VII

Arkansas, Missouri, Kansas, Nebraska. Regional Manager, Facilities Department, War Production Board, Mutual Interstate Bldg., Kansas City, Missouri.

REGION VIII

Louisiana, Oklahoma, Texas. Regional Manager, Redistribution Division, War Production Board, 1131 Mercantile Bldg., Dallas 2, Texas.

REGION IX

Wyoming, Utah, Colorado, New Mexico. Regional Manager, Redistribution Division, War Production Board, 621 Continental Oil Bldg., Denver, Colorado.

REGION X

California, Nevada, Arizona, Idaho (south of Salmon River). Regional Manager, Redistribution Division, War Production Board, 1355 Market Street, San Francisco, California.

REGION XI

Upper Peninsula of Michigan (Luce, Chippewa and Mackinac counties only) and all Michigan counties not listed under Region VI Ohio (Lucas county only). Regional Manager, Redistribution Division, War Production Board, 7310 Woodward Avenue, Detroit 2, Michigan.

REGION XII

Minnesota, Montana, North Dakota, South Dakota. Regional Manager, Redistribution Division, War Production Board, Midland Bank Bldg., Minneapolis, Minnesota.

REGION XIII

Washington, Oregon, Idaho (north of Salmon River.) Regional Manager, Redistribution Division, War Production Board, White-Henry-Stuart Bldg., Seattle, Washington.

§ 807.904 *Assignment of property to disposal agencies.* Assignment of property to disposal agencies is set forth in this section as published in Exhibit I to Regulation No. 1 of the Surplus War Property Administration under the following prefatory notes:

The assignments herein contained are based on the classifications contained in the Standard Commodity Classification (Government Printing Office, May 1943 and February 1944). That Classification contains a number of so-called major groups, which are designated by two digits only (such as 01—Live Animals; 65—Drugs and Medicines). These major groups in turn are broken down into classes of property represented by the two digits of the major group plus additional digits (such as 65 48—Marine liver oil, etc.). All of the major groups now being assigned are listed in this Exhibit, but only such of the lesser groups are listed as are necessary to carve out of a major group assigned to one agency types of property included therein which are assigned to another. For a complete breakdown of each major group, reference must be made to the Standard Commodity Classification itself.

It should further be noted that for reporting purposes, while reference to this Exhibit is necessary to ascertain the proper disposal agency, one report may include all property in a major group (two digits) at one location which is assigned to a single disposal agency.

Reconstruction Finance Corporation		*Treasury Procurement Division*		*War Food Administration*	
		01	Live Animals, other than food animals	01	Live Animals, except non-food animals
				02	Crude Animal Products, Edible
03	Crude Animal Products Inedible, Except Fibers			03	Crude Vegetable Products, Edible
05 5	Crude rubber and allied gums			05	Crude Vegetable Products, Inedible, (except as indicated)
05 6280	Lac				
05 7	Crude medicinal herbs, roots barks, and other plant parts, except U.S.P., N.F. and similar grades				
05 93	Crude cork				
05 94	Loofa Sponges				
06	Fibers, Vegetable and Animal, Unmanufactured (except as indicated) (note inclusion of foreign wool and mohair)			06 1	Cotton
				06 22	Flax (Only Domestic Production)
				06 23	Hemp (Cannabes Sativa)
				06 5	Wool and related specialty Hair (only domestic production)
07	Coal, Crude Petroleum, and Related Crude Hydrocarbons				
08	Metallic Ores, Tailings, Concentrates and their unrefined Metallic Products				
09	Crude Nonmetallic Minerals, except Coal and Petroleum				
11	Leather				
12	Boot and Shoe Cut Stock and Shoe Findings				

Reconstruction Finance Corporation

13	Wood Basic Materials, Except Pulpwood (except as indicated)
14 1	Pulpwood
14 2	Paperbase stocks except pulp
14 3	Woodpulp
14 4	Other pulp
14 6	Building paper
14 8	Building Board
15 2	Jute Basic Textiles
15 66	Curles hair (similar to 06.7)
15 71	Silk Semi Manufactures
15 72	Silk Yarn
15 81	Rayon, Nylon, etc. Semi Manufactures
15 82	Rayon, Nylon, etc. Yarn
15 912	Jute Cordage (except sizes less than ¼" cross sectional diameter)
15 913	Soft Fiber Cordage (except sizes less than ¼" cross sectional diameter)
15 914	Hard Fiber Cordage and Twine (All)
16 52	Industrial Molasses
17	Waxes, Animal and Vegetable
18	Petroleum and Coal Products (Except Raw Materials for Chemical Industries)
19	Chemicals (except as indicated)
21	Iron
22	Steel (except as indicated)
23	Ferro and Nonferrous Additive Alloys
24	Nonferrous Metals
25	Fabricated Metal Basic Products (except as indicated)
26	Nonmetallic Mineral Basic Products—Chiefly Structural (except as indicated)
27	Nonmetallic Mineral Basic Products—Chiefly Nonstructural (except as indicated)

Treasury Procurement Division

13 91	Cooperage Stock, Fabricated
13 92	Rattan, Willow and Bamboo Stock
13 94	Box and Crate Shook
13 97	Handles
14	Pulp, paper and paper board (except as indicated)
15	Textile Basic Manufactures (except as indicated)
19	Chemicals, to the extent of materials packaged for delivery to retail outlets
22 52	Barbed and twisted wire
25 42	Truck Tanks
25 51	Builders' Basic Hardware
25 54	Motor Vehicle Hardware
25 56	Casket Hardware
25 57	Furniture Hardware
25 58	Trunk & Luggage Hardware
25 59	Misc. Basic Hardware
25 61	Automotive Vehicle Bodies
25 64	Combat Vehicle Bodies
25 75	Insect Screening
25 76	Woven Wire Fencing
25 77	Wire Nails, Tacks & Staples
25 78	Wire Springs
25 7901	Wire Chain
25 7903	Chain Link Fencing
25 7906	Wire Hoops
25 91	Chain and Attachments
25 94	Bolts, Nuts, Screws, Rivets, Etc.
25 98	Cut Nails, Tacks & Spikes
25 99	Misc. Fabricated Products
26 3	Glass Basic Products
27 1	Glass Basic Products, except 3 items: 27 1431 Railroad 27 152 Radio tubes (glass only) 27 16 Insulators
27 2	Abrasive Basic Products, Natural and Synthetic, Manufactured—to the extent the materials are packaged for retail sale or can be considered hand tools.
27 32	Asbestos and asbestos metallic packing and gaskets, to the extent of automotive parts

War Food Administration

16	Food and Beverage Basic Materials (except as indicated)
17	Oils, Fats, Waxes and Derivatives, Animal and Vegetable
19 271	Rosins
19 272	Turpentine
19 274	Pine Oil
19 275	Pine Pitch
19 276	Pine Tar

U. S. Maritime Commission

25 53	Marine Basic Hardware
25 31	Power Boilers Marine

Reconstruction Finance Corporation

27	Nonmetallic Mineral Basic Products—Chiefly Nonstructural (except as indicated)
29	Miscellaneous Basic Materials (except as indicated)
31	General Purpose Industrial Machinery & Equipment
32	Electrical Machinery & Apparatus (except as indicated)
33	Special Industry Machinery
34	Metal Working Machinery
39	Miscellaneous Machinery (except as indicated)
41	Communications Equipment and Electronic Devices (except as indicated)
42	Aircraft
44	Railroad Transportation Equipment
52 7	Ice Making and Cold Storage Plant Systems, Components and Accessories
52 92	Industrial Refrigeration Units
52 12	Central Station Air Conditioning Systems
53 32	Railroad Signal Fixtures
53	Airport, Airway & Seadrome lighting
53 81	Train lighting fixtures
53 86	Aircraft lighting fixture

Treasury Procurement Division

27 33	Asbestos woven or mould-friction material, to the extent of automotive parts (principally brake linings and clutch facings).
27 92	Pottery
27 93	Pottery Supplies
27 94	Ceramic Products
29 1	Rubber Fabricated Materials
29 23	Automotive Plastic Parts, also any motor vehicle items elsewhere in 29 2
29 91	Button Blanks, Moulds and other parts
29 92	Beads, Bugles and Spangles
29 95	Catgut and Wormgut
31 6	Industrial trucks, tractors, trailers, stackers and accessories
31 97	Lubrication equipment—to the extent the items are for use in connection with motor vehicles
32 412	Battery Charging Generators (except Aircraft)
32 432	Starter Motors except Aircraft
32 45	Motor Ignition Equipment (except Aircraft)
32 514	Plug Fuses
32 53	Lamp Sockets
32 7	Lamps (except 32 73 Aviation Service Lamps)
32 8	Electric appliances, household and commercial
32 91	Dry Cell Batteries
32 92	Storage Batteries
33 54	Tire repairing machinery and equipment
33 995	Automotive service station equipment
35	Agricultural Machinery and Implements
36	Construction, Mining, Excavating and Related Machinery
37	Tractors
38	Office Machines
39 11	Home Type Laundry Equipment
39 20	Home Sewing Machines
39 43	Calculating & Computing Scales
39 44	Coin Operated Scales
39 45	Spring Scales, Household
39 50	Cash Registers
39 60	Coin Operated Machines
41 1	Radio Broadcast receivers
45	Motor Vehicles
49	Mis. Transportation Equipment
51	Plumbing and Heating Equipment
52	Air Conditioning and Refrigerator Equipment (except as indicated)
53	Lighting Fixtures (except as indicated)
54	Furniture & Fixtures
55	Photographic Goods and Processed Motion Pictures
56	Optical Instruments and Apparatus

U. S. Maritime Commission

31 582	Windlasses
31 583	Anchor Winches
31 594	Capstans
43	Ships, Small Watercraft and Marine Propulsion Machinery
53 2	Marine Fixtures

Reconstruction Finance Corporation		*Treasury Procurement Division*		*U. S. Maritime Commission*	
57	Indicating, Recording and Controlling Instruments and Accessories except watches and clocks (except as indicated)	57 11	Thermometers	57 65	Compasses and accessories (Marine)
		57 14	Heating & Ventilating controls and accessories	57 66	Azimuths Sextants and Octants
		57 56	Taximeters and Parking meters	57 C91	Taff Rail Logs
		57 341	Household refrigeration controls		
		58	Professional and Scientific Instruments and Apparatus		
59 15	Hazard measuring devices	59	Miscellaneous Equipment (except as indicated)		
59 18	Machine guards				
59 20	Water purification equipment except 59, 241, Home water softeners				
59 55	Sprinkler System Components				
59 77	Railroad Signal Controls				
				War Food Administration	
				61	Food, Manufactured
				62	Feed Manufactured
				63	Beverages and Ice
				64	Tobacco Manufactures
65	Drugs, and Medicines, to the extent that they are not prepared or packaged for sale to retail outlets or institutions. (Bulk unfinished drugs and medicines requiring processing or packaging not ordinarily done by a wholesale or retail store). (except as indicated)	65	Drugs and Medicines (except as indicated)	65 481	Marine liver oil, derivatives, and preparations, except Marine liver oil Concentrates in Solution, m.g.
				65 68	Vitamins, Vitamin-Active Compounds and Preparations containing one and more than one Vitamin, m.g.
		66	Toiletries, cosmetics, soap, and household chemical preparations		
		67	Apparel, except footwear		
		68	Footwear		
		69	Fabricated Textile Products except apparel		
		71	End Products of Leather except apparel, Footwear and luggage		
		72	Converted Paper Products and Pulp Goods		
		73	Products of Printing and Publishing Industries		
		74	Rubber End Products	*U. S. Maritime Commission*	
		75	End Products of Metal Industries	75 953	Cargo nets, wire rope
76 51	Lasts for boots and shoes	76	Finished Wood Products, except Furniture & Millwork (except as indicated)	75 954	Wire rope slings
76 52	Last sole patterns				
		77	End Products of Glass, Clay & Stone		
		79	Miscellaneous End Products of Manufacturing Industries		
		81	Small Arms & Components		
		83	Small Arms Ammunition and Specifically adapted Components		

§ 807.905 *Surplus War Property Administration report forms*—(a) *Form SWPA-1.*

[§ 7-905.1] Form SWPA-1.

Form SWPA-1, 1 May 1944
Form approved Budget
Bureau No. 16-R001

Date of report.....
Page No. ..... Of....

UNITED STATES OF AMERICA

SURPLUS WAR PROPERTY ADMINISTRATION

REPORT OF SURPLUS PROPERTY

To	Name and address of regional office of disposal agency, including street, city, zone, and state	Disposal agency No.	Standard commodity classification code No. Group
From	Name and address of reporting office, including street, city, zone, and state	Reporting agency No.	Total cost of this report
Location	Custodian and address at which property is located	Signature and title of authorized reporting official	

Line number (A)	Description (B)	Std'd commodity class (C)	Condition (D)	Unit (E)	Number of units (F)	Unit cost (G)	Total cost (H)

(Instructions Appearing on Reverse of Form SWPA-1)

INSTRUCTIONS FOR PREPARATION OF REPORT OF SURPLUS PROPERTY, FORMS SWPA-1 AND SWPA-1(a)

The property listed on any one report will be confined to property at a single location, to be reported to one disposal agency, and classified in a single major group (two digits) of Standard Commodity Classification (Government Printing Office, May 1943 and February 1944).

If used to report withdrawals, the word "Withdrawal" will be entered conspicuously at top and right-hand margin of each Form.

From—Include department, bureau, or similar subdivision. Also, if different from reporting office, state agent or office and address to which shipping instructions should be sent.

Location—Include title or other identification of property custodian.

Standard Commodity Classification Code No.—Enter the code number (two digits) for the major group of Standard Commodity Classification covered by the report.

Line No.—Enter consecutive numbers (starting with "1" on each page) for each property item listed.

Description—Describe each item in commercial terms in sufficient detail for transfer or sale purposes, including customary trade specifications and descriptions used in purchasing. Descriptions of much length should be written straight across columns (b) to (h) inclusive; entries in all columns shall be clearly identifiable with the related line number (property item). See separate instructions.

Leave a blank line space across all columns between successive line numbers or property items.

Standard Commodity Classification, Column (c)—Detailed classification code will be entered by reporting agency when it determines that such procedure is most practicable. In all other cases, the detailed code will be entered by the disposal agency.

Condition—Indicate condition of property as prescribed by separate instructions.

Unit—Indicate unit of measure for container, package, or other customary sales unit, such as, each, doz., ft., bbl., etc. Distinguish between long, short, and metric tons. Standard, clearly understandable abbreviations may be used.

Unit cost—Estimate cost when actual cost is not known. Estimated unit costs will be indicated by the prefix (E). In case of machine tools, other metal working machinery, and production equipment, enter unit costs f. o. b. manufacturer or vendor.

(b) *Form SWPA–1 (A).*

Form SWPA-1(A), 1 May 1944
Form approved Budget Bureau No. 16-R001

Reporting Agency No.____
Disposal Agency No.____

Page No.____ Of____

UNITED STATES OF AMERICA

SURPLUS WAR PROPERTY ADMINISTRATION

REPORT OF SURPLUS PROPERTY

(Continuation Sheet)

Line number (A)	Description (B)	St'd commodity class (C)	Condition (D)	Unit (E)	Number of units (F)	Unit cost (G)	Total cost (H)

(c) *Instructions covering preparation of report of surplus property.* Instructions covering preparation of report of surplus property as published in Exhibit III to Regulation No. 1 of the Surplus War Property Administration are set forth below with certain bracketed matter supplied:

FORMS TO BE USED IN REPORTING PERSONAL PROPERTY

1. The "Report of Surplus Property" (Forms SWPA–1 and SWPA–1 (A)) will be used as follows for reporting surplus personal property to the designated disposal agencies;

GENERAL INSTRUCTIONS

2. As the actual schedule of personal property items reported "Surplus" by reporting agency.

3. As the "cover-transmittal" sheet (block headings of Form SWPA–1 should be filled in as prescribed below) for supporting schedules prepared by means of mechanical accounting when the mechanical accounting form has been approved by the Surplus War Property Administrator. In such cases, the columnar arrangement and design of the mechanical type of forms shall correspond generally with Form SWPA–1.

4. As the "cover-transmittal" sheet (block headings of Form SWPA–1 should be filled in so far as possible) for reporting personal property surplus as the result of terminated contracts on "contract termination inventory sheets" when such sheets meet all of the following requirements:

(a) Contain all descriptive and other data required by this regulation in columns "a" through "h" of Form SWPA–1;

(b) Have been previously approved as to form for use as supporting schedules by the Surplus War Property Administrator [The Surplus War Property Administrator has approved War Department Termination Inventory Schedules C–1, C–2 and C–3 (W. D. A. G. O. Forms Nos. 247, 248 and 249) for use as supporting schedules. Accordingly, surplus termination inventory may be reported on these forms under cover of a Form SWPA–1, on which the block headings have been filled in];

(c) Duplicate copies are submitted to the disposal agency;

(d) The total number of lines for property items reported as surplus on the "contract termination inventory sheets" (after lining out or otherwise deleting from such sheets any items disposed of by reason of contract settlements or otherwise) are stated on the covering Form SWPA–1.

5. The property listed on any one report shall be confined to property at a single location, to be reported to one disposal agency, and classified in a single major group (two digits) of Standard Commodity Classification (Government Printing Office, May 1943 and February 1944) [The Surplus War Property Administrator has authorized the War Department— —

(a) To report all surplus termination inventory to Reconstruction Finance Corporation;

(b) To include in a single report all surplus property comprised in a single termination inventory at a single location. Separate reports need not be submitted for each major group of the Standard Commodity Classification;

(c) To include in a single report all surplus property at a single location to be reported to United States Maritime Commission and War Food Administration, respectively. Separate reports need not be submitted for each major group of the Standard Commodity Classification.

In case of surplus property other than termination inventory to be reported to Reconstruction Finance Corporation or Procurement Division, Treasury Department, separate reports will be submitted for each major group where the property falls into more than one major group of the Standard Commodity Clasification].

6. The "Report of Surplus Property" (and any supporting schedules) will be submitted in duplicate to the appropriate office of the designated disposal agency, for the region in which the property is located or other designated office listed in Exhibit II. [See §§ 807.906 to 807.908 for addresses of Regional Offices of Disposal Agencies. As an interim procedure, reports to Treasury Procurement Division will be submitted in triplicate, until further notice.]

7. When Form SWPA–1 is used as the actual schedule of property (as in 2 above), "continuation sheets" Form SWPA–1 (A) will be used for all pages except the first page.

8. *Withdrawals:* An owning agency will report the withdrawal of property which it has previously reported as surplus by forwarding duplicate copies of complete (all blocks and columns filled in as when previously reported) Forms SWPA–1 and SWPA–1 (A) for such property withdrawn, the word "Withdrawal" will be entered conspicuously at the top and right-hand margin of such forms.

BLOCK AND COLUMN INSTRUCTIONS

To—State the name and address (including street, city, zone and state) of the office of the disposal agency to which the property is being reported.

Disposal Agency Number—For use by disposal agency only.

From—State the name and address (including street number, city, zone and state) of the office at which the report was prepared. Always show department, bureau, office or other similar sub-division involved. Also, if different, state agent or office and address to which shipping instructions should be sent.

Location—State the address (including street number, city, zone and state) at which the property is located and the title or other identification of the property custodian.

Authorized Reporting Official—The signature of the reporting officer approving the report of surplus property shall appear in this space on the original form and his typewritten name on all copies of the form.

Title—Enter the title of the "authorized reporting official" described above.

Reporting Agency Number—Enter the report number assigned by the reporting agency to identify each report. [War Department reports will be numbered as follows: station identification number of field installation having jurisdiction of the property, followed by letter symbol of technical service, followed by serial number of report.]

Standard Commodity Classification Code No.—Enter the code number (two digits) for the major group of Standard Commodity Classification covered by the report.

Page No. of—To identify each page and state local number of pages in each report.

Report Date—Enter date report is forwarded to disposal agency.

Total Cost This Report—The sum of all amounts in column "h" (total cost) of all pages of the report (and supporting schedules) will be determined and entered in this block.

(a) *Line No.*—Enter consecutive numbers (starting with "1" on each page) for each property item listed.

(b) *Description*—Describe each item in commercial terms, in sufficient detail for transfer or sale purposes, including customary trade specifications and descriptions ordinarily used in purchasing. When possible, include manufacturer's or vendor's catalog and catalog stock number.

State reporting agency's stock number in all cases where recorded in stock accounting records.

To the extent applicable, state color and brand. Also describe exactly the type of any containers or packages and the quantities in each.

In case of machine tools, other metalworking machinery and production equipment, give date of initial use, if possible, or approximate length of time of use; also show characteristics as follows:

(1) Type of machine, serial number and year built; (2) Maker's designation, work size capacity; (3) State if machine is complete with standard equipment as furnished by the manufacturer, and describe any extra attachments, special features, or mechanisms; (4) Power and type of drive (if electric, give particulars of motor, starter, including horsepower, voltage and all other current characteristics.)

All descriptions of much length should be written straight across columns (b) to (h) inclusive, making sure that the entries in all columns are clearly identifiable with the particular line number (property item). Leave a blank line space between line numbers (for use of disposal agency).

(c) *Standard Commodity Classification*—The detailed classification code numbers for each item according to the Standard Commodity Classification (Gov't. Printing Office, May 1943 and February 1944) will be entered by the reporting agency when it deter-

mines that such procedure is most practicable. In all other cases, the detailed code numbers will be entered by the disposal agency.

(d) *Condition*—Indicate condition of property by the following letter-number code.

Code *Means:*
N—New
E—Used-reconditioned
O—Used-usable without repairs
R—Used-repairs required
X—Items of no further value for use as originally intended, but of possible value other than as scrap.
1—Excellent
2—Good
3—Fair
4—Poor

Except in case of code X, a letter-number combination must always be used to describe condition: For example: N1 (that is, new and in excellent condition); R3 (that is, used, minor repairs required).

(e) *Unit*—Indicate unit of measure for the container, package or other applicable customary sales unit, such as each, pounds, tons, dozen, gross, thousand, ream, bushel, feet, etc. Distinguish between long, short and metric tons. Standard, clearly understandable abbreviations may be used.

(f) *No. of Unit*—Specify the quantities of each item reported surplus in terms of the "Unit" used in "e" above.

(g) *Unit Cost*—Estimated cost when actual cost is not known. Estimated unit costs shall be indicated by the prefix (E). In case of machine tools, other metal-working machinery and production equipment, enter unit cost F.O.B. manufacturer or vendor to owning agency.

(h) *Total Cost*—Compute total cost, i. e., "No. of Units" multiplied by "Unit Cost" equals "Total Cost."

ACKNOWLEDGMENT OF RECEIPT

The receipt of each "Report of Surplus" by the disposal agency will be acknowledged to the reporting office, e.g., by a post card notice stating the reporting agency's number, date of report, and the disposal agency's number.

§ 807.906 *Regional Offices of War Food Administration.*

NORTHEAST REGION:

Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, West Virginia. Regional Director, War Food Administration, 150 Broadway, New York 7, New York (Mr. Francis D. Cronin).

SOUTHERN REGION:

Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia. Regional Director, War Food Administration, Western Union Building, Atlanta 3, Georgia (Col. James H. Palmer).

SOUTHWEST REGION:

Arkansas, Colorado, Kansas, Louisiana, New Mexico, Oklahoma, Texas. Regional Director, War Food Administration, 425 Wilson Building, Dallas 1, Texas (Mr. L. J. Cappleman).

MIDWEST REGION:

Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin. Regional Director, War Food Administration, Room 1714, 5 So. Wabash Avenue, Chicago 3, Illinois (Mr. E. O. Pollock).

WESTERN REGION:

Arizona, California, Idaho, Nevada, Montana, Oregon, Utah, Washington, Wyoming, Territory of Hawaii. Regional Director, War Food Administration, 821 Market Street, San Francisco 3, Calif. (Mr. Buell Maben).

§ 807.907 *Regional Offices of Reconstruction Finance Corporation.*

ATLANTA REGION

Georgia, Alabama, Tennessee, Florida. Regional Manager, Reconstruction Finance Corporation, Healey Building, Atlanta 3, Ga. (Mr. M. E. Everett, Manager).

BOSTON REGION

Maine, New Hampshire, Vermont. Regional Manager, Reconstruction Finance Corporation, 40 Broad Street, Boston 9, Massachusetts (Mr. John J. Hagerty, Manager).

CHARLOTTE REGION

North Carolina, South Carolina. Regional Manager, Reconstruction Finance Corporation, Wilson Building, 103 West Third Street, Charlotte 1, North Carolina (Mr. John A. Campbell, Jr., Manager).

CHICAGO REGION

Illinois, Indiana, Iowa. Regional Manager, Reconstruction Finance Corporation, 208 South LaSalle Street, Chicago 4, Illinois (Mr. B. A. Mattingly, Manager).

CLEVELAND REGION

Ohio, West Virginia. Regional Manager, Reconstruction Finance Corporation, Federal Reserve Bank Building, Cleveland 1, Ohio (Mr. J. A. Fraser, Manager).

DALLAS REGION

Northern and Western Texas including counties of Andrews, Archer, Armstrong, Bailey, Baylor, Bell, Borden, Bosque, Bowie, Briscoe, Brown, Burnet, Callahan, Camp, Carson, Cass, Castro, Childress, Clay, Cochran, Coke, Coleman, Collin, Collingsworth, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Culbertson, Dallam, Dallas, Dawson, Deaf Smith, Delta, Denton, Dickens, Donley, Eastland, Ector, Ellis, El Paso, Erath, Falls, Fannin, Fisher, Floyd, Foard, Franklin, Freestone, Gaines, Garza, Glasscock, Gray, Grayson, Gregg, Hale, Hall, Hamilton, Hansford, Hardeman, Harrison, Hartley, Haskell, Hemphill, Henderson, Hill, Hockley, Hood, Hopkins, Howard, Hudspeth, Hunt, Hutchinson, Irion, Jack, Jeff Davis, Johnson, Jones, Kaufman, Kent, King, Knox, Lamar, Lamb, Lampasas, Leon, Limestone, Lipscomb, Loving, Lubbock, Lynn, McCulloch, McLennan, Marion, Martin, Menard, Midland, Milam, Mills, Mitchell, Montague, Moore, Morris, Motley, Navarro, Nolan, Ochiltree, Oldham, Palo Pinto, Panola, Parker, Parmer, Pecos, Potter, Rains, Randall, Reagan, Red River, Reeves, Roberts, Robertson, Rockwall, Runnels, Rusk, San Saba, Schleicher, Scurry, Shackelford, Sherman, Smith, Somervell, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terry, Throckmorton, Titus, Tom Green, Upshur, Upton, Van Zandt, Ward, Wheeler, Wichita, Winkler, Wilbarger, Williamson, Wise, Wood, Yoakum, Young. Regional Manager, Reconstruction Finance Corporation, Cotton Exchange Building, Dallas 1, Texas (Mr. L. B. Glidden, Manager).

DENVER REGION

Colorado, New Mexico. Regional Manager, Reconstruction Finance Corporation, Boston Building, Denver 2, Colorado, (Mr. Ross L. Hudson).

DETROIT REGION

Michigan, except upper peninsula. Regional Manager, Reconstruction Finance Corporation, 607 Shelby Street, Detroit 26, Michigan, (Mr. Arthur J. Fushman).

HOUSTON REGION

Southeastern Texas, including counties of Anderson, Angelina, Austin, Bastrop, Brazoria, Brazos, Burleson, Calhoun, Chambers, Cherokee, Colorado, Fayette, Fort Bend, Galveston, Grimes, Hardin, Harris, Houston, Jackson, Jasper, Jefferson, Lavaca, Lee, Liberty, Madison, Matagorda, Montgomery, Nacogdoches, Newton, Orange, Polk, Refugio, Sabine, San Augustine, San Jacinto, Shelby, Trinity, Tyler, Victoria, Walker, Waller, Washington, Wharton. Regional Manager, Reconstruction Finance Corporation, Rusk Building, 723 Main Street, Houston 2, Texas, (Mr. W. Y. Phillips).

KANSAS CITY REGION

Kansas, Oklahoma. Regional Manager, Reconstruction Finance Corporation, Federal Reserve Bank Bldg., Kansas City 6, Missouri, (Mr. Albert L. Strong).

LOS ANGELES REGION

Arizona, Southern California, including counties of Imperial, Inyo, Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, Ventura. Regional Manager, Reconstruction Finance Corporation, Pacific Mutual Bldg., Los Angeles 14, California (Mr. Hector C. Haight).

MINNEAPOLIS REGION

Minnesota, Wisconsin, North Dakota, South Dakota. Regional Manager, Reconstruction Finance Corporation, McKnight Bldg., Minneapolis 1, Minnesota (Mr. China R. Clarke).

NEW ORLEANS REGION

Louisiana, Mississippi. Regional Manager, Reconstruction Finance Corporation, Union Building, 837 Gravier Street, New Orleans 12, Louisiana (Mr. George W. Robertson).

NEW YORK REGION

New York, New Jersey. Regional Manager, Reconstruction Finance Corporation, Federal Reserve Bank Bldg., 33 Liberty Street, New York 5, New York (Mr. Thomas J. Ahearn, Jr.).

OMAHA REGION

Wyoming, Nebraska. Regional Manager, Reconstruction Finance Corporation, Woodman of the World Bldg., Omaha 2, Nebraska (Mr. Herbert S. Daniel).

PHILADELPHIA REGION

Pennsylvania, Delaware. Regional Manager, Reconstruction Finance Corporation, 1528 Walnut Street, Philadelphia 2, Pennsylvania (Mr. E. Raymond Scott).

PORTLAND REGION

Washington, Idaho, Montana, Oregon. Regional Manager, Reconstruction Finance Corporation, Pittock Bldg., Portland 5, Oregon (Mr. William Kennedy).

RICHMOND REGION

Maryland, Virginia, Washington, D. C. Regional Manager, Reconstruction Finance Corporation, Richmond Trust Bldg., 7th and Main Streets, Richmond 19, Virginia (Mr. W. B. Cloe).

ST. LOUIS REGION

Missouri, Kentucky, Arkansas. Regional Manager, Reconstruction Finance Corporation, Landreth Bldg., 320 North Fourth St., St. Louis 2, Missouri (Mr. B. Glenn Culledge).

SAN ANTONIO REGION

Southern Texas, including the counties of Arkansas, Atascosa, Bandera, Bee, Bexar, Blanco, Brewster, Brooks, Caldwell, Cameron, Comal, DeWitt, Dimmit, Duval, Edwards, Frio, Gillespie, Goliad, Gonzales, Gaudalupe, Hayes, Hidalgo, Jim Hogg, Jim Wells, Karnes, Kendell, Kenedy, Kerr, Kimble, Kinney, Kleburg, La Salle, Live Oak, Llano, McMullen, Mason, Maverick, Medina, Nueces, Presidio, Real, San Patricio, Starr, Terrell, Travis, Uvalde, Van Verde, Webb, Willacy, Wilson, Zapata, Zavalla, Regional Manager, Reconstruction Finance Corporation, Alamo National Building, San Antonio 5, Texas (Mr. L. C. Andrews).

SAN FRANCISCO REGION

Nevada, Northern California including the counties of Alameda, Alpine, Amador, Butte,

Calaveras, Colusa, Contra Costa, Del Norte, Eldorado, Fresno, Glenn, Humboldt, Kern, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino Merced, Modoc, Mono, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Luis Obispo, San Mateo, Santa Clara, Santa Cruz, Shasta, Siskiyou, Solano, Sonomo, Stanislaus, Sutter, Tehama, Trinity, Tulard, Tuolumne, Yolo, Yoba. Regional Manager, Reconstruction Finance Corporation, 200 Bush Street, San Francisco 4, California (Mr. John S. McCullough).

SALT LAKE CITY REGION

Utah. Regional Manager, Reconstruction Finance Corporation, Dooley Building, Salt Lake City 1, Utah (Mr. Gerald L. Leaver).

§ 807.908 *Regional Offices of Procurement Division, Treasury Department.*

REGION I

Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont. Regional Director, Procurement Division, U. S. Treasury Department, Park Square Building, Boston 16, Massachusetts (Mr. Donald A. Mackay, Phone: Hubbard 2870).

REGION II

Pennsylvania, New Jersey, New York. Regional Director, Procurement Division, U. S. Treasury Department, 76 Ninth Avenue, New York 11, New York (Mr. F. S. Albrecht, Phone: Chelsea 3-8950).

REGION III

District of Columbia, Delaware, Maryland, North Carolina, Virginia. Regional Director, Procurement Division, U. S. Treasury Department, 1229-20th Street, N. W., Washington 25, D. C. (Mr. J. J. Connor, Phone: Executive 6400, Exts. 5035 and 5036).

REGION IV

Indiana, Kentucky, Ohio, West Virginia. Regional Director, Procurment Division, U. S. Treasury Department, Faller Bldg., 8th & Walnut Streets, Cincinnati 14, Ohio (Mr. J. H. Little, Phone: Parkway 7160).

REGION V

Illinois, Michigan, Minnesota, North Dakota, South Dakota, Wisconsin. Regional Director, Procurement Division, U. S. Treasury Department, Rm. 300, 209 S. LaSalle St., Chicago 4, Illinois (Mr. F. A. Mapes, Phone: Delaware 8300).

REGION VI

Alabama, Florida, Georgia, Mississippi, South Carolina, Tennessee. Regional Director, Procurement Division, U. S. Treasury Department, 10 Forsyth Street Building, Atlanta 3, Georgia (Mr. John D. Tompkins, Phone: Walnut 5081).

REGION VII

Arkansas, Louisiana, Oklahoma, Texas. Regional Director, Procurement Division, U. S. Treasury Department, 609 Neil P. Anderson Building, Fort Worth 2, Texas (Mr. Hamilton Morton, Phone: 2-1287).

REGION VIII

Iowa, Kansas, Missouri, Nebraska. Regional Director, Procurement Division, U. S. Treasury Department, 2605 Walnut Street, Kansas City 2, Missouri (Mr. W. B. Edgar, Phone: Westport 4903).

REGION IX

Colorado, New Mexico, Utah, Wyoming. Regional Director, Procurement Division, U. S. Treasury Department, 7th Fl., Exchange Building, 1030—15 Street, Denver 2, Colorado (Mr. Alden W. Pool, Phone: Keystone 4151).

REGION X

Arizona, California, Nevada, Regional Director, Procurement Division, U. S. Treasury Department, 335 Fell Street, San Francisco 2, California (Mr. Thomas C. Stephens, Phone: Underhill 1922).

REGION XI

Idaho, Oregon, Montana, Washington. Regional Director, Procurement Division, U. S. Treasury Department, 2005 Fifth Avenue, Seattle 1, Washington (Mr. Orrin C. Bradeen, Phone: Main 2782).

§ 807.909 *Stock pile materials.*

Material	Minimum quantity	Specific types and grades
Agar	250 pounds	Medical Department Supply Catalog, Item Nos. 10460, 10460-12, 10460-32, 10460-40, 10460-48, 10460-50, 10460-88, 1K00020, 10460-46 Bulk Agar.
Aluminum ingot	50,000 pounds	Primary or secondary refined metal (99 percent minimum Al).
Antimony	25 short tons	Refined metal, needle antimony, antimony sulfide, antimony ores and concentrates.
Asbestos:		
Rhodesian chrysolite	5 short tons	Commercial grades C & C/1, C & C/2 unfabricated.
South African amosite	5 short tons	Commercial grades B-1, B-3, D-3, 3DM-1 unfabricated.
Bauxite	25 long tons	Commercial grade A.
Beryl	5 short tons	Beryl ore (minimum 8 percent BeO), beryllium oxide, beryllium metal.
Bismuth	5 pounds	Bismuth metal, pharmaceutical compounds.
Cadmium	5 pounds	Metal in sticks, ingots, slabs, ball anodes or other refined forms.
Calcite, optical	100 pounds	Clear, flawless crystals, Minimum 1½" diameter.
Chromite:		
Chemical grade	25 long tons	Commercial ore or concentrates. Dry chromium chemicals.
Metallurgical grade	25 long tons	Ore (42 percent minimum Cr_2O_3, 2.8 minimum Cr/Fe ratio), ferrochromium, chromium metal.
Refractory grade	25 long tons	All commercial grades.
Chalk, English	10 short tons	Any.
Clay, English China	10 short tons	All commercial grades.
Cobalt	2,000 pounds cobalt content	Refined metal, oxide, ores, concentrates, crudes.
Columbite	500 pounds columbite content.	Ore (45 percent minimum Cb_2O_5 Ferrocolumbium).
Copper	25 short tons	All primary copper refinery forms. Ingot and other heavy mill forms. Also cartridge (70-30) brass ingot, mill forms.
Cordage fibers: Manila and sisal	400 pounds or 1 bale	Fiber or new cordage.
Corundum	10,000 pounds	Ore or grain.
Cryolite, natural	25 long tons	Natural ore.
Diamonds, industrial	No minimum	Stones (unset), powder, dust.
Diamond dies	No minimum	Finished dies.
Emery	25 short tons	Ore or grain. Turkish or Greek origin only.
Emetine	100 ounces	Medical Department Supply Catalog, Item Nos. 11720, A320800, A320830, A321000, A321010. Emetine in bulk.
Ergot	250 pounds	Material in bulk quantities.
Fluorspar: Acid or metallurgical	25 short tons	Commercial grades.
Graphite: Amorphous lump, 97 percent minimum.	5 short tons	Any amorphous lump (97 percent minimum C).
Crystalline fines	25 short tons	Madagascar; or domestic grades A, 1A, and 1B, smaller than 60 mesh.
Flake	5 short tons	Madagascar flake, 60 mesh or larger.
Hyoscine	25 ounces	Hyoscine hydrobromide in bulk or standard packages.
Indium	100 Troy ounces	Metal in refinery forms. Plating salts.
Iodine	2,000 pounds	Crude iodine.
Jewel bearings: Instrument rings, sapphire vees, watch rings, and other instrument and watch jewels.	No minimum	Set or unset.
Kapok	100 pounds	Raw fiber.
Kyanite, Indian	25 short tons	Ore.
Lead	25 short tons	Antimonial, common or corroding grade metal in all refinery forms. Ores and concentrates.
Magnesium ingot	50,000 pounds	Primary or secondary refined metal.
Manganese:		
Battery grade	25 long tons	Commercial battery ore, lump or pulverized battery mixes not acceptable.
Metallurgical grade	25 long tons	Ore (45 percent minimum Mn).
Mercury	10 flasks	Metallic or contained in chemicals.
Mica:		
Muscovite block and film, good stained and better.	No minimum	Commercial grade, larger than 1 square inch.
Muscovite block, stained and lower.	No minimum	Do.
Muscovite splittings	No minimum	Commercial grades, unbonded.
Phlogopite (amber) splittings	No minimum	Do.
Phlogopite (amber) block	No minimum	Commercial grade, larger than 1 square inch.
Molybdenum	10,000 pounds molybdenum content.	Molybdenum concentrates, oxide, calcium molybdate, ferromolybdenum, ammonium molybdate, molybdenum powder.
Monazite	5 short tons	Ore.
Nickel (including Monel)	10,000 pounds nickel content.	Refined metal in any form.
Pepper	1,000 pounds	Commercial grades, ground or unground.
Platinum group metals:		
Iridium	No minimum	Refined iridium or alloys with other platinum group metals. Crudes or semi-refined forms.
Osmium	No minimum	Refined osmium or alloys with other platinum group metals. Crudes or semi-finished forms.
Palladium	No minimum	Refined palladium or alloys with other platinum group metals. Crudes or semi-refined forms.
Platinum	No minimum	Refined platinum or alloys with other platinum group metals. Crudes or semi-refined forms.
Rhodium	No minimum	Refined rhodium or alloys with other platinum group metals. Crudes or semi-refined forms.
Ruthenium	No minimum	Refined ruthenium or alloys with other platinum group metals. Crudes or semi-finished forms.
Quartz crystals: Radio grade	No minimum	Oscillator plates and blanks (active) NBS grades 1, 2, and 3 crude quartz crystals.
Quebracho	5 long tons	Extract in bulk.
Quinidine sulfate	25 ounces	Medical Department Supply Catalog, Item No. 13870, material in bulk.
Quinine	100 ounces	Medical Department Supply Catalog, Item Nos. 13900, 13910, 13900-12, 13900-03, 13900-05, A-717000, A-716500, A-716600. Quinine sulfate or hydrochloride in bulk.

Material	Minimum quantity	Specific types and grades
Rubber: Crude rubber and natural rubber, latex.	5 long tons	Any.
Rutile	5 short tons	Ore or concentrates.
Sapphire (natural and synthetic)	No minimum	Any suitable for jewel bearings.
Selenium	1,000 pounds	Commercial forms or compounds.
Shellac	10,000 pounds	Bulk shellac of all grades (dry flake).
Strontium, celestite	25 short tons	Ores.
Talc:		
Steatite, block or lava	10 short tons	Quality suitable for electronic tube spacers, minimum 3-pound pieces.
Steatite, ground	5 short tons	Any.
Tantalite	100 pounds tantalite content.	Tantalite ore, potassium tantalum fluoride, tantalum oxide, tantalum metal powder.
Tin	100 pounds	Concentrates. Pig tin.
Tungsten	10,000 pounds tungsten content.	Ores and concentrates (65 percent minimum WO_3), commercial ferrotungsten, tungsten powder.
Vanadium	10,000 pounds vanadium content.	Vanadium oxide (70 percent minimum V_2O_5) ferrovanadium.
Wool	300 pounds	Raw wool, greasy or cleaned.
Zinc	25 short tons	Slab zinc, all grades. Zinc ores and concentrates, zinc oxide.
Zirconium: Baddeleyite and zircon	5 short tons	Ores or concentrates.

(a) *W. D., A. G. O. Form 257.*

STOCKPILE MATERIALS—REQUEST FOR DISPOSITION INSTRUCTIONS

(See instructions below. See also §§ 807.210, 807.603, and 807.909)

1. From: (*Requesting Field Installation*)	2. To: (*Responsible Chief of Service*)	3. Date

Request is made that disposition instructions be obtained for the following lot of material.

4. Material	5. Sub-group	6 Quantity	7. Analysis (state whether an actual analysis or guaranteed max. or min.)	
8. Type or grade	9. Physical form and size			
10. Source of analysis shown in 7	11. Specification purchased under		Element	% Weight
12. Original producer or source	13. Condition of material			
14. Present location (city)	15. Kind and condition of packaging			

16. Comments or additional descriptive information

17. Inclosures	18. Name, position, and signature of person preparing report

1ST IND.

19. From (*Chief of Service*)	20. To: The Director, Production Division, Headquarters Army Service Forces. Attn: Chief, Materials Branch.	21. Date	22. Lot No.

Request is made for a determination as to whether subject lot of material is to be held for stockpile or disposed of as surplus.

23. Name, position and signature of person making indorsement for Chief of Service

2ND IND.

24. From: The Director, Production Division, Headquarters Army Service Forces.	25. To: (*Chief of Service*)	26. Date

Person who determines suitability for stockpile will initial proper action and strike out other		
		Subject lot of material is to be held for stockpile. Action required by § 807.210 (b) (2) will be taken. This form will be returned with 3rd Indorsement completed.
		Subject lot of material is not desired for stockpile. Action required by § 807.210 (b) (3) will be taken. 3rd Indorsement need not be completed.

27. Name, position and signature of person recommending action	28. For the Director, Production Division Chief, Materials Branch

W. D. A. G. O. Form 257. 13 June 1944.

3RD IND.

29. From: (*Chief of Service*)	30. To: the Director, Production Division, Headquarters Army Service Forces. Attn: Chief, Materials Branch.	31. Date

Subject lot of material has been placed in permanent storage as directed by 2nd Indorsement. The following refers to permanent storage location. Any necessary future movement will be similarly reported. Material will not be disposed of without authorization.

32. Name and location of storage point	33. How stored
34. Custodian	35. Kind and condition of packaging

36. Name, position and signature of person making indorsement for Chief of Service

INSTRUCTIONS

A separate request will be filed for each lot of material. A lot is defined as any quantity to which the same analysis or other measure of quality applies. Report all material at a given location if the total of all lots at that location equals or exceeds the minimum shown in § 807.909.

In completing items 4 thru 16, any available Government records, or contractor's or supplier's records made available to the Government, will be referred to in order that the information will be as complete and specific as possible. A proper determination of suitability for stockpiling will depend upon having specific information. No actual analysis or other tests, other than visual inspection, need be carried out in order to complete the information.

The following instructions refer to the corresponding items in the request form and indorsements thereto:

4 and 5—Use terminology as in § 807.909, col. 1. Leave 5 blank if not applicable.

6—State quantity of lot in commercial unit and show unit. State whether quantity applies to the gross weight or to the contained weight of the material named in 4.

7—Show an actual analysis of record, or a guaranteed analysis, if available, and state which. If none available, so state.

8—Where 4 is generic term, show here the commercial name of the actual subject material. I. e. where 4 is "vanadium", 8 might be "fused black vanadium oxide" or "ferrovanadium".

10—Quote the source of authority for the analysis shown in 7.

11—Where 7 is not available, show a recognized specification under which the material was purchased.

17—Inclose any inspection records or other documents which would add to the information shown in 4 thru 16.

22—The chief of service will serial number, upon receipt, all lots of a given material and sub-group handled thru his office, regardless of the originating field installation. This will be used for reference in any necessary separate communications.

33—State whether stored in the open (and if so, whether on the ground or on a pavement), in an open shed or in an enclosed building. State also, where applicable, any precautions taken to prevent loss or damage by the elements.

34—Responsible War Department Office or Officer.

35—Repeat item 15 unless material has been packed or repacked or unless condition of packages has changed.

Three copies of each request will be sent by the requesting field installation to the responsible Chief of Service. After completing 1st indorsement, Chief of Service will forward two copies to the Director, Production Division, Headquarters Army Service Forces.

§ 807.910 *Monthly report of redistribution and disposal of excess and surplus serviceable property.*

BY	REDISTRIBUTION AND DISPOSAL OF SERVICEABLE PROPERTY EXCESS AND SURPLUS	CONTROL APPROVAL SYMBOL RC3-5 / MONTH

Line No.	Status and type of action	Cost	
	Sec. I.—Available excess and surplus		
1.	Available for redistribution and disposal 1st of month		$
2.	Made available during month:		$
	A. Military property	$	XXXXXXXXXXXXXXX
	B. Contract termination property		XXXXXXXXXXXXXXX
	C. Other non-military property		XXXXXXXXXXXXXXX
3.	Withdrawn from available excess and surplus:		$
	A. Redistributed within reporting agency	$	XXXXXXXXXXXXXXX
	B. Transfers to war reserve and stockpile		XXXXXXXXXXXXXXX
	C. Transfers to salvage		XXXXXXXXXXXXXXX
4.	Adjustments		$
5.	Balance before disposal (Line 1+2−3±4)		$
	Sec. II.—Disposals during month		*Cost*
6.	Transferred to other War Department components		$
7.	Transferred to Navy Department		$
8.	Transfers to or on order of disposal agencies:		$
	A. Treasury Department	$	XXXXXXXXXXXXXXX
	B. Reconstruction Finance Corporation		XXXXXXXXXXXXXXX
	C. Reconstruction Finance Corporation (aircraft)		XXXXXXXXXXXXXXX
	D. U. S. Maritime Commission		XXXXXXXXXXXXXXX
	E. War Food Administration		XXXXXXXXXXXXXXX
	F. Other Government agencies		XXXXXXXXXXXXXXX
9.	Sales by CPFF Contractors (excluding scrap)		$
10.	Direct sales by War Department		$
11.	Other disposals		$
12.	Total disposals (Lines 6 through 11)		$
13.	Balance available for redistribution or disposal—End of month (line 5−line 12)		$
	Sec. III.—Realization from sales—Govt. owned property		*Amt. realized*
14.	Sales by CPFF contractors (excluding scrap)		$
15.	Direct sales by War Department		$
	Sec. IV.—Other disposal actions	*Reported during month*	*Reported to end of month—not moved*
16.	Surplus property reported to Treasury Department	$	$
17.	Surplus property reported to RFC		
18.	Surplus property reported to RFC (aircraft)		
19.	Surplus property reported to U. S. Maritime Commission		
20.	Surplus property reported to War Food Administration		
21.	Surplus property reported to other disposal agencies		
22.	Total (lines 16 through 21)		
23.	Property declared surplus during month	$	XXXXXXXXXXXXXXX
	Sec. V.—Actions on contractor owned term. inventories	*Cost*	*Realization*
24.	Inventory on hand 1st of month	$	XXXXXXXXXXXXXXX
25.	Inventories reported during month	$	XXXXXXXXXXXXXXX
26.	Serviceable property retained or sold by contractor	$	$
27.	Property sold or retained by contractor as scrap	$	$
28.	Title taken by Government	$	XXXXXXXXXXXXXXX
29.	Inventory on hand end of month (line 24+25−26−27−28)	$	XXXXXXXXXXXXXXX

Remarks:

W. D. A. G. O., Form No. 256

(a) *Instructions as to monthly report of redistribution and disposal of excess and surplus serviceable property.* There are set forth in the succeeding subparagraphs instructions with respect to the information to be contained on the various lines of the report form. Subparagraph (*I-1*) contains instructions with respect to section I, line 1. Subparagraph (*H-2*) contains instructions with respect to section II, line 2, etc.

(*I-1*) Enter the cost of excess and surplus serviceable property of all types on hand at the beginning of the month available for redistribution and disposal. This figure will be identical with that reported on line 13 of the report for the preceding month.

(*I-2*) Enter the cost of additional excess and surplus property made available for redistribution or disposal during the month, subdivided as to: (a) Military property; (b) Contract termination property; (c) Other nonmilitary property. Such subdivisions will be made in accordance with the following definitions:

(a) Military property to be reported by technical services of the Army Service Forces will include (1) items in excess of the established U. S. redistribution and disposal level (see sec. II, ASF Cir. 67, 1944 as amended by sec. VIII, ASF Cir. 132, and sec. VIII, ASF Cir. 169, 1944); (2) all other items processed as surplus and excess even though not over the established U. S. redistribution and disposal level, including those authorized by section I, ASF Circular No. 67, 1944, as amended by section VII, ASF Circular No. 132, 1944; (3) nonstandard commercial property declared surplus by depot commanders and not yet disposed of (sec. II, ASF Cir. 101, 1944). Military property to be reported by service commands includes all excess property available for redistribution by the service command, and all surplus property which has been declared surplus by the commanding general of the service command (sec. II, ASF Cir. 101).

(b) Contract termination property will include Government-owned property made available for redistribution or disposal due to contract termination, including (1) Government free issue and Government furnished equipment on fixed price contracts; (2) property made available under terminated CPFF contracts; and (3) that portion of contractor-owned property to which title has been taken by the Government (see line V-28).

(c) Other nonmilitary property will consist of that which becomes excess or surplus for other reasons and from other sources.

(*I-3*) Enter the cost of property withdrawn from available excess and surplus serviceable property during the month for the following reasons: (a) Redistributed within the reporting agency; (b) transfers to war reserve and stockpile; (c) transfers to salvage. Such subdivisions will be made in accordance with the following definitions:

(a) Property redistributed within the reporting technical service or service command during the month.

(b) Military property transferred to war reserve during the month in accordance with section VIII, ASF Circular No. 132, 1944, the cost of nonmilitary property transferred to war reserve in accordance with procedures prescribed by the Commanding General, Army Service Forces (Production Division).

(c) The cost of property (previously included as serviceable property) transferred to salvage officers for disposal.

(*I-4*) Enter any adjustment made necessary by errors in previously reported figures which are required to correct the amount shown as available for disposal on line 5. Explain such adjustments on the back of the report or on an attached sheet.

(*I-5*) Enter the balance before disposal—that is, line 1 plus line 2 minus line 3, plus or minus any adjustments shown on line 4. This represents the estimated cost of property available for disposal outside of the reporting agency.

(*II-6*) Enter the cost of property transferred during the month to other services as a result of circularization of items of military property (sec. I, ASF Cir. 67), and the cost of contract termination inventory and other nonmilitary property transferred to other services (§ 807.308).

(*II-7*) Enter the cost of property transferred during the month to the Navy Department.

(*II-8*) Enter the cost of property transferred during the month to or upon order of a disposal agency. This will include only the cost of property actually transferred, and will not include the cost of property reported to disposal agencies but awaiting disposal. Cost of transfers will be segregated by agency.

(*II-9*) Enter the cost of serviceable property sold or retained by CPFF contractors during the month.

(*II-10*) Enter the cost of all excess or surplus serviceable property sold by the reporting service.

(*II-11*) Enter cost of all excess or surplus serviceable property disposed of by any means other than those covered by the preceding lines. Explain nature of such transactions on the back of the report or on an attached sheet. Property transferred to other government agencies should be listed by agency both as to cost and realization, if any.

(*II-12*) Enter costs of excess or surplus property disposed of during the month (line 6 through 11).

(*II-13*) Enter the balance available for disposal at the end of the month (line 5 minus line 12).

(*III-14*) Enter the receipts from sales or retentions of serviceable property by CPFF contractors, the costs of which appear on line 9.

(*III-15*) Enter the receipts from sales of property by the War Department, the costs of which appear on line 10.

(*IV-16 to 21*) Enter the costs of surplus property reported to the named disposal agency during the month, and the cost of property on hand at the end of the month which has been reported to the disposal agency but not moved. The latter figure will include the cost of property reported in previous months as well as that reported during the current month.

(*IV-22*) Enter total of lines 16 through 21.

(*IV–23*) Enter the cost of property declared surplus during the month. This will include military property declared surplus either with the approval of the Commanding General, Army Service Forces (Requirements Division), or by authority granted to the chiefs of technical services (see sec. VII, ASF Cir. 132, 1944); military property declared surplus by depot commanders as authorized by section II, ASF Circular No. 101; other military property declared surplus by the commanding generals of service commands and contract termination property deemed surplus in accordance with § 807.209.

(*V–24*) Enter the cost of contractor-owned termination property reported on inventory listings (submitted in conection with contract terminations) which have not been disposed of at the first of the month.

(*V–25*) Enter the cost of contractor-owned property reported on inventory listings in connection with contract terminations during the month.

(*V–26*) Enter the cost of contract termination property sold or retained by the contractor during the month as other than scrap and the realization through disposal credits resulting from such transactions.

(*V–27*) Enter the cost of contract termination property sold or retained by the contractor as scrap and the realization through disposal credits resulting from such transactions.

(*V–28*) Enter the cost of contractor-owned property resulting from contract termination, title to which was taken by the Government during the month.

(*V–29*) Enter balance of contractor-owned property yet to be disposed of (line 24, plus line 25, minus line 26, minus line 27, minus line 28).

[Procurement Reg. 8]

PART 808—FEDERAL, STATE AND LOCAL TAXES

SUBPART A—CONTRACT TAX ARTICLES

NOTE: See §§ 803.357 and 803.358.

SUBPART B—FEDERAL EXCISE TAXES

Sec.
808.801 Table of Federal excise taxes.
808.802 Manufacturers' excise taxes.
808.803 Pistols and revolvers.
808.804 Retailers' excise taxes.
808.805 Tax on transportation of persons.
808.806 Tax on transportation of property.
808.807 Tax on transportation of oil by pipe line.
808.808 Telegraph, telephone, radio and cable facilities.

SUBPART C—EXEMPTIONS FROM FEDERAL EXCISE TAXES

808.810 Exemption from specific Federal excise taxes as to articles sold and services furnished for the use of the United States.
808.811 Exemption based on exportation.
808.812 Exemption from manufacturers' excise taxes of sale of certain supplies and equipment for vessels of war including aircraft.
808.813 Manufacturers' excise taxes; sales for further manufacture.
808.814 Sales under contracts entered into prior to 1 June 1944 and agreements and change orders supplemental thereto.
808.815 Miscellaneous exemptions.
808.816 Effective date of removal of other Governmental exemptions.
808.817 Powers of Secretary of the Treasury to authorize exemption.
808.818 Federal excise taxes not covered by this part.

SUBPART D—TAX EXEMPTION FORMS AND PROCEDURE

808.820 Applicability of this subpart.
808.821 Standard tax exemption forms.
808.822 U. S. Government Tax Exemption Certificate, Form 1094.
808.823 Supply and reports of standard forms.
808.824 Who may execute tax exemption certificates.
808.825 Aircraft and vessels of war, supplies and equipment tax exemption certificate.
808.826 Tax exemption certificates for issuance by contractors.
808.827 Preparation and execution of exemption certificates.
808.828 When and how exemption certificates are issued to contractors.
808.829 Blanket tax exemption certificates, contracts under General Schedule of Supplies.
808.830 State and local taxes.

SUBPART E—STATE AND LOCAL TAXES

808.831 Applicable tax directives.
808.832 Certificate of non-inclusion of state or local taxes in amount billed to CPFF contractors or subcontractors.
808.833 Tax provisions of purchase orders issued by CPFF contractors and subcontractors.

SUBPART F—COLLECTION AND PAYMENT OF FEDERAL EXCISE TAXES BY THE GOVERNMENT

808.840 General.
808.841 Remittances to contractor.
808.842 Transfers to which §§ 808.840 and 808.841 do not apply.
808.843 Adjustment of sales price.

SUBPART G—ADJUSTMENTS OF CONTRACTS BECAUSE OF CHANGED FEDERAL EXCISE TAXES

808.850 Excise tax rates increased by Revenue Act of 1943.
808.851 Excise taxes repealed by Revenue Act of 1943.
808.852 Excise taxes repealed by Revenue Act of 1942.
808.853 Contract provisions requiring adjustment by reason of changed Federal excise taxes.
808.854 Adjustments required under standard tax article by reason of increase in rates and repeal of excise taxes.
808.855 Authority of chiefs of technical services with respect to adjustments.
808.856 Situations in which adjustment not required by reason of repeal or increase.
808.857 Adjustments by reason of removal of exemptions by Revenue Act of 1943.
808.858 Tax on transportation of property imposed by Revenue Act of 1942.

APPENDIX—POLICY AS TO CLAIMING EXEMPTION FROM FEDERAL EXCISE TAXES AVAILABLE ON THE PURCHASE OF ARTICLES FOR THE USE OF THE UNITED STATES

808.890 General; scope of Appendix.
808.891 Definition of terms.
808.892 Statutory exemptions.
808.893 Exemption under Treasury Decision 5114.
808.894 When sales deemed for use of United States.
808.895 Special considerations affecting tax exemption of lubricating oil and gasoline.
808.896 Exemption rules as to articles subject to tax under Chapters of Internal Revenue Code other than Chapters 25 or 29.
808.897 Memorandum of policy, effective as of 1 March 1943, as to Federal excise taxes.

SUBPART A—CONTRACT TAX ARTICLES

NOTE: See §§ 803.357 and 803.358 with respect to the standard forms of tax articles.

SUBPART B—FEDERAL EXCISE TAX

§ 808.801 *Table of Federal excise taxes.* The following table lists the Federal excise taxes which are discussed in this part, together with references to the portions of the Internal Revenue Code imposing such taxes, the Treasury Regulations issued with respect to such taxes, and the paragraphs of this part in which such taxes are more particularly described. In addition such table shows the taxes from which exemption is available on and after 1 June 1944 with respect to sales made for the exclusive use of the United States. The table does not show the exemption applying to supplies and equipment for vessels of war, including aircraft, nor other exemptions applying to private as well as Government procurement, as to which see §§ 808.811 and 808.812.

Tax	Reference to Internal Revenue Code and regulations thereunder	Section reference	Exemption of sales to United States on and after 1 June 1944
Manufacturers' excise taxes	Ch. 29, IRC; Regs. 44 and 46	808.802 et seq.	
Tires and inner tubes	Sec. 3400, IRC; Regs. 46, Subpart D.	808.802 (a)	Not exempt (But see Note 1).
Automobiles, buses, trucks, etc.	Sec. 3403, IRC; Regs. 46, Subpart F.	808.802 (b)	Not exempt (But see Note 1).
Radio receiving sets, etc	Sec. 3404, IRC; Regs. 46, Subpart G.	808.802 (c)	Exempt (§ 808.810).
Refrigerators, etc	Sec. 3405, IRC; Regs. 46, Subpart H.	808.802 (d)	Not exempt (But see Note 1).
Sporting goods	Sec. 3406 (a) (1), IRC; Regs. 46, Subpart J.	808.802 (e)	Not exempt (But see Note 1).
Electric, gas or oil appliances	Sec. 3406 (a) (3), IRC; Regs. 46, Subpart L.	808.802 (f)	Not exempt (But see Note 1).
Photographic apparatus	Sec. 3406 (a) (4), IRC; Regs. 46, Subpart M.	808.802 (g)	Not exempt (But see Note 1).
Business and store machines	Sec. 3406 (a) (6), IRC; Regs. 46, Subpart O.	808.802 (h)	Not exempt (But see Note 1).
Electric light bulbs and tubes	Sec. 3406 (a) (10), IRC; Regs. 46, Subpart S.	808.802 (i)	Not exempt (But see Note 1).
Firearms, shells, cartridges	Sec. 3407, IRC; Regs. 46, Subpart I.	808.802 (j)	Exempt (§ 808.810).
Matches	Sec. 3409, IRC; Regs. 44, Subpart F.	808.802 (k)	Not exempt (But see Note 1).
Electrical energy	Sec. 3411, IRC; Regs. 43, Subpart T.	808.802 (l)	Not exempt (But see Note 1).
Gasoline	Sec. 3412, IRC; Regs. 44, Subpart D.	808.802 (m)	Not exempt (But see Note 1).
Lubricating Oils	Sec. 3413, IRC; Regs. 44, Subpart E.	808.802 (n)	Not exempt (But see Note 1).
Pistols and revolvers	Sec. 3409, IRC; Regs. 47	808.803	Exempt (§ 808.810).
Retailers' excise taxes	Ch. 19, IRC; Regs. 61	808.804	
Jewelry	Sec. 2400, IRC; Regs. 61, Subpart D.	808.804 (a)	Not exempt (But see Note 1).
Furs	Sec. 2401, IRC; Regs. 61, Subpart E.	808.804 (b)	Not exempt (But see Note 1).
Toilet preparations	Sec. 2402, IRC; Regs. 61, Subpart F.	808.804 (c)	Not exempt (But see Note 1).
Luggage	Sec. 1631, IRC; Regs.	808.804 (d)	Not exempt (But see Note 1).

Tax	Reference to Internal Revenue Code and regulations thereunder	Section reference	Exemption of sales to United States on and after 1 June 1944
Taxes on transportation			
Transportation of persons	Ch. 30, Subch. C, IRC; Regs. 42, Subpart F.	808.805	Exempt as to transportation upon Government transportation requests (§ 808.810).
Transportation of property	Ch. 30, Subch. E, IRC; Regs. 113.	808.806	Exempt as to transportation under Government bills of lading (§ 808.810).
Transportation of oil by pipe line.	Ch. 30, Subch. A, IRC; Regs. 42, Subpart D.	808.807	Not exempt.
Telephone, telegraph, radio and cable facilities.	Ch. 30, Subch. B, IRC; Regs. 42, Subpart E.	808.808	Exempt as to services furnished directly to the United States (§ 808.810).

NOTE 1: Exemption continues as to articles sold after 1 June 1944 pursuant to contracts entered into prior to 1 June 1944 or to any agreements or change orders supplemental to such contracts and bearing the same Government contract number (See § 808.814)

This part does not purport to include all material necessary to a decision as to the scope of any of the Federal excise taxes referred to herein. In cases of doubt, the Treasury Regulations should be consulted. If additional assistance is required, it may be obtained from the Tax Division, Office of The Judge Advocate General, Washington, D. C., if not available within the technical service concerned.

§ 808.802 *Manufacturers' excise taxes.* (Chapter 29, IRC; Regulations 44 and 46; 26 CFR, Cum. Supp., Parts 314 and 316). *Rates:* Various. See following paragraphs.

The manufacturers' excise taxes are set forth below in § 808.802. The tax in each case, unless otherwise specified, is imposed upon articles sold by the manufacturer, producer or importer, and is equivalent to the indicated per cent of the price for which the article is sold. The rates specified are those effective since 1 November 1942, except in the case of the tax on electric light bulbs and tubes (§ 808.802 (i)), the rate of which was changed effective 1 April 1944.

(a) *Tires and inner tubes.* (Sec. 3400, IRC; Regulation 46, Subpart D; 26 CFR, Cum. Supp., 316.30–316.32).

(1) Tires wholly or in part of rubber (exclusive of metal rims or rim bases): 5 cents a pound on total weight.

(2) Inner tubes (for tires) wholly or in part of rubber: 9 cents a pound on total weight.

The term "rubber" includes synthetic and substitute rubber.

(b) *Automobiles, buses, trucks, trailers, motorcycles.* (Sec. 3403, IRC; Regulations 46, Subpart F; 26 CFR, Cum. Supp., 316.50–316.57).

(1) Automobile truck chassis, automobile truck bodies, automobile bus chassis, automobile bus bodies, truck and bus trailer and semitrailer chassis, truck and bus trailer and semitrailer bodies, tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer (including in each of the above cases parts or accessories therefor sold on or in connection therewith or with the sale thereof)—5%. A sale of an automobile truck, bus, or truck or bus trailer or semitrailer, shall be considered to be a sale of the chassis and of the body.

(2) Other automobile chassis and bodies, chassis and bodies for trailers or semitrailers suitable for use in connection with passenger automobiles, and motorcycles (including in each case parts or accessories therefor sold on or in connection therewith or with the sale thereof), except tractors—7%. A sale of an automobile, trailer, or semitrailer shall be considered to be a sale of the chassis and of the body.

(3) Parts or accessories (other than tires and inner tubes and other than radios) for any of the articles enumerated in subparagraphs (1) or (2)—5%. Spark plugs, storage batteries, leaf springs, coils, timers, and tire chains, which are suitable for use on or in connection with, or as component parts of, any of the articles enumerated in subparagraphs (1) and (2) shall be considered parts or accessories for such articles, whether or not primarily adapted for such use.

(4) The following items are not subject to this tax:

(i) Motor-driven machines designed and adapted for use in pulling or drawing vehicles around the premises of factories and railway stations, and small trucks for handling baggage and trunks at railway stations, as distinguished from automotive vehicles, including tractors, used on highways and roads. (Sec. 316.50, Regulations 46; 26 CFR, Cum, Supp., 316.50).

(ii) Parts and accessories (which term does not include tires, inner tubes and automobile radios) sold to a manufacturer of articles enumerated in subparagraphs (1) and (2) above, provided an appropriate certificate of the purchaser is given to the seller, stating that the purchaser is a manufacturer of such articles. (Sec. 3403 (c), IRC; Sec. 316.57, Regulations 46; 26 CFR, Cum. Supp., 316.57).

(5) Where a manufacturer sells tax-paid tires, inner tubes and automobile radios on or in connection with or with the sale of automobile trucks, other automobiles, taxable tractors, or motorcycles, he may take appropriate credit against the tax due on his sale. (Sec. 3403 (e), IRC; Sec. 316.54, Regulations 46; 26 CFR, Cum. Supp., 316.54).

(c) *Radio receiving sets, phonographs, phonograph records and musical instruments.* (Sec. 3404, IRC; Regulations 46, Subpart G; 26 CFR, Cum. Supp.; 316.60–316.64). Rate: 10%.

(1) Radio receiving sets, automobile radio receiving sets, combination radio and phonograph set, and phonographs.

(2) Chassis, cabinets, tubes, reproducing units, power packs, antennae of the "built in" type, and phonograph mechanisms, which are suitable for use on or in connection with, or as component parts of, any of the articles enumerated in subparagraph (1), whether or not primarily adapted for such use.

(3) Phonograph records.

(4) Musical instruments.

including in each case, except in the case of musical instruments, parts or accessories therefor sold on or in connection with the sale thereof.

(d) *Refrigerators, refrigerating apparatus and air conditioners.* (Sec. 3405, IRC; Regulations 46, Subpart H; 26 CFR, Cum. Supp., 316.70–316.73). Rate: 10%.

(1) *Refrigerators.* Household type refrigerators (for single or multiple cabinet installations) having, or being primarily designed for use with, a mechanical refrigerating unit operated by electricity, gas, kerosene, or gasoline.

(2) *Refrigerating apparatus.* Cabinets, compressors, condensors, evaporators, expansion units, absorbers, and controls for, or suitable for use as parts of or with, household type refrigerators of the kind described in subparagraph (1) except when sold as component parts of complete refrigerators or refrigerating or cooling apparatus.

(3) *Air-conditioners.* Self-contained air-conditioning units including in each case parts or accessories therefor sold on or in connection with the sale thereof.

(e) *Sporting goods.* (Sec. 3406 (a) (1), IRC; Regulations 46, Subpart J; 26 CFR, Cum. Supp., 316.90–316.91). Rate: 10%.

Badminton nets.
Badminton rackets.[1]
Badminton racket frames.[2]
Badminton racket string.
Badminton shuttlecocks.
Badminton standards.
Baseballs.
Baseball bats.[2]
Baseball body protectors.
Baseball shin guards.
Baseball gloves.
Baseball mitts.
Baseball masks.
Basketballs.
Billiard tables.[3]
Billiard balls (for such tables).
Billiard cues (for such tables).
Bowling balls.
Bowling pins.
Boxing gloves.
Boxing masks.
Boxing head guards.
Boxing ear guards.
Clay pigeons.
Crocket balls.
Cricket bats.
Croquet balls.
Croquet mallets.
Curling stones.
Deck tennis rings.
Deck tennis nets.
Deck tennis posts.
Fencing equipment.
Fishing artificial lures.
Fishing baits.
Fishing creels.
Fishing flies.
Fishing reels.
Fishing rods.
Footballs.
Football harness.
Football helmets.
Golf bags.[3]
Golf balls.
Golf clubs.[4]
Gymnasium equipment.
Gymnasium apparatus.
Hockey balls.
Hockey pucks.
Hockey sticks.[4]
Indoor baseballs.
Indoor baseball bats.[2]
Indoor baseball gloves.
Indoor baseball mitts.
Lacrosse balls.
Lacrosse sticks.
Mass balls.
P lo balls.
Polo mallets.
Pool tables.[3]
Pool balls
Pool cues {for such tables.
Push balls.
Skates.
Skis.

[1] Measuring 22 inches over-all or more in length.

[2] Measuring 26 inches or more in length.

[3] Measuring 45 inches over-all or more in length.

[4] Measuring 30 inches or more in length.

Ski poles.
Snow shoes.
Snow toboggans.
Snow sleds.
Soccer balls.
Softball balls.
Softball bats.[2]
Softball gloves.
Softball mitts.
Squash balls.
Squash rackets.[1]
Squash racket frames.[1]
Squash racket string.
Table tennis balls.
Table tennis nets.
Table tennis paddles.
Table tennis tables.
Tennis balls.
Tennis nets.
Tennis rackets.[1]
Tennis racket frames.[1]
Tennis racket string.
Track hurdles.
Traps for throwing clay pigeons.
Vaulting cross bars.
Vaulting poles.
Vaulting standards.
Volley balls.
Volley nets.
Volley standards.
Water polo balls.
Water polo goals.
Wrestling head harness.

[1] Measuring 22 inches over-all or more in length.

[2] Measuring 26 inches or more in length.

(f) *Electric, gas or oil appliances.* (Sec. 3406 (a) (3), IRC; Regulations 46, Subpart L; 26 CFR, Cum. Supp., 316.110–316.111). Rate: 10%. Electric direct motor-driven fans and air circulators; electric, gas, or oil water heaters; electric flat irons; electric air heaters (not including furnaces); electric immersion heaters; electric heating pads and blankets; electric, gas or oil appliances of the type used for cooking, warming, or keeping warm food or beverages for consumption on the premises; and electric mixers, whippers, and juicers.

(g) *Photographic apparatus.* (Sec. 3406 (a) (4), IRC; Regulations 46, Subpart M; 26 CFR, Cum. Supp., 316.120–316.121).

(1) Cameras (except cameras weighing more than four pounds exclusive of lens and accessories) and lenses, photographic apparatus and equipment, and any apparatus or equipment designed especially for use in the taking of photographs or motion pictures or in developing, printing, or enlarging photographs or motion pictures—25%.

(2) Unexposed photographic films (including motion picture films, but not including X-ray film), photographic plates and sensitized paper—15%.

(3) A credit or refund may be allowed or made in the amount of tax paid with respect to sale of unexposed motion picture films used or resold for use in the making of news reel motion picture films. (Sec. 3443 (a) (3) (A) (v), IRC; sec. 316.21, Regulations 46; 26 CFR, Cum. Supp., 316.121)

(h) *Business and store machines.* (Sec. 3406 (a) (6), IRC; Regulations 46; Subpart O; 26 CFR, Cum. Supp., 316.140–316.141). Rate: 10%.

Adding machines.
Addressing machines.
Autographic registers.
Bank proof machines.
Billing machines.
Bookkeeping machines.
Calculating machines.
Card punching machines.
Cash registers, except cash registers of the type used in registering over-the-counter retail sales.
Change making machines
Check writing machines.
Check signing machines.
Check cancelling machines.
Check perforating machines.
Check cutting machines.
Check dating machines.
Other check protector machine devices.
Computing machines
Coin counters.
Dictographs.
Dictating machine record shaving machines.
Dictating machines.
Duplicating machines.
Embossing machines.
Envelope opening machines.
Erasing machines.
Fanfold machines
Fare registers.
Fare boxes.
Folding machines.
Listing machines
Line-a-time and similar machines.
Mailing machines.
Multigraph machines.
Multigraph typesetting machines.
Multigraph type justifying machines and combinations of any of the foregoing.
Numbering machines.
Portable paper fastening machines.
Pay roll machines.
Pencil sharpeners.
Postal permit mailing machines.
Punch card machines.
Sealing machines.
Shorthand writing machines.
Sorting machines.
Stencil cutting machines.
Tabulating machines.
Ticket counting machines.
Ticket issuing machines.
Typewriters.
Transcribing machines.
Time recording devices.

(i) *Electric light bulbs and tubes.* (Sec. 3406 (a) (10), IRC; Regulations 46, Subpart S; 26 CFR, Cum. Supp., 316.180–316.181). Rate: 20%. Electric light bulbs and tubes, not including articles taxable under any other Manufacturers' excise tax.

(j) *Firearms, shells, cartridges.* (Sec. 3407, IRC; Regulations 46, Subpart I; 26 CFR, Cum. Supp., 316.80–316.82). Rate: 11%. Firearms (except pistols and revolvers, as to which see § 808.803), shells and cartridges.

(k) *Matches.* (Sec. 3409, IRC; Regulations 44, Subpart F; 26 CFR, Cum. Supp., 314.50–314.52).

(1) Fancy wooden matches and wooden matches having a stained, dyed, or colored stick or stem, packed in boxes or in bulk—5½ cents per 1,000 matches.

(2) All matches other than those enumerated above—2 cents per 1,000 matches.

(l) *Electrical energy for domestic or commercial consumption.* (Sec. 3411, IRC; Regulations 46, Subpart T; 26 CFR, Cum. Supp., 316.190–316.194). Rate: 3⅛%.

(1) Tax is imposed upon electrical energy sold for domestic or commercial consumption and not for resale.

(2) The term "electrical energy sold for domestic or commercial consumption" does not include (i) electrical energy sold for industrial consumption, e. g., for use in manufacturing, mining, refining, shipbuilding, building construction, irrigation, etc., or (ii) that sold for other uses which likewise cannot be classed as domestic or commercial, such as electrical energy used by electric and gas companies, waterworks, telegraph, telephone and radio communication companies, railroads, etc. (Sec. 316.190, Regulations 46; 26 CFR, Cum. Supp., 316.190).

(3) The tax does not apply to sales of electrical energy for resale, except where the electrical energy is sold to an owner or lessee of a building for resale to the tenants therein.

(4) The tax does not apply to publicly owned electric or power plants, or to electric or power plants or systems owned and operated by cooperative or nonprofit corporations engaged in rural electrification.

(m) *Gasoline.* (Sec. 3412, IRC; Regulations 44, Subpart D; 26 CFR, Cum. Supp., 314.30–314.35).

Rate: 1½ cents a gallon.

(1) Tax is imposed on gasoline sold by the producer or importer thereof, or by any producer of gasoline. The term "gasoline" means (i) all products commonly or commercially known or sold as gasoline (including casinghead and natural gasoline), benzol, benzene, or naphtha, regardless of their classifications or uses; and (ii) any other liquid of a kind prepared, advertised, offered for sale or sold for use as, or used as, a fuel for the propulsion of motor vehicles, motor boats, or airplanes, except that it does not include any of the foregoing (other than products commonly or commercially known or sold as gasoline) sold for use otherwise than as a fuel for the propulsion of motor vehicles, motor boats, or airplanes, and otherwise than in the manufacture or production of such fuel and does not include products commonly or commercially known or sold as kerosene, gas oil, or fuel oil. Further definitions, referring to the thermometer readings, octane ratings and other specifications are found in sec. 314.30, Regulations 44; 26 CFR, Cum. Supp., 314.30.

(2) Gasoline may be sold tax free by a producer of gasoline to other producers of gasoline, provided the producers are properly registered and bonded and an appropriate certificate in this connection is furnished the seller. (Sec. 314.32, Regulations 44; 26 CFR, Cum. Supp., 314.32).

(3) Tax does not attach to products (other than those referred to in §808.802 (m) (a) (1)) sold direct for use otherwise than as fuel for the propulsion of motor vehicles, motor boats, or airplanes and otherwise than in the manufacture or production of such fuel, provided an appropriate certificate in this connection is furnished the seller. (Sec. 314.33, Regulations 44; 26 CFR, Cum. Supp., 314.33). Exemption from tax discussed in this subparagraph (3) will not be claimed, contract prices will not exclude taxes on the basis of such an exemption and proof of such an exemption will not be furnished contractors.

(n) *Lubricating oils.* (Sec. 3413, IRC; Regulations 44, Subpart E; 26 CFR, Cum. Supp., 314.40–314.44). Rate: 6 cents a gallon.

(1) Tax is imposed upon lubricating oils sold by the manufacturer or producer. The term "lubricating oil" includes all oils, regardless of their origin, which are sold as lubricating oil and all oils which are suitable for use as a lubricant, but does not include products of the type commonly known as grease. (Sec.314.40, Regulation 44; 26 CFR, Cum. Supp. 314.40).

(2) Lubricating oils may be sold tax free by the manufacturer or producer thereof direct to another such manufacturer or producer for resale, provided the manufacturers are properly registered and bonded and an appropriate

certificate in this connection is furnished the seller. (Sec. 314.42 Regulations 44; 26 CFR Cum. Supp. 314.42).

(3) No tax attaches where lubricating oils are sold direct for nonlubricating uses by the purchaser provided an appropriate certificate in this connection is furnished the seller. (Sec. 314.43 Regulations 44; 26 CFR, Cum. Supp., 314.43). Exemption from tax discussed in this paragraph (3) will not be claimed, contract prices will not exclude taxes on the basis of such an exemption and proof of such an exemption will not be furnished contractors.

(o) *Basis and application of manufacturers excise taxes.* (1) In general, the manufacturers' excise taxes are based on the sales price. In such cases, any charges for coverings, containers, etc., are included in the sales price for purposes of computing the tax. If the amount of the sales price is adjusted upon return to the seller of coverings or containers, the tax should also be adjusted. (Sec. 316.10, Regulations 46; 26 CFR, Cum. Supp., 316.10). The tax imposed, however, is not part of the taxable price of the article. (26 CFR, Cum. Supp., 316.11). Charges for transportation, delivery, insurance, installation, and similar charges are also excluded in computing the tax. (Sec. 316.12, Regulations 46; 26 CFR, Cum. Supp. 316.12).

(2) The lease of an article is considered a sale thereof. In the case of leases or installment sales, the tax is paid proportionately upon each payment. (Sec. 316.9, Regulations 46; sec. 314.4, Regulations 44; 26 CFR, Cum. Supp., 316.9, 314.4).

(3) The tax in general attaches when title passes from the manufacturer. (Sec. 316.5, Regulations 46; sec. 314.4, Regulations 44; 26 CFR, Cum. Supp. 316.5, 314.4). If subsequent reduction is made in the sales price, credit or refund may be obtained by the manufacturer. (Sec. 316.13, Regulations 46; 26 CFR, Cum. Supp. 316.13). Claim by a manufacturer for credit or refund must show, among other things, that the tax has not been collected from the purchaser or has been repaid to him or that his written consent to the allowance of the credit or refund has been obtained. (Sec. 316.204, Regulations 46; § 314.64, Regulations 44; (26 CFR, Cum. Supp. 316.204, 314.64)).

(4) No Manufacturers' excise tax is imposed under section 3406, Internal Revenue Code (§ 808.802 (e) to (i), inclusive), with respect to any article subject to the retailers' excise tax on sale of jewelry, etc., referred to in § 808.804 (a). (Sec. 3406, IRC).

§ 808.803 *Pistols and revolvers.* (Chapter 25, Subchapter A, IRC; Regulations 47; 26 CFR, and Cum. Supp., Part 302). Rate: 11%. Tax is imposed upon pistols and revolvers sold or leased by the manufacturer, producer or importer. (Sec. 2700, IRC).

§ 808.804 *Retailers' excise taxes.* (Chapter 19, IRC; Regulations 51; 26 CFR, Cum. Supp., Part 320). Rate: 20% of price for which article is sold, except where otherwise specified. (Rate is effective 1 April 1944.) Tax is imposed upon the articles specified below in § 808.804 (a) to (d), inclusive, sold at retail. Such articles when sold to the Government for use or consumption are considered to be sold at retail.

(a) *Jewelry, etc.* (Sec. 2400, IRC; Regulations 51, Subpart D; 26 CFR, Cum. Supp., 320.30–320.38).

(1) All articles commonly or commercially known as jewelry, whether real or imitation; pearls, precious and semiprecious stones, and imitations thereof; articles made of, or ornamented, mounted or fitted with, precious metals or imitations thereof; watches and clocks and cases and movements therefor; gold, goldplated, silver, or sterling flatware or hollow ware, and silver-plated hollow ware; opera glasses; lorgnettes; marine glasses; field glasses; and binoculars. The rate of tax is 10% (and not 20%) of the sales price of watches selling at retail for not more than $65 and alarm clocks selling at retail for not more than $5.

(2) The tax does not apply to any article used for religious purposes, to surgical instruments, to watches designed especially for use by the blind, to frames or mountings for spectacles or eyeglasses, to a fountain pen or smokers' pipe if the only parts of the pen or the pipe which consist of precious metals are essential parts not used for ornamental purposes, or to buttons, insignia, cap devices, chin straps, and other devices prescribed for use in connection with the uniforms of the armed forces of the United States.

(3) "Opera glasses; lorgnettes; marine glasses; field glasses; and binoculars" include only those which are portable instruments. Articles known as marine glasses, field glasses and similar optical instruments which by reason of size or weight are ordinarily mounted upon tripods or other bases, are not subject to tax. (Sec. 320.36, Regulations 51; 26 CFR, Cum. Supp., 320.36).

(b) *Furs.* (Sec. 2401, IRC; Regulations 51, Subpart E; 26 CFR, Cum. Supp., 320.40–320.41).

(1) Articles made of fur on the hide or pelt and articles of which such fur is the component material of chief value.

(2) Where a person, who is engaged in the business of dressing or dyeing fur skins or of manufacturing, selling, or repairing fur articles, produces an article of the kind described from fur on the hide or pelt furnished, directly or indirectly, by a customer and the article is for the use of, and not for resale by, such customer, the transaction shall be deemed to be a sale at retail and the person producing the article shall be deemed to be the person selling such article at retail. The tax on such a transaction shall be computed and paid by such person upon the fair retail market value of the finished article. The Revenue Act of 1943 added, effective 1 April 1944, the provisions referred to in this subparagraph (2).

(c) *Toilet preparations.* (Sec. 2402, IRC; Regulations 51, Subpart F; 26 CFR, Cum. Supp., 320.50–320.52). Perfumes, essences, extracts, toilet waters, cosmetics, petroleum jellies, hair oils, pomades, hair dressings, hair restoratives, hair dyes, aromatic cachous, toilet powders, and any similar substance, article, or preparation, by whatsoever name known or distinguished; any of the above which are used or applied or intended to be used or applied for toilet purposes.

(d) *Luggage.* (Sec. 1651, IRC).

(1) Trunks, valises, traveling bags, suitcases, satchels, overnight bags, hat boxes for use by travelers, beach bags, bathing suit bags, brief cases made of leather or imitation leather, and salesmen's sample and display cases.

(2) Purses, handbags, pocketbooks, wallets, billfolds, and card, pass, and key cases.

(3) Toilet cases and other cases, bags, and kits (without regard to size, shape, construction, or material from which made) for use in carrying toilet articles or articles of wearing apparel, including in each case fittings or accessories therefor sold on or in connection with the sale thereof.

This tax first became effective 1 April 1944. For the period during which it remains in effect, the manufacturers' excise tax imposed upon luggage by section 3406 (a) (2), Internal Revenue Code, is suspended.

(e) *Sales in army commissaries and exchanges.* Under an agreement between the War Department and the Bureau of Internal Revenue, the latter will not attempt to collect retailers' excise taxes on sales of jewelry, furs, toilet preparations and luggage to members of the armed forces and their families and to civilian employees permanently employed on military posts, when such sales are made in army commissaries and exchanges. The War Department in turn agreed that sales of such articles in army commissaries and exchanges would not be made to casual laborers or temporary employees on military posts.

(f) *Basis and application of retailers' excise taxes.* (1) The retailers' excise taxes are based on the sales price. Any charges for coverings, containers, etc. shall be included in the sales price for purposes of computing the tax. If the amount of the sales price is adjusted upon return to the seller of coverings or containers, the tax should also be adjusted. (Sec. 320.6, Regulations 51; 26 CFR, Cum. Supp., 320.6). The tax imposed, however, is not part of the taxable price of the article. (Sec. 320.7, Regulations 51; 26 CFR, Cum. Supp., 320.7). Charges for transportation, delivery, insurance, installation, and similar charges are also excluded in computing the tax. (Sec. 320.8, Regulations 51; 26 CFR, Cum. Supp., 320.8)

(2) The lease of an article is considered a sale thereof. In the case of leases or instalment sales, the tax is paid proportionately upon each payment. (Sec. 320.10, Regulations 51; 26 CFR, Cum. Supp., 320.10)

(3) The tax in general attaches when title passes to the purchaser. (Sec. 320.4, Regulations 51; 26 CFR, Cum. Supp., 320.4). If subsequent reduction is made in the sales price, a credit or refund may be obtained by the seller. (Sec. 320.9, Regulations 51; 26 CFR, Cum. Supp., 320.9). Claim by a seller

for credit or refund must show, among other things, that the tax has not been collected from the purchaser or has been repaid to him or that his written consent to the credit or refund has been obtained. (Sec. 320.66, Regulations 51; 26 CFR, Cum. Supp., 320.66).

(4) In the case of any article classifiable under more than one retailer's excise tax, only one tax on such article shall be imposed. Where the rates of such tax differ, the article shall be subject to tax at the highest rate. (Section 1653, IRC.)

§ 808.805 *Tax on transportation of persons.* (Chapter 30, Subchapter C, IRC; Regulations 42, Subpart F; 26 CFR, Cum. Supp., 130.50–130.64).

Rate: 15% of the amount paid. Tax is imposed upon the amount paid within the United States for the transportation of persons by rail, motor vehicle, water, or air, within or without the United States, and for seating or sleeping accommodations in connection with such transportation. (Sec. 3469, IRC).

(a) *Basis and application of tax on transportation of persons.* (1) The taxability of a payment for transportation is determined strictly by the place of payment, i. e., whether within or without the United States. The place where the transportation service is furnished has no bearing on the tax. (Sec. 130.51, Regulations 42; 26 CFR, Cum. Supp., 130.51).

(2) Where a payment covers other charges than for transportation of a person, such other charges may be excluded in computing the tax, provided they are separable and are shown in the exact amounts thereof in the records pertaining to the transportation charge. (Secs. 130.52 and 130.54, Regulations 42; 26 CFR, Cum. Supp., 130.52 and 130.54).

(3) The tax does not apply to an amount paid for transportation of freight that includes also the transportation of caretakers or messengers for which no specific charge as such is made. (Sec. 130.54 (d), Regulations 42; 26 CFR, Cum. Supp. 130.54 (d)).

(4) The tax does not apply to transportation or facilities furnished under special tariffs providing for fares of not more than 1¼ cents per mile applicable to round trip tickets sold to personnel of the United States Army, Navy, Marine Corps, and Coast Guard traveling in uniform of the United States, or to members of the military or naval forces of any of the other United Nations traveling in uniform of such nation, at their own expense when on official leave, furlough, or pass, including authorized cadets and midshipmen (Sec. 3469 (f) (2) IRC).

(5) The tax does not apply to charges not exceeding 35 cents, certain commutation tickets, nor to transportation by motor vehicles with seating capacity of less than 10 and not operated on an established line. (Sec. 3469 (a) and (b), IRC; secs. 130.58–130.60, Regulations 42; 26 CFR, Cum. Supp., 130.58–130.60).

§ 808.806 *Tax on transportation of property.* (Chapter 30, Subchapter E, section 3475, IRC; 26 CFR, Cum. Supp., Part 143). Rate: 3% of the amount paid, except that in the case of coal, the rate is 4 cents per short ton.

(a) Tax is imposed upon the amount paid within the United States for the transportation of property by rail, motor vehicle, water, or air from one point in the United States to another. The tax applies only to amounts paid to a person engaged in the business of transporting property for hire, including amounts paid to a freight forwarder, express company, or similar person, but does not include amounts paid by a freight forwarder, express company, or similar person for transportation with respect to which a tax on the transportation of property has previously been paid. In the case of property transported from a point without the United States to a point within the United States, the tax shall apply to the amount paid within the United States for that part of the transportation which takes place within the United States. The tax on the transportation of coal does not apply to the transportation of coal with respect to which there has been a previous taxable transportation.

(b) Effective 1 December 1943, amounts paid by or to the War Shipping Administration for the transportation of property by water from one point in the United States to another, except between points on the Great Lakes, are exempt from tax until approximately six months after the termination of hostilities.

(c) Effective 1 December 1943, the tax does not apply to amounts paid for the transportation of property to or from the American National Red Cross.

(d) Effective 1 December 1943, amounts paid for transportation of property to or from the government of a state, territory, or political subdivision thereof, or the District of Columbia are exempt from tax.

(e) The tax does not apply to amounts paid to the Post Office Department for the transportation of property.

(f) As to shipments on United States Government bills of lading, see § 808.810.

(a) *Basis and application of tax on transportation of property*—(1) *Transportation.* The term "transportation" means the movement of property by a person engaged in the business of transporting property for hire, including interstate, intrastate, and intracity or other local movements, as well as towing, ferrying, switching, etc. In general, it includes accessorial service furnished in connection with a transportation movement, such as loading, unloading, blocking and staking, elevation, transfer in transit, ventilation, refrigeration, icing, storage, demurrage, lighterage, trimming of cargo in vessels, wharfage, handling, feeding and watering livestock, and similar services and facilities. (Sec. 143.1 (d), Regulations 113; 26 CFR, Cum. Supp., 143.1 (d)).

(2) *Coal.* The term "coal" includes anthracite, bituminous, semi-bituminous, sub-bituminous, and lignite coal, coal dust, and coke and briquettes made from coal (Sec. 143.1 (f), Regulations 113; 26 CFR, Cum. Supp., 143.1 (f)).

(3) *Baggage.* An amount paid, in connection with the transportation of persons, for the transportation of baggage, including incidental charges on account of excess weight, excess value, storage, transfer, special delivery, etc., or an amount so paid for a special baggage or express car or other conveyance is subject to the tax on the transportation of property if separable from the payment for the transportation of persons and separately shown on the records of the carrier. Otherwise the tax on the transportation of persons (see § 808.805 (a)) applies. (Sec. 143.1 (c), Regulations 113; 26 CFR, Cum. Supp., 143.14 (c)).

(4) *Previous taxable transportation of coal.* An amount paid for the transportation of coal is not taxable if there has been a previous taxable transportation of such coal. An amount paid for the transportation of coke or briquettes made from coal is not subject to tax provided there has been a previous taxable transportation of the coal or coal dust from which such coke or briquettes were manufactured. When a person delivers to a carrier a quantity of coal for a transportation movement, and the transportation tax has previously been paid with respect to the coal so delivered, a statement to that effect shall be endorsed on the bill of lading or other shipping papers. This endorsement shall constitute authority to the carrier not to collect tax with respect to the transportation charges due on such shipment. (Sec. 143.13 (b), Regulations 113; 26 CFR, Cum. Supp., 143.13 (b)).

§ 808.807 *Tax on transportation of oil by pipe line.* (Chapter 30, Subchapter A, IRC; Regulations 42, Subpart D). Rate: 4½% of amount paid. Tax is imposed upon all transportation of crude petroleum and liquid products thereof by pipe line. In the event no charge is made for such transportation, or if the payment is made under a transaction which is not an arm's length one and such payment is less than the fair charge, the tax is imposed upon the fair charge for the transportation (Sec. 3460, IRC).

§ 808.808 *Telegraph, telephone, radio and cable facilities.* (Chapter 30, Subchapter B, sec. 3465, IRC; Regulations 42, Subpart E; 26 CFR. Cum. Supp., 130.30–130.46.) Rate: See following paragraphs. Rates shown therein are those effective 1 April 1944.

(a) *Telephone and radio telephone messages.* Tax is imposed at the rate of 25% of the amount paid within the United States for each telephone or radio telephone message or conversation for which the toll charge is more than 24 cents.

(b) *Telegraph, cable, and radio dispatches and messages.* Tax is imposed on the amount paid within the United States for each telegraph, cable or radio dispatch or message. In the case of each such domestic dispatch or message the rate of tax is 25%. In the case of each such international dispatch or message the rate of tax is 10%.

(c) *Leased wire, teletypewriter, or talking circuit special services.* Tax is imposed at the rate of 25% of the amount paid for leased wire, teletypewriter, or talking circuit special service, but not including an amount paid for service used exclusively in rendering a service

taxable under the tax described in paragraph (d).

(d) *Wire and equipment service.* Tax is imposed at the rate of 8% of the amount paid for any wire and equipment service (including stock quotation and information services, burglar alarm or fire alarm service, and all other similar services but not including service described in paragraph (c)).

(e) *Local telephone service.* Tax is imposed at the rate of 15% of the amount paid by subscribers for local telephone service and for any other telephone service in respect of which a tax is not payable under the taxes described in paragraphs (a) to (d). Amounts paid for the installation of instruments, wires, poles, switchboards, apparatus, and equipment shall not be considered amounts paid for service.

SUBPART C—EXEMPTIONS FROM FEDERAL EXCISE TAXES

§ 808.810 *Exemption from specific Federal excise taxes as to articles sold and services furnished for the use of the United States.* Exemption is available from the following specific Federal excise taxes, to the extent indicated below, in connection with articles sold and services furnished for the use of the United States. Such exemption is available with respect to contracts entered into either prior or subsequent to 1 June 1944.

(a) Manufacturers' excise tax on radio receiving sets, phonographs, phonograph records and musical instruments. See § 808.802 (c).[1]

(b) Manufacturers' excise tax on firearms, shells, cartridges. See § 808.802 (j).[1]

(c) Manufacturers' excise tax on tires and inner tubes (see § 808.802 (a)), when such tires and tubes are sold to any person for use as component parts in the manufacture of an article which is to be sold direct to the War Department at a price not including the tax on the tires and tubes.[2]

(d) Tax on pistols and revolvers. See § 808.803.[1]

(e) Tax on telephone, telegraph, cable, radio, or leased wire services or facilities (see § 808.808), to the extent such services or facilities are furnished directly to the United States and for which payment is made directly by the United States. No exemption is available with respect to such services or facilities furnished to a contractor or other person operating under a contract to perform work on behalf of, or to furnish articles or materials to, the United States Government or any agency thereof.[3]

(f) Tax on transportation of persons (see § 808.805) with respect to payments for transportation furnished to the United States upon a United States Government transportation request.[3]

(g) Tax on transportation of property (see § 808.806), with respect to payments for transportation to or from the Government of the United States shipped on a United States Government bill of lading.[3]

(a) *Policy as to claiming exemption from specific Federal excise taxes listed above in this section.* Exclusion from contract prices of the tax on pistols and revolvers and the manufacturers' excise taxes referred to above is governed by the policy set forth in the Appendix to this part, except as otherwise provided in this paragraph. Fixed price (lump sum) contractors, subcontractors, suppliers and materialmen may be authorized to purchase tires and inner tubes on a tax exclusive basis, when permitted pursuant to Treasury Decision 5114, as a variation to the policy set forth in such Appendix. Cost-plus-a-fixed-fee prime contractors or subcontractors should not be permitted to purchase tires and inner tubes on a tax exclusive basis; care should be taken to determine that any fixed fee is computed without reflecting in any way any tax on tires or inner tubes.

Exemptions referred to above from transportation taxes are automatically secured by the use of United States Government transportation requests or bills of lading, as the case may be. Exemptions referred to above from communications taxes are automatically secured without the use of exemption certificates.

§ 808.811 *Exemption based upon exportation.* Exemption is available (1) from the manufacturers' excise taxes (§ 808.802 et seq.) and the retailers' excise taxes (§ 808.804 et seq.) with respect to sales for export and (2) from the tax on the transportation of property (§ 808.806) with respect to property in course of exportation. (Secs. 2406, 2705, 3449, IRC; secs. 314.25–314.27, Regulations 44; secs. 316.25–316.27, Regulations 46; secs. 320.21–320.22, Regulations 51; secs. 143.30–143.35, Regulations 113; 26 CFR, Cum. Supp., 314.25–314.27, 316.25–316.27, 320.21–320.22, 143.30–143.35.) This exemption will not be claimed. Contract prices therefore, will not exclude Federal excise taxes from which exemption is available only by reason of export and proof of exportation will not be furnished to contractors.

§ 808.812 *Exemption from manufacturers' excise taxes of sale of certain supplies and equipment for vessels of war including aircraft.* Exemption from manufacturers' excise taxes (§ 808.802, et seq.) is available with respect to the sale of an article for use as fuel supplies, ships' stores, sea stores, or legitimate equipment on vessels of war of the United States or of any foreign nation, vessels employed in the fisheries or in the whaling business or actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions. The term "vessels of war" of the United States or of any foreign nation includes aircraft owned by the United States or by any foreign nation and constituting a part of the armed forces thereof. The terms "fuel supplies," "ships' stores," "legitimate equipment" include all articles, materials, supplies, and equipment necessary for the navigation, propulsion, and upkeep of vessels. (Sec. 3451, IRC; sec. 314.28, Regulations 44; sec. 316.28, Regulations 46; 26 CFR, Cum. Supp., 314.28, 316.28).

(a) *Policy as to claiming exemption described above in this section.* Serious administrative burdens would be imposed if the exemption described above were to be claimed with respect to articles of a character useable either (1) as supplies or legitimate equipment for vessels of war including aircraft or (2) otherwise. This exemption will not be claimed, contract prices will not exclude Federal excise taxes on the basis of this exemption and proof of this exemption will not be furnished to contractors, except that such action may be taken in connection with purchases of the following items:

(i) Aviation gasoline.

(ii) Lubricating oil suitable only for aircraft engines.

(iii) Aircraft air conditioning units.

(iv) Aircraft tires and inner tubes.

(v) Aerial photographic cameras including gun cameras, lenses, apparatus, equipment, and films therefor.

(vi) Spark plugs suitable only for aircraft engines.

§ 808.813 *Manufacturers' excise taxes; sales for further manufacture.* Exemption is available from manufacturers' excise taxes (§ 808.802 et seq.), and may be claimed by manufacturers, in the case of sale of any taxable article (other than tires, inner tubes or automobile radios) sold for use by the vendee as material in the manufacture or production of, or as a component part of, a taxable article or for resale by the vendee for such use by his vendee if such article is in due course so resold. (Also see §808.802(b)(4)(ii).) An appropriate certificate of the vendee must be given to the vendor in order to obtain this exemption. (Sec. 3442, IRC; secs. 314.20–314.23, Regulations 44; secs. 316.20–316.23, Regulations 46; 26 CFR, Cum. Supp., 314.20–314.23, 316.20–316.23). This exemption is available to a purchasing manufacturer without the necessity for any action by the War Department. The standard tax articles do not provide for the inclusion in the contract price of taxes from which such an exemption is available and such taxes should not be a component of the contract price.

§ 808.814 *Sales under contracts entered into prior to 1 June 1944 and agreements and change orders supplemental thereto.* Exemption from the manufacturers' excise taxes (§ 808.802 et seq.)

[1] Exemption with respect to these items was retained in the Internal Revenue Code as to sales made prior to the first day of the first month which begins six months or more after the date of termination of hostilities in the present war. (Sec. 307 (b) (2), Revenue Act of 1943.)

[2] This exemption was authorized by the Secretary of the Treasury on 31 May 1944 (9 F. R. 5998, 2 June 1944) pursuant to authority vested in him by section 307 (c) of the Revenue Act of 1943 (see § 808.817). Such authorization of exemption expires at the close of the last day of the sixth full calendar month following the date of the termination of hostilities in the present war.

[3] Exemption of these items was authorized by the Secretary of the Treasury on 29 April 1944 (9 F. R. 4615, 2 May 1944) pursuant to authority vested in him by section 307 (c) of the Revenue Act of 1943 (see § 808.817). Such authorization of exemption expires at the close of the last day of the sixth full calendar month following the date of the termination of hostilities in the present war.

and the retailers' excise taxes (§ 808.804 et seq.) remain available as to sales for the use of the United States pursuant to a contract entered into prior to 1 June 1944 or to any agreement or change order (executed prior or subsequent to 1 June 1944) supplemental to such contract and bearing the same Government contract number. (Sec. 307(b)(1), Revenue Act of 1943.) No such exemption remains available as to excise taxes on transportation and communication referred to in §§ 808.805 to 808.808, inclusive.

(a) *Policy as to claiming exemptions applying to sales under contracts entered into prior to 1 June 1944 and agreements and change orders supplemental thereto.* (1) The provisions of contracts entered into prior to 1 June 1944 determine whether and to what extent the contract price includes or excludes Federal excise taxes and consequently whether exemptions are to be claimed.

(2) If the price under a contract entered into prior to 1 June 1944 includes an applicable Federal excise tax, agreements or change orders supplemental to such contract and executed on or after 1 June 1944 will also include such tax in the price and such tax will be paid by the contractor. This shall not prevent, however, the claiming of any available exemptions pursuant to the provisions of this part.

(3) If the price under a contract entered into prior to 1 June 1944 excludes an applicable Federal excise tax, agreements or change orders supplemental thereto and executed on or after 1 June 1944 may also exclude such tax. Exemption will continue to be available from any tax so excluded. Heretofore existing policies, which are contained in the Appendix to this part, determine the extent to which exemption from any such tax may be extended to purchases by contractors.

(4) Where new contracts normally would be executed, supplemental agreements or change orders will not be used merely to avoid the payment of Federal excise taxes.

§ 808.815 *Miscellaneous exemptions.* In addition to the exemptions discussed in this subpart, certain miscellaneous exemptions, applying to private as well as Government procurement, are available from Federal excise taxes. Some of these miscellaneous exemptions are mentioned in Subpart B of this part; in some cases such Subpart B provides that those exemptions will not be claimed. Any exemption, as to which no policy is otherwise provided in this part, need not be claimed, in which event contract prices will not exclude taxes on the basis of such an exemption and proof of such an exemption will not be furnished to contractors.

§ 808.816 *Effective date of removal of other Governmental exemptions.* Prior to the Revenue Act of 1943, additional exemptions, not set forth in this subpart, were available in connection with procurement for the use of the United States. The removal by the Revenue Act of 1943 of such additional exemptions is effective as follows:

(a) Manufacturers' and retailers' excise taxes—sales made on and after 1 June 1944.

(b) Tax on transportation of persons—amounts paid on or after 1 June 1944.

(c) Tax on transportation of property—amounts paid on or after 1 June 1944.

(d) Tax on telephone, telegraph, radio and cable facilities:

(1) Messages and dispatches (§ 808.808 (a) and (b))—originating on or after 1 June 1944.

(2) Service (§ 808.808 (c) to (e))—amounts paid pursuant to bills rendered on or after 1 June 1944 for service for which no previous bill was rendered.

§ 808.817 *Power of Secretary of the Treasury to authorize exemption.* The Secretary of the Treasury may authorize exemption from the taxes imposed by Chapters 19 (retailers' excise taxes, § 808.804 et seq.), 29 (manufacturers' excise taxes, § 808.802 et seq.), or 30 (taxes on transportation and communication, §§ 808.805 to 808.808) of the Internal Revenue Code as to any particular articles or services, or class of articles or services, to be purchased for the exclusive use of the United States, if he determines that the imposition of such taxes with respect to such articles or services, or class of articles or services, will cause substantial burden or expense which can be avoided by granting tax exemption and that the full benefit of such exemption, if granted, will accrue to the United States. The authority of the Secretary of the Treasury in this regard, however, is not applicable to any contract entered into on or after the first day of the first month which begins six months or more after the date of the termination of hostilities in the present war. (Sec. 307 (c) of the Revenue Act of 1943).

(a) *Procedure to request exercise of authority by Secretary of the Treasury.* In cases where it is deemed necessary for the Secretary of the Treasury to authorize exemptions with respect to any particular articles or services, or class of articles or services, requests for the exercise of that authority will be forwarded through channels to the Director, Purchases Division, Headquarters, Army Service Forces. Such requests should specify in detail the reasons why the request exemption is needed.

(b) *Circumstances under which requests are proper.* The purpose of the removal by the Revenue Act of 1943 of various exemptions applying to the United States from Federal excise tax was to eliminate the numerous administrative procedures (and resulting need for personnel) required on the part of private contractors, procurement agencies and the Bureau of Internal Revenue in order to establish such exemptions, which if not available would not cause any net loss to the United States. It was recognized, however, that in some cases it might be determined that such removal of exemptions would impose greater net costs or administrative burdens than did the retention thereof or would cause other results adversely affecting the United States, in some serious and substantial manner. The established policy of the War Department is to request the Secretary of the Treasury to authorize exemptions only in cases of this character.

In no event will requests be made to the Secretary of the Treasury to authorize exemptions from tax if the only reason therefor is a desire to reduce the contract price or prices by the amount of the tax which, if paid, would go eventually into the Treasury. Such requests will be presented to the Secretary of the Treasury only where it is clearly established (1) that the denial of exemption with respect to purchases of particular articles or services, or classes of articles or services, for the exclusive use of the United States imposes serious administrative problems or presents substantial danger of net loss to the United States, and (2) that the full benefit of any exemption, if granted, will accrue to the United States.

§ 808.818 *Federal excise taxes not covered by this part.* This part applies only to Federal excise taxes imposed by the following chapters of the Internal Revenue Code: Chapter 19 (retailers' excise taxes—see § 808.804, et seq.), Chapter 25 (pistols and revolvers—see § 808.803), Chapter 29 (manufacturers' excise taxes—see § 808.802, et seq.) and Chapter 30 (transportation and communication—see §§ 808.805 to 808.808). When any technical service has responsibility for the procurement or purchase of any articles subject to a Federal excise tax under any other chapter of the Internal Revenue Code, such technical service may prescribe such rules, governing the securing of exemption from such tax, as it may deem proper.

SUBPART D—TAX EXEMPTION CERTIFICATE FORMS AND PROCEDURE

§ 808.820 *Applicability of this subpart.* The forms and procedures set forth in this subpart are applicable after 1 June 1944, so far as exemptions from Federal excise taxes are concerned, only with respect to the exemptions specified in §§ 808.810, 808.812 and 808.814. The policies governing the claiming of these exemptions are set forth in §§ 808.810 (a), 808.812 (a) and 808.814 (a).

§ 808.821 *Standard tax exemption forms.* The following standard tax exemption forms have been prescribed:

	Standard Form No.
U. S. Government Tax Exemption Certificate	1094
Cover of U. S. Government tax exemption certificate book (front, outside and inside; back, outside)	1094A
Tabulation sheet (insert)	1094B
U. S. Government tax exemption identification card	1094C

§ 808.822 *U. S. Government Tax Exemption Certificate, Form 1094.* The front of U. S. Government Tax Exemption Certificate, Form 1094, is as follows:

Standard Form No. 1094—Revised
Form approved by Comptroller General U. S., June 11, 1937 (Gen. Reg. No. 86—Revised)

U. S. GOVERNMENT TAX EXEMPTION CERTIFICATE

U. S. WAR DEPARTMENT,

WASHINGTON, D. C.

W

Indicate amount of tax		
Kind	Included	Excluded
Federal	xxxxxxx	$
*State	$	$
*Local	$	$

(Use one block only, cancel others)

I certify that I have purchased for the exclusive use of the United States Government from

_____
(Name and local address of vendor—Street, City, and State)

delivered at _____ (City) _____ (State)

_____
((Description, quantity, and unit price)

which has (or have) been delivered, or which will be delivered and invoiced pursuant to purchase orders issued under contract No. _____, dated _____, and for which a tax exemption certificate has not heretofore been issued.

Date _____ Identification Card No. _____ Vehicle License No. _____

_____
(Signature, and title of purchase)

For VENDOR To be filled in ONLY when a State or local tax is included in the purchase price.
Certificate correct and just:

Name _____

By _____

Title _____

For Administrative Office
D. O. _____ Symbol _____
(Name)
Bu. Vou. No. _____ Period _____
*State and local taxes to be paid only when absolutely necessary to obtain commodity required.

(a) *Form 1094, where used.* U. S. Government Tax Exemption certificate Form No. 1094 will be issued by the appropriate officer where required by the contract to supply proof of exemption with respect to those taxes which have been excluded from the contract price, as follows:

(1) All Federal excise taxes from which exemption is available on the basis of purchase for the use of the United States. See §§ 808.812 and 808.824 in connection with exemption under section 3451, Internal Revenue Code.

(2) All state and local taxes, except when a different form is required by the state or local tax authority. (See § 808.830).

§ 808.823 *Supply and reports of standard forms.* (a) The standard forms referred to in § 808.821 are distributed in accordance with the provisions of AR 310–200.

(b) Reports, accounting for such standard forms, will be submitted by issuing officers as directed by The Adjutant General.

§ 808.824 *Who may execute tax exemption certificates.* (a) Tax exemption certificates will be executed only by those officers and Federal employees who have been supplied with a Standard Form No. 1094–C (U. S. Government tax exemption identification card).

(b) The identification card of authorized officers and employees of technical services responsible for purchasing at a post, camp, or station will be signed by the commanding officer. Identification cards supplied to other officers and Federal employees will be signed by the officer who furnishes such officer or employee with tax exemption certificates.

§ 808.825 *Aircraft and vessels of war supplies and equipment tax exemption certificate.* The following form is prescribed by Regulations 44 (Sec. 314.28) and Regulations 46 (Sec. 316.28) (26 CFR, Cum. Supp., 314.28 and 316.28):

EXEMPTION CERTIFICATE

(For use by purchasers of articles for use as fuel supplies, ships' stores, sea stores, or legitimate equipment on certain vessels (section 3451 of the Internal Revenue Code))

_____, 19____
(Date)

The undersigned purchaser hereby certifies that he is _____ of
(Owner, officer, charterer, or an authorized agent
_____ and that the article
(Name of company and vessel)
or articles specified in the accompanying order, or as specified below or on the reverse side hereof, will be used only for fuel supplies, ships' stores, sea stores, or legitimate equipment on a vessel belonging to one of the following classes enumerated in section 3451 of the Internal Revenue Code:

(Check class to which vessel belongs.)

——(1) Vessels engaged in foreign trade,
——(2) Vessels engaged in trade between the Atlantic and Pacific ports of the United States,
——(3) Vessels engaged in trade between the United States and any of its possessions,
——(4) Vessels employed in the fisheries or whaling business,
——(5) Vessels of war of the United States or a foreign nation.

If the articles are purchased for use on civil aircraft engaged in trade as specified in (1) or (3) above, state the name of the country in which the aircraft is registered _____.

The undersigned understands that if the article is used for any purpose other than as stated in this certificate, or is resold or otherwise disposed of, he must report such fact to the manufacturer. It is understood that this certificate may not be used in purchasing articles tax free for use as fuel supplies, etc., on pleasure vessels, or on any type of aircraft except (*a*) civil aircraft employed in foreign trade or trade between the United States and any of its possessions, and (*b*) aircraft owned by the United States or any foreign country and constituting a part of the armed forces thereof. It is also understood that the fraudulent use of this certificate to secure exemption will subject the undersigned and all guilty parties to a penalty equivalent to the amount of tax due on the sale of the article and upon conviction to a fine of not more than $10,000, or to imprisonment for not more than five years, or both, together with costs of prosecution. The undersigned also understands that he must be prepared to establish by satisfactory evidence the purpose for which the article was used.

_____
(Name)

_____
(Address)

The above form will be issued by the appropriate officer where *required by the contract* to supply proof of exemption with respect to the Federal excise taxes from which an exemption is available under Section 3451, Internal Revenue Code, such as for fuel supplies, ship stores and equipment for vessels of war, including aircraft of the armed forces. See § 808.812 (a) as to the policy with respect to claiming this exemption.

§ 808.826 *Tax exemption certificates for issuance by contractors.* T. D. 5114, 27 January 1942 (7 F.R. 579, 29 January 1942) authorizes exemption from the Federal excise taxes imposed by Chapters 25 and 29 of the Internal Revenue Code (taxes on pistols and revolvers and Manufacturers' excise taxes—see §§ 808.802 and 808.803) on sales to contractors with the United States of purchase, construction and subsidiary articles. The policy with respect to this exemption is set forth in the Appendix to this part. The exemption is not available unless the contractor or subcontractor has been authorized by the contracting officer on W. D. Tax Form No. 1 (see paragraph (a)) attached to a standard Government Tax Exemption Certificate Form 1094. The forms prescribed by § 470.3 (b) of T. D. 5114 for use by contractors and subcontractors are set forth in paragraphs (b) and (c).

(a) *W. D. Tax Form No. 1: Authority of contractor and subcontractors to issue tax exemption certificates.*

W. D. Tax Form No. 1

AUTHORITY OF CONTRACTOR AND SUBCONTRACTORS TO ISSUE TAX EXEMPTION CERTIFICATES

(To be attached to a Form 1094 U. S. Tax Exemption Certificate)

_____
(Name of Contractor)

_____
(Address of Contractor)

Contract No. _____

Tax Exemption Certificate No. _____

The Contractor and/or his subcontractors (including suppliers) are authorized to issue tax exemption certificates in the form prescribed by Section 470.3 (b) of Treasury Decision 5114, approved January 27, 1942 (7 F.R. 579, January 29, 1942) as to the articles listed below, which are incorporated in or to be incorporated in the supplies or work covered by the contract referred to in the Tax Exemption Certificate to which this authority is attached.

List of Articles (If none, so state)

Description	Quantity[1]	Unit Price[1]

_____
(Contracting Officer)

_____
(Title)

(b) *Exemption certificate for use by prime contractor.*

EXEMPTION CERTIFICATE

(For use by prime contractor)

_____, 19____
(Date)

The undersigned hereby certifies that the articles specified in the accompanying order or on the reverse side hereof are purchased from _____
(Name of vendor)
for the United States under Government contract _____;
(Number or other identification)
that he now has in his possession a certificate of exemption furnished by the United States with respect to such contract; and that such certificate authorizes him to issue this exemption certificate.

It is understood that the fraudulent use of this certificate to secure exemption will sub-

[1] To be shown by contracting officer if known.

ject the undersigned and all guilty parties to a fine of not more than $10,000, or to imprisonment for not more than five years, or both, together with costs of prosecution.

(Name)

(Address)

(c) *Exemption certificate for use by subcontractor.*

EXEMPTION CERTIFICATE

(For use by subcontractor)

---, 19--.
(Date)

The undersigned hereby certifies that the articles specified in the accompanying order or on the reverse side hereof are purchased from ---
(Name of vendor)
for incorporation in ---
(Subsidiary articles)
which are to be delivered to ---
(Subcontractor's vendee)
---; that the price to be charged said vendee contemplates that the aforesaid articles and the subsidiary articles are to be purchased on a tax-free basis; and that the undersigned now has in his possession an exemption certificate furnished by said vendee certifying that the above-named subsidiary articles are to be incorporated ultimately in other articles for use of the United States under Government contract ---
(Number ---
or other identification.)

It is understood that the fraudulent use of this certificate to secure exemption will subject the undersigned and all guilty parties to a fine of not more than $10,000, or to imprisonment for not more than five years, or both, together with costs of prosecution.

(Name)

(Address)

§ 808.827 *Preparation and execution of exemption certificates.* (a) In the preparation of tax exemption certificates the typewriter will be used when practicable, otherwise ink or indelible pencil will be used. The use of ordinary lead pencil is prohibited. All blank spaces must be properly filled in or lined out, and no such exemption certificate will be delivered to a contractor unless fully and properly executed, except that the Bureau of Internal Revenue has advised that it is not necessary to state the amount of Federal tax upon the exemption certificate (Ltr. to the Chief Signal Officer from D. S. Bliss, Deputy Commissioner of Internal Revenue, 19 June 1942). The amount of tax should be stated, however, if readily available. In a case where Federal excise taxes have been excluded from the contract price of articles or supplies purchased, but the exact amount of the tax cannot be determined at that time, a blanket tax exemption certificate may be issued to cover all sales under the contract. The certificate should cover all articles purchased under such contract, including delivery orders placed thereunder by other officers. As to blanket tax exemption certificates covering purchases under contracts of the General Schedule of Supplies, see § 808.829.

(b) A separate certificate for each kind of tax (Federal, State or local) involved will be prepared. In the issuance of these certificates care must be exercised to fill in the blank spaces provided for showing on each certificate the separate amounts of the taxes involved (if known) so that the certificates may be used only for the purpose intended.

(c) Where the supplies or work covered by the contract are not taxable as such and the certificate is to be used for the purpose of obtaining exemption on the articles to be incorporated in the supplies or work covered by the contract, the amount of tax to be shown on the certificate should be stated as "None". No tax should be shown on the certificate except the tax imposed directly upon the supplies or work covered by the contract.

(d) Except as provided in paragraph (a) of § 808.828, the following statement will be written or stamped upon the face of each certificate pertaining to Federal taxes (except where a cost-plus-a-fixed-fee contract is involved): "W. D. Tax Form No. 1 attached". Tax Exemption Certificate Form No. 1094 may be modified insofar as necessary with respect to contracts for construction, alterations, improvements and repairs. The person issuing a tax exemption certificate will, in addition to his signature and title, insert on the lines provided therefor, his identification card number. (See § 808.824.)

§ 808.828 *When and how exemption certificates are issued to contractors.* At any time after the execution of the contract, a tax exemption certificate (Form 1094) and W. D. Tax Form No. 1, when appropriate, will be executed and delivered to the contractor, upon request, covering Federal excise taxes in the following cases:

(a) Where supplies are taxable under Chapter 25 or 29, and are purchased by the Government at a price which is exclusive of such tax. In such a case, the description of the supplies furnished tax free will be inserted on the tax exemption certificate. If such supplies purchased by the Government have had (or will have) incorporated therein tires, inner tubes, or automobile radios and the price paid by the Government is exclusive of the tax thereon, these items will be listed in the space headed "List of Articles" on W. D. Tax Form No. 1, which will be attached to the tax exemption certificate. This will enable the contractor, pursuant to T. D. 5114, to issue tax exemption certificates to the suppliers of such tires, inner tubes and automobile radios. It should be noted that under section 3442, Internal Revenue Code, no tax is imposed with respect to the sale of any article (except tires, inner tubes, and automobile radios) for use by the contractor in the manufacture or production of, or as a component part of an article itself taxable under Chapter 29. Accordingly, the contractor may obtain exemption from the burden of the tax on any articles exempted from tax by section 3442 in the manner provided in the Treasury Regulations (Regulation 46, especially section 316.20, 26 C. F. R., Cum. Supp., 316.20). Therefore, if no tires, inner tubes, or automobile radios are to be included in such supplies to be purchased from the contractor, there is no occasion for annexing W. D. Form No. 1 to the tax exemption certificate.

(b) Where the supplies purchased under the contract are not taxable under Chapter 29 but have had (or will have) incorporated therein one or more articles which are taxable under such Chapter, and the price paid by the Government is exclusive of the tax on one or more of such articles. In such a case, the amount of tax shown on the tax exemption certificate should be stated as "None" and the articles incorporated (or to be incorporated) into the supplies purchased by the Government which are sold exclusive of the tax thereon should be listed upon W. D. Tax Form No. 1 attached to the certificate. Upon receipt of the tax exemption certificate, the contractor and/or his subcontractors (including suppliers) are then authorized to issue tax exemption certificates in the form prescribed in § 808.826 (b) and (c), as to the articles listed on W. D. Tax Form No. 1 attached to the Form No. 1094.

(c) Where the contract covers construction, alterations, improvements or repairs, and the physical project to be constructed, altered, improved or repaired will have incorporated therein one or more articles which are taxable under Chapter 29 and the price paid by the Government for the construction, alterations, improvements or repairs, is exclusive of the tax on one or more of such articles to be incorporated into the physical project. In such a case, the amount of tax shown on the tax exemption certificate should be stated as "None", and the articles to be incorporated into the physical project to be constructed, altered, improved or repaired on which no such tax is included in the contract price should be listed upon W. D. Tax Form No. 1 attached to the certificate. Upon receipt of the tax exemption certificate the contractor and/or his subcontractors (suppliers) are then authorized to issue tax exemption certificates in the form prescribed in § 808.826(b) and (c), as to the articles listed on W. D. Tax Form No. 1 attached to the certificate.

(4) Under a cost-plus-a-fixed-fee contract (except one covering the sale of articles taxable under Chapter 29, where (1) above is applicable) when one or more articles taxable under Chapter 29 are used by the contractor as equipment, material or supplies in performing the contract, and such articles are purchased at a price which is exclusive of the tax thereon and payment for same is made by the United States, directly or by reimbursement of the contractor. In such a case, the amount of tax shown on Form 1094 should be stated as "None" and there should be attached to or written on Form 1094 the following statement: "The contractor is authorized to issue tax exemption certificates in the form prescribed by § 470.3(b) of Treasury Decision 5114, approved January 27, 1942 (7 F. R. 579, January 29, 1942) as to all articles sold on a Federal tax exclusive basis and for which payment is made by the United States, directly or by reimbursement of the contractor, and which are used by the contractor as

equipment, material or supplies in performing the contract to which this (the attached) certificate pertains."

§ 808.829 *Blanket tax exemption certificates; contracts under General Schedule of Supplies.* (a) Nothing contained in these regulations will be construed as authorizing the issuance of blanket tax exemption certificates by chiefs of technical services or contracting officers covering purchases under contracts of the General Schedule of Supplies. Upon application of the contractor, the Procurement and Accounting Division, Office of the Secretary of War, will issue blanket tax exemption certificates as may be necessary to cover all purchases made by War Department agencies in Washington, D. C., and in the field under term contracts of the General Schedule of Supplies, Procurement Division, Treasury Department.

(b) Contractors are required to indicate the number of the applicable blanket tax exemption certificate on their invoices.

(c) The purchase order need not contain the number of the applicable tax exemption certificate. It is sufficient that it contain a reference to the General Schedule of Supplies contract number.

§ 808.830 *State and local taxes.* (a) Tax exemption certificates are also used for establishing exemptions from state and local taxes. In such cases, certificates should be prepared in accordance with the requirements of the particular state or local tax authority concerned. In most cases, Form 1094 (§ 808.822) will be the appropriate form of tax exemption certificate. Except as provided in paragraph (b), no tax exemption certificate should be issued with respect to a state or local tax unless the contract shows that the price paid by the Government is exclusive of the tax to which the certificate pertains or unless the contractor consents to the deduction of such tax from the contract price and the acceptance of the tax exemption certificate in lieu thereof.

(b) When impossible for any reason to effect purchases, excluding the amount of any state or local tax which is deemed to be legally inapplicable to Government purchases, a tax exemption certificate on Form 1094 will be executed and delivered to the disbursing officer to whose accounts the vouchers in the transaction pertain, together with a written statement to the effect that the vendor refused such certificate. Tax exemption certificates executed and delivered as prescribed in this paragraph are for the use of the Finance Department in securing a refund of the amount of the taxes involved. The serial number of the tax exemption certificate will be shown on the payment voucher.

(c) When Form No. 1094 (or other appropriate certificate) executed under the conditions stated above, is received in the administrative office (Finance Department), the bureau or office number of the payment voucher will be noted on the certificate and the administrative office (Finance Department) will bill the State or local taxing agency for refund of the taxes paid. The amount(s) collected will be transmitted to the disbursing officer for credit to the appropriation(s) from which the vouchers were paid, or to miscellaneous receipts account, "4326—Refund, State and Local Taxes," if the appropriation cannot be readily identified. In the event the administrative office (Finance Department) fails to secure refund of the amount of taxes paid, it will transmit promptly to the General Accounting Office the exemption certificates, if available, together with all correspondence with the taxing agency relating thereto, and information as to the disbursing officer's voucher number on which payment for the merchandise was made, for use by the General Accounting Office in effecting collection thereof as required by section 236, Revised Statutes, as amended by the Budget and Accounting Act, 1921.

SUBPART E—STATE AND LOCAL TAXES

§ 808.831 *Applicable tax directives.* While the various state and local tax laws are not uniform in their application, as a general rule Government purchases are exempt from such taxes. Neither are such laws uniform in their application to purchases by Government contractors. Information will be published from time to time as to the procedure to be followed with regard to state and local taxes. Information already published is contained in a series of memoranda for the chiefs of the technical services and others as follows:

Alabama	Memo. OUSW (PC–L 012.2 Taxes)), 12 January 1942. (Past transactions)
	Memo. OUSW (PC–L 012.2 (Taxes) (Alabama)), 23 January 1942, as amended by Memo. Hq. SOS (SPPDL–012.2 (Taxes) (Alabama)), 12 June 1942. (Future transactions)
Arkansas	Memo. Hq. SOS (SPPDL–012.2 (Taxes) (Arkansas)), 15 April 1942. (Future transactions)
California	Memo. SOS (SPPDL–012.2 (Taxes) (California)), 18 December 1942
Colorado	Memo. No. S5–53–43, 12 March 1943
Georgia	Memo. OUSW (PC–L 012.2 (Taxes)), 13 February 1942. (Past transactions)
Illinois	Memo. Hq. SOS (SPPDL–012.2 (Taxes) (Illinois)), 26 June 1942. (All manufacturing transactions)
	Section V, ASF Circular No. 13, 11 January 1944. (All construction transactions)
Indiana	Memo, No. S5–81–43, 28 April 1943
Iowa	Memo. Hq. SOS (SPPDL–012.2 (Taxes) (Iowa)), 13 October 1942
Kansas	Memo. No. S5–2–43, 2 January 1943
Louisiana	Memo. No. S5–71–43, 2 April 1943
Michigan	Memo. Hq. SOS (SPPDL–012.2 (Taxes) (Michigan)), 1 May 1942
Mississippi	Memo. Hq. SOS (SPPDL–012.2 (Taxes) (Mississippi)), 5 May 1942, as amended by Memo. Hq. SOS (SPPDL–012.2 (Taxes) (Mississippi)), 12 June 1942
Missouri	Memo. Hq. SOS (SPPDL–012.2 (Taxes) (Missouri)), 29 August 1942. (Transactions prior to 7 February 1942)
	Memo. Hq. SOS (SPPDL–012.2 (Taxes) (Missouri)), 29 August 1942. (Transactions after 6 February 1942)
North Dakota	Memo. Hq. SOS (SPPDL–012.2 (Taxes) (North Dakota)), 27 April 1942
Ohio	Memo. Hq. SOS (SPPDL–012.2 (Taxes) (Ohio)), 18 May 1942
Pennsylvania	Memo. Hq. SOS (SPPDL–012.2 (Pennsylvania State Taxes)), 9 April 1942.
South Dakota	Memo. Hq. SOS (SPPDL–012.2 (Taxes) (South Dakota)), 7 April 1942. (Future transactions)
Texas	Memo. OUSW (PC–L 012.2 (Taxes) (Texas)), 23 January 1942. (Future transactions)
Utah	Memo. Hq. SOS (SPPDL–012.2 (Taxes) (Utah)), 30 September 1942
Virginia	Memo. OUSW (PC–L 012.2 (Taxes), 30 January 1942. Future transactions)
Washington	Memo. Hq. SOS (SPPDL–012.2 (Taxes) (Washington)), 27 April 1942
West Virginia	Memo. OUSW (PC–L 012.2 (Taxes)), 7 February 1942, as amended by Memo. Hq. SOS (SPPDL–012.2 (W. Va. State Taxes)), 8 April 1942. (Future transactions)
Wyoming	Memo. Hq. SOS (SPPDL–012.2 (Taxes) (Wyoming)), 24 April 1942

(a) Information as to the situation in other states or advice with respect to particular problems in the states listed above should be obtained from the Office of The Judge Advocate General by inquiry addressed to the attention of the Chief, Tax Division.

(b) The instructions contained in the memoranda listed above are modified by the provisions of § 808.832 so far as they relate to the form of certificates required on invoices of subcontractors and suppliers under cost-plus-a-fixed-fee contracts.

§ 808.832 *Certificate of non-inclusion of State or local taxes in amounts billed to cost-plus-a-fixed-fee contractors or subcontractors.* Where purchases of materials or services by cost-plus-a-fixed-fee contractors or cost-plus-a-fixed-fee subcontractors are exempt from state or local taxes, the vendor's invoices, except as provided in § 808.833, should contain the following statement:

State or local sales, use and similar taxes are not included in the amounts billed.

Where purchases by cost-plus-a-fixed-fee contractors or cost-plus-a-fixed-fee subcontractors are not exempt from state or local taxes the above statement may be omitted from vendor's invoices, but such taxes must be separately itemized.

§ 808.833 *Tax provisions of purchase orders issued by cost-plus-a-fixed-fee contractors and subcontractors.* Cost-plus-a-fixed-fee contractors and cost-plus-a-fixed-fee subcontractors may include in their purchase orders covering

supplies or materials the following statement:

Any state or local sales, use, or similar tax, included in the amounts billed MUST be separately stated and itemized. It is understood, and the acceptance of this order shall constitute an agreement, that unless such taxes are separately stated and itemized, no such taxes are included in the amounts billed.

If this statement is included in the purchase order and if no state or local taxes are included in the amount billed to the cost-plus-a-fixed-fee contractor or cost-plus-a-fixed-fee subcontractor, the supplier of the supplies or materials need not include upon his invoice the statement quoted in § 808.832 that certain state or local taxes are not included in the amounts billed. However, even where the purchase order contains the statement quoted above in this paragraph, the invoice of the supplier under the purchase order must separately state and itemize all state or local sales, use or similar taxes which are in fact included in the price billed.

SUBPART F—COLLECTION AND PAYMENT OF FEDERAL EXCISE TAXES BY THE GOVERNMENT

§ 808.840 *General.* Except as provided in § 808.842, the amount of the Federal excise tax will be collected from the purchaser when articles, subject to tax under Chapter 25 (tax on pistols and revolvers—see § 808.803) or Chapter 29 (Manufacturers' excise taxes — see § 808.802, et seq.) of the Internal Revenue Code, purchased free of tax are sold to individuals or used for other than the use of the United States. Funds so collected will be deposited with the local disbursing officer together with information of the name of the contractor from whom the articles were purchased and the number of the contract under which purchase was made. In cases where the name and amount of the contract involved are not known to the sales officer, he will ascertain this information from the shipping or contracting officer or from the chief of the technical service, if necessary.

§ 808.841 *Remittances to contractor.* Funds received by a disbursing officer as payment for taxes imposed by Chapter 25 or 29 of the Internal Revenue Code will be placed in a special deposit account and remitted to the contractor monthly, or at the time the officer closes his accounts when he ceases to disburse, in order that return may be made therefor to the appropriate Collector of Internal Revenue. A copy of the report of such remittance will be forwarded to the Bureau of Internal Revenue. However, if it is impossible for the disbursing officer to determine the contractor from whom the articles subject to tax under Chapter 25 or 29 were purchased, he may remit the amount of the tax to the Collector of Internal Revenue for the district in which the disbursing officer is located with a statement that the name of the contractor is unknown.

§ 808.842 *Transfers to which §§ 808.840 and 808.841 do not apply.* In connection with the following types of transfers of Government-owned property purchased by the Government free of tax, it is not necessary that the amount of the Federal tax be collected from the purchaser and accordingly the provisions of §§ 808.840 and 808.841 are inapplicable:

(a) All sales of used property,

(b) Transfers to a cost-plus-a-fixed-fee contractor of Government-owned property for use in connection with the performance of the contract (whether the transfer is made directly by the Government or on behalf of the Government pursuant to a contract provision similar to that contained in § 808.363),

(c) Sales to a lump sum contractor of Government-owned property for use in connection with the performance of the contract,

(d) Transfers to other agencies of the Government, including transfers for disposition to the Procurement Division, Treasury Department.

§ 808.843 *Adjustment of sales price.* As indicated in § 808.842 (c), it is not necessary that on a sale of property to a lump sum contractor, the amount of the Federal tax, as such, be collected from the contractor. It is not appropriate, however, that the contractor derive the benefit arising from the fact that the Government originally acquired the property tax fee. Accordingly, in fixing the sales price to be paid to the Government by the lump sum contractor, one of the elements going into the price must be the amount of the Federal excise tax which would ordinarily be payable upon a sale of the property.

SUBPART G—ADJUSTMENTS OF CONTRACTS BECAUSE OF CHANGED FEDERAL EXCISE TAXES

§ 808.850 *Excise tax rates increased by Revenue Act of 1943.* The following excise tax rates, among others, were increased (effective 1 April 1944) by the Revenue Act of 1943.

Description of tax	Old rate	Rate under 1943 act
Retailers' excise taxes:	*Percent*	*Percent*
Jewelry, etc. (except as to certain watches and alarm clocks)	10	20
Furs	10	20
Toilet preparations	10	20
Luggage (formerly manufacturers' excise tax)	10	20
Manufacturers' excise taxes:		
Electric light bulbs and tubes	5	20
Tax on communication:		
Telephone (over 24 cents)	20	25
Domestic telegraph, cable or radio dispatches	15	25
Leased wires, etc.	15	25
Wire and equipment service	5	8
Local telephone service	10	15
Tax on transportation of persons	10	15

§ 808.851 *Excise taxes repealed by Revenue Act of 1943.* Section 310 of the Revenue Act of 1943 repealed as of 1 April 1944 the retailers' excise tax imposed by section 2400, Internal Revenue Code, with respect to "silver-plated flatware." Section 311 of the Revenue Act of 1943 revised section 3406 (a) (3), Internal Revenue Code, so as to exempt household type electric vacuum cleaners from manufacturers' excise taxes.

§ 808.852 *Excise taxes repealed by Revenue Act of 1942.* Section 611 of the Revenue Act of 1942 repealed as of 1 November 1942 excise taxes imposed by Internal Revenue Code, section 3406 (a), subsections (5), (7), (8), and (9) relating respectively to electric signs, rubber articles, washing machines and optical equipment. Sections 614 and 615 of the Revenue Act of 1942 have revised sections 3405 and 3406 (a) (6) of the Internal Revenue Code so as to exempt from excise taxation certain commercial refrigerating apparatus and cash registers of the type used in registering over-the-counter retail sales.

§ 808.853 *Contract provisions requiring adjustment by reason of changed Federal excise taxes.* The standard tax article prescribed in § 803.357 (a) (as well as the provision formerly prescribed therein) for lump sum supply contracts requires certain adjustments in contract prices by reason of changes after the date of the contract or the date of the award, as the case may be, in excise taxes directly applicable to the supplies or work covered by the contract or the materials used in the manufacture thereof, all as more fully set out in paragraph (b) of such standard tax article.

§ 808.854 *Adjustments required under standard tax article by reason of increase in rates and repeal of excise taxes.* The increases in rates of excise taxes and the repeal of excise taxes mentioned in §§ 808.850 to 808.852 require adjustment under paragraph (b) of the standard tax article prescribed in § 803.357 (a) or substantially similar provisions, if:

(a) Such taxes are directly applicable to the supplies or work covered by the contract or to the materials used in work or manufacture under the contract (all as more fully set forth in paragraph (b) of such standard tax article);

(b) The date of such contract or of the award, as the case may be, was prior to the date of the applicable increase or repeal; and

(c) Such taxes were included in the contract price. In the case of increase of rates, however, no adjustment will be made in excess of the amount of additional taxes or charges which the contractor is required to pay by reason of such increase. As a general rule, no adjustment will be required in connection with increase in rates of tax imposed with respect to communication and transportation.

§ 808.855 *Authority of chiefs of technical services with respect to adjustments.* To facilitate the prosecution of the war by reducing to a minimum the serious administrative burden of making adjustments referred to in § 803.854 and the time of contractors and government officers consumed in determining the amount thereof, the chiefs of the technical services are authorized pursuant to the First War Powers Act, 1941 and Executive Order No. 9001 to negotiate and enter into supplemental agreements with contractors with respect to the amount of any such adjustments after such verification and check thereof as the chiefs of the technical services severally

shall prescribe. To expedite the negotiation of such adjustments the amount thereof may be determined by estimate, spot check, audit, or in any other manner deemed reasonable or appropriate by the chief of the technical service concerned. No adjustment decreasing the contract price shall be required in respect of any contract or class of contracts as to which the chief of the technical service concerned shall determine that the amount of adjustment possibly to be obtained will not be substantial or will not warrant the interference with the orderly conduct of the procurement program or the expenditure of the time and effort involved in making or determining the amount of adjustment.

§ 808.856 *Situations in which adjustment not required by reason of repeal or increase.* No adjustment of the contract price will be required by reason of the repeal or increase of rates of excise taxes if the contract provides that the contract price does not include such taxes or if the contract does not contain a provision substantially similar to paragraph (b) of the standard tax article prescribed in § 803.357 (a).

§ 808.857 *Adjustments by reason of removal of exemptions by Revenue Act of 1943.* Effective 1 June 1944, certain exemptions available in connection with procurement by the United States were terminated (see § 808.815). Such exemptions, insofar as they relate to manufacturers' excise taxes (§ 808.802 et seq.) and retailers' excise taxes (§803.804 et seq.), remain in force as to contracts entered into prior to that date (see § 808.814) and no adjustments in contract prices are necessary by reason of termination of such exemptions. Such exemptions, however, insofar as they relate to transportation and communications taxes remain in effect only to the extent provided in § 808.810. If under a particular contract provision, adjustment is required by reason of the removal of exemptions relating to transportation and communication taxes, the provisions of § 808.855 shall apply to such adjustment.

§ 808.858 *Tax on transportation of property imposed by Revenue Act of 1942.* No increase will be made in the price payable under a contract executed prior to 1 December 1942 and containing a tax article substantially in the form of the standard tax article prescribed in § 808.357 (a), by reason of the imposition of the tax on transportation of property under section 3475 of the Internal Revenue Code (Revenue Act of 1942, sec. 620) on freight charges which the contractor is bound to pay in accordance with the contract. (See Dec. Comp. Gen. B-30754, dated January 2, 1943; 22 Comp. Gen. 583).

APPENDIX — POLICY AS TO CLAIMING EXEMPTION FROM FEDERAL EXCISE TAXES AVAILABLE ON THE BASIS OF PURCHASE OF ARTICLES FOR THE USE OF THE UNITED STATES [1]

§ 808.890 *General; scope of Appendix.* This Appendix sets forth the policies which were in effect prior to 1 June 1944 as to claiming exemption from Federal excise taxes. These policies were based upon the availability of exemption on the ground of purchase for the use of the United States and therefore remain in effect on and after 1 June 1944 only in those instances where exemption with respect to sales for the use of the United States are continued beyond that date. (See § 808.814 with respect to exemption under contracts entered into prior to 1 June 1944 and § 808.810 with respect to exemption from specific taxes remaining available).

Discussion in this Appendix of statutory exemption provisions and Treasury Regulations relates to the situation existing prior to 1 June 1944 and is applicable with respect to exemptions based on sales for the use of the United States continued beyond that date.

The policy as to claiming exemptions which are available on any basis other than purchase for the use of the United States is set forth in Subpart C of this part (e. g. see § 808.811, concerning exemptions based on exportation and § 808.812, concerning exemption based on supplies and equipment for vessels of war including aircraft).

§ 808.891 *Definition of terms.* (a) The following terms are used in this Appendix as they are defined in Treasury Decision 5114, 27 January 1942 (7 F. R. 579, 29 January 1942):

"Prime Contract" means a contract made by the United States. "Purchase article" means any article purchased as such by the United States under a prime contract. "Construction article" means any article for use as equipment, material or supplies by a prime contractor in performing a prime contract, provided, however, that payment for the article is made by the United States. "Subsidiary article" means any article, which by itself or after being combined by any persons with other articles, is incorporated in a purchase article or construction article.

(b) The following terms are defined for the purposes of this Appendix as follows:

"Subcontract" means any purchase or agreement to perform all or any part of the work, or to make or furnish any article, required for the performance of another contract or subcontract. "Article" includes any material, part, assembly, machinery, equipment or other personal property.

§ 808.892 *Statutory exemptions.* Chapters 19 (Retailers' excise taxes; see § 808.804 et seq.), 25 (pistols, revolvers and certain other firearms; see § 808.803), and 29 (Manufacturers' excise taxes; see § 808.802 et seq.) of the Internal Revenue Code impose certain excise taxes from which exemption is available if the taxable articles are sold for the use of the United States.

§ 808.893 *Exemption under Treasury Decision 5114.* In accordance with Treasury Decision 5114 dated 27 January 1942, articles are exempt from taxes imposed by Chapter 25 or 29, where such articles are used or incorporated by the purchaser as material in the manufacture or production of, or a component part of, an article which is to be furnished to the United States Government, *Provided*, That (a) the price of the article does not include a tax on the sale or transfer thereof under Chapter 25 or 29 of the Internal Revenue Code, (b) the article is included at such tax-free basis in the price of the article in which it is incorporated and (c) satisfactory evidence of the exemption is furnished by tax exemption certificate (see § 808.828). With respect to prime contracts or purchases made 1 March 1943, and purchases made by subcontractors on or after that date, see policies outlined in § 808.897, et seq.

§ 808.894 *When sales deemed for use of United States.* An article is deemed to be sold for the use of the United States when it is sold (a) to the United States to be utilized by the United States or to be disposed of by the United States to a foreign Government, or (b) to a Government contractor or subcontractor (including a supplier) when the article is incorporated in an article sold to the United States or in the building or work constructed, altered, improved or repaired pursuant to a contract with the United States, or (c) to a Government contractor under a cost-plus-a-fixed-fee contract or subcontractor under a cost-plus-a-fixed-fee subcontract where the article is used as equipment, materials or supplies by the contractor or subcontractor in performing a Government prime contract or in performing a subcontract under such prime contract and payment for the article is made by the United States, whether directly or by reimbursement of the contractor or subcontractor for the cost thereof. With respect to purchases by cost-plus-a-fixed-fee subcontractors of articles to be consumed in the performance of the subcontract (see § 808.895 (c)) tax exemption can be obtained under present rulings of the Commissioner of Internal Revenue only by the issuance of a Form 1094 by an authorized Government officer (see § 808.824). The term "incorporated in" as above refers to any process whereby an article enters into building, work or supplies or a component thereof so as to become a part thereof and is not merely consumed in such production.

§ 808.895 *Special considerations affecting tax exemption of lubricating oil and gasoline.* (a) Lubricating oil or gasoline, when incorporated in a purchase article so as to become a part thereof, constitutes a subsidiary article within the meaning of Treasury Decision 5114, and tax exemption of such oil and gasoline can be obtained pursuant to that Treasury Decision. Thus lubricating oil incorporated as the fluid in hydraulic apparatus constitutes a subsidiary article, where the hydraulic apparatus is purchased as such by the United States under a prime contract or where the hydraulic apparatus is a component part of some other article purchased as such by the United States under a prime contract. However, except as stated in paragraph (b) below, the term "subsidiary article" does not include lubricating oil consumed in the operation of machinery in manufacturing such hydraulic apparatus.

(b) Lubricating oil or gasoline is also a subsidiary article when sold to a prime contractor for use as equipment, material

[1] The matters set forth in this Appendix have limited application. See § 808.890.

or supplies in the performance of his prime contract, if payment for the lubricating oil or gasoline is made by the United States, and in other cases where it can be shown that the United States clearly receives the benefit of exemption from the tax. Thus, where the prime contract involves the construction of a plant, or the operation and maintenance of a plant, either on the basis of cost-plus-a-fixed-fee or some other basis under which the tax on the gasoline or lubricating oil is not to be included in the cost chargeable to the United States, the gasoline or lubricating oil sold to the prime contractor for use in the performance of such prime contract constitutes a subsidiary article within the meaning of Treasury Decision 5114 and tax exemption of such oil and gasoline can be obtained pursuant to that decision. In such case, the gasoline or lubricating oil is deemed to be incorporated in the subject matter of the prime contract, namely, the plant construction or the plant operation.

(c) Gasoline, lubricating oil and other similar consumable supplies, used under cost-plus-a-fixed-fee contracts are exempt. However, such consumable supplies, when constituting subsidiary articles, as in paragraph (b) above, are only exempt under Treasury Decision 5114 if purchased by a prime contractor. If such consumable supplies are purchased by a cost-plus-a-fixed-fee subcontractor or subsidiary subcontractor, Form 1094 must be used in order to secure the exemption from Federal excise tax.

(d) With respect to prime contracts or purchases made after 1 March 1943, and subcontracts or purchases made by contractors or subcontractors on or after that date, see policies outlined in § 808.-897 et seq.

§ 808.896 *Exemption rules as to articles subject to tax under Chapters of Internal Revenue Code other than Chapter 25 or 29.* Where any technical service has responsibility for the procurement or purchase of any articles subject to tax under Chapters of the Internal Revenue Code other than Chapter 25 or 29, as for instance Chapter 19, such technical service may prescribe such rules governing the securing of tax exemptions thereunder as it may deem proper.

§ 808.897 *Memorandum of policy, effective as of 1 March 1943, as to Federal excise tax.* The Under Secretary of War, jointly with the Under Secretary of the Navy, has issued the memorandum dated 4 January 1943, quoted below. The purpose of the policies stated therein is to reduce administrative work caused to Government departments and to contractors with respect to Federal excise tax exemptions and to eliminate confusion which has arisen particularly in connection with purchases, on a tax exempt basis in accordance with Treasury Decision 5114, by fixed price (lump sum) contractors and subcontractors, of articles and supplies for incorporation in or use in connection with supplies or work to be furnished or performed under a prime contract with the Government. The policies outlined in the memorandum have no application whatsoever to state and local taxes or exemptions thereunder or to fixed price (lump sum) prime contracts or subcontracts made prior to 1 March 1943 or to subcontracts or purchase orders thereunder. (The memorandum does not change or have any effect upon the exemption expressly provided by section 3442 (1) of the Internal Revenue Code under which contractors manufacturing taxable purchase articles may obtain subsidiary articles tax exempt in the manner provided in that section and applicable regulations—see § 808.813.) The memorandum follows:

POLICY AS TO FEDERAL EXCISE TAX EXEMPTIONS—TO BECOME EFFECTIVE MARCH 1, 1943

The War and Navy Departments adopt the following policies as to the payment of Federal excise taxes and exemptions therefrom, with respect (a) to all contracts executed by the Government after March 1, 1943, and all subcontracts thereunder and (b) to all subcontracts made after March 1, 1943, under cost-plus-a-fixed-fee prime contracts, regardless of when the prime contracts were executed. Certain terms used in this memorandum are defined in Note 1 below. The purpose of these policies is to reduce administrative work caused to Government Departments and to contractors with respect to Federal excise tax exemptions and to avoid the complications which have arisen in connection with purchases on a tax exempt basis in accordance with Treasury Decision 5114 by fixed price (lump sum) contractors and subcontractors.

1. The Government may make direct purchase of articles subject to Federal excise taxes ("purchase articles") on a price basis which either includes or excludes such taxes. In general, it will be War and Navy Department policy to make such direct purchases on a tax exclusive basis except where administrative convenience makes tax inclusive purchasing preferable.

2. In general, fixed-price (lump sum) contractors, subcontractors, suppliers and materialmen will not be authorized to purchase "construction articles", "subsidiary articles" or articles used or consumed in the performance of the prime contract or subcontract, on a tax-exclusive basis pursuant to Treasury Decision 5114, and no tax exemption certificates will be issued in respect thereof.

3. A prime contractor under a cost-plus-a-fixed-fee or cost prime contract, or any cost-plus-a-fixed-fee or cost subcontractor thereunder, may purchase any articles subject to Federal excise taxes ("construction articles", "subsidiary articles," or articles used or consumed in the performance of such prime contract or subcontract) on a price basis which either includes or excludes such taxes, *provided* that in general purchases on a tax exclusive basis shall be made by a cost-plus-a-fixed-fee subcontractor only where there is no fixed-price contractor intervening between such subcontractor and the prime contractor. Tax exemption certificates will be issued where purchases are made on a tax-exclusive basis pursuant to the policy announced in this paragraph. In general, it will be War and Navy Department policy to have such cost-plus-a-fixed-fee contractors and cost-plus-a-fixed-fee subcontractors make such purchases on a tax exclusive basis except where administrative convenience makes tax inclusive purchasing preferable. The term "cost contract" includes any contract provision on a cost basis and any contract for special additional facilities or emergency plant facilities of the Government-ownership type or substantially in the form approved by the Advisory Commission to the Council of National Defence and published in the FEDERAL REGISTER on October 19, 1940 (5 F. R. 4147, No. 205).

4. Exceptions to the policies prescribed in this memorandum may be authorized by the War or Navy Departments in order to facilitate procurement.

5. Bidders and contractors will be advised of the policies herein set forth as promptly as possible, so that they may make plans, fix prices and prepare cost analyses consistently with such policies.

6. The policies herein contained have no application to state and local taxes. These policies will likewise not necessitate any change in the policies applicable to fixed-price prime contracts and subcontracts executed prior to March 1, 1943, and subcontracts thereunder.

Dated this 4th day of January, 1943.

ROBERT P. PATTERSON
Under Secretary of War
FORRESTAL
Under Secretary of the Navy

[NOTE 1: This note in the statement of policy refers to the definitions set out in § 808.891.]

(a) *Changes effected by memorandum of policy.* (1) Fixed price (lump sum) prime contracts made on or after 1 March 1943 for the acquisition by the War Department of articles subject to Federal excise taxes ("purchase articles") shall in general be made on a price basis which excludes such Federal excise taxes. The chief of any technical service may authorize any contract or class of prime contracts to be made on a price basis which includes such Federal excise taxes.

(2) Fixed price (lump sum) prime contractors under contracts made on or after 1 March 1943 and subcontractors under them will not in general be authorized to purchase "subsidiary articles" (see paragraph 891) or articles used or consumed in the performance of the prime contract on a tax exclusive basis pursuant to Treasury Decision 5114.

(3) Where the prime contract with the Government is on a cost-plus-a-fixed-fee basis, regardless of the date of the execution of the prime contract, a fixed price (lump sum) subcontractor thereunder whose subcontract is made on or after 1 March 1943 will not be authorized to purchase "subsidiary articles", or articles used or consumed in the performance of the prime contract or subcontract, on a tax exclusive basis pursuant to Treasury Decision 5114.

(4) Cost-plus-a-fixed-fee prime contractors and cost-plus-a-fixed-fee subcontractors acting under them (where no lump sum contractor intervenes between the prime contractor and the cost-plus-a-fixed-fee subcontractor) will normally purchase articles, which are subject to Federal excise tax, on a tax exclusive basis.

(b) *Issue of tax exemption certificates.* Except as provided in (c), no tax exemption certificate will be issued by any officer or employee of the War Department or pursuant to Treasury Decision 5114 in a manner inconsistent with the policies provided in §§ 808.897 and 808.897 (a). Nothing in these regulations, however, requires any contractor or subcontractor to forego any Federal excise tax exemption to which he may be entitled otherwise than under Treasury Decision 5114

(see, for example, sec. 3442, IRC). Where contractors are entitled to any such exemption, contracting officers should take precautions to see that prices under lump sum contracts are fixed after giving due consideration to the effect of such exemption (see § 808.813).

(c) *Variations from policy by chief of any technical service.* The chief of any technical service may authorize variations (consistent with applicable tax exemption laws and tax regulations) from the policies set forth in § 81.897, et seq., in any case or class of cases where he finds that such action is necessary to facilitate procurement. Any variations so authorized will be reported at once in writing to the Director, Purchases Division, Headquarters, Army Service Forces. (Variations authorized by § 808.897 (e) need not be so reported.)

(d) *Documents to be consistent with policy.* The chief of each technical service will make necessary changes in existing bid forms, specifications, and instructions relating to bids and evaluation of contracts to carry out the policies set forth in the memorandum quoted in this section. Great care should be exercised in drawing contracts and purchase orders to make certain that their provisions reflect accurately the intention of the parties with respect to taxes and that they are consistent with the policies above mentioned.

(e) *Exception to tax policy with respect to radio apparatus, parts and similar items.* In some instances contractors have experienced difficulty in ascertaining whether particular items and parts of certain specialized military and naval equipment fall within the category of articles enumerated in section 3404, Internal Revenue Code (see § 808.802 (c)). Accordingly, as an exception to the tax policy set forth in § 808.897 (see § 808.-897 (c)), contracting officers are given authority to make prime contracts by the terms of which the prime contractor will be permitted to make purchases, on a basis exclusive of tax, of articles which are or may be subject to the tax imposed by section 3404 or section 3444 (so far as it relates to articles enumerated in section 3404), Internal Revenue Code, whether such articles (1) constitute subsidiary articles, or (2) are acquired by the prime contractor for transfer by him to the United States as purchase articles. With respect to any such purchases, the prime contractor may be authorized to issue tax exemption certificates in accordance with Treasury Decision 5114 and subject to its limitations.

(f) *Taxable articles manufactured by the prime contractor and included in a purchase article as a component part thereof.* The tax policy set out in § 808.-897 and 808.897 (a) is not intended to prevent the Government from buying purchase articles on a basis exclusive of any taxes on component parts of such purchase articles where such component parts (1) have been manufactured by the prime contractor himself and (2) have been included in the purchase article by such manufacturer himself. Buying such purchase articles from prime contractors on a basis exclusive of any tax imposed with respect to such component parts pursuant to the provisions of Internal Revenue Code, section 3444, is consistent with the above mentioned tax policy.

[Procurement Reg. 9]

PART 809—LABOR

SUBPART A—CONVICT LABOR LAW

809.901 Basic statutes.
809.902 Executive order of the President.
809.903 Application of basic statutes.

SUBPART B—EIGHT-HOUR LAW OF 1912

809.904 Basic law.
809.905 Applicability.

SUBPART C—COPELAND ("ANTI-KICKBACK") ACT

809.906 Basic law.
809.907 Applicability.
809.908 Procedure.
809.909 Alternative procedure for railway carriers.

SUBPART D—DAVIS-BACON ACT

809.910 Basic law.
809.911 Applicability: Character of contracts covered.
809.912 Regulations, forms and procedures.
809.913 Policy regarding construction and maintenance work.

SUBPART E—WALSH-HEALY PUBLIC CONTRACTS LAW

809.916 Basic law.
809.917 Applicability.
809.918 General instructions.
809.919 Knitting, knitwear and woven underwear.
809.920 Gloves and mittens industry.
809.921 Seamless hosiery industry.
809.922 Men's hats and caps industry.
809.923 Rainwear industry.
809.924 Cotton garments and allied industries.
809.925 Men's neckwear industry.
809.926 Dimension granite industry.
809.927 Shoe manufacturing and allied industries.
809.928 Handkerchief industry.
809.929 Envelope industry.
809.930 Vitreous or vitrified china industry.
809.931 Leather, leather trimmed, and sheep-lined garments industry.
809.932 Flint glass industry.
809.933 Luggage, leather goods, belts and women's handbag industry.
809.934 Fireworks industry.
809.935 Wool carpet and rug industry.
809.936 Tag industry.
809.937 Aircraft manufacturing industry.
809.938 Bobbinet industry.
809.939 Iron and steel industry.
809.940 Tobacco industry.
809.941 Furniture industry.
809.942 Drug and medicine industry.
809.943 Photographic supply industry (excluding motion picture equipment of 35 mm. or over).
809.944 Blueprint paper coating industry.
809.945 Soap industry.
809.946 Fertilizer industry.
809.947 "Specialty accounting" supply manufacturing industry.
809.948 Small arms ammunition, explosives, and related products industry.
809.949 Paper and pulp industry.
809.950 Cement industry.
809.951 Structural clay products industry.
809.952 Uniform and clothing industry.
809.953 Die casting manufacturing industry.
809.954 Dental goods and equipment manufacturing industry.
809.955 Scientific industrial and laboratory instruments industry.
809.956 Surgical instruments and apparatus industry.
809.957 Evaporated milk industry.
809.958 Paint and varnish industry.
809.959 Leather manufacturing industry.
809.960 Textile industry.
809.961 Chemical and related products industry.
809.961a Aviation textile products manufacturing industry.

SUBPART E-1—FAIR LABOR STANDARDS ACT OF 1938

809.961b Basic law.

SUBPART F—OVERTIME WAGE COMPENSATION

809.962 Executive Order No. 9240.
809.963 Elimination of inconsistencies through amendment of contracts; non-reimbursement, etc.
809.964 Interpretations, former and present.
809.965 Exceptions.
809.966 Future interpretations.

SUBPART G—WAGE AND SALARY STABILIZATION

809.975 Executive Order No. 9250.
809.976 Regulations of Economic Stabilization Director approved by the President.
809.976a Definitions (§ 4001.1).
809.976b Authority of National War Labor Board (§ 4001.2).
809.976c Rules, orders and regulations of Board (§ 4001.3).
809.976d Authority of the Commissioner of Internal Revenue (§ 4001.4).
809.976e Rules and regulations of Commissioner (§ 4001.5).
809.976f Salary increases (§ 4001.10).
809.976g Decreases in salaries of less than $5,000 (§ 4001.13).
809.976h Decreases in salaries of over $5,000. (§ 4001.14).
809.976i Limitation on wage and salary increases (§ 4001.11).
809.976j Effect of unlawful payments (§ 4001.15).
809.976k Exempt employers (§ 4001.16).
809.976l Salary allowances under Internal Revenue Code (§ 4001.17).
809.976m Statutory salaries and wages (§ 4001.18).
809.976n Territories and possessions (§ 4001.19).
809.976o Regulations and Economic Stabilization Director (§ 4001.21).
809.976p Applicability (§ 4001.20).
809.977 Regulations of Commissioner of Internal Revenue.
809.977a Salary Stabilization Unit (§ 1001.-1).
809.977b Authority of Unit (§ 1001.2).
809.977c Regional offices (§ 1001.3).
809.977d General terms.
809.977e Employee and employer (§ 1002.2).
809.977f Executive employees (§ 1002.3).
809.977g Administrative employees (§ 1002.-4).
809.977h Professional employees (§ 1002.5).
809.977i Salary payments (§ 1002.6).
809.977j Salary rate (§ 1002.7).
809.977k Insurance and pension benefits (§ 1002.8).
809.977l Approval by Commissioner (§ 1002.9).
809.977m Amount of salary payment (§ 1002.10).
809.977n Conclusiveness of determination (§ 1002.11).
809.977o Geographical scope (§ 1002.12).
809.977p Commissioner's approval required (§ 1002.13).
809.977q Commissioner's approval not required (§ 1002.14).
809.977r Salaries under $5,000 (§ 1002.15).
809.977s Salaries over $5,000 (§ 1002.16).

Sec.
809.977t State and local employees (§ 1002.17).
809.977u Basic allowance (§ 1002.18).
809.977v Charitable contributions (§ 1002.19).
809.977w Insurance premiums (§ 1002.20).
809.977x Fixed obligations (§ 1002.21).
809.977y Federal taxes (§ 1002.22).
809.977z Multiple employers (§ 1002.23).
809.977aa Limitation on 1942 salaries (§ 1002.24).
809.977bb Community property (§ 1002.25).
809.977cc Taxable year (§ 1002.26).
809.977dd Effective date (§ 1002.27).
809.977ee Amounts disregarded (§ 1002.28).
809.977ff Criminal penalties (§ 1002.29).
809.977gg Salary allowances under Code (§ 1002.30).
809.977hh Exempt employers (§ 1002.31).
809.977ii Statutory salaries (§ 1002.32).
809.977jj Services in foreign countries (§ 1002.33).
809.977kk Foreign employers (§ 1002.34).
809.977ll Functions and jurisdictions of the Salary Stabilization Unit and its regional offices.
809.977aaa Delegation by Commissioner of Internal Revenue to Secretary of War.
809.978 Wage stabilization policy of the National War Labor Board.
809.978a List of Designated Industries referred to in § 809.978.
809.979 Jurisdiction and procedure of Regional War Labor Boards.
809.979a War Labor Board Instructions to Regional Boards re Executive Order 9328 and Supplementary Directive of May 12, 1943.
809.979b Wage and Hour Division Regions; geographical jurisdiction and addresses.
809.979c Extension of authority of National War Labor Board Regional Directors; bonuses.
809.979d Extension of authority of National War Labor Board Regional Directors; voluntary wage and salary adjustments.
809.980 General Orders of National War Labor Board.
809.980a General Order No. 1.
809.980b General Order No. 2.
809.980c General Order No. 3.
809.980d General Order No. 4.
809.980e General Order No. 5.
809.980f General Order No. 6.
809.980g General Order No. 7.
809.980h General Order No. 8.
809.980i General Order No. 9.
809.980j General Order No. 10.
809.980k General Order No. 11.
809.980l General Order No. 12-B.
809.980m General Order No. 13.
809.980n General Order No. 14.
809.980o General Order No. 15.
809.980p General Order No. 16.
809.980q General Order No. 17.
809.980r General Order No. 18.
809.980s General Order No. 19.
809.980t General Order No. 20.
809.980u General Order No. 21.
809.980v General Order No. 22.
809.980w General Order No. 23.
809.980x General Order No. 24.
809.980y General Order No. 25-A.
809.980z General Order No. 26.
809.980aa General Order No. 27.
809.980bb General Order No. 30.
809.980cc General Order No. 31.
809.981 Delegations to industrial commissions.
809.981a West Coast Lumber Commission.
809.981b Non-Ferrous Metals Commission.
809.981c Detroit Area Tool and Die Commission.
809.981d Trucking Commission.
809.981e Shipbuilding Commission.
809.981f Shipbuilding Stabilization Committee.
Sec.
809.982 Interpretations of National War Labor Board.
809.982a Interpretation.
809.982b Interpretation.
809.982c Interpretation.
809.983 Joint statements of the National War Labor Board and the Commissioner of Internal Revenue.
809.983c Joint statement of January 23, 1942, by the Commissioner of Internal Revenue and the National War Labor Board regarding the victory tax.
809.983d Procedure under Executive Order 9250.
809.984 Executive Order 9328.

SUBPART H—FORTY-EIGHT HOUR WORKWEEK

809.985 Executive Order No. 9301.
809.986 Interpretation of regulations.
809.987 Enforcement procedure.
809.988 Adjustments to cover increased cost of compliance.

SUBPART I—EMPLOYMENT OF ALIENS

809.990 Joint statement.

SUBPART J—STATE LABOR LEGISLATION

809.993 Requests for relaxation of State labor legislation.

SUBPART K—FAIR EMPLOYMENT PRACTICE

809.994 Executive Order No. 9346.
809.994a Interpretations of Executive Order No. 9346.

SUBPART A—CONVICT LABOR LAW

§ 809.901 *Basic statutes.* The public policy of the United States as to convict labor is expressed in the act of February 23, 1887 (24 Stat. 411; 18 U. S. C. 703, 709). This statute is a penal one and provides for imprisonment or fine upon conviction for its violation. See also 47 Stat. 418; 31 U. S. C. 686b; 45 Stat. 1084; 49 U. S. C. 60; 49 Stat. 494; 49 U. S. C. 61–64; 54 Stat. 1134, as amended 55 Stat. 581; 18 U. S. C. 396a.

§ 890.902 *Executive order of the President.* Pursuant to the public policy prescribed by the aforementioned act of February 23, 1887, the President on May 18, 1905, issued an Executive Order which provides, in substance, that all contracts which shall hereafter be entered into by officers or agents of the United States involving the employment of labor in the States composing the Union, or the Territories contiguous thereto, shall, unless otherwise provided by law, contain a stipulation forbidding, in the performance of such contracts, the employment of persons undergoing sentences of imprisonment at hard labor which have been imposed by courts of the several States, Territories, or Municipalities having criminal jurisdiction.

Under date of July 9, 1942, the President issued Executive Order 9196 which "in order to remove any doubts which might otherwise exist and to insure the effective utilization of all existing productive facilities, * * * ordered that Executive Order No. 325A of May 18, 1905, be, and the same is hereby, suspended for the period of the war and for six months thereafter to the extent necessary to permit officers and agencies of the Federal Government charged with the purchase or procurement of articles necessary in the conduct of war to procure, directly or indirectly, through any contractor or subcontractor or otherwise, articles of any kind produced in any Federal, State or territorial prison, provided such articles are not produced pursuant to any contract or other arrangement under which prison labor is hired out to, or employed or used by, any private person, firm or corporation."

§ 809.903 *Application of basic statutes.* (a) The prohibitions contained in the foregoing provisions of this section do not apply to the following purchases:

(1) Purchases of items manufactured, or services rendered, by Federal Prison Industries, Inc. (see § 806.603).

(2) Purchases of items manufactured or produced, or of services rendered, by State prisons or other correctional State institutions (see § 806.603a).

(b) The Assistant Solicitor General has advised the Chairman of the War Production Board that the Federal statutes prohibiting shipment of convict-made goods and subjecting such shipments to the operation of state prohibitory laws (See e. g. 54 Stat. 1134, as amended 55 Stat. 581; 18 U.S.C. 396a; 45 Stat. 1084; 49 U.S.C. 60; 49 Stat. 494; 49 U.S.C. 61–64) do not extend to convict-made goods being procured by a contractor directly or indirectly for the Federal Government, *Provided,*

(1) That there is no other source of supply readily available to him on the open market;

(2) That purchases of such articles, materials or supplies are limited to the amount necessary to fulfill specific existing contracts with the Government; and

(3) That all such purchases are made at prices substantially equivalent to the current market price of the commodity purchased.

He has also expressed the view that an order of the Secretary of Labor, dated May 26, 1942, has the effect of exempting from the operation of the convict labor provisions of the Walsh-Healey Act (49 Stat. 2036, as amended, 41 U.S.C. 35 and following) "Contracts negotiated during the present war for the purchase of prison-made goods by contractors, subcontractors or brokers when such purchases are limited as above set forth to the purchase of such goods for the purposes of existing Government Contracts." (See opinion of Attorney General, May 6, 1942; letter amplifying this opinion to the Chairman, War Production Board from the Assistant Solicitor General, dated June 20, 1942.)

(c) The provisions of the statute referred to in § 809.901 do not prohibit the employment by contractors or subcontractors of persons serving sentences on parole or probation, nor to convicts who have served their terms.

SUBPART B—EIGHT-HOUR LAW OF 1912

§ 809.904 *Basic law.* The act requires that, in every contract to which it is applicable, a provision must be inserted that no laborer or mechanic doing any part of the work contemplated by the contract in the employ of a contractor or any subcontractor, shall be required or permitted to work more than 8 hours in any one calendar day upon such work unless such mechanic or laborer is compensated for all hours worked in excess of 8 hours in any one calendar day at not less than 1½ times the basic rate of pay.

Act of June 19, 1912 (37 Stat. 137), as amended by section 5 (b) act of June 28, 1940 (54 Stat. 679) and section 303 act of September 9, 1940 (54 Stat. 884), 40 U. S. C. 324, 325, 325-A; M. L. 1939 and Supp. II, secs. 743, 745.

(a) *Form of provision.* The form of the provision to be used in contracts to which the act applies is set out in § 803.346.

§ 809.905 *Applicability.* The basic law applies to all War Department contracts which may require or involve the employment of laborers or mechanics either by the prime contractor or any subcontractor, with the following exceptions:

(a) *Exceptions.* The law does not apply to supply contracts, such contracts ordinarily being subject to the Walsh-Healey Act where the amount involved is in excess of $10,000.00 (Subpart E of this part).

(b) *Exceptions.* Where the same class of work is not, as a general rule, being performed by the Government, contracts for any of the following classes of work are not covered by the act.

(1) Contracts for transportation by land or water.

(2) Contracts for the transmission of intelligence.

(3) Contracts for the construction or repair of levees or revetments necessary for protection against floods or overflows on the navigable waters of the United States.

(4) Contracts for supplies or for such materials or articles as may usually be bought in the open market, whether such supplies, materials or articles are made to conform to particular specifications or not (except armor and armor plate).

(c) *Exceptions.* The law does not apply to contracts between the War Department and any one of the several States of the Union or the political subdivisions thereof. The law, however, is applicable to any subcontract covering any part of the work covered by such prime contract with a State (or political subdivision thereof) where it is sublet to a private contractor.

(d) *Dredge workers.* The Attorney General has expressed the opinion that the basic law is not applicable to the employment of members of the crew of a dredge or like floating plant (38 Op. A. G. 150 (1934)).

SUBPART C—COPELAND ("ANTI-KICKBACK") ACT

§ 809.906 *Basic law.* The act provides that whoever shall induce any person employed in work subject to the act to give up any part of the compensation to which he is entitled under his contract of employment by force, intimidation, threat of procuring dismissal from such employment or any other manner whatsoever, shall be fined not more than $5,000 or imprisoned not more than 5 years, or both. Act of June 13, 1934, (48 Stat. 948) 40 U. S. C. A. secs. 276 (b) and (c) as amended by Reorganization Plan No. IV, effective June 30, 1940, (54 Stat. 1236) in accordance with sec. 4 of H. J. Res. 551 (Pub. Res. 75) approved June 4, 1940, sec. 4, (54 Stat. 231)—5 U. S. C. 133u.

(a) *Form of provision.* The form of the provision required by regulation in contracts to which the act applies is set out in § 803.344. (Title 29-A, Department of Labor Regulations 2.6). (29 CFR, Cum. Supp., 3.6).

§ 809.907 *Applicability*—(a) *Character of contracts.*—Generally the act applies to contracts and subcontracts regardless of amount for the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States.

(b) *Cost plus contracts.* The act applies to contracts for such work entered into upon a cost-plus-a-fixed-fee basis or otherwise, with or without advertising for proposals, as well as to contracts entered into upon a lump sum basis.

(c) *Exceptions.* The act does not apply to supply contracts, such contracts ordinarily being subject to the Walsh-Healey Act where the amount is in excess of $10,000 (see Subpart E of this part); nor does it apply ordinarily to installation or maintenance work done for the account of the Government in connection with and as an incident to supply contracts.

(d) *Determination of applicability.* Since the primary factor for determining whether or not the act applies is the nature of the work contemplated in the contract and since this same factor is involved in determining whether or not the Davis-Bacon Act applies, reference is here made to § 809.911 to 809.911 (e) under Subpart D which are equally applicable to this subpart.

(e) *Exceptions.* The form of provision required in § 803.344 is not required in War Department contracts with a State, or a political subdivision thereof, nor are other regulations with regard to the filing of affidavits, payroll summaries and securing authorized payroll deductions applicable to such contracts. However, the provision must be included and the regulations must be followed in subcontracts of any part of the work involved sublet by any state (or political subdivision thereof) to a private contractor.

§ 809.908 *Procedure.* Pursuant to the provisions of the act, the Secretary of Labor has prescribed certain regulations made effective April 30, 1942 which govern the procedure to be followed in connection with contracts that are subject to the act, and the Davis-Bacon Act (§ 809.910 and following); also with regard to certain types of authorized deductions and the method of securing approval thereof. The substance of the pertinent regulations follows:

(a) *Weekly affidavit with respect to payment of wages.* Each contractor or subcontractor engaged in work subject to the act is required to furnish each week a sworn affidavit with respect to the wages paid each of its employees (which shall not be deemed to apply to persons in classifications higher than that of laborer and mechanic and those who are the immediate supervisors of such employees) engaged on the work covered by the act during the preceding weekly payroll period. The affidavit shall be executed and sworn to by the contractor or subcontractor who supervises the payment of wages and shall be in the following form:

STATE OF _____,
County of _____, *ss:*

I, _____ (Name of party signing affidavit), _____ (title) being duly sworn, do depose and say: That I pay or supervise the payment of the persons employed by _____ (contractor or subcontractor) on the _____ (building or work); that the attached payroll sets out accurately and completely the name, occupation, and hourly wage rate of each person so employed for the weekly payroll period from the ____ day of _____, 194__, to the ____ day of _____, 194__, the total number of hours worked by him during such period, the full weekly wages earned by him and any deductions made from such weekly wages, and the actual weekly wages paid to him; that no rebates have been or will be made either directly or indirectly to or on behalf of said _____ (contractor or subcontractor) from the full weekly wages earned as set out on the attached pay roll; and that no deductions, other than the permissible deductions (as defined in the Regulations under the "Kickback" Act (48 Stat. 948) described in the following paragraph of this affidavit, have been made or will be made, either directly or indirectly, from the full weekly wages earned as set out on the attached pay roll.

(Paragraph describing deductions, if any.)

_____
(Signature and title)

Sworn to before me this _____ day of _____, 194____. (Title 29-A Dept. of Labor Regulations, 2.3 (b)). 29 CFR, Cum. Supp., 3.3 (b)).

(b) *Exemptions with respect to weekly affidavits.* Upon a written finding by the Secretary of War, the Secretary of Labor may provide reasonable limitations, variations, tolerances and exemptions from the requirements set forth in paragraph (a) above, subject to such conditions as the Secretary of Labor may specify. Request for such finding shall be submitted through the chief of the technical service to the Industrial Personnel Division Headquarters, Army Service Forces, for submission through channels to the Secretary of Labor. (Title 29-A, Dept. of Labor Regulations, 2.3 (c)). (29 CFR, Cum. Supp., 3.3 (c)).

(c) *Submission of weekly affidavits and subcontractors summaries.* (1) Each weekly affidavit shall be delivered by the contractor or subcontractor within seven days after the regular payment date of the payroll period to the contracting officer or such other officer as may be designated for such purpose by the chief of the technical service.

(2) After such examination and check as may be made, one affidavit and one copy of the payroll of each contractor and subcontractor engaged on Federal construction (except shipbuilding and railroad), covering the weekly payroll periods ending nearest January 15, April 15, July 15, and October 15 shall be submitted quarterly by the contracting officer or other designated officer to the U. S. Department of Labor within 14 days after the close of the specified payroll period.

(3) Affidavits and payrolls for all contracts (except shipbuilding and railroads) located in the States listed below

should be mailed to the addresses indicated:

State and Location of Regional Office

Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Virginia. Regional Wage Analyst, Bureau of Labor Statistics, 4th Floor, Carl Witt Building, 249 Peachtree Street, N. W., Atlanta, Georgia.

Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont. Regional Wage Analyst, Bureau of Labor Statistics, 294 Washington Street, Boston, Massachusetts.

Illinois, Indiana, Minnesota, North Dakota, South Dakota, Wisconsin. Regional Wage Analyst, Bureau of Labor Statistics, Room 1212, Merchandise Mart, 222 West North Bank Drive, Chicago, Illinois.

Louisiana, Oklahoma, Texas. Regional Wage Analyst, Bureau of Labor Statistics, 1610 Mercantile Bank Building, Dallas, Texas.

Kentucky, Ohio, West Virginia. Regional Wage Analyst, Bureau of Labor Statistics, 133 Federal Building, Public Square, Cleveland, Ohio.

Colorado, Idaho, Montana, New Mexico, Utah, Wyoming. Regional Wage Analyst, Bureau of Labor Statistics, 422 Chamber of Commerce Building, Denver, Colorado.

Michigan. Regional Wage Analyst, Bureau of Labor Statistics, Room 926, David Stott Building, 1150 Griswold Street, Detroit, Michigan.

New York, New Jersey Counties: Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Passaic, Somerset, Sussex, Union, Warren. Regional Wage Analyst, Bureau of Labor Statistics, Room 713, Parcel Post Building, 341 Ninth Avenue, New York, New York.

Delaware, District of Columbia, Maryland, Pennsylvania, New Jersey Counties: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Ocean, Salem. Regional Wage Analyst, Bureau of Labor Statistics, Room 1634, Widener Building, Chestnut and Juniper Streets, Philadelphia, Pennsylvania.

Arkansas, Iowa, Kansas, Missouri, Nebraska. Regional Wage Analyst, Bureau of Labor Statistics, 3000 Fidelity Building, Kansas City, Missouri.

Arizona, California, Nevada. Regional Wage Analyst, Bureau of Labor Statistics, Room 410-412, Golden Gate Building, 25 Taylor Street, San Francisco, California.

A separate office for the Southern California area is maintained at: Room 1529, Post Office and Court House Building, Los Angeles, California.

Oregon, Washington. Regional Wage Analyst, Bureau of Labor Statistics, 516 Seaboard Building, Seattle, Washington.

(4) In the case of shipbuilding and railroad contracts, affidavits and payrolls will be submitted for payroll periods ending nearest May 15 and November 15 to the Bureau of Labor Statistics, Washington, D. C.

(d) *Submission of subcontractor summaries.* Each contractor or subcontractor shall within seven days after the making of any subcontract with another person concerning work subject to the Act deliver to the contracting officer or such other officer as may be designated for such purpose by the chief of the technical service, an affidavit setting forth the name and address of his subcontractor and a summary description of the precise work subcontracted. After such examination and check as may be made, such affidavit or a copy thereof shall be transmitted by the contracting officer or other designated officer directly to the Bureau of Labor Statistics, U. S. Department of Labor, Washington, D. C. (Title 29-A Department of Labor Regulations 2.4 (b)) (29 CFR, Cum. Supp., 3.4 (b)).

(e) *Authorized payroll deductions.* Deductions for the following purposes are permissible:

(1) Where required by Federal, State, or local statutes or ordinances to be made by the employer from the wages earned by the employee;

(2) Bona fide prepayment of wages without discount or interest;

(3) Deductions required by court process provided that the contractor or subcontractor will not be permitted to make such a deduction in favor of the contractor, subcontractor, or any affiliated person or where collusion or collaboration exists. (Title 29-A Department of Labor Regulations 2.5 (a)) (29 CFR, Cum. Supp., 3.5 (a)).

(f) *Authorized payroll deductions.* Any deduction is also permissible which in fact meets the following standards and with respect to which the contractor or subcontractor shall have made written application by registered mail to the Secretary of Labor, a copy of which application shall be sent to the contracting agency by the contractor or subcontractor setting forth all the pertinent facts, indicating that such deductions will meet the following standards:

(1) That such deduction is not prohibited by other law; and

(2) That such deduction is (i) voluntarily consented to by the employee in writing and in advance of the period in which the work was done, and that consent to the deduction is not a condition either for the obtaining of or for the continuance of employment; or (ii) that such deduction is for the benefit of the employees or their labor organization through which they are represented and is provided for in a bona fide collective bargaining agreement; and

(3) That from such deduction no payment is made to, nor profit or benefit is obtained directly or indirectly by the contractor or subcontractor or any affiliated person, and that no portion of the funds, whether in the form of a commission or otherwise, will be returned to the contractor or subcontractor or to any affiliated person; and

(4) That the convenience and interest of the employees are served thereby, and that such or similar deductions have been customary in this or comparable situations. (Title 29-A Dept. of Labor Regulations 2.5 (b)). (29 CFR, Cum. Supp., 3.5 (b)).

(g) *Authorized payroll deductions.* After application in good faith, the deduction may be made in accordance with the foregoing standards: *Provided, however,* That if the Secretary of Labor, on his own motion, or on the application of any person or agency affected by the granting of the application, shall conclude at any time, after written notice to the applicant and an opportunity for him to present his views in support of the deduction, that the deduction has not met the foregoing standards, such deductions shall cease to be "permissible" seven days after the applicant and the Federal agency concerned have been notified of the Secretary's decision. (Title 29-A Department of Labor Regulations 2.5 (c)). (29 CFR, Cum. Supp., 3.5 (c)).

(h) *Authorized payroll deductions.* Upon application to and prior written permission from the Secretary of Labor, and subject to the standards set forth in paragraph (f), deductions may be made by a contractor or subcontractor or any affiliated person, for membership fees in group benefit or retirement associations; for board and lodging; or for other purposes where the Secretary of Labor concludes the deduction is required by compelling circumstances; provided, however, the contractor, subcontractor, or any affiliated person does not make a profit or benefit directly or indirectly from the deduction. A copy of the Secretary's decision shall be sent to the applicant and the Federal agency concerned. (Title 29-A Department of Labor Regulations 2.5 (d)). (29 CFR, Cum. Supp., 3.5 (d)).

(i) *Authorized payroll deductions.* In accordance with and subject to the standards set forth in paragraph (f), general permission is hereby granted to make payroll deductions for:

(1) The payment of the purchase price of United States Defense Stamps and Bonds and United States Tax Savings Notes;

(2) The repayment of loans to or the purchase of shares in credit unions organized and operated in accordance with District of Columbia, Federal, or State credit union statutes.

(3) Contributions to a Federal governmental or quasi-governmental agency. (Title 29-A Department of Labor Regulations 2.5 (e)). (29 CFR, Cum. Supp., 3.5 (e)).

(j) *Restricted payments prohibited.* In any case in which the employee does not have full and actual freedom of disposition of his wage payment, whether made in cash or by check, any restricted payment made to the employee is considered a deduction under the regulations in this part. (Title 29-A Department of Labor Regulations 2.5 (h)). (29 CFR, Cum. Supp., 3.5 (h)).

(k) *Lack of knowledge no defense.* Nothing herein shall be construed to permit any deduction which the contractor or subcontractor knew, or in the exercise of good faith should have known, did not meet the foregoing standards. In order to insure compliance with this section, the Secretary of Labor may notify the contractor or subcontractor that the deduction will be permitted only if certain conditions with respect thereto are observed. The contractor or subcontractor or any affiliated person shall also comply with such general rules and regulations concerning the deductions as the Secretary of Labor shall make from time to time, notice of which shall have been given to the contractor or subcontractor or any affiliated person making the deduction and to the Federal agency concerned either directly or through publication in the FEDERAL REGISTER. (Title 29-A Dept. of Labor Regulations 2.5 (g)). (29 CFR 3.5 (g)).

(1) *Request for advisory opinions.* The Secretary of Labor will furnish an opinion regarding the coverage of any specific project or with respect to the application of any provisions of the regulations in this part at the request of any Federal or State agency. Request for any such opinion shall be submitted through the chief of the technical service to the Industrial Personnel Division, Headquarters, Army Service Forces, for submission through channels to the Secretary of Labor. (Title 29–A Department of Labor Regulations 2.7). (29 CFR, Cum. Supp., 3.7).

§ 809.909 *Alternative procedures for railway carriers.* By letters of October 5, 1942 and January 22, 1943 from the Secretary of Labor to the Secretary of War, a partial exemption regarding the submission of weekly reports above described in § 809.908 (a) was granted to railway carriers and an alternative method for obtaining permission of the Secretary of Labor to make certain types of deductions was approved. Copies of these letters may be obtained from the office of the Labor Relations Branch, Industrial Personnel Division, Headquarters, Army Service Forces.

SUBPART D—DAVIS-BACON ACT

§ 809.910 *Basic law.* The act as amended requires as to every contract to which it applies:

(1) That a scale of minimum wages for every class of mechanics or laborers employed shall be set out in the specifications (in cases where specifications are advertised for bids).

(2) That a minimum wage scale must be included in the contract together with a stipulation that the same will be observed whether contracts are let on bids or not.

(3) The inclusion of certain additional provisions referred to hereinafter for the administration and enforcement of the required stipulations.

Act of March 3, 1931 (46 Stat. 1494), as amended by act of August 30, 1935 (49 Stat. 1011), act of June 15, 1940, (54 Stat. 399), and act of March 23, 1941, (55 Stat. 53—40 U. S. C. 276 a, a-1 to a-7), M. L. 1939 and Sup. I, sec. 746.

(a) *Form of provisions required.* The form of provisions required by regulation in contracts to which the Act applies is set out in § 803.343 and 803.343 (a). (Title 29–A, Department of Labor Regulations 2.6). (29 CFR, Cum. Supp., 3.6).

§ 809.911 *Applicability; character of contracts covered.* The act as amended applies to all contracts in excess of $2000 to be performed in any of the States of the United States, the Territory of Alaska, the Territory of Hawaii or the District of Columbia, for construction, alteration or repair including painting or decorating of public buildings or public works where the same require or involve the employment of mechanics or laborers. The act applies to contracts entered into upon a cost-plus-a-fixed-fee basis or otherwise with or without advertising for bids, as well as to contracts entered into upon a lump sum basis.

(a) *Definition of "building" and "work" by regulation.* The Secretary of Labor has, by regulation, defined the words "building" and "work" as including, generally, construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work.

(b) *Definition of "construction", or "repair".* The Secretary of Labor has defined the above terms as used in the act and in the Copeland Act covered in Subpart C above as, in substance including all types of work done under a construction contract such as altering, remodeling, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work by persons employed at the site by the contractor or subcontractor. (Title 29–A Department of Labor Regulations 2.2 (b)). (29 CFR, Cum. Supp., 3.2 (b)).

(c) *Exceptions.* The law does not apply to contracts between the War Department and any one of the several States of the Union or the political subdivisions thereof. The law, however, is applicable to any subcontract covering any part of the work covered by such prime contract with a State (or political subdivision thereof) where it is sublet to a private contractor.

(d) *Exceptions based on nature of work contemplated by contract.* The Act does not apply to:

(1) Contracts for servicing and maintenance work generally (Title 29–A, Department of Labor Regulations, 2.2 (a)). (29 CFR, Cum. Supp., 3.2 (a)).

(2) Contracts for manufacturing and furnishing materials or supplies (See Title 92–A, Department of Labor Regulations, 2.2 (a) (29 CFR, Cum. Supp., 3.2 (a)), and servicing and maintenance work incident thereto.

(3) Contracts covering the furnishing of equipment and operating personnel for work only incidental to public works (see 19 Comp. Gen. 467, Dec. B–6009, Nov. 1, 1939.).

(e) *Exceptions, "servicing and maintenance work" defined.* The terms "servicing and maintenance work" as used in subparagraphs (3) and (4) of paragraph (d) above, include:

(1) Movement of machinery into or out of or from one part to another part of a building or plant completed or substantially completed.

(2) Installation of machinery, machine tools or other equipment in a plant or building completed or substantially completed.

(3) Plant rearrangement and production facilities adjustment or alterations incident to (1) or (2) above.

NOTE: This definition in connection with subparagraphs (3) and (4) of paragraph (d) does not relate to servicing and maintenance prosecuted by a construction contractor as a part of construction work.

(f) *Exceptions based on other grounds.* The act does not apply to:

(1) Contracts for construction, alteration or repair, though otherwise meeting the tests of coverage hereinabove set out, where the place of performance of the contract is not known or cannot be reasonably ascertained at the time the contract is negotiated.

(2) Contracts with railroad carriers and airline carriers engaged in interstate or foreign commerce, or subcontracts let to such carriers for the construction, alteration or repair of railways, or other facilities, insofar as such contracts involve railways or other facilities, insofar as such contracts involve wage rates payable to employees of such carriers operating under collective bargaining agreements with such carriers made agreeable to the provisions of the Railway Labor Act, as amended. (Letter March 14, 1942 from the Secretary of Labor to the Secretary of War, and amendment dated April 10, 1936, 49 Stat. 1189, 45 U. S. C. 181 through 188, of the "Railway Labor Act" of 1926).

(g) *Determination by chief of technical service.* The act contemplates an administrative determination of the application of the law to particular contracts and the War Department is authorized to make such determination. The chief of the technical service involved will determine within his own office whether the foregoing regulations require the inclusion of Davis-Bacon (and Copeland) act provisions in any particular contract. In cases of doubt the question, accompanied by full statement of the facts, shall be referred to the Industrial Personnel Division, Headquarters, Army Service Forces, for determination.

§ 809.912 *Regulations, forms and procedures*—(a) *Regulations.* The regulations of the Secretary of Labor described in § 809.908, where pertinent, are applicable to all contracts subject to the act.

(b) *Regulations.* Regulation No. 503 issued by the Secretary of Labor September 30, 1935, as amended April 30, 1942, prescribes the procedures to be followed in predetermining prevailing rates of wages. Whenever a request for wage rate predeterminations is made by the contracting officer and referred to the Secretary of Labor in accordance with the procedures hereinafter described, the necessary steps to obtain evidence upon which the Secretary may make the requisite predeterminations are to be taken by the Solicitor of Labor in accordance with the provisions of Regulation No. 503.

(c) *Forms.* Wage rate predeterminations are to be requested on Forms DB–11, accompanied by Forms DB–15, issued by the Department of Labor (see paragraphs (e) and (f) below). Reports of violations are to be made on standard Form No. 1093 (see paragraph (g) below).

(d) *How obtained.* Copies of pertinent regulations and forms will be obtained by the chief of the technical service directly from the Department of Labor for distribution to those concerned. The chiefs of the technical services are responsible for the supplying of the necessary regulations and forms to their contracting officers.

(e) *Procedures; request for wage rate predeterminations.* Prior to entering into negotiations for awarding a contract to which the basic law is applicable, the contracting officer will request the Secretary of Labor, through the chief of

the technical service concerned, to predetermine the wage rates to be contained in the contract. This request will be made on Department of Labor Form DB–11, and the instructions on that form will be followed. Since the Department of Labor has stated that the basic law does not apply to the following positions, no predetermination of wages is necessary in their cases:

Assistant engineer on dredges or floating plant in supervisory positions.	Master or Captain.
	Mate.
	Mess boy.
	Messenger.
	Office manager.
Assistant foreman.	Pilot.
Camp assistant.	Quartermaster or steersman.
Checker.	
Chief mate.	Steward.
Civil engineer.	Storekeeper.
Clerk.	Superintendent.
Cook.	Timekeeper.
Cook's helper.	Waiter.
Foreman.	Watchman.
Junior deck officer.	

(f) *Procedures; prevailing rate information.* Each request submitted as indicated in paragraph (e) above will be accompanied by one or more copies of Department of Labor Form DB–15, executed in accordance with the instructions on that form, which require a separate form for each occupation. In filling out this form, the contracting officer will consult the following and consider the information obtained therefrom in forming the opinion which he is required to state on the form:

(1) The Building Trades Council (or some other local federation or council of the various craft unions),

(2) Independent labor organizations not allied with the local Building Trades Council,

(3) Municipal officials (the commissioner of public works, the city clerk or other officials in charge of municipal construction who have data on the wage rates paid on city projects),

(4) The employers' organizations (such as Master Builders, the Master Painters, or other contractors' associations, the local chamber of commerce, etc.),

(5) Individual contractors and architects in the locality,

(6) The State Labor Department or its equivalent,

(7) The contracting officer and supervising superintendent, and

(8) The local office of the United States Employment Service or affiliated agency.

(g) *Procedures; service commands.* Requests by commanding generals of service commands to the Department of Labor for the confirmation or establishment of prevailing wage determinations for construction work prosecuted under a contract to which the provisions of the act are applicable, should be channeled through the Division Engineer of the Corps of Engineers, who will forward the request to the Department of Labor through the Chief of Engineers. The Division Engineer has available current Davis-Bacon wage rate schedules to be employed in the award of such contracts and trained personnel familiar both with War Department construction policies and the technical requisites for procuring proper wage determinations.

(h) *Reports of violations.* Where a contracting officer finds that any laborer or mechanic employed by a contractor or subcontractor on work subject to the act has been or is being paid wages less than the wages required by the contract to be paid, the contracting officer will make a report on standard Form No. 1093 (schedule of deductions from payment to contractors) executed as completely as possible from his records to the disbursing officer. The latter will complete the execution of the form from his records and transmit it to the office indicated on the form. (Circular letter A-34106, February 28, 1936 of the Comptroller General.)

§ 809.913 *Policy regarding construction and maintenance work.* See Subpart F of Part 802.

SUBPART E—WALSH-HEALEY PUBLIC CONTRACTS LAW

§ 809.916 *Basic law.* (a) Act of 30 June 1936 (49 Stat. 2036), as amended by the act of 13 May 1942 (56 Stat. 277); 41 U. S. C. 35–45; M. L., 1939, sec. 747. The act of 30 June 1936 is quoted in "Rulings and Interpretations, September 29, 1939, Walsh-Healey Public Contracts Act," and the effect of the amendment of 13 May 1942 is explained in the Supplement to that publication (see §§ 809.917 (a) and 809.918 (a) below).

§ 809.917 *Applicability.* (a) Generally, the law is applicable to all contracts for the purchase of supplies when the amount thereof exceeds $10,000. The publication of the Department of Labor entitled "Rulings and Interpretations, September 29, 1939, Walsh-Healey Public Contracts Act," as supplemented by Supplement published 24 January 1944 (Cir. Let. No. 1–44, 4 February 1944, Dept. of Labor), and paragraph (b) below, contain detailed information as to the contracts which are subject to and those which are exempt from the act.

(b) The following changes and additions to the regulations referred to in paragraph (a) above have been published:

(1) Individuals, corporations, or other organizations, not manufacturers or regular dealers as defined by the act, but acting at the instance of Defense Production Associations certified by the War Production Board, are exempt from the representation and stipulation required by section 1 (a) of the act.

(2) All Emergency Plant Facilities Contracts executed on an approved form are exempt from the act.

(3) Ice has been held to be a nonperishable commodity and thus contracts therefor are subject to the act.

(4) Contracts awarded to any railroad or other carrier are excepted from the representations and stipulations required by section 1 of the act.

(5) Contracts awarded for preserved or processed butter during the period from February 3, 1943, to the termination of the present war and three months thereafter are excepted from the representations and stipulations of section 1 of the act. (8 F. R. 1652).

(6) Contracts awarded during the present war for the production of training films are excepted from the representations and stipulations required by section 1 of the act.

(7) Contracts awarded for certain canned and dehydrated fruits and vegetables are excepted from the representations and stipulations of section 1 of the act until 31 December 1944 (7 F. R. 10794; 9 F. R. 405).

(8) Contracts awarded for orange marmalade are excepted from the representations and stipulations of section 1 of the act until 31 December 1944 (8 F.R. 14353; 9 F. R. 405).

(9) Contracts awarded for dehydrated rutabagas are excepted from the representations and stipulations of section 1 of the act until 31 December 1944 (8 F. R. 14353; 9 F. R. 405).

(9a) Contracts awarded for evaporated milk and powdered skim milk are excepted from the representations and stipulations of section 1 of the act until 1 September 1944 (9 F. R. 5996).

(10) Stipulation (c) of Article 1 of the contract stipulations (page 39 of the regulations) has been amended so as to add a colon at the end thereof and the following provisos:

Provided, however, That the provisions of this stipulation shall not apply to any employer who shall have entered into an agreement with his employees pursuant to the provisions of paragraphs 1 or 2 of subsection (b) of section 7 of an act entitled "The Fair Labor Standards Act of 1938"; *Provided further,* That in the case of such an employer, during the life of the agreement referred to, the applicable overtime rate set by the Secretary of Labor shall be paid for hours in excess of 12 in any 1 day or in excess of 56 in any 1 week and if such overtime is not paid, the employer shall be required to compensate his employees during that week at the applicable overtime rate set by the Secretary of Labor for hours in excess of 8 in any 1 day or in excess of 40 in any 1 week.

(11) Article 103 (Overtime) of the Administrative Regulations (page 42 of the Regulations) has been amended so as to add the following paragraph:

In the case of any employer who shall have entered into an agreement with his employees pursuant to the provisions of paragraphs 1 or 2 of subsection (b) of section 7 of an Act entitled "The Fair Labor Standards Act of 1938," the foregoing requirements shall be the same except that during the life of the agreement overtime compensation shall be payable only for hours worked in excess of 12 in any 1 day or in excess of 56 in any 1 week. If overtime is not paid for hours in excess of 12 in any 1 day or in excess of 56 in any 1 week, the employer shall be required to compensate his employees during that week for overtime for hours in excess of 8 in any 1 day or in excess of 40 in any 1 week. The requirements of section 7 (b) 1 and 2 of the Fair Labor Standards Act are more fully explained in Interpretative Bulletin No. 8 of the Wage and Hour Division.

(12) Articles 601, 602, 1101 and 1201 of the Administrative Regulations (pages 43 to 45 of the Regulations) have been amended as follows:

(a) Art. 601 (Requests for Exceptions and Exemptions). Request for the exception or exemption of a contract or class of contracts from the inclusion or application of one or more of these stipulations required by article

1 must be made by the head of a contracting agency or department and shall be accompanied with a finding by him setting forth reasons why such inclusion or application will seriously impair the conduct of Government business.

Request for the exception or exemption of a stipulation respecting minimum rates of pay and maximum hours of labor contained in an existing contract must be made jointly by the head of the contracting agency and the contractor and shall be accompanied with a joint finding by them setting forth reasons why such exception or exemption is desired.

All requests for exceptions or exemptions shall be transmitted to the Public Contracts Division of the Department of Labor.

(b) Art. 602 (Decisions Concerning Exceptions and Exemptions). Decisions concerning exceptions and exemptions shall be in writing and approved by the Secretary of Labor or officer prescribed by him, originals being filed in the Department of Labor, and certified copies shall be transmited to the department or agency originating the request, to the Comptroller General, and to the Procurement Division of the Treasury. All such decisions shall be promulgated to all contracting agencies by the Public Contracts Division of the Department of Labor.

(c) Art. 1101 (Minimum Wages).—Until a determination of the prevailing minimum wage for a particular industry or group of industries has been made by the Secretary of Labor prior to the invitation for bids, the stipulation with respect to wages in section 1 (b) of the Act will be inoperative, as provided in article 1 (b) of these Regulations.

Determinations of prevailing minimum wages or changes therein will be published in the Federal Register and sent to contracting officers by the Public Contracts Division of the Department of Labor. Such determinations will be effective upon the dates fixed therein.

(d) Art. 1201 (Reports of Contracts Awarded). Whenever the contracting officer shall award a contract in which the stipulations required under article 1 are operative, he shall furnish the Department of Labor in quadruplicate on a form provided for this purpose the information required by such form.

(13) The following article has been added to the aforementioned rulings and interpretations:

Art. 1102 (Tolerance for Handicapped Workers).

Workers whose earning capacity is impaired by age or physical or mental deficiency or injury may be employed either by commercial establishments or as handicapped clients in sheltered workshops at wages lower than the prevailing minimum wages applicable under section 1 (b) of the Public Contracts Act upon the same terms and conditions as are prescribed for the employment of handicapped persons and of handicapped clients in sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, c. 676, 52 Stat. 1060, 29 U. S. C. sec. 201, by the regulations of the Administrator of the Wage and Hour Division of the Department of Labor (Title 29, Chapter V, Code of Federal Regulations, Parts 524 and 525), which are hereby adopted as the regulations governing employment of handicapped persons and of handicapped clients in sheltered workshops under the Public Contracts Act.

Any certificate issued by the Administrator of the Wage and Hour Division, pursuant to such regulations, authorizing the employment of a handicapped worker under the Fair Labor Standards Act shall constitute authorization for the employment of that worker under the Public Contracts Act in accordance with the terms of the certificate.

The Administrator of the Wage and Hour Division is authorized to issue certificates under the Public Contracts Act for the employment of handicapped workers not subject to the Fair Labor Standards Act or subject to different minimum rates of pay under the two Acts, at appropriate rates of compensation and in accordance with the standards and procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act.

The Administrator of the Wage and Hour and Public Contracts Divisions has authorized the Vocational Rehabilitation Officers and the Acting Vocational Rehabilitation Officers of the Veterans' Administration to sign and issue temporary certificates authorizing the employment of veterans handicapped by a service incurred disability (as determined by the Veterans' Administration) under any vocational rehabilitation program administered by the Veterans' Administration, at sub-minimum wage rates pursuant to section 14 of the Fair Labor Standards Act of 1938 and § 524.14 of Part 524, as amended, of the regulations issued thereunder, and Article 1102, as amended, of Regulations No. 504 issued under Walsh-Healey Public Contracts Act.

(14) By order dated September 2, 1942, the Secretary of Labor excepted from the requirements of section 1 of the Walsh-Healey Act contracts with a foreign Government or its representative for the purchase of materials which have been purchased for export to a foreign country but which have not been exported because of existing conditions due to the war in the foreign country of export and contracts with the custodians of or the holders of title documents to the materials purchased for export but which have not been exported because their exportation has been prohibited or curtailed pursuant to the Act of July 2, 1940 (54 Stat. 714; 50 U.S.C. 701).

§ 809.918 *General instructions.* (a) The regulations and instructions contained in "Rulings and Interpretations, September 29, 1939, Walsh-Healey Public Contracts Act", as supplemented by supplement published 24 January 1944 (see § 809.917 (a)), and amendments thereto, and § 809.917 (b), will be complied with by all contracting officers. Chiefs of technical services are responsible for furnishing this publication and a supply of the forms referred to therein to each of their contracting officers. It is no longer necessary to obtain Form PC–1 from the Department of Labor (see § 802.298 (e)).

(b) The prospective contractors will be informed of applicable minimum wage determinations, if any, in advance of or coincident with negotiating contracts.

(c) Contracting officers are responsible for seeing that contractors to whom are awarded contracts subject to the Walsh-Healey Act are furnished Posters, Form PC–13 (Revised October 1943), simultaneously with the making of the award, or as soon thereafter as possible. All copies of previously issued posters, which bear no revision date or a revision date other than October 1943, must be destroyed and be replaced by that revised issue. These forms may be obtained from the Record Keeping and Control Section, Room 1106, Department of Labor, Washington 25, D. C. In this connection, see paragraph (a) second sentence.

(d) Requests for exemptions, modifications, and exceptions authorized by Section 6 of the basic law will be submitted by the chief of the technical service concerned to the Industrial Personnel Division, Headquarters, Army Service Forces, through the Purchases Division, Headquarters, Army Service Forces.

Minimum Wage Determinations

§ 809.919 *Knitting, knitwear, and woven underwear.* The knitting, knitwear, and woven underwear industry is defined for the purposes of this determination as follows:

(a) The manufacturing, dyeing, or other finishing of any knitted fabric made from any yarn or mixture of yarns, and the manufacturing of knitted towels and cloths;

(b) The knitting from yarn or manufacturing from knitted fabric of knitted garments, sections of garments, or garment accessories except gloves, mittens, hosiery, belts manufactured from purchased knitted fabric, and any product the manufacture of which is covered by the prevailing minimum wage determination for the suit and coat branch of the uniform and clothing industry (§ 809.952);

(c) The manufacturing of underwear and bathing suits from any woven fabric.

Date effective: April 20, 1943.

Wage: Not less than 40 cents an hour or $16.00 for a week of 40 hours, arrived at either upon a time or piece-work basis. Learners may be employed at subminimum rates only in accordance with the present applicable regulations issued by the Administrator of the Wage and Hour Division under Fair Labor Standards Act, as amended on June 28, 1943, which were adopted for the purposes of this determination.

§ 809.920 *Gloves and mittens industry.* The gloves and mittens industry is defined for the purpose of this determination as that industry which manufactures gloves and mittens (except athletic gloves and mittens) from any material (other than rubber) or from any combination of materials (other than rubber).

Date effective: January 16, 1943.

Wage: 40 cents an hour or $16.00 for a week of 40 hours arrived at either upon a time or piece-work basis. Learners may be employed at subminimum rates only in accordance with the present applicable regulations issued by the Administrator of the Wage and Hour Division under the Fair Labor Standards Act, as amended on March 22, 1943, which were adopted for the purposes of this determination.

§ 809.921 *Seamless hosiery industry.* Manufacture or furnishing of seamless hosiery.

Date effective: July 8, 1943.

Wage: 40 cents per hour or $16.00 per week for a week of 40 hours, arrived at either upon a time or piece-work basis. Learners may be employed at subminimum rates only in accordance with the present applicable regulations issued by the Administrator of the Wage and Hour

Division under the Fair Labor Standards Act, which were adopted for the purposes of this determination.

§ 809.922 *Men's hat and cap industry.* Manufacture or supply of men's hats and caps, including men's white sailor and other stitched cloth hats, men's fur-felt hats, men's uniform caps, and women's hats, men's uniform caps, and women's hats and caps of similar design and construction.

Date effective: 2 March 1944.

Wage: 67.5 cents an hour or $27.00 per week of 40 hours, arrived at either upon a time or piece-work basis.

(a) *Variation from minimum wage determination.* A tolerance of not more than 20 percent of the employees in any one factory, whose activities at any given time are subject to the provisions of the Walsh-Healey Public Contracts Act is granted for auxiliary workers in the men's hat and cap industry except that there shall be no limitation on the number or proportion of auxiliary workers employed in the uniform cap and stitched hat branches of the Industry, provided that any auxiliary workers in the Industry shall be paid not less than 40 cents an hour or $16 per week of 40 hours, arrived at either upon a time or piece-work basis.

(b) *Definition of "auxiliary workers."* The term "auxiliary workers" as applied to the employees in the uniform cap and stitched hat branches of the industry shall include only those employees engaged in auxiliary occupations enumerated and defined as follows:

(1) Hand clipping: The operation of separating component parts of the article after they have been sewn.

(2) Hand cleaning: The operation of removing excess threads from the article or removing stains or dust.

(3) Size stamping: The operation of stamping the head size mark on the article.

(4) Floor boys (girls): One who carries items of work to and from the various departments.

(5) Examining: The operation of inspecting the article for imperfections during any stage of manufacture.

(6) Sweat band, braid, and strap cutter and measuring: The operation of measuring and cutting bands, straps and ribbons.

(7) Turning: The operation of turning the article inside out or outside in.

(8) Packing: The operation of packing the finished caps into shipping containers, spraying larvex or moth flakes; if necessary, inserting tissue paper in caps and inserting a cardboard ring stiffener to support crown of cap.

(9) Shipping and receiving: The operation of unloading and checking stock and preparing containers for shipment.

(10) Waste material sorting: The operation of separating paper from the rags whether performed in the cutting room or elsewhere.

(11) Hand stapling: The operation by hand pressure of a wire stapling machine to join together parts of the article, to attach labels, bowls or cloth to the article or part of the article, or to join ends of a cardboard strip to form a packing ring.

(12) Drawstring pulling: The operation of slipping a cord or drawstring through part of a cap, hood or helmet.

(13) Basting pulling: The operation of pulling out basting threads.

(14) Porter: The operation of cleaning floors or carrying boxes.

(15) Band and braid fitting: The operation of placing by hand but not sewing on a cap a prepared band or braid.

(16) Wire stiffener inserting: The operation of slipping a wire ring into the cap.

(17) Hand buckling: The operation of slipping a buckle on a strap.

(18) Visor inserting: The operation of inserting a canvas stiffener into a cloth pocket before the visor is attached.

(19) Pasting: The operation of attaching a label or ticket to a part of hat with paste or glue.

(20) Hand button inserting: The operation of inserting, by hand, into a prepared hole a button and bending overclips to hold the button in place, or inserting a button with a threaded neck, and screwing a nut on neck to hold button firm.

(21) Hand hole punching: The operation of punching a hole into material by use of an ice pick or similar pointed hand instrument.

(22) Wire cutting and ring forming: The operation of cutting a wire to length and joining the ends to form a stiffener ring.

(23) Hand eyeletting: The operation by hand pressure of a machine to attach an eyelet to the article.

(24) Hand snap fastening: The operation by hand pressure of a machine to attach a snap fastener to the article.

§ 809.923 *Rainwear industry.* Manufacture or supply of men's raincoats, including vulcanized and rubberized raincoats and raincoats made from material known under the registered trademark of "Cravenette" or from fabric chemically or otherwise treated so as to render it water-resistant, of oiled waterproof cotton outer garments, and of other types of rainwear.

Date effective: December 4, 1942, except that learners may be employed at subminimum rates, in accordance with the present applicable regulations of the Administrator of the Wage and Hour Division, on or after December 4, 1942, in the performance of contracts, bids for which were solicited or negotiations otherwise commenced by the contracting agency prior to that date.

Wage: 40 cents an hour or $16 per week of 40 hours, arrived at either upon a time or piece-work basis. Learners may be employed at subminimum rates only in accordance with the present applicable regulations issued by the Administrator of the Wage and Hour Division under the Fair Labor Standards Act of 1938, as amended on June 28, 1943, which were adopted for the purposes of this determination.

§ 809.924 *Cotton garment and allied industries.* The cotton garment and allied industries shall be understood to be that industry which manufactures or furnishes any of the following commodities:

Trousers, knickers, work pants, and breeches (except when made wholly of wool and uniform trousers and breeches made wholly or partially of wool); dress or work shirts and nightwear of any material except knit fabric; overalls, overall jackets, and one-piece overall suits; work coats and work jackets (except wool and wool-lined, and leather and sheep-lined); washable service apparel (hospital, professional, etc.); other cotton outerwear of any material except knit fabric; barrack bags; bandoleers; ammunition and cartridge belts made of textiles; canvas leggins; cot covers; fabric pouches and carriers for first aid equipment, such as: kit cantle ring straps, kit inserts, kit laces, kit pouches and kit suspenders; mattress covers; mosquito bars; and wardrobe bags with draw-strings, made of textiles.

Date effective: July 20, 1942.

Wage: 40 cents per hour or $16.00 per week of 40 hours, arrived at either upon a time or piece-work basis.

Learners may be employed at subminimum rates only in accordance with the present applicable regulations issued by the Administrator of the Wage and Hour Division under the Fair Labor Standards Act, as amended on June 28, 1943, which were adopted for the purposes of this determination.

§ 809.925 *Men's neckwear industry.* Manufacture and supply of men's neckwear (exclusive of knitted neckwear) and of women's ties of design and construction similar to such men's neckwear.

Date effective: July 8, 1943, except that learners and apprentices may be employed at subminimum rates in accordance with the present applicable regulations of the Administrator of the Wage and Hour Division, on or after July 8, 1943, in the performance of contracts bids for which were solicited or negotiations otherwise commenced by the contracting agency prior to that date.

Wage: 50 cents per hour or $20.00 per week for a 40-hour week arrived at either upon a time or piece work basis. Learners and apprentices may be employed at subminimum rates in accordance with the present applicable regulations issued by the Administrator of the Wage and Hour Division under the Fair Labor Standards Act which were adopted for the purposes of this determination.

Establishments manufacturing products as defined in this industry shall be granted a tolerance for persons actually employed as boxers and trimmers: *Provided,* That such boxers and trimmers be paid not less than 40 cents per hour or $16.00 per week for a 40-hour week and not less than the piece rates paid to all others workers in the same occupational classification.

§ 809.926 *Dimension granite industry.* Including monumental stone, building stone, paving blocks, curbing, riprap, and rubble, but not crushed stone.

Date effective: January 15, 1938.

Wage: In Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, and New York—57.5 cents per hour or $23.00 per week based on a 40-hour week, arrived at either on a time or piece work basis.

In North Carolina, Virginia, South Carolina, Georgia, Florida, Alabama, Tennessee, Kentucky, Mississippi, Louisiana, Arkansas, and Texas—32.5 cents per hour or $13.00 per week based on a 40-hour week, arrived at either on a time or piece work basis.

In Pennsylvania, Maryland, Wisconsin, Minnesota, South Dakota, and all other States not included in the foregoing paragraphs—42.5 cents per hour or $17.00 per week based on a 40-hour week, arrived at either on a time or piece work basis.

Monumental stone, building stone, paving blocks, curbing, riprap, and rubble, specifically made subject to the minimum wage determination for the dimension granite industry, are exclusively products of granite quarries, and such stones when the products of other quarries are not subject to the minimum wage determination for the dimension granite industry.

§ 809.927 *Shoe manufacturing and allied industries.* The term "shoe manufacturing and allied industries" means:

(a) The manufacture or partial manufacture of footwear from any material and by any process except knitting, vulcanizing of the entire article or vulcanizing (as distinct from cementing) of the sole to the upper.

(b) The manufacture or partial manufacture of the following types of footwear, subject to the limitations of paragraph (a) but without prejudice to the generality of that paragraph:

Athletic shoes.	Puttees, except spiral puttees.
Boots.	Sandals.
Boot tops.	Shoes completely rebuilt in a shoe factory.
Burial shoes.	Slippers.
Custom made boots or shoes.	
Moccasins.	

(c) The manufacture from leather or from any shoe-upper material of all cut stock and findings for footwear, including bows, ornaments, and trimmings.

(d) The manufacture of the following types of cut stock and findings for footwear from any material except from rubber or composition of rubber, molded to shape:

Cutsoles.	Shanks.
Midsoles.	Boxtoes.
Insoles.	Counters.
Taps.	Stays.
Lifts.	Stripping.
Rands.	Sock linings.
Toplifts.	Heel pads.
Bases.	

(e) The manufacture of heels of any material except molded rubber, but not including the manufacture of wood-heel blocks.

(f) The manufacture of cut upper parts for footwear, including linings, vamps and quarters.

(g) The manufacture of pasted shoe stock.

(h) The manufacture of boot and shoe patterns.

Date effective: July 11, 1942.

Wage: 40 cents an hour or $16.00 for a week of 40 hours, arrived at on a time or piece work basis.

Learners, handicapped workers, and apprentices may be employed in accordance with the following regulations under the Fair Labor Standards Act of 1938, which are hereby adopted for the purpose of this wage determination: Regulations Applicable to the Employment of Learners (5 F.R. 2862; 29 CFR, Cum. Supp., Part 522); Regulations Applicable to the Employment of Handicapped Persons (5 F.R. 2959; 29 CFR, Cum. Supp., Part 524); Regulations Applicable to the Employment of Apprentices (5 F.R. 3766; 29 CFR, Cum. Supp., Part 521); and the Regulations Applicable to the Employment of Handicapped Clients in Sheltered Workshops (5 F.R. 655; 29 CFR, Cum. Supp., Part 525).

Nothing in this determination shall be interpreted as abrogating any obligation that may have been incurred under the previous determination for the men's welt shoe industry.

§ 809.928 *Handkerchief industry.* The handkerchief industry, for the purpose of this determination, is defined as follows: The manufacture of men's, women's and children's handkerchief, plain or ornamented, from any material.

Date effective: July 8, 1943.

Wage: 40 cents per hour or $16.00 per week of 40 hours, arrived at either upon a time or piece work basis. Learners may be employed at subminimum rates in accordance with the present applicable regulations issued by the Administrator of the Wage and Hour Division under the Fair Labor Standards Act of 1938 which were adopted for the purposes of this determination.

§ 809.929 *Envelope industry.* Envelopes.

Date effective: May 12, 1938.

Wage: 42.5 cents per hour or $17.00 per week for a week of 40 hours, to be arrived at either upon a time or piece work basis.

§ 809.930 *Vitreous or vitrified china industry.* Vitreous or vitrified china, excluding semivitreous or semivitrified china.

Date effective: May 19, 1938.

Wage: 42.75 cents per hour or $17.10 per week for a week of 40 hours, to be arrived at either upon a time or piece work basis. The Administrator for the Public Contracts Division, Department of Labor, advises the above applies only to "tableware, kitchenware, dinnerware, and kindred lines, and not to plumbers' and sanitary supplies."

§ 809.931 *Leather, leather trimmed, and sheep-lined garments industry.* All leather, leather trimmed, and sheep-lined garments for men, women, or children.

Date effective: September 19, 1941.

Wage: 42.5 cents per hour or $17.00 per week of 40 hours, arrived at either upon a time or piece rate basis.

NOTE: The Administrator of Public Contracts, Department of Labor, in letter dated January 6, 1942, states that it has been determined that sheep-lined aviation helmets and leather aviation helmets come within the purview of the above determination.

§ 809.932 *Flint glass industry.*

Date effective: July 12, 1938.

Wage: 42.5 cents an hour or $17.00 per week for a week of 40 hours, arrived at either upon a time or piece work basis.

The flint glass industry produces such types of glassware as illuminating, table glassware, all thin blown glass, thermos bottles, chemical and laboratory ware, perfumery ware, stoppers and bottles, and the like, which character of glassware is produced by the pressed, pressed and blown, off hand and blown method, cutting and polishing; in fact, all types of glassware other than window, plate, and rolled glass, common bottles, containers, and prescription glassware.

NOTE: The Department of Labor has advised that this wage determination is intended to cover all types of glassware other than window, plate and rolled glass, common bottles, containers, and prescription glassware. Among the items particularly included under this intended coverage are fiberglass and fiberglass products.

§ 809.933 *Luggage, leather goods, belts, and women's handbag industry.* The luggage, leather goods, belts, and women's handbag industry is defined for the purpose of this determination as follows:

(a) The manufacture from any material of luggage including, but not by way of limitation, trunks, suitcases, traveling bags, brief cases, sample cases; the manufacture of instrument cases covered with leather, imitation leather, or fabric including, but not by way of limitation, portable radio cases; the manufacture of small leather goods and like articles from any material except metal; the manufacture of women's, misses', and children's handbags, pocketbooks, purses, and mesh bags from any material except metal; but not the manufacture of bodies, panels, and frames from metal, wood, fiber, or paper board for any of the above articles.

(b) The manufacture from leather, imitation leather, or fabric of cut stock and parts for any of the articles covered in paragraph (a) of this section.

(c) The manufacture of men's, boys', women's, misses', and children's separate belts from leather, imitation leather, or other material or fabric.

Date effective: April 20, 1943.

Wage: Not less than 40 cents an hour or $16.00 per week of 40 hours, arrived at either upon a time or piece work basis. Apprentices may be employed at subminimum rates in accordance with the present applicable regulations issued by the Administrator of the Wage and Hour Division under the Fair Labor Standards Act, which were adopted for the purposes of this determination. Learners may be employed at subminimum rates in the performance of contracts for the manufacture or furnishing of articles covered by this paragraph of the definition of this industry in accordance with the present applicable regulations issued by the Administrator of the Wage and Hour Division under the Fair Labor Standards Act, which were adopted for the purposes of this determination.

§ 809.934 *Fireworks industry. Commercial fireworks division.* Commercial fireworks.

Date effective: October 15, 1938.

Wage: 31.25 cents an hour or $12.50 per week for a week of 40 hours, arrived at either upon a time or piece work basis.

Fusee division. Fusees, flares, and ship and railroad torpedoes.

Date effective: October 15, 1938.

Wage: 37.5 cents an hour or $15.00 per week for a week of 40 hours, arrived at either upon a time or piece work basis.

§ 809.935 *Wool carpet and rug industry.* Wool carpets and rugs (exclusive of rag rugs).

Date effective: October 15, 1938.

Wage: 40 cents an hour or $16.00 per week of 40 hours, to be arrived at either upon a time or piece work basis.

§ 809.936 *Tag industry.* Tags.

Date effective: September 23, 1941.

Wage: 40 cents an hour or $16.00 per week of 40 hours, arrived at either upon a time or piece work basis.

§ 809.937 *Aircraft manufacturing industry.* (a) The following illustrative list of commodities, their parts and accessories is understood to be within the scope of the aircraft manufacturing industry wage determination (included are not only those products which were originally construed to be within this industry, but also those products which have since been included by interpretation. This list is subject to revision as additional interpretation of products is made):

Airplanes.
Engines, aircraft-type.
Gliders.
Propellers, aircraft and parts and accessories, such as:
Airplane spare parts and accessories:
Accumulators, landing gear.
Adapter assembly for oxygen masks.
Adapters and plungers.
Ailerons.
Ammunition rounds counters and contractors.
Axles.
Beaching gear.
Bomb bay tanks.
Bomb hoists.
Bomb rack assemblies.
Bomb shackles.
Booster coils.
Brackets.
Brake hose and hose fittings.
Cabin center panel for windshield.
Cable terminals.
Cables, motor trigger.
Clevises.
Clips.
Conduit and pipe fittings.
Control assemblies for bomb release interval.
Control equipment for turrets.
Controls, air brake.
Couplings.
Cowlings.
De-icer equipment (except rubber) for propeller, windshield and carburetor venturi:
Pump, oil supply tank, control and distributing valve.
Airplane spare parts and accessories—Con.
Domes, plexiglas navigating.
Elbows.
Elevators.
Fairings.
Ferrules.
Fins.
Fittings, structural.
Fixtures: master and articulated rod bearing and bushing.
Flaps, wing.
Flare racks.
Floats.
Generators.
Hinges.
Hoisting slings.
Hooks, arresting.
Hose assemblies.
Housings.
Hulls, seaplane.
Hydraulic pressure regulators.
Hydraulic windshield wipers.
Jumpers, bonding.
Landing gear:
Brakes.
Oleo struts.
Skids.
Tires.
Wheels.
Levers.
Locks, oleo leg.
Mount assemblies:
Gun, ammunition box.
Mounts:
Camera, engine, and generator.
Oleo packing.
Operating cylinders.
Panels, wing.
Pedals.
Pins, fitting.
Posts.
Pulleys.
Recoil dampeners, gun.
Reservoirs.
Retracting cylinders.
Rudders.
Airplane spare parts and accessories—Con.
Seats, pilot.
Shackles.
Shock struts and cords.
Solenoids.
Spars.
Sponsons.
Stabilizers.
Struts, shock (oleo) and parts.
Supports.
Switches:
Electrical, gun control.
Swivels.
Tabs.
Tail skids.
Tail surfaces.
Tail wheel assemblies.
Tail wheel caster knuckles.
Tanks.
Thimbles.
Tie rods.
Tips, wing.
Tow target releases and drags.
Trigger motors.
Turnbuckles.
Turret ammunition boxes and mount assemblies.
Turrets.
Valves.
Vents.
Wings.
Engine parts and accessories:
Adapters.
Arms.
Baffles.
Bushings.
Cages.
Cams.
Carburetor manifold jackets.
Carburetors.
Closures.
Collector rings.
Control systems.
Counterweights.
Covers, metal.
Crankcases.
Crankshafts.
Cylinder barrels.
Cylinder heads.
Dowels.
Drives.
Filters:
Air, gasoline.
Fuel injection systems.
Gear boxes.
Glands.
Guides.
Heating systems.
Housings.
Ignition harness.
Impellers, supercharger.
Intercoolers.
Jets.
Magnetos.
Manifolds:
Intake, exhaust.
Oil coolers.
Oil separators.
Pipes.
Pistons.
Plates.
Priming equipment.
Engine parts and accessories—Con.
Pumps:
Air, fuel, oil, vacuum.
Radiators.
Rockers.
Rods.
Seats, valve.
Shafts.
Slingers.
Spacers.
Spark plugs.
Starters.
Strainers.
Studs.
Sumps.
Superchargers.
Tappets.
Temperature regulating equipment.
Tubes.
Valves: engine, gasoline (pilot operated, manual control, syphon).
Propeller parts:
Barrels.
Blades.
Brackets.
Brakes.
Bushings.
Cams.
Collars.
Controls.
Counterweights.
Cylinders.
Domes.
Gears.
Governors.
Housings.
Hubs.
Pistons.
Spiders.
Spinners.
Specialized servicing equipment:
Airplane mooring kits.
Cable testing machines.
Check assemblies.
Clubs, test.
Cradle assemblies for servicing aircraft parts.
Combination work-stand-ladder assemblies.
Dollies.
Energizer assemblies.
Engine heaters.
External power units for hand inertia starters.
Pump testing units.
Special testing equipment for aircraft, engine, and propeller parts and accessories.
Special tools and stand assemblies for the assembly, disassembly, and repair of aircraft and the engines, propellers, parts, and accessories therefor.
Tables, propeller aligning.

(b) Specifically excluded from the scope of the industry are:

Fabricated textile products: fabric covers (including engine-warming covers); parachutes; safety belts; tow targets; wind socks.

Pyrotechnics: engine starter cartridges; flares; signals.

Electrical and radio equipment: batteries; electric wire and cable; intercommunication equipment; landing and navigation lights; lighting systems; radios; radio compasses.

Rubber products: rubber de-icing equipment; flotation gear; life preservers; life rafts; bonded rubber mountings; vibration dampers; rubber utilities; tires and tubes.

Machine shop products and machinery: bearings; bolts, nuts, rivets, screws, and washers; gas refueling systems (including refueling pumps); gears and sprockets; piston rings; springs; wire rope.

Miscellaneous products: cameras; fire extinguishers; first aid equipment; gaskets; instruments; lavatory equipment; lighter-than-air craft.

Date effective: May 7, 1942.

Wage: 50 cents an hour or $20.00 for a week of 40 hours, arrived at on a time or piece-work basis.

§ 809.938 *Bobbinet industry.* See § 809.960 (Textile industry).

§ 809.939 *Iron and steel industry.* This determination covers only pig iron, iron or steel ingots, and rolled or drawn iron or steel products as hereinafter stated, and such fabricated iron or steel products as are specifically named but does not include any unspecified coated, insulated, forged, or cast items. The definition as formulated below describes the products of the iron and steel industry and the provisions thereof do not apply to any production in open hearth and electric furnaces other than that specifically enumerated.

The iron and steel industry is defined to mean and include the business of producing and selling all or any one or more of the following products:

Axles—rolled or forged.
Male ties—single loop.
Bars—alloy steel, hot rolled.
Bars—cold finished, carbon and alloy.
Bars—concrete reinforcing, straight lengths.
Bars—ingots, blooms and billets—iron.
Bars—merchant steel.
Bars—tool steel.
Ferro-manganese and spiegeleisen.
Girder rails and splice bars therefor.
Ingots, blooms, billets and slabs—alloy.
Ingots, blooms, billets and slabs—carbon.
Light rails—60 pounds or less per yard, and splice bars and angle bars therefor.
Standard tee rails of more than 60 pounds per yard, and angle bars and rail joints therefor, or any of such products.
Mechanical tubing.
Pig iron—foundry, high silicon silvery, malleable, open hearth basic, Bessemer, and high silicon Bessemer.
Pig iron—low phosphorus.
Pipe—standard, line pipe, and oil country tubular products.
Plates.
Posts—fence and sign.
Railroad tie plates.
Railroad track spikes.
Sheet bars.

Sheets.
Skelp.
Steel sheet piling.
Strip steel—cold rolled.
Strip steel—hot rolled.
Structural shapes.
Tubes—boiler.
Tube rounds.
Wheels—car, rolled steel.
Wire—drawn.
Wire hoops—twisted or welded.
Wire nails and staples, twisted barbless wire, barbed wire, twisted wire fence stays and wire fencing (except chain-link fencing).
Wire rods.
Wire—spring.
Wire—telephone.

Date effective: This determination was originally effective March 1, 1939, but its operation was subsequently suspended due to court proceedings. Its operation was again resumed effective May 27, 1940.

Wage: Whether arrived at on a time or piece work basis, 45 cents per hour in the locality consisting of the States of Louisiana, Arkansas, Mississippi, North Carolina, South Carolina, Florida, Oklahoma, Texas, Alabama, Tennessee, Georgia, Virginia, and West Virginia (except the counties of Hancock, Brooke, Ohio, Harrison, Monongalia, and Marshall);

60 cents per hour in the locality consisting of the States of Washington, Oregon, California, Montana, Idaho, Nevada, Wyoming, New Mexico, Utah, Colorado, and Arizona;

58½ cents per hour in the locality consisting of the States of North Dakota, South Dakota, Nebraska, Kansas, Minnesota, Iowa, Missouri, and the area in and about East Saint Louis, Illinois:

62½ cents per hour in the locality consisting of the States of Wisconsin, Illinois (except the area in and about East Saint Louis, Illinois), Michigan, Indiana, Ohio, Pennsylvania, Delaware, Maryland, Kentucky, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, Maine, and that portion of the State of West Virginia comprised within the counties of Hancock, Brooke, Ohio, Marshall, Harrison, and Monongalia, and the District of Columbia.

Provided, That apprentices may be employed at lower rates if their employment conforms to the standards of the Federal Committee on Apprenticeship.

This wage determination has heretofore been interpreted to cover the following:

Plate, armor;
Strips, galvanized;
Sheets, galvanized;
Plates, galvanized;
Shapes, structural, galvanized;

and to exclude the following:

Wire, telephone, insulated;
Rods, welding, coated.

§ 809.940 *Tobacco industry.* The tobacco industry, for the purposes of this determination, is defined to include the manufacture of cigarettes, of chewing and smoking tobaccos, and of snuff, but to exclude the manufacture of cigars.

Date effective: December 4, 1942.

Wage: 40 cents an hour, or $16 per week of 40 hours, arrived at either upon a time or piece-work basis. Learners may be employed at subminimum rates in accordance with the present applicable regulations issued by the Administrator of the Wage and Hour Division under the Fair Labor Standards Act of 1938 which were adopted by the Secretary of Labor for the purposes of this determination.

§ 809.941 *Furniture industry.* This determination applies to all contracts subject to the basic law, for any of the commodities included in the determination under the wood furniture branch, the public seating branch, and the metal furniture branch of the furniture manufacturing industry.

(a) *Metal furniture branch.* (1) The metal furniture branch of the furniture manufacturing industry is defined to be that industry whose products include:

Metal office furniture—Vertical filing cabinets; horizontal sections and half sections, and bookcases; hi-line and bookshelf units; desks; tables; chairs; storage cabinets; and wardrobes.
Metal hospital furniture.
Metal household furniture.
Steel shelving—Industrial and general purpose steel shelving, miscellaneous fittings, attachments, and accessories.
Steel lockers—Box lockers; single-tier lockers; double-tier lockers; two-person and compartment lockers; miscellaneous fittings as used in schools, clubs, gymnasiums, commercial, and industrial establishments.
Visible filing equipment—Cabinets; panels.

Date effective: May 13, 1939.

Wage: 45 cents an hour or $18.00 per week of 40 hours, arrived at either upon a time or piece rate basis.

(2) Extension of minimum wage determination: Metal furniture branch.

Date effective: July 28, 1941.

Wage: That the minimum wage determination for the metal furniture branch of the furniture industry is extended to the manufacture of metal cabinets for printers' type; metal cabinet partitions; metal tool boxes, tool cabinets, and tool chests; metal trunks, box type; metal rotating bins; metal sectional bins; and metal work benches, desks, and tables.

(3) It has been determined that the manufacture of steel fabric springs for metal folding cots, when to be supplied on government contracts subject to the Public Contracts Act, is covered by the Metal Furniture Branch of the Furniture Manufacturing Industry minimum wage determination (Cir. Let. No. 4-44, 25 March 1944, Dept. of Labor).

(b) *Public seating branch.* The public seating branch of the furniture manufacturing industry is defined to be that industry which fabricates, assembles, and installs (by those who fabricate or assemble) public seating (upholstered or unupholstered), fabricated or assembled of wood, plywood, iron, steel, nonferrous metals or any combinations of these materials and consisting of the following:

(1) Fixed or connected seating for such public places as theaters, auditoriums, lodges, assembly halls, shoe stores, rinks, ball parks, race tracks, stadia, and other similar buildings and structures;

(2) Pewing, chancel, choir stalls, and related furniture and accessories for ecclesiastial purposes, seats and benches for court houses, hospitals, public waiting rooms, and for other similar public purposes;

(3) Pupils' desks, pupils' tables, pupils' chairs, and school furniture for all educational purposes;

(4) Portable chairs with folding seats in both single and multiple units;

(5) Portable folding seating in single units for other than household use.

Provided, that the following are specifically not included: Tablet armchairs and school chairs fabricated and/or assembled exclusively of wood.

Date effective: August 15, 1942.

Wage: 40 cents an hour, or $16.00 for a week of 40 hours arrived at either on a time or piecework basis.

(c) *Wood furniture branch.* The wood furniture branch of the furniture manufacturing industry is defined to mean the manufacturing, assembling, upholstering, and finishing, from wood, reed, rattan, willow, and fiber, of upholstered and other household, office, lawn, camp, porch, and juvenile and toy furniture, including but without limitation porcelain top breakfast furniture and radio, phonograph and sewing machine cases and cabinets; the manufacturing and assembling from wood, of furniture parts for the above, separately, set up or knocked down including but without limitation parlor furniture frames and chairs in the white. This definition does not include the manufacture of any product covered by the prevailing minimum wage determination for the public seating branch of the furniture manufacturing industry.

The manufacturing of any products covered under this definition is deemed to begin following the delivery of the wood from the kiln or from the air-dried dimension shed.

Date effective: August 15, 1942.

Wage: 40 cents an hour, or $16.00 for a week of 40 hours, arrived at either on a time or piecework basis for the District of Columbia, and all states other than California, Washington, and Oregon; and 50 cents an hour, or $20.00 for a week of 40 hours, arrived at either on a time or piecework basis, for the States of California, Washington, and Oregon.

§ 809.942 *Drug and medicine industry.* Manufacture or packaging of any one or more of the following products:

a. Drugs or medicinal preparations (other than food) intended for internal or external use in the diagnosis, treatment, or prevention of disease in, or to affect the structure or any function of, the body of man or other animals;

b. Dentifrices, cosmetics, perfume, or other preparations designed or intended for external application to the person for the purpose of cleansing, improving the appearance of, or refreshing the person.

The foregoing shall not be deemed to include the manufacture or packaging of shaving cream, shampoo, essential (volatile) oils, glycerine, and soap, or the milling or packaging without further processing of crude botanical drugs.

Date effective: September 19, 1941.

Wage: 40 cents per hour or $16.00 per week of 40 hours, arrived at either upon a time or piece rate basis.

§ 809.943 *Photographic supplies industry (excluding motion picture equip-*

ment of 35 mm. or over). (a) The following illustrative list of commodities is understood to be within the scope of the photographic supplies industry wage determination (included are not only those products which were originally construed to be within this industry, but also those products which have since been included by interpretation. This list is subject to revision as additional interpretation of products is made):

Accessories and parts, photographic: bellows, cable releases, cones, film rewinders, filters, lenses, magazines, reels, shades, shutters, splicers, spools, synchronizers.
Cameras.
Developing and printing equipment (except photographic chemicals): contact printers, driers, dry-mounting presses, enlargers, hangers, racks, stands, straighteners, tanks, washers, wringers.
Films, sensitized or unsensitized: photographic, X-ray.
Finders, photographic: view, range.
Flashlight apparatus, photographic (except lamps).
Frames, printing, photographic.
Holders, plate, photographic.
Machines: blueprint coating and reproduction, photocopying, photographic, photostat.
Projectors and their accessories and parts (except lamps).
Screens, photographic or X-ray: intensifying, projection.
Sensitized supplies, photographic: cloths, films, papers, plates, slides.
Tripods, photographic.
Vectograph.

(b) Specifically excluded from the scope of this industry are:

Blueprint, brownprint, black-line, and blackprint paper and cloth; photoengraving equipment; built-in photographic laboratory fixtures; camera mounts; drop-knife type print trimmers; cameras, projectors, and photographic accessories and parts of the 35 mm. size or larger (motion picture); photographic chemicals; and lamps.

Date effective: August 14, 1939.

Wage: 40 cents an hour or $16.00 per week of 40 hours, arrived at either upon a time or piece work basis; *Provided*, That learners may be employed at lower rates for a period of not to exceed 60 days if the total number of such workers in any one establishment does not exceed 5 per cent of the workers on the payroll, and if such learners are paid not less than 80 per cent of the minimum wage as determined, or 32 cents an hour or $12.80 per week of 40 hours, arrived at either upon a time or piece work basis.

§ 809.944 *Blueprint paper coating industry.* The blueprint paper coating industry includes the manufacture or supply of blueprint, brownprint, blackprint, blackline, and other similarly sensitized papers and cloths.

Date effective: October 11, 1940.

Wage: The prevailing minimum wage determination for the photographic supplies industry, set forth in paragraph 943, has been extended to include the blueprint paper coating industry.

Allowances or tolerances: none.

§ 809.945 *Soap industry.* Soap in bars, cakes, chips, and flakes, and in granulated, powdered, paste, and liquid forms, and glycerine; cleansers containing soap, scouring powders, and shaving soaps, and creams containing soap, and washing compounds containing soap.

Date effective: August 14, 1939.

Wage: 40 cents an hour or $16.00 per week of 40 hours, arrived at either upon a time or piece work basis.

§ 809.946 *Fertilizer industry.* Superphosphates, concentrated superphosphates, and concentrated fertilizer from superphosphates, potash, and ammoniates.

Date effective: September 12, 1939.

Wage: The amount indicated for each of the following groups of States, whether arrived at upon a time or piece work basis:

For the States of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware (except Kent and Sussex Counties), Maryland (except the Eastern Shore consisting of Cecil, Kent, Queen Annes, Talbot, Caroline, Dorchester, Wicomico, Worcester, and Somerset Counties), West Virginia, Ohio, Indiana, Michigan, Wisconsin, Illinois, Missouri, Iowa, Minnesota, North Dakota, South Dakota, Nebraska, Kansas, and the District of Columbia, 40 cents an hour or $16.00 per week of 40 hours.

For the States of New Mexico, Colorado, Wyoming, Montana, Idaho, Utah, Arizona, Nevada, California, Oregon, and Washington, 50 cents an hour or $20.00 per week of 40 hours.

For Kent and Sussex Counties of Delaware, the Eastern Shore of Maryland (including Cecil, Kent, Queen Annes, Talbot, Caroline, Dorchester, Wicomico, Worcester, and Somerset Counties), Virginia, Tennessee, and Kentucky, 30 cents an hour or $12.00 per week of 40 hours.

For the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas, Oklahoma, and Texas, effective April 19, 1940, 30 cents an hour or $12.00 per week of 40 hours.

§ 809.947 *"Specialty accounting" supply manufacturing industry.* The commodities covered by this determination are as follows:

(a) Autographic and/or credit registers and/or supplies thereof, such as are used in making handwritten records of various transactions.

(1) Autographic registers may be further described as a machine or device for storing, alining, registering, and issuing copies of handwritten records.

(i) The accounting forms are usually folded in zigzag style, although some roll stationery is used. Such accounting forms are usually printed with the name and business of the user, but stock printed forms and plain stationery may be used. One or multiple copies of stationery may be used. Some roll and folder stationery is provided with edge perforations which engage pin sprockets for registration of forms.

(ii) The one or several carbon copies required may be arranged on rolls at right angles to rolls of stationery or such carbon sets may be interleaved with the forms and may cover the entire area or only a part of such forms.

(iii) Registers may be equipped to retain one or more copies of the transaction in a lock compartment and to issue the remaining copies. Registers may be supplied with a cash drawer, which is opened only by an operation which delivers a serially numbered form into a locked compartment.

(2) Credit registers may be further described as a cabinet or device for retaining in orderly arrangement sales tickets representing charge and other transactions.

(i) Such credit registers usually contain a set of vertical-hinged leaves, each leaf containing several numbered springs, the numbers corresponding with customers' names written on an index.

(ii) Such registers usually contain a storage and cash drawer and are sometimes supplied in combination with adding machines.

(b) Continuous form stationery, which is described as multiple sets of "business forms" with or without carbons, attached and/or folded, for use in billing machines, typewriters, and other office equipment. For example, continuous form stationery may be rolled or "fan folded' and may provide any number of copies up to the limit which will take a carbon impression. This type of stationery is usually printed according to specifications. They may be coated with carbon on the back or interleaved with carbon sheets.

(c) Sales and manifold books, which are described as bound books of multiple sets of forms for making original, handwritten records of sales and/or other transactions. For example, sales books are bound books of sales checks or tickets arranged in sets, usually either carbon coated on the back or arranged to fold or lay one or more carbon sheets between each two copies of a set. Translucent sheets are occasionally combined with carbon paper coated on both sides to reduce the number of carbon sheets. Covers may be arranged to fold in for the purpose of providing a better writing surface and may be ruled for tabulating sales. Sales books may or may not be printed.

Date effective: November 1, 1939.

Wage: 40 cents per hour or $16.00 per week of 40 hours, arrived at either upon a time or piece work basis. Apprentices may be employed at lower rates if their employment conforms with the standards of the Federal Committee on Apprenticeship.

§ 809.948 *Small arms ammunition, explosives, and related products industry.* The following illustrative lists of commodities are understood to be within the scope of the small arms ammunition, explosives, and related products industry wage determination (included are not only those products which were originally construed to be within this industry, but also those products which have since been included by interpretation. This list is subject to revision as

additional interpretation of products is made):

(a) *Small arms ammunition.*

Without reference to size:
Cartridges: blank.
Engine starter.
Howitzer igniting.
Mortar igniting.
Target rocket igniting.
Primers, saluting.
Shot shells (empty or loaded):
Riot gun.
Shotgun.
Not over .50 caliber:
Bullets.
Cartridges: machine gun.
Pistol.
Revolver.
Rifle.
Submachine gun.
Cases, cartridge, empty.
Cores, bullet.

and the primer's shot, and wads used in connection with any of the products included in either of the above groups.

Date effective: September 16, 1940.

Wage: $42.5 cents an hour or $17.00 per week of 40 hours, arrived at either upon a time or piece rate basis. Apprentices may be employed at lower rates than herein determined: *Provided,* Their employment conforms to the standards of the Federal Committee on Apprenticeship.

(b) *Explosives.*

Ammonium picrate.
Dinitroglycol.
Dynamite: ammonia, ammonia gelatine, blasting gelatine, gelatine, nitroglycerine, low freezing.
Fulminate of mercury.
Gelignite.
Gun cotton (dry nitrocellulose).
Lead azide.
Nitrocellulose: dry, flake.
Nitro-starch explosive, compressed.
Permissible explosives (Bureau of Mines Bulletin No. 219).
Picric acid.
Potassium nitrate.
Potassium picrate.
Powder: black, blasting, chlorate type, fuse, nitroglycerine, pellet, smokeless cannon, smokeless gun.
Spotting charges: M1, M1A1.
Tetranitro—aniline.
Tetranitro—methane.
Tetryl.
Tolite.
Trinitro—aniline.
Trinitro—benzene.
Trinitro—cresol.
Trinitrotoluol or trinitrotoluene (TNT).
Trinitroxylene or trinitroxylol (TNX).
Trinol.
Trotyl.

Date effective: September 16, 1940.

Wage: 57.5 cents an hour or $23.00 per week of 40 hours, arrived at either upon a time or piece rate basis. Apprentices may be employed at lower rates than herein determined: *Provided,* Their employment conforms to the standards of the Federal Committee on Apprenticeship.

(c) *Blasting caps.*

Blasting caps.
Detonating caps.

Date effective: September 16, 1940.

Wage: 47.5 cents per hour or $19.00 per week of 40 hours, arrived at either upon a time or piece rate basis. Apprentices may be employed at lower rates than herein determined: *Provided,* Their employment conforms to the standards of the Federal Committee on Apprenticeship.

§ 809.949 *Paper and pulp industry.* Pulp and other fiber and the primary conversion of pulp and other fiber into paper and paperboard, and in addition, the manufacture and conversion of primary paper into toilet paper and paper towels, coated book paper, and paper shipping sacks.

Date effective: Determined to be October 15, 1939.

Wage: For the States of Virginia, North Carolina, South Carolina, Georgia, Alabama, Tennessee, Kentucky, Mississippi, Louisiana, Arkansas, Oklahoma, Florida, and Texas, 35 cents an hour or $14.00 per week of 40 hours, arrived at either upon a time or piece work basis.

For the States of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, Maryland, West Virginia, Ohio, Indiana, Michigan, Wisconsin, Illinois, Missouri, Iowa, Minnesota, North Dakota, South Dakota, Nebraska, Kansas, New Mexico, Colorado, Wyoming, Montana, Idaho, Utah, Arizona, Nevada, and the District of Columbia, 39 cents an hour or $15.60 per week of 40 hours, arrived at either upon a time or piece work basis.

For the States of Washington, Oregon, and California, 50 cents an hour or $20.00 per week of 40 hours, arrived at either upon a time or piece work basis.

The following explanation of this determination has been received from the Public Contracts Division, Department of Labor:

Except for those products listed in the determination as manufactured or converted from primary paper, this determination is limited in application to paper and paperboard manufactured from pulp and other fiber, and to pulp and other fiber of the character used in manufacturing paper and paperboard. The majority of paper and paperboard items purchased by the Government that are subject to this wage determination are classified and listed as follows:

(a) *Book paper, writing paper, and cover paper.* (1) Book paper includes antique-finish, book end, coated book, half-tone, lithograph, machine-finished sized and supercalendered, and offset papers.

(2) Cover paper includes laid cover and machine-finish cover papers.

(3) Writing paper includes bond, duplicate check copies, index, internal revenue, ledger, manifold (including glazed), map, mimeograph, parchment deed, vellum finish, and postage stamp papers.

(b) *Building paper.* Felts and sheathing paper.

(c) *Ground-wood printing and specialty paper.* Blueprint paper (unsensitized), distinctive papers (public debt, securities, etc.), safety papers (safety device incorporated in manufacture of paper), and tracing paper.

(d) *Newsprint paper.* Facing slips and newsprint paper.

(e) *Paperboards.* Back-lining, binder's board or tarboard, bristol board, chipboard, lined boards (box, chip, marble-grained), newsboard, pressboard, red sulphite, tag board, manila cardboard, and strawboard.

(f) *Tissue and absorbent paper.* (1) Absorbent paper includes blotting, filter, and matrix paper and board.

(2) Tissue paper includes lens tissue, paper towels, and toilet paper.

(g) *Wrapping paper.* (1) Kraft wrapping paper.

(2) Manila paper includes target paper and uncut label paper.

(3) Plate and roll wiping paper.

§ 809.950 *Cement industry.* Portland cements, including modified portland cement, such as portland masonry cement and portland puzzolan cement.

Date effective: March 2, 1940.

Wage: Within the States of Pennsylvania, New York, New Jersey, Maryland, West Virginia, Ohio, Delaware, Massachusetts, Connecticut, Rhode Island, Vermont, New Hampshire, and the District of Columbia, 57 cents an hour or $22.80 per week of 40 hours.

Within the States of Maine, Michigan, Indiana, Kentucky, South Dakota, North Dakota, Nebraska, and Kansas, 50 cents an hour or $20.00 per week of 40 hours.

Within the State of Illinois, 63½ cents an hour or $25.40 per week of 40 hours.

Within the States of Wisconsin, Minnesota, Iowa, Missouri, Colorado, Wyoming, Utah, Montana, Idaho, Oregon, Nevada, Arizona, and New Mexico, 55 cents an hour or $22.00 per week of 40 hours.

Within the State of Washington, 70 cents an hour or $28.00 per week of 40 hours.

Within the State of California, 62½ cents an hour or $25.00 per week of 40 hours.

Within the States of Oklahoma and Texas, 47 cents an hour or $18.80 per week of 40 hours.

Within the States of Arkansas, Louisiana, Alabama, Tennessee, Virginia, Georgia, Florida, Mississippi, North Carolina, and South Carolina, 40 cents an hour or $16.00 per week of 40 hours.

§ 809.951 *Structural clay products industry.* Common brick, face brick (including glazed and enameled brick), salt glazed brick, manhole brick, structural clay tile (including glazed tile), unglazed face tile, paving brick, and clay or shale granules.

Date effective: October 27, 1941.

Wage: Arrived at either upon a time or piece work basis:

In the States of Maryland, Virginia, Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Florida, Louisiana, Arkansas, Oklahoma, Texas, New Mexico, and the District of Columbia, 34 cents an hour or $13.60 per week of 40 hours.

For the remaining States of the United States, 40 cents an hour or $16.00 per week of 40 hours.

§ 809.952 *Uniform and clothing industry.* Suit and coat branch: The suit and coat branch of the uniform and clothing industry is defined to be that industry which manufactures men's civilian suits and overcoats, tailored-to-measure uniforms including the pants, uniform overcoats, and uniform coats. Expressly excluded from this definition are shirts, single pants regardless of

material, outdoor jackets, leather and sheep-lined jackets, work clothing, and washable service apparel.

Date effective: February 25, 1941.

Wage: 60 cents an hour or $24.00 per week of 40 hours, arrived at either upon a time or piece work basis, with a 20 percent tolerance for auxiliary workers: *Provided,* They be paid not less than 40 cents an hour or $16.00 per week of 40 hours.

Outdoor jackets branch: The outdoor jackets branch of the uniform and clothing industry is defined to be that industry which manufactures wool and wool-lined jackets whether or not such jackets are properly described as mackinaws, field jackets, windbreakers, lumber jackets, peajackets, wool jumpers, or middies, blanket-lined or similar coats, or by any other similar designation.

Date effective: February 25, 1941.

Wage: 40 cents an hour or $16.00 per week of 40 hours, arrived at either upon a time or piece work basis.

Wool trousers branch: The wool trousers branch of the uniform and clothing industry is defined to be that industry which manufactures wool or part wool uniform trousers or breeches, except tailored-to-measure trousers.

Date effective: February 25, 1941.

Wage: 40 cents an hour or $16.00 per week of 40 hours, arrived at either upon a time or piece work basis.

§ 809.953 *Die casting manufacturing industry.* The die casting manufacturing industry is defined to be that industry which manufactures die castings for sale and does not include the manufacture of die castings when incorporated into another product by the manufacture of such other products. The term "die casting" as used herein describes a casting made by forcing molten metal under pressure into a metallic mold or die.

Date effective: April 5, 1941.

Wage: 50 cents an hour or $20.00 per week of 40 hours, arrived at either upon a time or piece work basis. Apprentices may be employed at lower rates of pay if their employment conforms to the standards of the Federal Committee on Apprenticeship. Learners may be employed at the rate of 40 cents an hour or $16.00 per week of forty hours for a period of not to exceed 60 days if the total number of employees classified as such does not exceed 5 per cent of the total number of employees in any one establishment.

§ 809.954 *Dental goods and equipment manufacturing industry*—(a) *Durable goods.*

Hand instruments, including forceps and pliers, broaches and cutting instruments, for dental use.
Dental chairs.
Dental cabinets.
Equipment units.
Dental sterilizers.
Dental gas apparatus.
Dental X-ray equipment.
Dental compressors, engines, and lathes.
Dental lights.
Dental laboratory equipment, other than laboratory furniture.

Date effective: September 23, 1941.

Wage: 40 cents an hour or $16.00 per week of 40 hours, arrived at either upon a time or piece work basis.

Apprentices may be employed at lower rates of pay if their employment conforms to the standards of the Federal Committee on Apprenticeship. Learners may be employed at the rate of 35 cents an hour or $14.00 per week of 40 hours for a period of not to exceed 60 days, if the total number of employees so classified does not exceed 10 per cent of the total number of employees in any one establishment in any given pay roll or work week.

(b) *Consumable goods.*

Dental gold.
Dental alloy for amalgams.
Dental cement and filling materials.
Teeth, porcelain and gold.
Orthodontic appliances.
Waxes, compounds, and investments.
Rubber dental materials.
Denture materials other than rubber.
Burs, drills, and similar tools for use with handpieces.
Abrasive points, wheels, and disks.

Date effective: September 23, 1941.

Wage: 35 cents an hour or $14.00 per week of 40 hours, arrived at either upon a time or piece work basis.

§ 809.955 *Scientific industrial and laboratory instruments industry.* (a) The following illustrative list of commodities, their components and spare parts is understood to be within the scope of the scientific industrial and laboratory instruments wage determination (included are not only those products which were originally construed to be within this industry, but also those products which have since been included by interpretation. This list is subject to revision as additional interpretation of products is made):

Accelerometers.
Aerographs.
Alidades.
Almanac units, nautical.
Altimeters.
Altiperiscopes.
Ammeters.
Analyzers, exhaust gas.
Anemometers.
Apparatus, microprojection.
Astrographs.
Automatic gun control equipment.
Azimuth drums.
Balances: analytical laboratory, precision, torsion.
Balancing machines.
Bank and climb control units.
Barographs.
Barometers.
Bars, beam-compass.
Bearing circles.
Binnacles, compensating.
Binoculars.
Boards: drafting, plotting.
Boro silicate (optical glass).
Brake testing machines, inertia.
Bulbs: resistance, thermometer.
Bunsen burners.
Centrifuge: human, small electric.
Chronograph, counter.
Clinometers, service.
Colimeters: binocular, octant.
Compasses: direction, drafting, hull vehicular, gyro-scope.
Computers, gun data.
Controller assemblies.
Controls, domestic automatic (humidity, temperature).
Curves: aircraft, altitude correction, drafting.
Dials.
Directors, ballistic cam.
Dividers, proportional.
Drafting machines.
Dynamometers.
Equipment, automatic steering.
Fathometers.
Filters, ray.
Firing control equipment.
Flight control equipment, electronic.
Fuzes: glass tube, self-indicating.
Fuze setters.
Galvanometers.
Gages: depth, pressure, temperature, vacuum (but not machinists' precision).
Gears, steering (gyroscope).
Generator, pulse.
Glass, optical.
Glasses, magnifying, reducing.
Gyro indicator assemblies.
Gyroscopes: directional, horizon.
Hydrographs, without clocks.
Hydrometers.
Hygrothermographs and accessories.
Inclinometers.
Indicators: directional, elevation, fuel mixture, salinity, temperature, velocity, level.
Instruments: drafting, engineering, laboratory, meteorological, military, navigation, ophthalmic, surveying, aircraft, recording.
Lenses (wholly or partially ground and polished) except photographic lenses and except lenses such as are of a non-corrective type used in protective goggles.
Lettering devices.
Level vials.
Liners (paper rulers).
Manometers: liquid, mechanical.
Map enlarging outfits.
Measures, map.
Meters: drift, electric, exposure, water velocity.
Microscopes.
Milliammeters.
Motion picture recording theodolites.
Mototracers.
Mounts: telescope, bombsight, periscope.
Octants.
Odometers.
Ophthalmic goods.
Ophthalmoscopes.
Pantographs, drafting.
Pelorus assemblies.
Pencils, drawing-instrument and, parts.
Pens: barograph, drawing-instrument, thermograph.
Periscopes.
Pilots, robot.
Poles, tubular metal ranging.
Potentiometers.
Prickers, drawing-instrument.
Prisms.
Profilometers.
Projectors for air mapping.
Propeller shaft revolution indicating equipment.
Protractors.
Psychrometers, sling.
Pyrometers.
Q Meters.
Recording instruments: depth, humidity, light intensity, stress, temperature, water stage.
Reels, sounding.
Reflector, sight.
Regulators, gaseous oxygen.
Resistance coils for use on scientific instruments.
Reticles.
Retinoscopes.
Rods: Philadelphia level, stadia.
Rotors, meteorological.
Rules: drafting, slide.
Sextants.
Sights: drift, telescopic, bomb, computing.
Signal assemblies (instruments).
Sound locaters.
Sounding equipment, echo.
Splines and weights, sets.
Stabilizers, bomb.
Stadia, computer.
Stadimeters.
Stereophotogrammetric equipment.
Stereoscope, magnifying, lens prism.
Stereoscopic plotting instruments (aerial mapping projectors).
Strain measuring equipment.
Sunshine detectors (recorders).
Supports: maximum and minimum thermometer, wind instrument.
Switches for engine cylinder thermometers.
Synchronous repeaters and transmitters.
Tachometers.
Tally counters.
Telescopes.
Temperature controls: electric, pneumatic.
T-Squares.
Testing sets and equipment:
  Battery.
  Electric.
  Fatigue crack.
  Gage, portable.
  Hardness.
  Tension.
  Valve spring.
  Wheatstone bridge type.
Teststand assemblies:
  Tachometer.
  Automatic pilot.
Theodolites and tripods.
Thermocouples.
Thermographs.

Thermometers (except clinical).
Thermostats.
Torpedo computer trainer.
Tracers.
Trainers for pilot instruction.
Transits.
Transmission systems, gun data.
Triangles.
Tube assemblies, air-speed.
Tube, Pitot-static.
Vanes, wind-instrument.
Vibration measuring instruments.
Whirling apparatus.

Date effective: September 23, 1941.

Wage: 40 cents an hour or $16.00 per week of 40 hours, arrived at either upon a time or piece work basis.

Apprentices may be employed at lower rates of pay if their employment conforms to the standards of the Federal Committee on Apprenticeship. Learners may be employed at the rate of 35 cents on hour or $14.00 per week of 40 hours for a period of not to exceed 60 days, if the total number of employees so classified does not exceed 10 per cent of the total number of employees in any one establishment in any given payroll or work week.

NOTE: The Department of Labor has issued the following interpretation of the term "optical glass" as used in the above determination:

Optical glass is a generic term applying to that type of glass which after grinding and polishing assumes definite refractive qualities and is intended to include finished products as well as blanks.

By this token, ophthalmic glass and its products, including eye glass lenses, as well as wholly or partially ground and polished lenses for any purpose other than photographic, are covered by the determination.

§ 809.956 *Surgical instruments and apparatus industry.* (a) The following illustrative list of commodities is understood to be within the scope of the surgical instrument and apparatus industry wage determination (included are not only those products which were originally construed to be within this industry, but also those products which have since been included by interpretation. This list is subject to revision as additional interpretation of products is made):

Adenotomes.
Anastomosis buttons.
Apparatus, blood transfusion.
Applicators, metal surgical.
Aspirators.
Atomizers.
Blades, surgeons'.
Bougies, metal.
Bronchoscopes.
Catheters.
Cauteries.
Chisels, bone.
Clamps, surgical.
Clips, suture.
Cranioclasts.
Curettes, surgical.
Cystoscopes.
Depressors, tongue (metal).
Dilators.
Directors, grooved.
Dissectors.
Drills, bone.
Drill points.
Elevators, bone, periosteal, rib.
Endoscopes.
Forceps, surgical.
Forks, tuning.
Gags, mouth.
Gouges.
Haemacytometers.
Hammers, surgical.
Hemostats.
Inhalers, anesthetic.
Instruments, foreign body.
Intubators.
Irrigators.
Knives, surgical.
Laryngoscopes.
Ligatures.
Lithotomes.
Mallets, surgical.
Microtomes.
Needles, surgical and hypodermic.
Otoscopes.
Pelvimeters.
Perforators.
Periosteotomes.
Pharyngoscopes.
Plates, bone.
Pliers, surgical.
Probangs.
Probes, surgical.
Proctoscopes.
Rachitomes.
Raspatories.
Rasps, surgeons'.
Razors, surgical.
Retractors.
Rongeurs.
Saws, surgical.
Scalpels.
Scissors or shears, surgical.
Sigmoidoscopes.
Snares.
Speculas.
Sphygmomanometers, mercurial and aneroid.
Spoons, surgical.
Sterilizers.
Stethoscopes.
Strippers, vein.
Syringes, glass or metal.
Sutures.
Tenacula.
Thermometers, clinical.
Trocars.
Trephine.
Trephine points.
Trachea tubes.
Urethroscopes.
Urethrotomes.
Wrenches, clubfoot.

§ 807.957 *Evaporated milk industry.* Evaporated milk:

Date effective: November 3, 1941.

Wage: Arrived at either upon a time or piece work basis:

In the States of Washington, Oregon, and California, 50 cents per hour or $20.00 per week of 40 hours.

In the States of Idaho, Montana, Nevada, Utah, Arizona, New Mexico, Colorado, Wyoming, North and South Dakota, Nebraska, Minnesota, Iowa, Wisconsin, Michigan, and Ohio, 40 cents per hour or $16.00 per week of 40 hours.

In the remaining States of the United States and the District of Columbia, 32.5 cents per hour or $13.00 per week of 40 hours.

§ 809.958 *Paint and varnish industry.* Pigments or colors, either in dry or paste form; paints mixed ready for use or in dry or paste form; varnishes, lacquers, enamels; fillers, putty, top dressings; paint and varnish removers; furniture and floor wax; and lacquer thinners.

Date effective: November 6, 1941.

Wage: Arrived at either upon a time or piece work basis:

For the States of Virginia, North Carolina, South Carolina, Tennessee, Georgia, Florida, Alabama, Mississippi, Louisiana, and Arkansas, 40 cents an hour or $16.00 per week of 40 hours.

For all other States of the United States and the District of Columbia, 50 cents an hour or $20.00 per week of 40 hours.

§ 809.959 *Leather manufacturing industry.* The leather manufacturing industry is defined to be that industry which tans, curries, and finishes leather (including rawhide) from any type of hide or skin, and manufactures welting and power transmission belting when made wholly or principally of leather.

(a) *Tanning, currying, and finishing of leather (including rawhide).*

Date effective: December 17, 1941.

Wage: Arrived at either upon a time or piece rate basis.

In the States of Maine, Vermont, New Hampshire, New York, Massachusetts, Rhode Island, Connecticut, New Jersey, Maryland, Pennsylvania, Delaware, Ohio, Indiana, Michigan, Wisconsin, Illinois, Missouri, Iowa, Minnesota, North Dakota, South Dakota, Nebraska, Kansas, New Mexico, Colorado, Wyoming, Montana, Idaho, Utah, Arizona, Nevada, California, Oregon, Washington, and the District of Columbia, 50 cents an hour or $20.00 per week of 40 hours.

In the States of West Virginia, Virginia, Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Florida, Arkansas, Louisiana, Oklahoma, and Texas, 40 cents an hour or $16.00 per week of 40 hours.

(b) *Welting and power transmission belting.*

Date effective: December 17, 1941.

Wage: Arrived at either upon a time or piece rate basis; 40 cents an hour or $16.00 per week of 40 hours, regardless of where manufactured.

§ 809.960 *Textile industry.* The term textile industry means:

(a) The manufacturing or processing of yarn or thread and all processes preparatory thereto, and the manufacturing, bleaching, dyeing, printing and other finishing of woven fabrics (other than carpets and rugs containing any wool) from cotton, flax, jute, other vegetable fiber, silk, grass, or any synthetic fiber, or from mixtures of these fibers; or from such mixtures of these fibers with wool or animal fiber (other than silk) as are specified in subparagraphs 960.7 and 960.8; except the chemical manufacturing of synthetic fiber and such related processing of yarn as is conducted in establishments manufacturing synthetic fiber;

(b) The manufacturing of batting, wadding, or filling and the processing of waste from the fibers enumerated in paragraph (a);

(c) The manufacturing, bleaching, dyeing, or other finishing of pile fabrics or cords (except carpets and rugs containing any wool) from any fiber or yarn;

(d) The processing of any textile fabric, included in this definition of this industry, into any of the following products: bags; bandages and surgical gauze; bath mats and related articles; bedspreads; blankets; diapers; dish-cloths; scrubbing cloths and wash-cloths; sheets and pillow cases; tablecloths, luncheloths and napkins; towels; window curtains; shoe laces and similar laces;

(e) The manufacturing or finishing of braid, net or lace from any fiber or yarn;

(f) The manufacturing of cordage, rope or twine from any fiber or yarn including the manufacturing of paper yarn and twine;

(g) The manufacturing, or processing of yarn (except carpet yarn containing any carpet wool) or thread by systems other than the woolen system from mixtures of wool or animal fiber (other than silk) with any of the fibers designated in paragraph (a), containing not more than 45 per cent by weight of wool or animal fiber (other than silk);

(h) The manufacturing, bleaching, dyeing, printing or other finishing of woven fabrics (other than carpets and rugs) from mixtures of wool or animal fiber (other than silk) containing not more than 25 per cent by weight of wool or animal fiber other than silk), with any of the fibers designated in paragraph (a), with a margin of tolerance of 2 percent to meet the exigencies of manufacture;

(i) The manufacturing, dyeing, finishing or processing of rugs or carpets from grass, paper, or from any yarn or fiber except yarn containing any wool but not including the manufacturing by hand of such products.

(j) The manufacture of adhesive tape of the type used with surgical gauze or bandages. (Adhesive tape for industrial purposes is not now subject to any minimum wage determination under the Walsh-Healey Act.)

Date effective: June 24, 1942.

Wage: 40 cents an hour or $16.00 for a week of 40 hours, arrived at on a time or piece work basis.

Learners may be employed at subminimum rates only in accordance with the present applicable regulations issued by the Administrator of the Wage and Hour Division under the Fair Labor Standards Act, as amended on March 22, 1943, which were adopted for the purposes of this determination.

This determination shall not be interpreted as abrogating any obligation that may have occurred under the previous determination for the industry or under the previous wage determination for the manufacture of bobbinets which is covered by the present definition of the Textile Industry.

§ 809.961 *Chemical and related products industry.* The following illustrative list of commodities is understood to be within the scope of the chemical and related products industry wage determination (included are not only those products which were originally construed to be within this industry, but also those products which have since been included by interpretation. This list is subject to revision as additional interpretation of products is made):

The chemical and related products industry includes:

(1) (i) Heavy, industrial, and fine chemicals, including compressed and liquefied gases, and insecticides and fungicides (1939 Census of Manufactures industries Nos. 999, 985, [1] 933);

(ii) The by-products of the foregoing (1939 Census of Manufactures industries Nos. 981, 982).

(2) The manufacture of such commodities as bluing; bone black, carbon black, and lampblack; cleaning and polishing preparations, blackings, and dressings; mucilage, paste, and other adhesives (1939 Census of Manufactures industries Nos. 995, 986, 989, 996).

(a) *Illustrative list of commodities.*

Acetylene gas.
Acid: boric, carbolic, oxalic.
Acid wash, deck covering.
Alcohol (except wood).
Amine, alkylated.
Ammonia, anhydrous.
Ammonia, household.
Ammonium nitrate.
Auramine.
Bichromate of soda.
Blackings.
Bleaching material.
Bluing.
Bone black.
Burnishing ink.
Cadmium lithopone lemon salt.
Calcium silicate.
Calomel.
Carbon black
Carbon dioxide (dry ice).
Carbonate, strontium.
Casein.
Celluloid.
Cellulose, acetate flake.
Cement, mending (except rubber)
Chloroform.
Cleansers (no soap).
Compounds, industrial: boiler, water treating, insulating, metal treating.
Creosote.
Creosote oil.
Deodorants (except for human use).
Developer, X-ray film.
Dibutyl phthalate.
Dinitrotoluene.
Disinfectants: household, industrial.
Dressing, fabricated leather.
Dry cleaning preparations.
Dry mix for welding rod coating.
Dyestuffs.
Ethyl cellulose.
Ferro-alloys (except ferro-manganese) produced by electrochemical processes.
Ferrosilicon.
Fibestos, cellulose acetate.
Fluorescein dye.
Fungicides, agricultural.
Gasket paste.
Germicides.
Gums, manufactured synthetic.
Hexamethylene tetramine.
Humidity indicators.
Hydrocarbon gases.
Hydrogenation catalyst.
Hydroquinone.
Hyperchloride.
Insecticides: agricultural, household.
Kolloxaline.
Lamp black.
Magnesium metal, when chemically compounded.
Magnesium resinate.
Methox.
Methylbenzine.
Methylbenzol.
Methyl chloride.
Mononitrotoluene.
Mucilage.
Neoprene.
Nitrocellulose, wet (gun cotton).
Oxygen.
Paint, desiccant detector.
Paris green.
Paste, adhesive.
Pentaerythrite.
Pentaerythritol.
Penthrite.
Pentolite.
Pentrinite.
Pentrite.
Phenol (carbolic acid).
Phenylemthone.
Photographic chemicals.
Polish: auto, metal, stove.
Polystyrene.
Potash.
Potassium perchlorate.
Pyrethrum concentrate extract.
Pyrethrum (insect powder).
Repellents: agricultural, household.
Resins, synthetic.
Rubber, synthetic.
Scouring powder (no soap).
Sealing wax.
Shoe impregnite.
Soda, caustic (sodium hydroxide).
Sodium hyposulfite.
Sodium nitrate, synthetic.
Sodium thiosulfate.
Stains, leather.
Strontium oxalate.
Synthetic gums.
Thermite, incendiary.
Thorium nitrate.
Tints, household.
Titanium tetrachloride.
Toluene.
Toluol.
Washing powder (no soap).
Wax: auto, metal, stove.

(b) *Specifically excluded from the chemical industry.*

Cement, rubber.
Compounds: caulking, damp proofing, water proofing; liquid and plastic roof coating.
Ferro-manganese.
Glue.
Paint remover.
Plastics, fabricated.
Polish: floor, furniture.
Rayon and allied products.
Salt: table, rock.
Soap.
Top dressings.
Varnish remover.
Wax: floor, furniture.

Date effective: April 28, 1942.

Wage: Arrived at either upon a time or piecework basis:

(1) 40 cents an hour or $16.00 per week of 40 hours, for the States of Maryland, Virginia, North Carolina, South Carolina, Tennessee, Arkansas, Mississippi, Alabama, Georgia, Florida, and the District of Columbia; and

(2) 50 cents an hour or $20.00 per week of 40 hours for the remaining States of the United States.

§ 809.961a *Aviation textile products manufacturing industry.* The aviation textile products manufacturing industry is defined for the purposes of this determination as that industry which is engaged in the manufacture of articles (other than apparel) primarily of fabric for use in connection with the aviation industry, including, but without limitation, parachutes of all types, parachute packs, parachute harnesses, safety belts, aerial delivery containers made primarily from fabrics, tow targets, and wind direction indicators of the wind-sock type: *Provided, however* That the manufacture of canvas and duck articles for ground use, such as signaling panels, is not included.

Date effective: December 11, 1942.

Wage: 55 cents an hour or $22.00 a week of 40 hours, arrived at either on a time or piecework basis, for the States of California, Oregon, and Washington; 47½ cents an hour or $19.00 a week of 40 hours, arrived at either on a time or piecework basis, for the remaining 45 States and the District of Columbia. Workers who are in fact learners may be employed at the rate of 40 cents an hour or $16.00 a week of 40 hours during the first two weeks of their employment and at the rate of 45 cents an hour or $18.00 a week during the third and fourth weeks of their employment.

SUBPART E–1—FAIR LABOR STANDARDS ACT OF 1938

§ 809.961b *Basic law.* (1) The act establishes minimum wages and maximum hours for employees engaged in commerce or in the production of goods for commerce, and restricts the use of child labor. Only those provisions of the act relating to minimum wages and maximum hours as they affect cost-plus-a-fixed-fee contractors are dealt with in this Procurement Regulation.

(2) Section 6 (a) requires every employer to pay to each of his employees (except homeworkers in Puerto Rico and the Virgin Islands) "who is engaged in commerce or in the production of goods for commerce" not less than 30 cents per hour or, if the Administrator of the Wage and Hour Division of the Department of Labor in accordance with the act shall have prescribed some other rate, not less than the rate (not in excess of 40 cents per hour) so prescribed by the Administrator.

(3) Section 7 (a) prohibitis every employer from employing any of his employees "who is engaged in commerce or in the production of goods for commerce" for a workweek longer than 40 hours, unless such employee receives compensation for his employment in excess of such 40-hour workweek at a rate of not less than one and one-half times the regular rate at which he is employed. Employment pursuant to bona fide collective bargaining agreements providing for employment for not more than 1000 hours during any period of 26 consecutive weeks or for not more than 2080 hours during any period of 52 consecutive weeks, and employment for a period or periods of not more than 14 workweeks in the aggregate in any calendar year in an industry found by the Administrator to be of a seasonal nature will not constitute a violation of sec-

[1] Except water-proofing compounds.

tion 7 (a), if employees receive compensation for employment in excess of 12 hours in any workday or in excess of 56 hours in any workweek at a rate not less than one and one-half times the regular rate at which they are employed. Neither does section 7 (a) apply, under stated circumstances, to employees engaged in processing certain perishable products. Act of June 25, 1938, 52 Stat. 1060, 29 U. S. Code Section 201-219 (Supp. 1939); as amended by 53 Stat. 1266; 54 Stat. 615; and act of October 29, 1941 (77th Congress, 1st Sess.).

(a) *Exceptions.* The provisions of sections 6 and 7 do not apply with respect to:

(1) Any employee employed in a bona fide executive, administrative, professional, or local retailing capacity, or in the capacity of outside salesman (as such terms are defined and delimited by regulations of the Administrator); or

(2) Any employee engaged in any retail or service establishment the greater part of whose selling or servicing is in intrastate commerce; or

(3) Any employee employed as a seaman; or

(4) Any employee of a carrier by air subject to the provisions of title II of the Railway Labor Act; or

(5) Any employee employed in the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacia, sponges, seaweeds, or other acquatic forms of animal and vegetable life, including the going to and returning from work and including employment in the loading, unloading, or packing of such products for shipment or in propagating, processing, marketing, freezing, canning, curing, storing, or distributing the above products or byproducts thereof; or

(6) Any employee employed in agriculture; or

(7) Any employee to the extent that such employee is exempted by regulations or orders of the Administrator issued under section 14 (which permits the issue of regulations and certificates allowing learners, apprentices, messengers and individuals whose earning capacity is impaired by age, physical or mental deficiency, or injury to be employed for lower wages than those prescribed by section 6); or

(8) Any employee employed in connection with the publication of any weekly or semiweekly newspaper with a circulation of less than three thousand the major part of which circulation is within the county where printed and published; or

(9) Any employee of a street, suburban, or interurban electric railway, or local trolley or motor bus carrier; or

(10) To any individual employed within the area of production (as defined by the Administrator), engaged in handling, packing, storing, ginning, compressing, pasteurizing, drying, preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products; or

(11) Any switchboard operator employed in a public telephone exchange which has less than five hundred stations.

(b) *Regulations of the Administrator.* The act provides that the Administrator shall by regulation define certain terms used in the act and may grant certain exemptions from its provisions. Regulations issued by the Administrator, as revised from time to time, should be consulted in these respects.

(c) *Liability of employer.* Any employer who violates the provisions of section 6 or 7 of the act is liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, and in an additional equal amount as liquidated damages; and, in the event the employee institutes suit therefor, the costs of the action and a reasonable attorney's fee as allowed by the court. Violations also may be restrained by injunction and may subject the employer to criminal penalties.

(d) *Reimbursement of cost-plus-a-fixed-fee contractors for payments in accordance with the act.* Minimum wages and overtime payments paid currently in accordance with the act are reimbursable to cost-plus-a-fixed-fee contractors as labor costs. Cost-plus-a-fixed-fee contractors also may be reimbursed, in proper cases, amounts paid in settlement of claims for overtime subsequently asserted by his employees. (See paragraph (f) for the administrative procedure to be followed in respect of such of said subsequently asserted claims as are made the subject of an investigation by the Administrator and § 811.1120 (c) for the administrative procedure to be followed to determine the position of the Government in suits for such claimed overtime brought against cost-plus-a-fixed-fee contractors.) Attention is called to the Comptroller General's opinion to the Secretary of War of 15 December 1943 (B-38642) to the effect that amounts paid in settlement of such claims may be reimbursed even though the settlements necessitated a compromise of disputed questions of law or fact, provided that such settlements are in amounts less than the total amounts (including liquidated damages, court costs and attorneys fees) which would be required to be paid in the event the employee sued and obtained judgment and that it is administratively determined that the settlement in each instance was fully warranted as being in the best interest of the Government. Vouchers covering such payments should be supported by evidence setting forth the basis for such administrative determination and any questions of law with respect to the application of the act should be determined by the contracting officer only after thorough consideration has been given the matter by competent Government attorneys or by private attorneys engaged to represent the contractors if the former are not available, and a showing to that effect should also be made a part of the evidence submitted with the vouchers.

(e) *Investigations and inspections of records by the Administrator.* Employers subject to the act or any order issued thereunder must make and preserve such records of the persons employed by him and of the wages, hours and other conditions and practices of employment maintained by him, and make such reports therefrom, as the Administrator shall prescribe by regulation or order as necessary or appropriate for the enforcement of the provisions of the act or his regulations or orders thereunder. The act provides that the Administrator or his designated representatives may investigate and gather data regarding the wages, hours and other conditions and practices of employment in any industry subject to the act and may enter and inspect such places and such records, question such employees and investigate such facts, conditions, practices or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of the act, or which may aid in the enforcement of the provisions of the act.

(f) *Investigations of cost-plus-a-fixed-fee contractors.* (1) The Under Secretary of War, by memorandum dated 15 December 1943 to the Commanding Generals of the Army Air Forces and the Army Service Forces, has directed, with respect to investigations of cost-plus-a-fixed-fee contractors of the War Department, that: To the extent consistent with security and other regulations governing admission of visitors to plants and projects, representatives of the Administrator should be accorded access to the facilities and records of War Department contractors for the purpose of making investigations to determine applicability of a compliance with the act. Investigations will be conducted at such time and in such manner as to interrupt or interfere least with operations. They should be confined wherever possible to the inspection of records in the office of the contractor. Inspections of the areas in the facility where construction or production is in progress will be held to a minimum. Necessary interviewing of employees should, wherever possible, be conducted outside work hours or at such other times as will interfere least with construction or production operations.

(2) The Administrator has stated that his investigators will advise cost-plus-a-fixed-fee contractors approximately one week before they plan to arrive at the project to make an investigation under the act. The War Department representative at the plant will see that the investigation is conducted in accordance with such directive of the Under Secretary of War.

(3) If the Administrator is of the opinion that any such investigation discloses violation of sections 6 or 7 of the act, he will transmit a report of the investigation to the Director, Industrial Personnel Division, Headquarters, Army Service Forces, who will transmit it to the appropriate technical service. The technical service will cause the matter to be examined into and, if such examination confirms such violation, will advise the contractor to take appropriate steps to comply with the law. The technical service promptly will report to the Director, Industrial Personnel Division, Headquarters, Army Service Forces, as to its examination into the matter and

as to the action taken. If the question as to whether a violation exists depends upon a construction of a provision of the act which has not been construed by the courts or under the procedure provided in the agreement referred to in § 811.1120 (c), the Judge Advocate General will be consulted as to the construction to be followed.

SUBPART F—OVERTIME WAGE COMPENSATION

§ 809.962 *Executive order.* Executive Order No. 9240, dated September 9, 1942 (7 F.R. 7159) with section V as amended by Executive Order No. 9248, dated September 17, 1942 (7 F.R. 7419), reads as follows:

REGULATIONS RELATING TO OVERTIME WAGE COMPENSATION

Whereas many labor organizations have already adopted the patriotic policy of waiving double time wage compensation or other premium pay for work on Saturday, Sunday and holidays, as such, for the duration of the war; and

Whereas it is desirable and necessary in the prosecution of the war, and to insure uniformity and fair treatment for those labor organizations, employers, and employees who are conforming to such wage policies that this principle be universally adopted:

Now, therefore, by virtue of the authority vested in me by the Constitution and the statutes, as President of the United States and as Commander in Chief of the Army and Navy, it is hereby ordered:

I. That the following principles and regulations shall apply for the duration of the war to the payment of premium and overtime wage compensation on all work relating to the prosecution of the war:

A. No premium wage or extra compensation shall be paid to any employee in the United States, its territories or possessions, for work on Saturday or Sunday except where such work is performed by the employee on the sixth or seventh day worked in his regularly scheduled workweek and as hereinafter provided.

(1) Where because of emergency conditions an employee is required to work for seven consecutive days in any regularly scheduled workweek a premium wage of double time compensation shall be paid for work on the seventh day.

(2) Where required by the provisions of law or employment contracts, not more than time and one-half wage compensation shall be paid for work in excess of eight hours in any day or forty hours in any workweek or for work performed on the sixth day worked in any regularly scheduled workweek.

B. No premium wage or extra compensation shall be paid for work on customary holidays except that time and one-half wage compensation shall be paid for work performed on any of the following holidays only:

New Year's Day.
Fourth of July.
Labor Day.
Thanksgiving Day.
Christmas Day.

and either Memorial Day or one other such holiday of greater local importance.

II. All Federal departments and agencies shall conform the provisions in all existing and future contracts negotiated, executed, or supervised by them to the policies of this order. All such departments and agencies shall immediately open negotiations to alter provisions in existing contracts to conform them to the requirements of this order.

III. Nothing in this order shall be construed as requiring a modification of the principle that every employee should have at least one day of rest in every seven days. The continuous operation of plants and machines in prosecuting the war does not require that employees should work seven consecutive days.

IV. Nothing herein shall be construed as superseding or in conflict with the provisions of the statutes prescribing the compensation, hours of work and other conditions of employment of employees of the United States.

V. All Federal departments and agencies affected by this order shall refer to the Secretary of Labor for determination questions of interpretation and application arising hereunder. In any industry or occupation in which the Secretary finds that a wage stabilization agreement approved by a Government department or agency is operating satisfactorily, or in any industry or occupation in which the Secretary finds that the nature and exigencies of operations make such action necessary or advisable for the successful prosecution of the war, the Secretary may determine that any or all of the provisions of this order shall not apply to such industry or occupation or to any classes of employees therein.

VI. The provisions of this order shall become effective October 1, 1942.

FRANKLIN D ROOSEVELT

§ 809.963 *Elimination of inconsistencies through amendment of contracts; non-reimbursement, etc.* By memorandum dated September 17, 1942 (See A. S. F. Cir. No. 65, 1942) the Under Secretary of War acting jointly with the Under Secretary of the Navy and the Chairman of the Maritime Commission, issued instructions reading in part as follows:

2. Wherever any contract of the War Department, the Navy Department, or the Maritime Commission contains a provision which requires the payment of overtime or premium wages in a manner inconsistent with the provisions of Executive Order No. 9240, contracts will be amended to eliminate such inconsistency for the period beginning October 1, 1942, and no future contract will contain any such inconsistent provision. It is not required that any amendment be made of the usual contract articles included with respect to the provisions of the Walsh-Healey Act, the Eight Hour Law, and the Fair Labor Standards Act of 1938, all as amended.

3. On and after October 1, 1942, no reimbursement of cost will be made under any cost-plus-a-fixed-fee contract nor will any recognition be given for inclusion in the case of Navy so called "price-minus" contracts, of any cost which represents the payment of premium or overtime compensation at rates or under circumstances which are not permitted by the foregoing order.

§ 809.964 *Interpretations; former and present.* Prior to February 17, 1943, the Secretary of Labor issued various interpretations of Executive Order 9240 which were formerly incorporated in these procurement regulations. On February 17, 1943, the Secretary of Labor issued "Interpretative Bulletin No. 1 of Executive Order 9240." This bulletin contains the official interpretations of the order, effective March 1, 1943. It supersedes the former interpretations. The bulletin interpretations are set forth in the succeeding subdivisions of this section. As additional interpretations are issued, the procurement regulations will be amended to include such interpretations. All of the earlier interpretations have been deleted, although payments made prior to March 1, 1943 pursuant to these earlier interpretations should be considered to have been in compliance with the order.

(a) *Basic purposes of the order as stated by the Secretary of Labor.* The order was designed: (1) To facilitate round-the-clock war production, (2) to discourage absenteeism found to have resulted from the practice of paying premium rates for particular days as such, and (3) to assure, in the interest of efficiency and health, observance of the principle that workers should have at least one day of rest in each week.

(b) *Coverage; work to which order is applicable.* The order went into effect October 1, 1942. By its terms it applies to "all work relating to the prosecution of the war." This is interpreted to mean all work performed by prime contractors on Government war contracts, by their subcontractors, and those who make the materials and supplies necessary for the performance of such contracts and subcontracts. The order was intended to extend to enterprises which are engaged in producing, processing, mining, or manufacturing products used by the Government in the prosecution of the war or products used by a Government contractor or subcontractor in the manufacture of war products. Enterprises which provide public transportation or communication facilities, storage, distribution, or warehousing facilities, are not covered by the order. Accordingly, employees of railroads, air lines, bus lines, trucking lines or other common or contract carriers, seagoing personnel, longshoremen, dock workers, and similar waterfront workers, are not within the scope of the order. Employees of telephone and telegraph companies and radio stations, engaged in the normal communication operations of such companies, as well as employees of newspapers, magazines, and other periodicals which disseminate general information to the public at large are also excluded. Employees of power and light, water, gas and other public utility companies which merely furnish power and other facilities to the general public are not covered even though some of their output is supplied to war contractors. On the other hand, a power plant operated, for example, by a war manufacturer furnishing power or light, or other services to the factory would properly be regarded as a plant facility and would be subject to the order. Also firms engaged exclusively in distribution which do not process any war products would not be covered. Accordingly, employees of wholesalers, retailers, storage warehouses and brokers would be exempt if their employers are not engaged in any processing activity. Agricultural workers and employees of Federal or State Governments, and political subdivisions thereof, are not subject to the order.

(c) *Coverage; classes of employees to which order is applicable.* The order should be applied on the basis of operations carried on in an individual plant. Therefore, if a particular plant is engaged in war work which is within the scope of coverage, the entire plant would be subject to the order, including production, clerical, and maintenance employees. In cases where an employer in a particular plant is engaged both in the production of war goods and in noncov-

ered work the order would apply to the entire plant in the absence of segregation. If an employee works an entire workweek exclusively in noncovered production, and his duties do not contribute or relate to work which is subject to the order, such an employee would not be covered by the order for that week. On the other hand, if that employee works a portion of a week in the performance of any function contributing to the production of war goods, he would be subject to the order for the entire workweek. The burden of establishing segregation is upon the employer. The order would apply to any employee engaged in covered work if his compensation is customarily or by requirements of applicable statutes or agreements related to the number of hours worked in a day or the number of days worked in a week.

(d) *Saturday and Sunday work.* Paragraph I A of the order prohibits premium wages or extra compensation for work performed on Saturday or Sunday as such, that is, for work performed on either of those days without reference to the number of hours or days previously worked in the workweek. Any attempt to clothe any other day in the workweek with the status of a premium day, as such, would be contrary to the order.

(e) *Double time for seventh day.* Paragraph I A (1) of the order requires the payment of double time for work on the seventh consecutive day worked in any regularly scheduled workweek. Under this requirement double time may be paid only if all 7 days fall within the same workweek. Double time for work performed on the seventh day should be computed at twice the straight-time rate paid for work on that day or twice the average straight-time hourly rate for the workweek, whichever is the customary method of computing overtime compensation. The employer's records should indicate which method is adopted.

(f) *The workweek.* A workweek consists of 7 successive days (see paragraph (g)) starting on the same calendar day each week. This is the definition of a workweek under the Fair Labor Standards Act and is generally accepted by industry. The workweek may be established for the whole plant, for particular employees, or for any subdivision of the plant. The beginning of the workweek may be changed if not intended to evade the requirements of the order. The order does not call for or require any particular work or shift schedule nor does it prescribe the days or hours on which work is to be performed. It is of course highly desirable that work schedules be posted in advance, thus enabling employees to know upon what days work will be required of them.

(g) *The work day.* The order is to be applied on a 24-hour day basis. A 24-hour period may be established as the workday for the plant or for particular employees or departments, provided such an arrangement is not designed to evade the purposes of the order. In the event no particular 24-hour period is established as the workday, the calendar day (i. e., from midnight to midnight) shall be considered as the workday. Thus, work on an established workday regardless of the number of hours worked would for the purpose of the order, be considered as 1 day of work.

(h) *Exceptions.* Certain exceptions to this rule must be recognized. At times a shift may cut across 2 workdays. Only 1 of the 2 days is to be counted as a day worked, and that is the day on which the shift starts. Where an employee on particular occasions works beyond his normal shift and thereby works into the next workday, such excess hours should not be regarded as an additional day. However, if the employee continues to work into his day of rest to the extent of one-half his normal shift or is called back to work on his day of rest, that day must be counted as a day of work.

(i) *Effect of the order on applicable statutes and employment contracts.* Such provisions of employment contracts as are in conflict with the order are to that extent modified thereby. Employment contracts or agreements as those terms are used herein include practices established by custom or usage. Paragraph I A (2) contemplates that applicable statutes such as the Fair Labor Standards Act and the Walsh-Healey Act, or employment agreements which provide for overtime at time and one-half on a daily or weekly basis or for the sixth day of work in a regularly scheduled workweek, shall not be disturbed by the provisions of the order. Therefore, in situations where applicable laws or employment agreements require time and one-half for overtime worked in excess of 8 hours per day or 40 hours per week, the order permits the payment of time and one-half for such overtime. Likewise, where an employment contract requires time and one-half compensation for the sixth day worked in a regularly scheduled workweek, the order permits such premium pay. If overtime compensation for hours in excess of 8 per day or 40 per week, or for the sixth day worked is not required by applicable statutes or employment agreements, nothing in the order requires the payment of such premium rates.

(j) *Exceptions unrelated to premium pay for work on particular days as such.* It is not the purpose of the order to disturb employment contracts which contain provisions for extra compensation for onerous work, night work, or emergency work (i. e., work resulting from a sudden condition calling for immediate action); which extra compensation is in no way related to premium pay for work on Saturday, Sunday, or particular days as such. Accordingly, the order would not invalidate contracts, practices, or customs calling for more than time and one-half for hours in excess of 12 on a shift since such work is ordinarily regarded as particularly onerous. Likewise, the order would not invalidate contracts calling for premium pay for "call-in work" where the employee is summoned to duty outside his regular work schedule, and such premium rates are unrelated to work on Saturday, Sunday, or any other day as such. Furthermore, the order does not prevent the payment of shift wage differentials or bonuses, or attendance bonuses, where such payments are not in fact related to work performed on Saturday, Sunday, or particular days, as such.

(k) *Holidays; choice of sixth holiday.* Paragraph I B of the order has two requirements: (1) It requires time and one-half for work on the 6 holidays enumerated in the order, and (2) it forbids payment of any premium wage or extra compensation for work on any other holidays as such. A choice is afforded between Memorial Day and any other holiday of greater local importance. Failure to select a substitute holiday leaves Memorial Day as the sixth holiday under the order. The holiday chosen as a substitute for Memorial Day need not be the same holiday each year but only 6 holidays may be paid for at premium rates in the 12-month period beginning October first.

(l) *Holidays; computation of premium pay.* The order requires that time and one-half compensation be paid for work on designated holidays but forbids payment in excess of time and one-half. Thus, if the wages of an employee include compensation for a holiday although not worked, the additional amount which must be paid under the order for work performed on that holiday is limited to such amount as brings the total compensation for the day to time and one-half. Compensation for work performed on a holiday should be computed at one and one-half times the straight-time rate paid for work on that day or one and one-half times the average straight-time hourly rate for the workweek, whichever is the customary method of computing overtime compensation. The employer's records should indicate which method is adopted.

(m) *Holidays; inclusion of holidays in computing sixth and seventh days.* For purposes of computing the seventh day of work in a workweek under the order, the designated holidays must be included in the count whether or not work is performed on such days. An idle holiday should be included in computing the sixth day worked in the workweek unless the employment contract specifies otherwise.

(n) *Holidays; determination of what constitutes work on.* Insofar as the order requires payment of time and one-half for work on the designated holidays, it means payment of time and one-half for the hours worked on the calendar holiday, namely, hours worked between midnight at the beginning of the holiday and midnight at the close of the holiday. However, in order to give all employees equal benefit of the holiday, it is permissible to compensate employees at time and one-half for all hours worked on a shift, some part of which cuts across the calendar holiday. It is not permissible to pay the time and one-half holiday rate for more than one shift in a situation in which the employee works two shifts, both of which cut across the calendar holiday. However, employees must be paid time and one-half for at least all the hours worked on the calendar holiday. If one of the designated holidays falls on Sunday, either Sunday

or Monday may be observed as the holiday, but not both.

(o) *Holidays, not worked.* There is no provision in the order relating to compensation on holidays not worked.

(p) *Offsets crediting and pyramiding; holiday pay against other premium pay.* The time and one-half premium pay required for work on the 6 holidays designated in the order may not be offset or credited against overtime or premium pay required for any other day or portion of the workweek by virtue of this order or applicable statute, such as the Fair Labor Standards Act, the Walsh-Healey Act, or the Federal Eight-Hour Law. For example, an employee works 6 days of 8 hours each or a total of 48 hours in a workweek. The second day is one of the designated holidays and the 8 hours worked on that day must be paid for at time and one-half. This premium pay may not be credited or offset against the time and one-half required by statute for hours over 40 during that week. Both must be paid.

(q) *Seventh day pay against other premium pay.* Similarly, the double time required for the seventh consecutive day worked in the workweek may not be offset or credited against overtime or premium pay required for any other day or portion of the workweek by the order or existing law. Thus, if in the example in paragraph (p), above, the employee works an additional or seventh consecutive day in the same workweek, he must receive double time for that day. This double time may not be offset or credited against the holiday premium pay in this example, nor against the time and one-half due for the hours worked in excess of 40 prior to the seventh day.

(r) *Pyramiding of overtime or premium rates on a particular day.* On the other hand, it is contrary to the purposes of the order to allow the pyramiding of overtime or premium rates on a particular day. Thus, double time and no more may be paid for work on the seventh consecutive day worked in the workweek even though, by virtue of the employment contract or applicable statute, the hours worked on that day may exceed 8 or are in excess of 40 for the workweek or otherwise call for overtime rates of pay. For example, an employee works all 7 days of the workweek, 8 hours each day. The hours worked on the seventh day call for time and one-half under the Fair Labor Standards Act and double time under the order. The two premium rates may not be pyramided; only double time may be paid for work on that day. The same is true even though the employee works over 8 hours on the seventh day, which excess hours may also call for time and one-half. Also, since the order limits premium pay for the designated holidays to time and one-half, it would be contrary to the order to pyramid the holiday rate and the weekly overtime rate required, for example, by the Fair Labor Standards Act, in cases where the holiday itself consists of hours in excess of 40 for the week. For example, the employee works 6 days of 8 hours each. The hours worked on the last day call for time and one-half under the Fair Labor Standards Act. The last day is also a holiday designated in the order. The order limits pay on that day to time and one-half. For the same reason, where the holiday coincides with the sixth day worked in the workweek, which day by contract may also call for time and one-half, the order prevents the pyramiding of the two overtime rates. Likewise, not more than time and one-half may be paid for work on the sixth day worked in the workweek even though the hours worked on that day may be in excess of 8 for the day or 40 for the week. Even though the hours worked on the holiday in excess of 8 require time and one-half under the Walsh-Healey Act, the order limits the amount of compensation to time and one-half and prevents the pyramiding of overtime rates or the hours worked in excess of 8.

(s) *Absences; Full days of absence.* (1) If an employee is absent for all of one or more days, such days are not to be included in computing the seventh day. The only two exceptions to this rule are a designated holiday on which no work is performed and the case where an employee reports with the reasonable expectation of work and is sent home because of a lack of work or other reason beyond his control. Such days should be counted in computing the seventh consecutive day.

(2) With respect to the inclusion of full days of absence for the purpose of determining whether a sixth day has been worked, the answer is to be found in the prevailing custom, practice, or agreement, in the plant. However, the counting of days of absence merely for the purpose of evading the prohibition in the order against premium pay for Saturday and Sunday work as such would be in contravention of the terms of the order.

(t) *Absences for parts of workdays.* (1) The order does not require that any particular number of hours be worked in a day for that day to be regarded as a day worked under the order.

(2) Where an employee is absent for part of a workday for a justifiable reason, the day must be counted as a day worked for the purpose of computing the seventh day of work in the workweek. Since one of the basic purposes of the order is to discourage absenteeism, days on which an employee does not work his full schedule but absents himself for a portion of the day without justifiable cause should not be counted in computing the seventh day. It is permissible, however, for the employer to allow the employee to make up the time lost by such voluntary absence during the subsequent days of the workweek, and be compensated at the rate of double time on the seventh day of the workweek for hours worked on that day. However, double time may be paid on the seventh day only for those hours worked after the time lost has been made up by the employee.

(3) In computing the sixth day worked in the workweek, the question as to inclusion of days on which the employee has been absent for a portion of the day may be determined by the prevailing custom, practice, or agreement in the plant, provided days are not counted merely for the purpose of evading the prohibitions against premium pay for Saturday and Sunday, as such.

(u) *Relationship of Executive Order 9240 to 9250.* Payments required or forbidden by the terms of Executive Order 9240 do not, in the opinion of the Secretary of Labor, as stated in Interpretative Bulletin No. 1, require approval of the WLB as wage increases or decreases under the terms of Executive Order 9250. In situations where changes in the wage structure or premium rates are permitted but not required by Executive Order 9240, the procedures for the approval of wage increases as stated in Subpart G of this part should be followed before such changes are initiated by the employer.

(v) *National War Labor Board approval requirements for premium pay on sixth day of workweek.* On May 31, 1943, the National War Labor Board adopted a resolution to the effect that, where, pursuant to the terms of a collective bargaining agreement, or the custom and practice in a plant, a premium rate or extra compensation was regularly paid, prior to October 1, 1942, for services performed on Saturday, as such, not more than time and one-half premium wage compensation may be paid, without the approval of the National War Labor Board, for services performed on the sixth day of work in the regularly scheduled workweek, in accordance with the provisions of Executive Order 9240.

§ 809.965 *Exceptions*—(a) *Shipbuilding stabilization agreement.* The Secretary of Labor on February 25, 1943, pursuant to Executive Order 9248, issued an order determining that the provisions of Executive Order 9240 shall not apply after March 2, 1943, to the shipbuilding and ship repair industry.

The Secretary's order is based on a finding that the Zone Standards Agreements for the Shipbuilding and Ship Repair Industry, and the Pacific Coast Repair Agreements, approved by the Government departments and agencies concerned with shipbuilding and ship repair work, are operating satisfactorily to stabilize overtime practices in the industry. The exemption is not limited, however, to companies which are parties or subject to these wage stabilization agreements, but is applicable to the entire shipbuilding and ship repair industry.

The shipbuilding and ship repair industry, for the purposes of the Secretary's order, includes generally construction, conversion, outfitting, and repair of any floating marine structures, including floating drydocks. Many preliminary processes and the manufacture of many parts and products which are eventually used in the building of a ship are, however, not included. For example, the manufacture of prefabricated parts in steel mills or sawmills is not included in the industry.

The construction, conversion, outfitting, and repair activities which are considered within the shipbuilding and ship repair industry are those which are performed in the water, in drydocks, in basins, on ways for launching, or on the premises of a shipyard or boatyard. The

exemption covers all employees of companies which are engaged in such activities, including maintenance, clerical and technical employees, and including also employees who may be assigned to work away from the shipyard such as draftsmen employed by the shipyard and temporarily stationed in the office of an independent drafting concern, working on plans for the shipyard. However, employees of "uptown shops" are not within the exemption.

(b) *Building trades stabilization agreement.* (1) Except as indicated in subparagraph (2) below, work on construction projects subject to the Wage Stabilization Agreement for the Building and Construction Trades Industry engaged in War Construction (July 1941) is exempted from the provisions of Executive Order 9240. The Agreement is entitled "Memorandum of Agreement between the Representative of Government Agencies Engaged in Defense Construction and the Building and Construction Trades Department of the American Federation of Labor." (See Order, Secretary of Labor, September 30, 1942.)

(2) On May 22, 1943, the Secretary of Labor determined that for the duration of the war, paragraph 1 (B) of Executive Order 9240, which recognizes the following six holidays only: New Year's Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day, and Memorial Day, and requires compensation at the rate of time and one-half for work performed on such holidays, applies to work on construction projects which is subject to the Wage Stabilization Agreement for the Building and Construction Industry, *Provided*, That the clause in the Executive order permitting the substitution of one holiday of greater local importance than Memorial Day does not apply to such work. (See Determination, Secretary of Labor, May 22, 1943.)

(c) *Holiday provisions of the order incorporated in building trades stabilization agreement.* While work covered by the building trades stabilization agreement has been exempted from the order, the holiday provisions of the order (paragraph 1 (B)) have been incorporated in the stabilization agreement by resolution of the Board of Review, which performs the function of administering the stabilization agreement. (Interpretative Resolution No. 2 of the Board of Review passed on November 10, 1942.)

(d) *Sugar processing industry.* The Secretary of Labor on March 24, 1943, pursuant to Executive Order 9248, issued an order determining that in the case of an employer engaged in the processing of sugar beets or sugar cane into sugar (but not refined sugar) or into syrup, the provisions of section 1A (1) of Executive Order 9240 (requiring the payment of double time compensation on the seventh consecutive day of a regularly scheduled workweek) shall not apply to his employees in any place of employment where he is so engaged.

(e) *Fish processing industry.* The Secretary of Labor on June 7, 1943, pursuant to Executive Order 9248, issued an order determining that the provisions of Executive Order 9240 shall not apply to employees engaged in the processing of fish, including the canning and reduction thereof, and operations incidental thereto, in the States of Washington, Oregon, and California, and in the Territory of Alaska.

(f) *Fruit and vegetable packing and canning industries.* The Secretary of Labor on August 25, 1943, pursuant to Executive Order 9248, issued an order determining that in the case of an employer engaged in the first processing of, or in canning or packing, perishable or seasonal fresh fruits and vegetables, the provisions of Executive Order 9240 shall not apply to his employees in any place of employment where he is so engaged.

(g) *Milk processing industry.* The Secretary of Labor on October 22, 1943, pursuant to Executive Order 9248, issued an order determining that in the case of an employer engaged in the first processing of milk, whey, skimmed milk, or cream into dairy products, the provisions of Executive Order 9240 shall not apply to his employees in any place of employment where he is so engaged.

§ 809.966 *Future interpretations.* Section V of Executive Order No. 9240, as amended, requires that all questions regarding its interpretations and application be referred to the Secretary of Labor. Such questions requiring action by the Secretary of Labor, insofar as they are posed by representatives of the War Department, will be directed, through channels, to the Director, Industrial Personnel Division, Headquarters, Army Service Forces, who will take any necessary steps to obtain such interpretations in appropriate cases. The Director, Industrial Personnel Division, will clear with the Director, Purchases Division, all such questions relating to contracting or procurement procedure. Interpretations of Executive Order 9240, made by the Secretary of Labor from time to time will be promptly forwarded to the chiefs of technical services, and will be summarized for inclusion in these regulations or in Army Service Forces Circulars. Auditors, Finance Officers, and other persons reviewing War Department vouchers and payments will present to the Director, Industrial Personnel Division, through the Office of the Fiscal Director, Headquarters, Army Service Forces, all requests for instructions as to the applications of the Executive order to fiscal matters.

(a) Requests for interpretations will be prepared in the following form and submitted in triplicate:

(1) A brief statement of the question for which interpretation is requested.

(2) A statement as to the person, official, department, or organization requesting the interpretation.

(3) Any facts or comments which are necessary for interpretation. These comments should not exceed one or two paragraphs.

SUBPART G—WAGE AND SALARY STABILIZATION

§ 809.975 *Executive order.* Executive Order No. 9250, dated 3 October 1942 (7 F. R. 7871), establishes a national wage and salary stabilization policy pursuant to the act of 2 October 1942 entitled "An Act to Amend Emergency Price Control Act of 1942, to Aid in Preventing Inflation, and for Other Purposes, as amended by the Public Debt Act of 1943 (Public Law 34—78th Congress)". Titles II, III, and VI of that Order deal with wage and salary stabilization, and, in general, provide that the administration and enforcement of the stabilization policy will be under the direction of the National War Labor Board and of the Economic Stabilization Director.

(a) Title II of Executive Order No. 9250 provides:

1. No increases in wage rates, granted as a result of voluntary agreement, collective bargaining, conciliation, arbitration, or otherwise, and no decreases in wage rates, shall be authorized unless notice of such increases or decreases shall have been filed with the National War Labor Board and unless the National War Labor Board has approved such increases or decreases.

2. The National War Labor Board shall not approve any increase in the wage rates prevailing on Sept. 15, 1942, unless such increase is necessary to correct maladjustments or inequalities, to eliminate substandards of living, to correct gross inequities, or to aid in the effective prosecution of the war.

Provided, however, that where the National War Labor Board or the Price Administrator shall have reason to believe that a proposed wage increase will require a change in the price ceiling of the commodity or service involved, such proposed increase, if approved by the National War Labor Board, shall become effective only if also approved by the Director.

3. The National War Labor Board shall not approve a decrease in the wages for any particular work below the highest wages paid therefor between Jan. 1, 1942, and Sept. 15, 1942, unless to correct gross inequities and to aid in the effective prosecution of the war.

4. The National War Labor Board shall, by general regulation, make such exemptions from the provisions of this title in the case of small total wage increases as it deems necessary for the effective administration of this order.

5. No increases in salaries now in excess of $5,000 per year (except in instances in which an individual has been assigned to more difficult or responsible work), shall be granted until otherwise determined by the Director.

6. Except as provided in regulations issued by the Director, no decreases shall be made by any employer in the salary for any particular work below the highest salary paid therefor between January 1, 1942, and September 15, 1942, if the effect of the decrease is to reduce the salary below $5000 per annum.

7. [1] [Rescinded by Act of Congress—see below.]

8. The Policy of the Federal Government, as established in Executive Order No. 9017 of January 12, 1942, to encourage free collective bargaining between employers and employees is reaffirmed and continued.

[1] Section 7 was rescinded by section 4 (b), Act of April 11, 1943, Public Law 34, 78th Congress, which reads as follows:

"(1) Section 7 of Title II and all other provisions of Executive Order 9250, 'providing for the stabilization of the national economy' issued October 3, 1942, and all provisions of Regulation No. 4001.9, promulgated by the Economic Stabilization Director on October 27, 1942, which are in conflict with this section are hereby rescinded; and (2) all orders, regulations, and other directives, and all decisions, promulgated or made by virtue of said Executive Order or regulation which are in conflict with this section are hereby rescinded."

9. Insofar as the provisions of Clause (1) of section 302 (c) of the Emergency Price Control Act of 1942 are inconsistent with this Order, they are hereby suspended.

(b) Title III of Executive Order No. 9250 provides:

1. Except as modified by this Order, the National War Labor Board shall continue to perform the powers, functions, and duties conferred upon it by Executive Order No. 9017, and the functions of said Board are hereby extended to cover all industries and all employees. The National War Labor Board shall continue to follow the procedure specified in said Executive Order.

2. The National War Labor Board shall constitute the agency of the Federal Government authorized to carry out the wage policies stated in this Order, or the directives on policy issued by the Director under this Order. The National War Labor Board is further authorized to issue such rules and regulations as may be necessary for the speedy determination of the propriety of any wage increases or decreases in accordance with this Order, and to avail itself of the services and facilities of such state and Federal departments and agencies as, in the discretion of the National War Labor Board may be of assistance to the Board.

3. No provision with respect to wages contained in any labor agreement between employers and employes (including the shipbuilding stabilization agreements as amended on May 16, 1942, and the wage stabilization agreement of the building construction industry arrived at May 22, 1942) which is inconsistent with the policy herein enunciated or hereafter formulated by the Director shall be enforced except with the approval of the National War Labor Board within the provisions of this order. The National War Labor Board shall permit the shipbuilding stabilization committee and the wage adjustment board for the building construction industry, both of which are provided for in the foregoing agreements, to continue to perform their functions therein set forth, except in so far as any of them is inconsistent with the terms of this order.

4. In order to effectuate the purposes and provisions of this order and the act of October 2, 1942, any wage or salary payment made in contravention thereof shall be disregarded by the executive departments and other governmental agencies in determining the costs or expenses of any employer for the purpose of any law or regulation, including the Emergency Price Control Act of 1942 or any maximum price regulation thereof, or for the purpose of calculating deductions under the revenue laws of the United States or for the purpose of determining costs or expenses under any contract made by or on behalf of the government of the United States.

(c) Title IV, paragraph 1 provides:

1. The prices of agricultural commodities and of commodities manufactured or processed in whole or in substantial part from any agricultural commodity shall be stabilized, so far as practicable, on the basis of levels which existed on September 15, 1942, and in compliance with the act of October 2, 1942

(d) Title VI, paragraphs 1, 2 and 4 provide as follows:

1. Nothing in this Order shall be construed as affecting the present operation of the Fair Labor Standards Act, the National Labor Relations Act, the Walsh-Healey Act, the Davis-Bacon Act, or the adjustment procedure of the Railway Labor Act.

2. Salaries and wages under this Order shall include all forms of direct or indirect remuneration to an employee or officer for work or personal services performed for an employer or corporation, including but not limited to, bonuses, additional compensation, gifts, commissions, fees, and any other remuneration in any form or medium whatsoever, (excluding insurance and pension benefits in a reasonable amount as determined by the Director); but for the purpose of determining wages or salaries for any period prior to September 16, 1942, such additional compensation shall be taken into account only in cases where it has been customarily paid by employers to their employees. "Salaries" as used in this Order means remuneration for personal services regularly paid on a weekly, monthly or annual basis.

* * * * *

4. The Director shall be the agency to receive notice of any increase in the rates or charges of common carriers or other public utilities as provided in the aforesaid Act of October 2, 1942.

§ 809.976 *Regulations of Economic Stabilization Director approved by the President.* On 31 August 1943 (8 F.R. 11960), the Economic Stabilization Director issued amended regulations (Part 4001) pursuant to authority vested in, and with the approval of, the President, relative to wages and salaries, in order to conform the regulations promulgated by him with the approval of the President, dated 27 October 1943, to the provisions of the Public Debt Act of 1943. The amended regulations, effective as of October 2, 1942, are set forth in the succeeding sections which are designated 809.976a to 809.976p, inclusive.

§ 809.976a *Definitions.*

§ 4001.1 *Definitions.* When used in these regulations, unless otherwise distinctly expressed or manifestly incompatible with the intent thereof:

(a) The term "act" means the act of October 2, 1942, entitled "An Act to amend the Emergency Price Control Act of 1942, to aid in preventing inflation, and for other purposes".

(b) The term "Board" means the National War Labor Board created by Executive Order No. 9017, dated January 12, 1942.

(c) The term "Commissioner" means the Commissioner of Internal Revenue.

(d) The term "Code" means the Internal Revenue Code, as amended and supplemented.

(e) The term "salary" or "salary payments" means all forms of direct or indirect compensation which is computed on a weekly, monthly, annual or other comparable basis, except a wage basis, for personal services of an employee irrespective of when rendered, including bonuses, additional compensation, gifts, loans, commissions, fees, and any other remuneration in any form or medium whatsoever (excluding insurance and pension benefits in a reasonable amount).

(f) The term "salary rate" means the rate or other basis at which the salary for any particular work or service is computed either under the terms of a contract or agreement or in conformity with an established custom or usage.

(g) The term "wages" or "wage payments" means all forms of direct or indirect compensation which is computed on an hourly or daily basis, a piece-work basis, or other comparable basis, for personal services of an employee irrespective of when rendered, including bonuses, additional compensation, gifts, commissions, loans, fees, and any other remuneration in any form or medium whatsoever (but excluding insurance and pension benefits in a reasonable amount).

(h) The term "insurance and pension benefits in a reasonable amount" means:

(1) Contributions by an employer to an employees' retirement plan which meets the requirements of section 165 (a) of the Code but does not include contributions of an employer to a stock bonus or profit-sharing plan providing benefits distributable other than on the death, retirement, sickness or disability of the employee.

(2) Amounts, not to exceed 5 per cent of the employee's annual salary or wages determined without the inclusion of insurance and pension benefits and without the inclusion of bonuses or other additional compensation, paid by an employer on account of premiums on insurance on the life of the employee, and amounts, regardless of the amount of salary otherwise received annually by the employee, paid by the employer on account of premiums for participation in group life insurance without cash surrender value covering the lives of his employees or in group hospitalization policies or group health and accident insurance policies, the beneficiaries of which are employees. The type of insurance on the life of the employee referred to in this section is the ordinary or whole life policy which does not provide for a cash surrender or loan value, or both, amounting to a large percentage of the premiums paid.

(i) The terms "approval by the Board" and "determination by the Board" shall, except as may be otherwise provided in the regulations or orders of the Board, include an approval or determination by an agent of the Board duly authorized to perform such act; and such approval or determination, if subsequently modified or reversed by the Board, shall nevertheless for the purpose of these regulations, be deemed to have been continuously in effect from its original date until the first day of the payroll period immediately following the reversal or modification or until such later date as the Board may direct.

(j) The terms "approval by the Commissioner" and "determination by the Commissioner" shall, except as may be otherwise provided in regulations prescribed by the Commissioner, include an approval or determination by an agent of the Commissioner duly authorized to perform such act; and such approval or determination, if subsequently modified or reversed by the Commissioner, shall nevertheless for the purpose of these regulations, be deemed to have been continuously in effect from its original date until the first day of the payroll period immediately following reversal or modification or until such later date as the Commissioner may direct.

(k) The terms "approval by the War Food Administrator" and "determination by the War Food Administrator" shall, except as may be provided in regulations prescribed by the Administrator, include an approval or determination by an agent or agents of the Administrator duly authorized to perform such act.

(l) The term "agricultural labor" shall means persons who are employed in farming in any of its branches, including among other things the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of agricultural or horticultural commodities, and the raising of livestock, bees or poultry: *Provided, however,* That the term "agricultural labor" shall not include any person whose salary payments, exclusive of bonuses and additional compensation and without regard to the contemplated adjustment, are at a rate, computed on an annual basis, which exceeds $5,000 per annum.

The War Food Administrator, by regulation, may issue such interpretations of the definition in this paragraph as he finds necessary.

(m) The term "in contravention of the act" means in contravention of the act, these

regulations, Executive Order 9250, Executive Order 9328, or any other orders, rulings or regulations promulgated under the act.

(a) *Text of section 165 (a) of the Internal Revenue Code.*

(a) *Exemption from tax.* A trust forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall not be taxable under this supplement and no other provision of this supplement shall apply with respect to such trust or to its beneficiary—

(1) if contributions are made to the trust by such employer, or employees, or both, for the purpose of distributing to such employees or their beneficiaries the corpus and income of the fund accumulated by the trust in accordance with such plan;

(2) if under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees or their beneficiaries;

(3) If the trust, or two or more trusts, or the trust or trusts and annuity plan or plans are designated by the employer as constituting parts of a plan intended to qualify under this subsection which benefits either—

(A) 70 per centum or more of all the employees, or 80 per centum or more of all the employees who are eligible to benefit under the plan if 70 per centum or more of all the employees are eligible to benefit under the plan, excluding in each case employees who have been employed not more than a minimum period prescribed by the plan, not exceeding five years, employees whose customary employment is for not more than twenty hours in any one week, and employees whose customary employment is for not more than five months in any calendar year, or

(B) such employees as qualify under a classification set up by the employer and found by the Commissioner not to be discriminatory in favor of employees who are officers, shareholders, persons whose principal duties consist of supervising the work of other employees, or highly compensated employees;

and

(4) If the contributions or benefits provided under the plan do not discriminate in favor of employees who are officers, shareholders, persons whose principal duties consist in supervising the work of other employees, or highly compensated employees.

(5) A classification shall not be considered discriminatory within the meaning of paragraphs (3) (B) or (4) of this subsection merely because it excludes employees the whole of whose remuneration constitutes "wages" under section 1426 (a) (1) (relating to the Federal Insurance Contributions Act) or merely because it is limited to salaried or clerical employees. Neither shall a plan be considered discriminatory within the meaning of such provisions merely because the contributions or benefits of or on behalf of the employees under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of such employees, or merely because the contributions or benefits based on that part of an employee's remuneration which is excluded from "wages" by section 1426 (a) (1) differ from the contributions or benefits based on employee's remuneration not so excluded, or differ because of any retirement benefits created under State or Federal law.

(6) A plan shall be considered as meeting the requirements of paragraph (3) of this subsection during the whole of any taxable year of the plan if on one day in each quarter it satisfied such requirements.

(b) *Extract from section 23 of the Internal Revenue Code.*

Deductions from gross income. In computing net income there shall be allowed as deductions:

(a) *Expenses*—(1) *In general.* All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; * * *

* * * * *

(o) *Charitable and other contributions.* In the case of an individual, contributions or gifts payment of which is made within the taxable year to or for the use of:

(1) The United States, any State, Territory, or any political subdivision thereof or the District of Columbia, or any possession of the United States, for exclusively public purposes;

(2) A corporation, trust, or community chest, fund, or foundation, created or organized in the United States or in any possession thereof or under the law of the United States or of any State or Territory or of any possession of the United States, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation;

(3) The special fund for vocational rehabilitation authorized by section 12 of the World War Veterans' Act, 1924, 43 Stat. 611 (U. S. C., Title 38, Sec. 440):

(4) Posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions, and if no part of their net earnings inures to the benefit of any private shareholder or individual; or

(5) A domestic fraternal society, order, or association, operating under the lodge system, but only if such contributions or gifts are to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals;

to an amount which in all the above cases combined does not exceed 15 per centum of the taxpayer's net income as computed without the benefit of this subsection. Such contributions or gifts shall be allowable as deductions only if verified under rules and regulations prescribed by the Commissioner, with the approval of the Secretary.

(c) *Section 5 (b) of act to amend the Emergency Price Control Act of 1942, to aid in preventing inflation and for other purposes.* Section 5 (b) of Public Law 729 (77th Cong. 2d Session) provides as follows:

Nothing in this Act shall be construed to prevent the reduction by any private employer of the salary of any of his employees which is at the rate of $5,000 or more per annum.

§ 809.976b *Authority of National War Labor Board.*

§ 4001.2 *Authority of National War Labor Board.* The Board shall, subject to the provisions of sections 1, 2, 3, 4, and 8 of Title II of Executive Order No. 9250, of October 3, 1942, and except as otherwise provided in Executive Order No. 9299, of February 4, 1943, prescribing regulations and procedure with respect to wage and salary adjustments for employees subject to the Railway Labor Act, have authority to determine whether any:

(a) Wage payments, or

(b) Salary payments to an employee where the rate at which the salary, exclusive of bonuses and additional compensation and without regard to the contemplated adjustment, computed on an annual basis, is not in excess of $5,000 per annum, and where such employee:

(1) In his relations with his employer is represented by a duly recognized or certified labor organization, or

(2) Is not employed in a bona fide executive, administrative or professional capacity

are made in contravention of the act, or any rulings, orders or regulations promulgated thereunder. Any such determination by the Board, made under rulings and orders issued by it, that a payment is in contravention of the act, or any rulings, orders, or regulations promulgated thereunder, shall be conclusive upon all Executive Departments and agencies of the Government in determining the costs or expenses of any employer for the purpose of any law or regulation, either heretofore or hereafter enacted or promulgated, including the Emergency Price Control Act of 1942 or any maximum price regulation thereof, or for the purpose of calculating deductions under the revenue laws of the United States, or for the purpose of determining costs or expenses under any contract made by or on behalf of the United States. Any determination of the Board made pursuant to the authority conferred on it shall be final and shall not be subject to review by The Tax Court of the United States or by any court in any civil proceedings.

§ 809.976c *Rules, orders and regulations of Board.*

§ 4001.3 *Rules, orders and regulations of Board.* The Board may make such rulings and issue such orders or regulations as it deems necessary to enforce and otherwise carry out the provisions of these regulations.

§ 809.976d *Authority of the Commissioner of Internal Revenue.*

§ 4001.4 *Authority of Commissioner of Internal Revenue.* The Commissioner, except as otherwise provided in Executive Order 9299, of February 4, 1943, prescribing regulations and procedure with respect to wage and salary adjustments for employees subject to the Railway Labor Act, shall have authority to determine, under regulations to be prescribed by him with the approval of the Secretary of the Treasury, whether any salary payments other than those specified in paragraph (b) of § 4001.2 (§ 809.976b of this part) and § 4001.6 (§ 809.976e (a) of this part) of these regulations are made in contravention of the act, or any regulations or rulings promulgated thereunder. Any such determination by the Commissioner, made under such regulations, that a payment is in contravention of the act, or any rulings or regulations promulgated thereunder, shall be conclusive upon all Executive Departments and agencies of the Government in determining the costs or expenses of any employer for the purpose of any law or regulations, either heretofore or hereafter enacted or promulgated, including the Emergency Price Control Act of 1942 or any maximum price regulation thereof, or for the purpose of calculating deductions under the revenue laws of the United States, or for the purpose of determining costs or expenses under any contract made by or on behalf of the United States. Any determination of the Commissioner made pursuant to the authority conferred on him shall be final and shall not be subject to review by The Tax Court of the United States or by any court in any civil proceedings. No increase in a salary rate approved by the Commis-

sioner shall increase the level of production costs appreciably or furnish the basis either to increase prices or to resist otherwise justifiable reductions in prices or furnish the basis of further wage or salary increases.

§ 809.976e *Rules and regulations of Commissioner.*

§ 4001.5 *Rules and regulations of Commissioner.* The Commissioner may prescribe such regulations with the approval of the Secretary of the Treasury, and make such rulings as he deems necessary, to enforce and otherwise carry out the provisions of these regulations.

(a) *Provisions with respect to wages and salaries of agricultural labor.* On August 31, 1943, the Director of Economic Stabilization issued amended regulations bearing section numbers 4001.6, 4001.7, 4001.8, and 4001.9, with the approval of the President, conferring upon the War Food Administrator the authority to determine whether any salary or wage payments to agricultural labor receiving not in excess of $2,400 per annum are made in contravention of the Stabilization Act of October 2, 1942. The text of these sections is omitted.

§ 809.976f *Salary increases.*

§ 4001.10 *Salary increases.* In the case of a salary rate of $5,000 or less per annum existing on October 27, 1942, or established thereafter, and in the case of a salary rate of more than $5,000 per annum existing on October 3, 1942, or established thereafter, no increase shall be made by the employer except as provided in regulations, rulings, or orders promulgated under the authority of these regulations. Except as herein provided, any increase made after such respective dates shall be considered in contravention of the Act and the regulations, rulings, or orders promulgated thereunder from the date of the payment if such increase is made prior to the approval of the Board or the Commissioner, as the case may be.

In the case, however, of a reasonable increase in the rate at which the salary (exclusive of bonuses and additional compensation) is computed, made both in accordance with the terms of a salary plan or a salary rate schedule and as a result of:

(a) Individual promotions or reclassifications,

(b) Individual merit increases within established salary rate range,

(c) Operation of an established plan of salary increases based on length of service within established rate ranges,

(d) Increased productivity under incentive plans,

(e) Operation of a trainee system, or

(f) Such other reasons or circumstances as may be prescribed in orders, rulings, or regulations, promulgated under the authority of these regulations, no prior approval of the Board or the Commissioner is required. No such adjustment shall increase the level of production costs appreciably or furnish the basis either to increase prices or to resist otherwise justifiable reductions in prices or furnish the basis of further wage or salary adjustments.

(a) *Statement of Commissioner of Internal Revenue on payment of overtime compensation to salaried employees.* The Commissioner of Internal Revenue under date of 1 July 1943 issued a statement for the guidance of employers who find it necessary to pay their salaried employees additional compensation to maintain productive efficiency on account of the extension of the normal week. This statement reads in part as follows:

The Commissioner's jurisdiction extends only to salaried employees receiving more than $5,000 a year, and to executive, administrative and professional employees receiving less than $5,000 a year who are not represented by a recognized labor organization. In order to come within the Commissioner's jurisdiction, an executive employee must receive more than $30 a week, and an administrative or professional employee must receive more than $200 a month.

Due to the extension of the workweek, employers are required under the provisions of the Fair Labor Standards Act to pay their nonexempt wage earners and others of their salaried personnel coming within the jurisdiction of the Fair Labor Standards Act additional compensation at time and a half for all hours worked in excess of 40 in any one calendar week. Employers are not legally required to compensate the supervisory personnel on the same basis as the wage earners. However, it is customary for employers to maintain reasonable pay differentials between the wage earners and their supervisors and between the several levels of supervision. Payment for overtime to the wage earners without any additional compensation to the salaried personnel in many cases results in the wage earners receiving more total compensation for a given period than their immediate supervisors and in some cases more than the second and third levels of supervision.

In order to clarify the position which will be taken in this matter, the Commissioner has issued instructions to the regional offices of the Salary Stabilization Unit as to the methods under which payments of additional compensation to salaried personnel may be determined. Under these instructions, the maximum amounts which will be allowed are such amounts as are necessary to keep the minimum differentials between the interrelated job classifications required for the maintenance of productive efficiency. The Commissioner stated that no set rule may be established for determining such amounts, because of the variations of differentials between wage and salary levels within plants and industries. However, the amounts allowed will be proportionately less in the higher levels. Approval is required in all cases except where the employer had a regularly established overtime payment plan in effect on October 3, 1942, and neither the plan, the rates, nor the hours have been changed. The maximum limitations within which payments may be made will be determined on the following basis:

Additional compensation may be paid at the same overtime rates to all employees in a particular plant for the actual scheduled hours worked in excess of the regular 40-hour workweek as is paid to the highest hourly paid employee, whose rate is subject to the Fair Labor Standards Act, if their compensation for the 40-hour workweek is equal to or less than that of such highest hourly paid employee.

In the application of this principle, the highest participating pay level in direct line of supervision and the minimum additional compensation necessary for the level shall be determined to the satisfaction of the Commissioner. The amount allowable to the higest rated hourly employee will then be progressively reduced for the several intervening pay levels in such manner that each succeeding higher level receives a proportionately lesser amount, until the minimum amount allowable for the highest participating pay level as previously determined is reached.

This plan may be followed with respect to all salaried positions between the highest hourly rated employee receiving compensations at overtime rates and the highest salaried position for which overtime compensation is required.

The level of supervision at which the minimum additional compensation is to be allowed will depend upon the circumstances prevailing in each particular case. Therefore, in order to expedite consideration of their problem, employers, in submitting applications for approval to make overtime adjustments, should include complete information, covering particularly the following: The hours of the extended work week; the hours of the previous work week; the rates of pay of the wage and salaried employees under the jurisdiction of the National War Labor Board; the amounts and rates of overtime presently being paid to those groups as well as to the groups under the jurisdiction of the Commissioner; the number of employees for whom payments are proposed, together with their rates of pay; a description of the several types or levels of supervision; a sufficiently clear description of the job classifications and positions of those required to work the same or more hours than the wage earners under the extended work week and for whom overtime compensation is required; the top level of supervision at which the minimum additional compensation is required; the amount of additional compensation deemed necessary in the top level of supervision so determined; and the basis upon which both the top level of supervision and the amount of additional compensation to be paid that level have been determined.

§ 809.976g *Decreases in salaries of less than $5,000.*

§ 4001.13 *Decreases in salaries of less than $5,000.* In the case of a salary rate existing as of the close of October 3, 1942, under which an employee is paid a salary of less than $5,000 per annum for any particular work, no decrease shall be made by the employer below the highest salary rate paid for such work between January 1, 1942, and September 15, 1942, unless to correct gross inequities or to aid in the effective prosecution of the war. Any decrease in such salary rate after October 3, 1942, shall be considered in contravention of the Act and the regulations, rulings, or orders promulgated thereunder if such decrease is made prior to the approval of the Board or the Commissioner, as the case may be. The words "for any particular work" in the first sentence of this section refer to the particular work of the particular employee and not merely to a particular type of work. For example, the Act does not invalidate or prohibit a wage stabilization order establishing maximum wages for any particular type of work, so long as exception is made allowing the payment of wages higher than such maximum wages to any particular employee for the particular type of work where such higher wages were being paid to such employee for such work at the time the order was issued.

§ 809.976h *Decreases in salaries of over $5,000.*

§ 4001.14 *Decreases in salaries of over $5,000.* In the case of a salary rate existing as of the close of October 3, 1942, under which an employee is paid a salary of $5,000 or more per annum, no decrease in such rate made by the employer shall be considered in contravention of the Act and the regulations promulgated thereunder (see section 5 (b) of the act set forth in § 809.976a (c): *Provided, however,* That if by virtue of such decrease the new salary paid to the employee is less than $5,000 per annum, then the validity of such decrease below $5,000 shall be determined under the provisions of § 4001.13 (§ 809.976g) of these regulations.

§ 809.976i *Limitation on wage and salary increases.*

§ 4001.11 *Limitation on wage and salary increases.* (a) No further increase in wages or salaries shall after April 8, 1943, be authorized by the Board or the Commissioner,

as the case may be, except in the following cases:

(1) Such increases as are clearly necessary to correct substandards of living.

(2) Such wage or salary readjustments as may be deemed appropriate and may not have heretofore been made to compensate, in accordance with the Little Steel formula as heretofore defined by the Board, for the rise in the cost of living between January 1, 1941, and May 1, 1942.

(3) Salary and wage adjustments necessary to adjust salaries or wages up to the minimum of the tested and going rates paid for the same work in the same or most nearly comparable plants or establishments in the same labor market, except in rare and unusual cases in which the critical needs of war production require the setting of a wage or salary at some point above the minimum of the going wage or salary bracket.

(4) Reasonable adjustments in wages or salaries in case of promotions, reclassifications, merit increases, incentive wages or the like, provided that such adjustments do not increase the level of production costs appreciably or furnish the basis either to increase prices or to resist otherwise justifiable reductions in prices.

(b) In connection with the approval of wage or salary adjustments necessary to eliminate substandards of living or to give effect to the Little Steel formula or in connection with the adoption of a longer workweek, nothing herein contained shall be construed to prevent the approval of a wage or salary adjustment for workers in immediately interrelated job classifications to the extent required to keep minimum differentials between immediately interrelated job classifications necessary for the maintenance of productive efficiency. Such adjustments are to be tapered off rigorously in application to higher job classifications so as to apply only in those classifications and only to the extent necessary for productive efficiency in the interrelated job classifications.

(a) *Increases subject to approval of Economic Stabilization Director.*

§ 4001.12 *Increases subject to approval of Economic Stabilization Director.* All wage adjustments made by the Board which may furnish the basis either to increase price ceilings or to resist otherwise justifiable reductions in price ceilings or if no price ceilings are involved which may increase the production costs above the level prevailing in comparable plants or establishments, shall become effective only if also approved by the Economic Stabilization Director.

§ 809.976j *Effect of unlawful payments.*

§ 4001.15 *Effect of unlawful payments.* (a) If any wage or salary payment is made in contravention of the act or the regulations, rulings or orders promulgated thereunder, as determined by the Board, the Commissioner, or the War Food Administrator, as the case may be, the entire amount of such payment shall be disregarded by the Executive Department and all other agencies of the Government in determining the costs or expenses of any employer for the purpose of any law or regulation, including the Emergency Price Control Act of 1942, or any maximum price regulation thereof, or for the purpose of calculating deductions under the revenue laws of the United States, or for the purpose of determining costs or expenses of any contract made by or on behalf of the United States. The term "law or regulations" as used herein includes any law or regulation hereafter enacted or promulgated. In the case of wages or salaries decreased in contravention of the act or regulations, rulings or orders promulgated thereunder, the amount to be disregarded is the amount of the wage or salary paid or accrued. In the case of wages or salaries increased in contravention of the act or regulations, rulings or orders promulgated thereunder, the amount to be disregarded is the amount of the wage or salary paid or accrued which represents an increase in such wage or salary.

(b) Payments made or received in violation of any regulations, rulings or orders promulgated under the authority of the act are subject to the penal provisions of the act.

§ 809.976k *Exempt employers.*

§ 4001.16 *Exempt employers.* The provisions of §§ 4001.10 (§ 809.976f), 4001.11 (§ 809.976i), 4001.13 (§ 809.976g), and 4001.14 (§ 809.976h) shall apply only in the case of an employer who employs more than eight individuals.

§ 809.976l *Salary allowances under Internal Revenue Code.*

§ 4001.17 *Salary allowances under Internal Revenue Code.* No provisions of these regulations shall preclude the Commissioner from disallowing as a deduction in computing Federal income tax any compensation paid by an employer (regardless of the number of employees and of the amount paid to any employee) in excess of a "reasonable allowance" in accordance with the provisions of section 23 (a) of the Code (for text of this section of the Code see § 809.976a (b)).

§ 809.976m *Statutory salaries and wages.*

§ 4001.18 *Statutory salaries and wages.* These regulations shall be applicable to any salary or wages paid by the United States, any State, Territory or possession, or political subdivision thereof, the District of Columbia, or any agency or instrumentality of any one or more of the foregoing, except where the amount of such salary or wages is fixed by statute.

(a) *Joint Statement of November 12, 1942, of the National War Labor Board and the Commissioner of Internal Revenue.*

Procedure for wage and salary adjustments by State Governments and subdivisions and agencies thereof. Adjustments in salaries or wages of State, county or municipal employees which require the approval of the Board or of the Commissioner will be deemed approved upon certification by the State or local agency authorizing the adjustment that such adjustment is necessary to correct maladjustments, or to correct inequalities or gross inequities as contemplated by Executive Order No. 9250. Such a certificate, briefly describing the nature and amount of the adjustment, and setting forth the necessary facts, will be accepted by the Board or Commissioner, as the case might be, as satisfactory evidence of the facts and of the propriety of the adjustment, subject to the right of the Board or the Commissioner to reopen the matter and to request further information pertaining to the propriety of the adjustment. Modification by the Board or by the Commissioner of action taken by a governmental official or agency acting pursuant hereto will not be retroactive. The certificate prescribed herein, together with four copies thereof, should be filed promptly with the committee established by joint action of the National War Labor Board and the Commissioner of Internal Revenue, namely, the Joint Committee on Salaries and Wages, Room 5406, Department of Labor Building, Washington, D. C., which will forward the same to the Board or the Commissioner, as the case may require.

The certification procedure will not apply to any adjustment which would raise salaries or wages beyond the prevailing level of compensation for similar services in the area or community. In exceptional cases where such an adjustment is sought, and in all cases where the agency seeks an adjustment other than by the certification procedure, application for approval should be filed with the appropriate Regional Office of the National War Labor Board or of the Commissioner of Internal Revenue as the case may be.

(b) On December 26, 1942, the National War Labor Board and Commissioner of Internal Revenue issued a joint statement which effected changes of the procedure provided for in the joint statement of the Board and Commissioner of November 12, 1942, (paragraph (a)). The joint statement of December 26, 1942, took the form of General Order No. 12–A. On May 25, 1943, General Order No. 12–A was revoked, and in its stead there was adopted, as General Order No. 12–B, the Joint Statement of the National War Labor Board and the Commissioner of Internal Revenue, dated May 25, 1943, and set forth in § 809.980l).

§ 809.976n *Territories and possessions.*

§ 4001.19 *Territories and possessions.* The Board, the Commissioner, and War Food Administrator shall have the authority to exempt from the operation of these regulations any wages or salaries paid in any Territory or possession of the United States where deemed necessary for the effective administration of the act and these regulations.

§ 809.976o *Regulations of Economic Stabilization Director.*

§ 4001.21 *Regulations of Economic Stabilization Director.* The Director shall have authority to issue such regulations as he deems necessary to amend, modify or rescind these regulations.

§ 809.976p *Applicability.*

§ 4001.20 *Applicability.* These amended regulations supersede as of their effective date (October 2, 1943) the regulations promulgated by the Director of Economic Stabilization, with the approval of the President, dated October 27, 1942, as amended, and are applicable to all salary adjustments within the authority of the Commissioner, the Board, or the War Food Administrator, as the case may be, which are made after that date.

§ 809.977 *Regulations of Commissioner of Internal Revenue.* From time to time the Commissioner of Internal Revenue issues regulations, with the approval of the Secretary of the Treasury, establishing procedures and rules for the administration and interpretations of such portions of Executive Order No. 9250 and of the regulations of the Economic Stabilization Director approved by the President on October 27, 1942 (§ 809.976 et seq., above) as are administered by the Commissioner of Internal Revenue. These regulations are set forth in the succeeding sections which are designated 809.977 followed by a letter, or letters, of the alphabet.

§ 809.977a *Salary Stabilization Unit.*

§ 1001.1 *Salary Stabilization Unit.* There is established a Salary Stabilization Unit, which shall be under the supervision of a deputy commissioner of internal revenue, appointed in accordance with law, and which shall be independent of all other units of the Bureau of Internal Revenue.

§ 809.977b *Authority of Unit.*

§ 1001.2 *Authority of Unit.* The Commissioner of Internal Revenue may confer upon the deputy commissioner in charge of the Salary Stabilization Unit such powers and duties as he shall deem necessary for the effective administration of the provisions of this Treasury decision.

§ 809.977c *Regional offices.*

§ 1001.3 *Regional offices.* The Commissioner of Internal Revenue may establish such regional offices as he shall deem necessary for the effective administration of the provisions of this Treasury Decision.

(a) The Commissioner of Internal Revenue has established the following Salary Stabilization Regional Offices:

Detroit: 14th Floor, Penobscot Building, Detroit, Michigan. Jurisdiction: Michigan.

Los Angeles: Suite 770, Subway Terminal Building, Los Angeles, California. Jurisdiction: Sixth Collection District of California, and Arizona.

New York: 253 Broadway, Fourth Floor, New York, New York. Jurisdiction: New York and the Fifth Collection District of New Jersey.

Philadelphia: Suite 1313, Market Street, National Bank Building, Philadelphia, Pennsylvania. Jurisdiction: Pennsylvania and New Jersey with the exception of the Fifth Collection District of New Jersey.

San Francisco: Room 918—100 McAllister Street Building, San Francisco, California. Jurisdiction: First Collection District of California, Nevada, Utah and Hawaii.

Chicago: Fourth Floor, 208 South La Salle Street, Chicago, Illinois. Jurisdiction: Illinois, Wisconsin, Minnesota, North Dakota, South Dakota, Indiana.

Boston: Rooms 301–4, 1 State Street, Boston, Massachusetts. Jurisdiction: Maine, New Hampshire, Vermont, Massachusetts, Connecticut, and Rhode Island.

Cleveland: Williamson Building, 215 Euclid Avenue, Cleveland, Ohio. Jurisdiction: Ohio and Kentucky.

Atlanta: Rooms 717–720, William Oliver Building, Atlanta, Georgia. Jurisdiction: South Carolina, Georgia, Florida, Alabama and Tennessee.

Seattle: Room 312, Smith Tower Annex, Seattle, Washington. Jurisdiction: Washington, Oregon, Idaho, Montana, Wyoming and Alaska.

Kansas City: R. A. Long Building, Kansas City, Missouri. Jurisdiction: Kansas, Missouri, Iowa, Nebraska and Colorado.

Dallas: Tower Petroleum Building, Dallas, Texas. Jurisdiction: Mississippi, Louisiana, Texas, New Mexico, Arkansas, and Oklahoma.

Washington, D. C.: Room 2529, Internal Revenue Building, Washington, D. C. Jurisdiction: Maryland, Delaware, Virginia, West Virginia, North Carolina, District of Columbia, and Puerto Rico.

§ 809.977d *General terms.*

§ 1002.1 *General terms.* When used in these regulations, unless otherwise distinctly expressed or manifestly incompatible with the intent thereof.

(a) The term "act" means the act of October 2, 1942 (Public, No. 729, 77th Congress) entitled "An Act to Amend the Emergency Price Control Act of 1942, to aid in preventing inflation, and for other purposes," as amended by the Public Debt Act of 1943 (Public, No. 34, 78th Congress) entitled "An Act to Increase the Debt Limit of the United States and for other purposes."

(b) The term "Board" means the National War Labor Board created by Executive Order No. 9017, dated January 12, 1942 (7 F.R. 237).

(c) The term "Commissioner" means the Commissioner of Internal Revenue.

(d) The term "Code" means the Internal Revenue Code, as amended and supplemented.

(e) The term "person" has the same meaning as when used in the Code.

(f) The term "General Regulations" means amended regulations (relating to wages and salaries) promulgated by the Economic Stabilization Director on August 23, 1943 (8 F.R. 11900), and as amended or supplemented by subsequent regulations relating to wages and salaries promulgated by the Economic Stabilization Director.

(g) The term "in contravention of the Act" means in contravention of the act of October 2, 1942 (referred to in paragraph (a) above. Executive Order No. 9250 of October 3, 1942 (7 F.R. 7871), Executive Order 9299 of February 4, 1943 (8 F.R. 1609), Executive Order 9328 of April 8, 1943 (8 F.R. 4681), the General Regulations, these regulations and other orders, rulings, and regulations promulgated under such act.

§ 809.977e *Employee and employer.*

§ 1002.2 *Employee and employer.* An employee, for the purposes of these regulations, is an individual who performs services for compensation where the relationship between him and the person for whom he performs the services is the legal relationship of employee and employer. An employer is any person for whom an individual performs any services, of whatever nature, as the employee of such person. The term "employer" is not limited to private persons engaged in trade or business, but includes organizations which, under section 101 of the Code, are exempt from income taxation, and also government departments and agencies. The existence of the legal relationship of employer and employee is to be ascertained in the light of the general purposes of the Act and the General Regulations.

Generally, the legal relationship of employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work done, but also as to the details and means by which that result is accomplished. An employee is generally subject to the will and control of the employer not only as to what shall be done but how it shall be done. In this connection it is unnecessary that the employer actually direct or control the precise manner in which the services are performed; it is sufficient that he has the right to do so. The right to discharge is also an important factor indicating that the person possessing that right is an employer.

Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools and the furnishing of a place to work to the individual who performs the services. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, he is an independent contractor. An individual performing services as an independent contractor is not an employee as to such services. Physicians, lawyers, architects, contractors and others who follow an independent trade, business or profession in which they offer their services to the public are generally independent contractors and not employees. Whether the relationship of employer-employee exists will be determined upon an examination of the particular facts of each case.

If the relationship of employer and employee exists the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. If such relationship exists, it is of no consequence that the employee is designated as a partner, co-adventurer, agent or independent contractor. The measurement, method, or designation of compensation is immaterial if the relationship of employer and employee thus in fact exists.

An officer of a corporation is an employee of the corporation but a director as such is not. A director may be an employee of the corporation, however, if he performs services for the corporation other than those required by attendance at and participation in meetings of the board of directors.

§ 809.977f *Executive employees.*

§ 1002.3 *Executive employees.* An individual "employed in a bona fide executive capacity" means any employee:

(a) Whose primary duty consists of the management of the establishment in which he is employed or of a customarily recognized department or subdivision thereof, and

(b) Who customarily and regularly directs the work of other employees, and

(c) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any change of status of other employees will be given particular weight, and

(d) Who customarily and regularly exercises discretionary powers, and

(e) Who is compensated for his services on a salary basis at not less than $30 per week (exclusive of board, lodging, or other facilities), and

(f) Whose hours of work of the same nature as that performed by employees not employed in an executive, administrative or professional capacity do not exceed 20 percent of the total number of hours worked in the workweek by the employees under his direction; provided that this paragraph (f) shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment.

§ 809.977g *Administrative employees.*

§ 1002.4 *Administrative employees.* An individual "employed in a bona fide administrative capacity" means any employee:

(a) Who is compensated for his services on a salary or fee basis at a rate of not less than $200 per month (exclusive of board, lodging, or other facilities), and

(b) (1) Who regularly and directly assists an employee in a bona fide executive or administrative capacity (as such terms are defined in these regulations), where such assistance is nonmanual in nature and requires the exercise of discretion and independent judgment; or

(2) Who performs under only general supervision, responsible nonmanual office or field work, directly related to management policies or general business operations, along specialized or technical lines requiring special training, experience, or knowledge, and which requires the exercise of discretion and independent judgment; or

(3) Whose work involves the execution under only general supervision of special nonmanual assignments and tasks directly related to management policies or general business operations involving the exercise of discretion and independent judgment; or

(4) Who is engaged in transporting goods or passengers for hire and who performs, under only general supervision, responsible outside work of a specialized or technical nature requiring special training, experience, or knowledge, and whose duties require the exercise of discretion and independent judgment.

§ 809.977h *Professional employees.*

§ 1002.5 *Professional employees.* Any individual "employed in a bona fide professional capacity" means any employee who is:

(a) Engaged in work:

(1) Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work, and

(2) Requiring the consistent exercise of discretion and judgment in its performance, and

(3) Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time, and

(4) Whose hours of work of the same nature as that performed by employees not employed in an executive, administrative or professional capacity do not exceed 20 percent of the hours worked in the workweek by such employees: *Provided,* That where such nonprofessional work is an essential part of and necessarily incident to work of a professional nature, this subparagraph (4) shall not apply, and

(5) (i) Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes; or

(ii) Predominantly original and creative in character in a recognized field of artistic endeavor as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training, and the result of which depends primarily on the invention, imagination, or talent of the employee, and

(b) Compensated for his services on a salary or fee basis at a rate of not less than $200 per month (exclusive of board, lodging, or other facilities): *Provided,* That this paragraph (b) shall not apply in the case of an employee who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and who is actually engaged in the practice thereof.

§ 809.977i *Salary payments.*

§ 1002.6 *Salary payments.* The terms "salary" and "salary payment" mean only such salaries over which the Commissioner has jurisdiction. (See § 1002.10 of these regulations.) These terms are not used in any restricted, narrow or technical sense, but encompass all forms of direct or indirect compensation for personal services of an employee which is computed on a weekly, monthly, annual or other basis, other than wages (as defined in the General Regulations and in orders or rulings of the Board). Bonuses, gifts, loans, commissions, fees, additional compensation and any other remuneration in any form or medium whatsoever are considered as falling within the concept of "salary" or "salary payment". Any compensation which is not regarded as wages in the commonly accepted sense of the term is salary notwithstanding that it may be computed on an hourly, daily or piece-work basis.

Retainer fees paid to an individual not otherwise an employee are not to be considered as salary. (See § 1002.8 re insurance and pension benefits.)

Although the terms "salary" and "salary payment" do not include any compensation other than for personal services of an employee, the Commissioner is not precluded from determining, after investigation, that amounts denominated, for example, as rents or royalties are in fact salary payments subject to the controls set forth in these regulations.

All amounts paid to, authorized to be paid to, or accrued to the account of any employee during a calendar year for services rendered or to be rendered are to be included as salary for such year.

§ 809.977j *Salary rate.*

§ 1002.7 *Salary rate.* The term "salary rate" means that rate or aggregate of rates or other basis at which the salary for any particular work or service is computed, either under the terms of a contract or agreement, express or implied, or in conformity with custom or usage existing in the employer's business establishment. For treatment of commissions and bonuses on a percentage basis see § 1002.14.

§ 809.977k *Insurance and pension benefits.*

§ 1002.8 *Insurance and pension benefits.* Compensation may include insurance and pension benefits. In determining the amount of salary of an employee, the insurance or pension benefit inuring to such employee is not measured by what he will be entitled to receive after the happening of certain contingencies, but rather in terms of the amount of contributions or premiums paid by the employer. To the extent that an insurance and pension benefit inuring to an employee is reasonable in amount, such benefit is not considered as salary as defined in § 1002.6.

Contributions by an employer to an employee's retirement plan, which plan meets the exemption requirements of section 165 (a) of the Code (as of the date the contributions are made), shall be considered as reasonable regardless of the amount of such contributions: *Provided, however,* That contributions by an employer to a stock bonus or profit-sharing plan meeting the requirements of such section 165 (a) providing benefits distributable other than on the death, retirement, sickness, or disability of the employee shall be treated as salary. On the other hand, contributions by an employer to an employee's pension trust which is subject to Federal income taxation or which does not meet the requirements of such section 165 (a) shall be treated, for purposes of these regulations, as salary.

Amounts paid by an employer on account of insurance premiums on a policy on the life of an employee, the beneficiaries of which are designated by the employees, to the extent that they do not exceed five percent of the employee's annual salary determined without the inclusion of insurance and pension benefits and without the inclusion of bonus and additional compensation, are not considered as salary. The type of insurance on the life of the employee referred to in this section is the ordinary or whole life policy which does not provide for a cash surrender or loan value, or both, amounting to a large percentage of the premiums paid. For example, premiums on endowment policies, single premium life insurance policies, fixed payment life insurance policies, and other similar policies shall be considered salary. The payment of insurance premiums on ordinary or whole life policies referred to in the preceding sentence must be for the benefit of more than a small number of selected individuals.

For example: An employer having ten salaried employees takes out life insurance policies on each of such employees in favor of beneficiaries designated by them. The premiums paid for five of the employees are in each instance seven per cent of the employees' annual salary (exclusive of insurance and pension benefits). As to the remaining five employees the premiums in each instance are five per cent of the employee's annual salary (exclusive of insurance and pension benefits). As to the first five employees, two per cent of the premiums in each instance would be considered as salary, whereas no part of the premiums will be considered as salary in the case of the second group of employees.

Premiums paid by an employer on policies of group life insurance without cash surrender value covering the lives of his employees, or on policies of group health or accident insurance, the beneficiaries of which are designated by such employees do not constitute salary (regardless of the amount of salary otherwise received annually by such employees).

§ 809.977l *Approval by Commissioner.*

§ 1002.9 *Approval by Commissioner.* Wherever the terms "approval by the Commissioner" and "determination by the Commissioner" are used in these regulations they shall, except as otherwise provided, include an approval or determination by a regional officer of the Salary Stabilization Unit established by the Commissioner under Treasury Decision 5176, which officer is authorized to make such determination. If an approval or determination made by such regional officer is subsequently modified or reversed by the Commissioner, such approval or determination shall be deemed to have been continuously in effect from its original date until the first day of the pay-roll period following reversal or modification, or until such later date as the Commissioner may provide in his ruling.

To illustrate, an employer obtains the approval of a regional officer of the Salary Stabilization Unit that a proposed increase in certain salaries is permissible. The approval is given on January 2, 1943, and the salary increase is to become effective January 15, 1943. On March 15, 1943, the Commissioner determines that the salary increase was not proper and reverses the approval given by the regional officer. The Commissioner provides in his ruling that the increase in salary shall be discontinued after March 31, 1943. For purposes of these regulations, no part of the salary for the period between January 15 and March 31 shall be considered to have been in contravention of the act.

§ 809.977m *Amount of salary payment.*

§ 1002.10 *Amount of salary payment.* The General Regulations, provide that the Commissioner, except as otherwise provided in Executive Order 9299 of February 4, 1943, prescribing regulations and procedure with respect to wage and salary adjustments for employees subject to the Railway Labor Act shall have authority to determine, under regulations to be prescribed by the Commissioner with the approval of the Secretary of the Treasury, whether salary payments are made in contravention of the act. The Commissioner's jurisdiction is confined to cases where the rate at which the salary, exclusive of bonuses and additional compensation and without regard to the contemplated adjustment, computed on an annual basis is:

(a) In excess of $5,000.00 per annum, in the case of individuals employed in any capacity whatsoever; and

(b) $5,000.00 or less per annum in the case of individuals (1) who are employed in bona fide executive, administrative, or professional capacities and (2) who in their relations with their employer are not represented by duly recognized or certified labor organizations and (3) whose services are not within the meaning of "agricultural labor" as defined in paragraph (l) of § 4001.1 of the General Regulations.

Other salary payments are subject either to the jurisdiction of the Board or the War Food Administrator, as prescribed in the General Regulations. If, for example, the rate of salary, exclusive of bonuses and additional compensation, is to be increased from $4,500.00 per annum to $5,200.00 per annum (and subparagraph (2) is inapplicable), approval of such increase, if required, must be obtained from the Board.

§ 809.977n *Conclusiveness of determination.*

§ 1002.11 *Conclusiveness of determinations.* (a) Any determination by the Commissioner that a salary payment is in contravention of the Act is conclusive in every respect upon all executive departments and

agencies of the Federal Government for the following purposes:

(1) Determining costs or expenses of any employer for the purpose of any law or regulation, either heretofore or hereafter enacted or promulgated, including the Emergency Price Control Act of 1942, or any maximum price regulation thereunder;

(2) Calculating deductions under the revenue laws of the United States; or

(3) Determining costs or expenses under any contract made by or on behalf of the United States.

(b) Any such determination of the Commissioner is final and not subject to review by The Tax Court of the United States or by any court in any civil proceedings. Nothing herein is intended, however, to deny the right of any employer or employee to contest in The Tax Court of the United States or in any court of competent jurisdiction the validity of:

(1) Any provision of these regulations, on the ground such provision is not authorized by law, or

(2) Any action taken or determination made under these regulations, on the ground that such action or determination is not authorized, or has not been taken or made in a manner required, by law.

§ 809.977o *Geographical scope.*

§ 1002.12 *Geographical scope.* The provisions of these regulations shall not apply to salaries in any Territory or possession of the United States, except Alaska and Hawaii.

§ 809.977p *Commissioner's approval required.*

§ 1002.13 *Commissioner's approval required.* Section 1 of the act provides in effect that salaries, so far as practicable, shall be stabilized at the levels which existed on September 15, 1942. In the case of a salary rate of $5,000 or less per annum existing on October 27, 1942, or established thereafter in compliance with these regulations, and in the case of a salary rate of more than $5,000 per annum existing on October 3, 1942, or established thereafter in compliance with these regulations, no increase shall be made by the employer, except as provided in section 1002.14, without prior approval of such increase by the Commissioner. Any salary increase made before the required approval of the Commissioner is obtained is from the date of such increase in contravention of the act. (See §§ 1002.28 and 1002.29 for the consequences of a salary payment made in contravention of the act.) The Commissioner may, however, approve an increase in salary rate to be effective as of the date of the application for approval.

The burden of justifying an increase in salary rate shall in every instance be upon the employer seeking to make such increase. Increases in salary rates will not be approved except in the following cases:

(1) Such increases as are clearly necessary to correct substandards of living.

(2) Such adjustments as may be deemed appropriate by the Commissioner and have not heretofore been made to compensate in accordance with the Little Steel formula as heretofore defined by the Board, for the rise in the cost of living between January 1, 1941, and May 1, 1942.

(3) Salary revisions clearly necessary to adjust salaries up to the minimum of the tested and growing rates paid for the same work in the same or most nearly comparable plants or establishments in the same labor market, except in rare and unusual cases, in which the critical needs of war production require the setting of a salary at some point above the minimum of the going salary bracket.

(4) Reasonable adjustments may be made with the approval of the Commissioner in case of promotions, reclassifications, merit increases, incentive wages, or the like, provided that such adjustments do not increase the level of production cost appreciably or furnish the basis either to increase prices or to resist otherwise justifiable reduction in prices.

In connection with the approval of wage and salary adjustments necessary to eliminate substandards of living or to give effect to the Little Steel formula or in connection with the adoption of a longer work week, salary adjustments may be approved for workers in immediately interrelated job classifications to the extent required to keep the minimum differentials between immediately interrelated job classifications necessary for the maintenance of production efficiency. Such adjustments are to be tapered off rigorously in application to higher job classifications so as to apply only to the extent necessary for productive efficiency in the interrelated job classifications.

A promise made by an employer to his employees prior to October 3, 1942, that salaries would be increased in the future is generally to be ignored in determining whether an increase after that date should be approved. The same rule is applicable with respect to a promise made by an employer prior to October 27, 1942, in the case of employees whose salary rates are $5000.00 or less per annum.

An employer who has established a new job classification, or who has begun business, after October 3, 1942, must obtain approval of the Commissioner for the payment of salaries for such job classification or in such new business; *Provided, however,* That if the salary rates in question are not in excess of the minimum of those prevailing for similar job classifications within his own organization or if no such rates are available, then within the local area on September 15, 1942, the approval of the Commissioner is not required. An increase in a salary rate for a job classification established after October 3, 1942, shall be subject to the limitations provided in this subpart.

A mere change in the name, organization, or financial structure of an employer, whether such employer be an individual, partnership or corporation, will not in itself be sufficient for a finding that, for the purposes of these regulations, a new business has been begun or new job classifications established after such change.

Any change in a salary rate, regardless of its effective date, which results from an award or decision of an arbitrator or referee made after October 3, 1942, in the case of salaries of more than $5,000 per annum, and after October 27, 1942 in the case of salaries of $5,000 or less per annum, is subject to the provisions of these regulations notwithstanding that the agreement or order for arbitration or reference was made on or before October 3, 1942 or October 27, 1942, as the case may be.

Unless otherwise expressly exempted, any change in a salary rate, provided for in any agreement existing as of October 3, 1942 in the case of salaries of more than $5,000 per annum, or as of October 27, 1942 in the case of salaries of $5,000 or less per annum, which is to take effect at some future date or on the happening of some future event, is subject to the provisions of these regulations regardless of when the agreement was made.

Payment for overtime will constitute an increase in salary rate and thus will require the approval of the Commissioner, unless the customary practice of the employer has been to pay for overtime and the rate and scheduled number of overtime hours of work have not been changed. Pay in lieu of vacations to employees receiving in excess of $7,500.00 a year does not require the prior approval of the Commissioner if computed in accordance with a vacation policy established prior to October 3, 1942, and if computed at not in excess of the straight time rate for the normal (unextended) work week.

Except as may be otherwise provided from time to time by the Commissioner, an application for the approval of a salary increase shall be filed by the employer with the regional office of the Salary Stabilization Unit of the Bureau of Internal Revenue in whose territorial jurisdiction the main office or principal place of business of the employer is located. Such application shall be filed on forms prescribed by the Commissioner and shall contain such information as may be required by the Commissioner.

(a) Where an employer has numerous employees on a weekly salary basis and who receive stipulated salaries for a week comprised of 48 hours of work, without provision for overtime compensation, approval by Commissioner of Internal Revenue is required to increase weekly salaries on a pro rata hourly basis for all hours worked in excess of 48. Likewise, approval of the Commissioner is required to effect a pro rata hourly reduction of the weekly salaries under the same circumstances (letter of Commissioner of Internal Revenue dated December 22, 1942).

(b) Where an employer has numerous employees who receive stipulated salaries per week of 40 hours of work with provision for time and one-half compensation for all hours worked in excess of 40 per week, approval of Commissioner of Internal Revenue is required to increase the base weekly salary for 40 hours of work but not for pro rata overtime (letter of Commissioner of Internal Revenue dated December 22, 1942).

§ 809.977q *Commissioner's approval not required.*

§1002.14 *Commissioner's approval not required.* The Commissioner's approval is not required where a reasonable increase in the rate at which the salary, exclusive of bonuses and additional compensation, is computed, is made both in accordance with the terms of a salary agreement or salary rate schedule in effect on October 3, 1942, or approved thereafter by the Commissioner, and is a result of:

(1) Individual promotions or reclassifications,

(2) Individual merit increases within established salary rate ranges.

(3) Operation of an established plan of salary increases based on length of service within established salary rate ranges,

(4) Increased productivity under incentive plans,

(5) Operation of a trainee system, or

(6) Such other reasons or circumstances as may be prescribed in rulings or regulations promulgated by the Commissioner from time to time.

For purposes of this section, the term "salary plan" or "salary rate schedule" may include a salary policy in effect on October 3, 1942, even though not evidenced by written contracts or written rate schedules. For example, a salary policy may be determined from previous payroll records or other payroll data. The existence of such policy, however, must be established to the satisfaction of the Commissioner, and the burden of proof rests upon the employer. In such cases, the employer in advance of making an increase in salary rate may reduce the salary policy to writing and secure approval thereof by the Commissioner. Top salary rate of a given job classification shall not be increased, without approval, to a salary in excess of a maxi-

mum salary paid for the given job classification for a period of years prior to October 3, 1942. Promotions and reclassifications for the purposes of this section comprehend only cases involving materially increased responsibilities or a substantial change in the nature of the work performed. Merit increases within a given salary range and increases based upon length of service shall not exceed in frequency or in maximum amount the frequency or maximum amount given in such positions in that salary range during normal periods as established by the employer's records or for a period of years to October 3, 1942, and there shall be no substantial increase in the average salary in any given salary range.

Except as provided in the following sentence, a bonus or other form of additional compensation which does not exceed in amount the bonus or other additional compensation to such employee for the last bonus year ending before October 3, 1942, does not require approval by the Commissioners, provided the employee has not been allowed or received an adjustment in his salary rate since October 3, 1942, or October 27, 1942, as the case may be. A bonus regularly paid based upon a fixed percentage of salary (exclusive of bonuses and additional compensation) where the percentage has not been changed does not require approval by the Commissioner even though the amount may be increased due to an increase in salary (exclusive of bonuses and additional compensation) authorized under these regulations. Any other bonus or other form of additional compensation requires approval by the Commissioner.

The term "last bonus year" ending before October 3, 1942, means the employer's last accounting year, calendar or fiscal, ending prior to that date. For example, an employer operating on a fiscal year ending on August 31, would have as his last bonus year prior to October 3, 1942, the fiscal year ending August 31, 1942.

With respect to the limitation on the effect of increases made under this section, see § 1002.14 (a).

The provisions of this section may be illustrated as follows:

(1) The X Corporation began business in 1940. As of July 1, 1942, pursuant to a corporate resolution duly passed in January 1942, all of its salaried employees received more than $5,000 per annum. No approval of the Commissioner is required to increase the salary of an employee who is promoted in November 1942 from a salesman to general manager and who receives a salary within the salary range paid previously to individuals occupying the position of general manager.

(2) The X Corporation in December 1942 wishes to establish a new salary rate schedule raising the level of compensation of all its salaried employees. Approval by the Commissioner of such schedule is required. Assuming that such approval has been obtained, further approval by the Commissioner of any adjustment under such schedule coming within this section is not required.

(3) The Y Corporation begins business on November 1, 1942. The salaries paid by it to its employees are commensurate with salaries paid by other employers in comparable businesses in the same local area. Payment of such salaries does not require the approval of the Commissioner. Any increase in salary rates, however, requires the approval of the Commissioner.

(4) The M Corporation, which has manufactured furniture since 1925, is reorganized in November 1942 and emerges from the reorganization proceedings as the N Corporation. There is no change in the nature of the business although there is a substantial alteration in the financial structure of the company. The N Corporation is not to be treated as a new employer beginning business after October 27, 1942. Consequently, any general increase in salaries over and above those paid by the M Corporation requires the prior approval of the Commissioner.

(5) Employees of the Z Corporation have customarily received a bonus of 5 percent of their annual salary at the end of each calendar year. If, for example, one of the employees received $6,000 in 1941 but received salary of $7,000 in 1942 due to a salary increase on July 1, 1942, a bonus of $350 may be paid to him for 1942 without prior approval of the Commissioner, notwithstanding that his bonus for 1941 was only $300.

(a) *Bonuses.* On November 14, 1943, the Commissioner of Internal Revenue issued a statement to guide employers in determining what bonus payments may be made to employees under his jurisdiction without formal application for approval under the salary stabilization program. Subject to certain limitations, the general effect of the Commissioner's statement was to enable employers to pay bonuses without obtaining prior approval if the bonuses do not exceed amounts paid the 1941–1942 period.

While the statement outlined the conditions under which bonus payments may be made without prior approval, the Commissioner explained that other types of bonuses may also be paid, if submitted to him for approval and receive his approval. The purpose of the statement was to advise employers that no application for approval is necessary to pay bonuses for the bonus year 1943 or subsequent years, if such bonuses meet any one of the following conditions:

(1) If the employee's base salary has not been increased since October 3, 1942 (in the case of salaries of more than $5,000 per annum), or October 27, 1942 (in the case of salaries of $5,000 or less per annum), as the case may be, he may be paid a bonus which does not exceed the higher of the following amounts:

(i) The dollar amount paid for the employer's last accounting year ended prior to October 3, 1942, or

(ii) The dollar amount of a bonus authorized under the Salary Stabilization regulations for the employer's first accounting year ending after October 3, 1942, provided the bonus does not exceed 50 per cent of the base salary.

(2) If the employee's base salary has been increased since October 3, 1942, he may be paid a bonus not to exceed the same dollar amount of bonus paid him for the employer's first accounting year ending after October 3, 1942, provided the bonus does not exceed 20 per cent of his present base salary.

(3) If the employee has been paid regularly, in accordance with an established policy of the employer, a bonus based on a percentage of base salary, such bonus payment may be made, regardless of dollar amount, provided the percentage has not been changed since October 3, 1942, or October 2, 1942, as the case may be.

(4) An employee may also be paid a bonus which, together with all other compensation for personal services, does not increase his total compensation for the current year over the total earned in the calendar year 1941 by more than

(i) 15 per cent if the total compensation for the year 1941 was $2,400 or less, (ii) 10 per cent if the total compensation for the year 1941 was over $2,400 but not over $4,000, (iii) five per cent if the total compensation for the year 1941 was over $4,000 but not over $7,500.

Base salary for purposes of the statement means salary exclusive of bonuses and other forms of additional compensation.

(b) The salary schedules for nonmanual employees contained in Construction Contract Board Form 5 used by the Office of the Chief of Engineers have been ruled by the Commissioner of Internal Revenue to be salary rate schedules within the meaning of § 1002.14 of the regulations and salary increases and promotions within the limits of these schedules may be made without prior approval of the Commissioner, for employees who come within the jurisdiction of the Commissioner. Prior approval, however, must be obtained in any case where salary increases are made beyond the limits set forth in such schedules (letter of Commissioner of Internal Revenue dated December 22, 1942).

(c) *Limitation on effect of increase.*

§ 1002.14 *Commissioner's approval not required.* * * *

(a) *Limitation on effect of increase.* No increase in salary rate, whether made with the approval of the Commissioner or not requiring his approval, shall increase the level of production costs appreciably or furnish the basis either to increase prices or to resist otherwise justifiable reductions in prices or furnish the basis for further wage or salary increases.

§ 809.977r *Salaries under $5,000.*

§ 1002.15 *Salaries under $5,000.* In the case of a salary rate existing as of the close of October 3, 1942, or established thereafter in compliance with these regulations, under which an employee is paid a salary of less than $5,000 per annum for any particular work, the general rule is that no decrease can be made by the employer in such salary rate below the highest salary rate paid for such work in the local area between January 1, 1942 and September 15, 1942. A decrease is permitted, however, with the approval of the Commissioner, in order to correct a gross inequity in any case or to aid in the effective prosecution of the war. Where such decrease is permitted the salary rate may be reduced below the highest salary rate paid for the work in question between January 1, 1942 and September 15, 1942. Except as otherwise provided in this section, any decrease in such salary rate after October 3, 1942 shall be considered in contravention of the Act if it is made prior to the approval thereof by the Commissioner.

Except as may be otherwise provided from time to time by the Commissioner, an application for approval of any salary decrease shall be filed in the same manner as in the case of an application for approval of a salary increase. See § 1002.13 of these regulations.

The Commissioner's approval is not required, for example, in the following cases where salary decreases are made after October 3, 1942:

(1) The new salary rate does not fall below the highest salary rate existing between January 1, 1942 and September 15, 1942 for the particular work in question or for the same or comparable work in the local area.

(2) An employee has been demoted to a lower position than that filled by him between January 1, 1942 and September 15, 1942 and the salary rate for such lower posi-

tion is not less than the highest salary rate existing for that position during the same period.

(3) An employee has been relieved of substantial duties and responsibilities.

A disparity between salaries paid by a particular employer and those paid by employers generally in the local area does not necessarily constitute justification for decrease in salary rates paid by such employer. The words "for any particular work" in the first sentence of this section refers to the particular work of the particular employee and not to a particular type of work.

§ 809.977s *Salaries over $5,000.*

§ 1002.16 *Salaries over $5,000.* In the case of a salary rate existing as of the close of October 3, 1942, or established thereafter in compliance with these regulations, under which an employee is paid a salary of more than $5,000 per annum, the employer is permitted to make, without approval by the Commissioner, a decrease to a rate not less than $5,000 per annum. If, however, by virtue of a decrease the new salary paid to the employee is less than $5,000 per annum, then the decrease below $5,000 per annum is subject to the limitations of § 1002.15 of these regulations. To the extent that prior approval by the Commissioner of a decrease is not required under § 1002.15 or this section, such decrease shall not be considered as being in contravention of the act.

§ 809.977t *State and local employees.*

§ 1002.17 *State and local employees.* An adjustment in salaries (not fixed by statute, see § 1002.32) may be made by a State, or any political subdivision thereof, the District of Columbia, or any agency or instrumentality of any of the foregoing in all cases where such adjustment is of the type referred to in § 1002.13. Any such adjustment will be deemed to have received the approval of the Commissioner.

§ 809.977u *Basic allowance* (§ *1002.18*) (The section formerly appearing at this section was rescinded by section 4 (b), act of April 11, 1943, Public Law 34, 78th Congress. See footnote to § 809.975 (a) (7).)

§ 809.977v *Charitable contributions* (§ *1002.19*). (The section formerly appearing at this section was rescinded by section 4 (b), act of April 11, 1943, Public Law 34, 78th Congress. See footnote to § 809.975 (a) (7).)

§ 809.977w *Insurance premiums* (§ *1002.20*). (The section formerly appearing at this section was rescinded by section 4 (b), act of April 11, 1943, Public Law 34, 78th Congress. See footnote to § 809.975 (a) (7).)

§ 809.977x *Fixed obligations* (§ *1002.21*). (The section formerly appearing at this section was rescinded by section 4 (b), act of April 11, 1943, Public Law 34, 78th Congress. See footnote to § 809.975 (a) (7).)

§ 809.977y *Federal taxes* (§ *1002.22*). (The section formerly appearing at this section was rescinded by section 4 (b), act of April 11, 1943, Public Law 34, 78th Congress. See footnote to § 809.975 (a) (7).)

§ 809.977z *Multiple employers* (§ *1002.23*). (The section formerly appearing at this section was rescinded by section 4 (b), act of April 11, 1943, Public Law 34, 78th Congress. See footnote to § 809.975 (a) (7).)

§ 809.977aa *Limitation on 1942 salaries* (§ *1002.24*). (The section formerly appearing at this section was rescinded by section 4 (b), act of April 11, 1942, Public Law 34, 78th Congress. See footnote to § 809.975 (a) (7).)

§ 809.977bb *Community property* (§ *1002.25*). (The section formerly appearing at this section was rescinded by section 4 (b), act of April 11, 1942, Public Law 34, 78th Congress. See footnote to § 809.975 (a) (7).)

§ 809.977cc *Taxable year.*

§ 1002.26 *Taxable year.* For purposes of Subparts F and G of these regulations, the term "taxable year" of an employee shall mean the calendar year during which the salary in question is paid or authorized to be paid to or accrued to the account of such employee or received by him. This rule is applicable regardless of whether the employer or employee, or both, file Federal income tax returns for a fiscal year or report income, for Federal income tax purposes, on an accrual basis or on the cash receipts and disbursements basis.

§ 809.977dd *Effective date* (§*1002.27*). (The section formerly appearing at this paragraph was rescinded by section 4 (b), act of April 11, 1942, Public Law 34, 78th Congress. See footnote to § 809.975 (a) (7).)

§ 809.977ee *Amounts disregarded.*

§ 1002.28 *Amounts disregarded.* (a) Section 5 (a) of the act provides in effect that the President shall prescribe the extent to which any salary payment made in contravention of regulations promulgated under the act shall be disregarded by executive departments and other governmental agencies in determining the costs or expences of any employer for the purposes of any other law or regulation. In any case where a salary payment is determined by the Commissioner to have been made in contravention of the act, the entire amount of such payment is to be disregarded by all executive departments and all other agencies of the Federal Government for the purposes of:

(1) Determining costs or expenses of any employer for the purpose of any law or regulation, either heretofore or hereafter enacted or promulgated, including the Emergency Price Control Act of 1942, or any maximum price regulation thereof;

(2) Calculating deductions under the revenue laws of the United States; or

(3) Determining costs or expenses under any contract made by or on behalf of the United States.

A payment in contravention of the act may be disregarded for more than one of the foregoing purposes.

(b) In the case of salaries decreased in contravention of the act, the amount to be disregarded, as required by paragraph (a) of this section, is the amount of the salary actually paid or accrued by the employer at the reduced rate. Thus, if, for example, on November 1, 1942, a weekly salary rate of $100 has been unjustifiably reduced to $50 for the remainder of the calendar year 1942, the amount to be disregarded under paragraph (a) of this section is the total amount of salary paid at the weekly rate of $50.

(c) In the case of salaries increased in contravention of the act, the amount to be disregarded, as required by paragraph (a) of this section, is the amount of the salary actually paid or accrued by the employer at the increased rate and not merely an amount representing an increase in such salary. Thus, if, for example, on November 1, 1942, a weekly salary rate of $100 is unjustifiably increased to $150 for the remainder of 1942, then the amount of salary to be disregarded for purposes of paragraph (a) of this section is the total amount paid at the weekly rate of $150. Also, if, for example, on February 1, 1943, a weekly salary rate of $100 is increased to $150 without prior required approval, but is restored to $100 on June 1, 1943 after formal disapproval by the Commissioner or regional officer, then the amount of salary to be disregarded for purposes of paragraph (a) of this section is the total amount at the weekly rate of $150. Neither in the cases described in this paragraph nor in the case described in paragraph (b) of this section are the total amounts paid at the weekly rate of $100 to be disregarded for purposes of paragraph (a) of this section. (See § 1002.30 relating to salary allowances under section 23 (a) of the Code.)

§ 809.977 ff *Criminal penalties.*

§ 1002.29 *Criminal penalties.* Section 5 (a) of the act provides in substance that no employer shall pay, and no employee shall receive, any salaries in contravention of the regulations promulgated by the President under the act. Section 11 of the act provides that any person, whether an employer or employee, who wilfully violates any provision of the act or of any regulations promulgated thereunder, shall be subject, upon conviction, to a fine of not more than $1,000, or to imprisonment for not more than one year, or to both such fine and imprisonment.

§ 809.977 gg *Salary allowances under Code.*

§ 1002.30 *Salary allowances under Code.* Under section 23 (a) of the Code reasonable allowances for salaries are allowed as deductions in computing net income. The tests which determine whether an allowance for salaries paid or accrued is reasonable within the meaning of section 23 (a) of the Code are in nowise suspended by any provision of these regulations. An employer may be exempt from the operation of these regulations yet be denied deductions for purposes of section 23 (a) of the Code with respect to the salaries paid or accrued by him.

§ 809.977 hh *Exempt employers.*

§ 1002.31 *Exempt employers.* The provisions of these regulations shall not apply in the case of an employer who employs eight or less individuals in a single business. An employer is subject to the provisions of these regulations if at the time a salary increase is to take effect he has in his employ more than eight individuals in a single business. It is not necessary that each employee be paid a salary provided all the individuals employed receive compensation for their personal services. If it is subsequently determined that the number of employees has been temporarily reduced by the employer, or that the employer has utilized any other improper device, for the sole purpose of claiming the exemption provided in the General Regulations and these regulations, then such exemption shall be deemed to have been improperly obtained and of no force or effect.

An employer may be exempt under this section notwithstanding that shortly after the effective date of a salary increase he enlarges his personnel in good faith to more than eight employees. Any further adjustment in salary will then be subject to the provisions of these regulations.

§ 809.977 ii *Statutory salaries.*

§ 1002.33 *Statutory salaries.* The provisions of these regulations are applicable in every respect to any salary paid by the United States, any State, Territory, or possession or political subdivision thereof, the District of Columbia, or any agency or instrumentality of any one or more of the foregoing, except where the amount of such salary is fixed by statute. The term "statute" for purposes of

this section does not include a municipal ordinance or resolution enacted by a governmental unit inferior to a State, Territory, or possession. Salaries covered by the Federal Classification Act of 1933, as amended, are excluded from the operation of these regulations. Likewise, salaries, for example, of public school teachers which are paid under salary schedules fixed by a state legislature and providing for mandatory increments are excluded from the operation of these regulations. See § 1002.17.

§ 809.977jj *Services in foreign countries.*

§ 1002.33 *Services in foreign countries.* The provisions of these regulations shall not be applicable in the case of any individual employer, resident in the United States or any Territory or possession thereof, or of a corporate employer organized under the laws of the United States or any State, Territory or possession, with respect to salaries paid by such employers to employees for services rendered exclusively in foreign countries.

§ 809.977kk *Foreign employers.*

§ 1002.34 *Foreign employers.* The provisions of these regulations shall not be applicable in the case of nonresident foreign employers except that if any salary is paid to an employee residing in the United States payment of such salary is subject to all the provisions of these regulations.

§ 809.977ll *Functions and jurisdictions of the Salary Stabilization Unit and its regional offices.* On January 19, 1943 the Commissioner of Internal Revenue issued seventeen procedural regulations relating to the functions and jurisdictions of the Salary Stabilization Unit and its Regional Offices. These regulations are set forth in the succeeding paragraphs which are designated (a) to (o).

(a) *Duties of Deputy Commissioner.*

1. *Duties of Deputy Commissioner.* The Deputy Commissioner, Salary Stabilization Unit, will exclusively represent the Commissioner in administering those provisions of the Executive Order of October 3, 1942 (No. 9250) and the Director's and Commissioner's regulations issued thereunder which relate to the stabilization and limitation of salaries in excess of $5,000 per annum, and of salaries not in excess of $5,000 per annum paid to executive, administrative, and professional employees not represented by a recognized labor organization.

(b) *Regional offices.* See § 809.977c (a) for list of the regional offices of the Salary Stabilization Unit, their addresses and jurisdictions.

(c) *Regional officers and employees.*

3. *Regional officers and employees.* Each salary stabilization office will be under the immediate supervision of a head, who will perform his duties under the direction of the Deputy Commissioner, and will represent the Commissioner and Deputy Commissioner in administering, within the territory assigned to his office, the above-specified provisions of Executive Order 9250 and the regulations issued thereunder. Each salary stabilization office may also have an assistant head, a counsel, and such number of conferees, clerks, and other employees as the Deputy Commissioner may from time to time find necessary.

(d) *Applications for approval of salary adjustments.*

4. *Applications for approval of salary adjustments.* (a) Except as provided in subparagraphs (b) and (c) hereof, every application under §§ 1002.13, 1002.15, or 1002.16 of the Salary Stabilization Regulations[1] for approval of an increase or decrease in a salary rate within the Commissioner's jurisdiction, shall be submitted by the employer on Form SSU 1 in triplicate, or in any alternative manner authorized by the instructions on that form, to the head of the regional office serving the area within which the employer's principal office or place of business is located, and shall be within that officer's jurisdiction; but jurisdiction of any such application may, by direction of the Deputy Commissioner, be transferred to any other regional office. If under exceptional circumstances he deems it necessary in the interest of efficient administration, the Deputy Commissioner may also assume original jurisdiction of any application.

(b) If the Commissioner has delegated to any other officer or agency his authority to approve or disapprove adjustments in the salaries of employees of any class or group, applications for approval of such adjustments shall be made to the officer or agency to whom such authority has been delegated, in the form and manner prescribed by such officer or agency.[2]

(c) No application or notice to the Commissioner will be required for adjustments in the salaries of employees of State or local governments, if made to correct maladjustments, inequalities, or gross inequities.

CROSS REFERENCE: See § 809.976m (b)).

(e) *Applications for approval of salary-rate schedules.*

5. *Applications for approval of salary-rate schedules.* Every application for approval of a proposed new salary-rate schedule or proposed general modification of an existing salary-rate schedule shall be submitted by the employer in triplicate to the head of the regional office within whose territorial jurisdiction the employer's principal office or place of business is located. Jurisdiction of any such application may be transferred to another regional office or assumed by the Deputy Commissioner as provided in paragraph 4 (a) hereof. After approval by the head of a regional office or by the Deputy Commissioner, a new or modified salary-rate schedule will have the same effect, in obviating the necessity for approval of individual salary-rate changes, as a salary-rate schedule in effect October 3, 1942.

(f) *Applications for rulings respecting exemptions.*

6. *Applications for ratings respecting exemptions.* Every application for a ruling as to whether a proposed salary adjustment is exempt from the requirements of the Director's and Commissioner's regulations relative to prior approval by the Commissioner shall be submitted by the employer on Form SSU 2 in triplicate to the head of the regional office serving the area within which the employer's principal office or place of business is located, and shall be within that officer's jurisdiction, subject to the provisions of paragraph (d) (1) hereof regarding transfers of jurisdiction and assumption of jurisdiction by the Deputy Commissioner.

(g) *Applications for authorization of salaries in excess of the $25,000 limit.* (The section formerly appearing at this paragraph was rescinded by section 4 (b), act of April 11, 1943, Public Law 34, 78th Congress. See footnote to § 809.975 (a) (7).)

(h) *Signature and verification of applications.*

8. *Signature and verification of applications.* Every application shall be signed by the applicant, or in the applicant's name by a duly authorized person; shall set forth fully the facts on which it is based, as required by the appropriate application form; and shall be sworn to before a deputy collector, notary public, or other officer authorized to administer oaths. If the applicant is a partnership, the application shall be executed in the partnership's name by one of the partners. If the applicant is a corporation, the application shall be executed in the name of the corporation by one of its principal officers. Statements of fact made in any application may be verified by the head of the regional office having jurisdiction, insofar as he deems it necessary and practicable under the circumstances. For that purpose he may refer an application for investigation to the appropriate internal revenue agent in charge, special agent in charge, or collector of internal revenue, and may require such further evidence in substantiation of the statements made in the application as he may deem necessary in order to reach a decision thereon.

(i) *Conferences.*

9. *Conferences.* The head of the regional office having jurisdiction of an application, or any of his legal or technical assistants, may grant a conference to the applicant or his representative when deemed advisable or when requested by the applicant but only after the applicant has complied with the provisions of paragraphs 4, 5, 6 and 8.[1] At any such conference the applicant may be represented by a responsible officer or a duly authorized regular employee whose salary is not covered by the application. Any other representative must submit a power of attorney authorizing him to represent the applicant on salary stabilization matters and must also submit evidence of enrollment in accordance with the Conference and Practice Requirements of the Bureau, as revised February 1942. If additional facts are brought out at a conference they must be reduced to writing and sworn to as provided in paragraph 8[2] before they will be considered as a basis for a decision.

(j) *Authority of heads of regional offices.*

10. *Authority of heads of regional offices.* The head of the regional office having jurisdiction of any application will have authority to approve or disapprove it for the Commissioner, wholly or in part, and his decision shall be deemed to be the Commissioner's determination under § 4001.4 of the general regulations of the Economic Stabilization Director[3] (§§ 1002.10 and 1002.11 of the Salary Stabilization Regulations)[4] unless and until modified or reversed as provided in paragraphs 13 and 14[5] hereof; but any such decision may be set aside by the Commissioner if he finds that it has been arrived at through fraud, collusion, or misrepresentation of a material fact.

(k) *Decisions and rulings.*

11. *Decisions and rulings.* (a) Every decision approving or disapproving, wholly or in part, an increase or decrease in a salary rate, a new or modified salary agreement or salary-rate schedule, will be set forth in a memorandum, to be known as a "decision memorandum," which will show the name and address of the applicant, the precise nature of

[1] §§ 809.977p, 809.977r and 809.977s.

[2] For delegation by the Commissioner to the Secretary of War as to certain salary adjustments see § 809.977aaa.

[1] Paragraphs (d), (e), (f) and (h).

[2] Paragraph (h).

[3] § 809.976d.

[4] §§ 809.977m and 809.977n.

[5] Paragraphs (m) and (n).

the proposed action for which the Commissioner's approval is requested, and the decision with respect thereto. Every such memorandum will be signed by the head of the regional office, or by the Deputy Commissioner, in his own name, following the words "By direction of the Commissioner." The original will be transmitted promptly to the applicant, and copies of decisions made by the heads of regional offices will be forwarded promptly to the Deputy Commissioner. Every decision memorandum approving an application, wholly or in part, will be supported by a concise statement, on a separate sheet, of the reasons for approval. Every adverse decision memorandum will be accompanied by a copy of the regional office's letter to the applicant disapproving his application, which letter will include a concise statement of the reasons for disapproval. Copies of decision memorandums will also be furnished to such officers of the Internal Revenue Bureau and other Government agencies as the Commissioner may from time to time direct.

(b) Rulings with respect to exemptions will be prepared, signed, and dispatched by heads of regional offices, or by the Deputy Commissioner, in the same manner as decision memorandums.

(l) *Determinations respecting salaries paid.*

12. *Determinations respecting salaries paid.* (a) On request of any collector of internal revenue, internal revenue agent in charge, or special agent in charge whose office is located within the territorial jurisdiction of any salary stabilization office, the head thereof will determine whether any salary payment within the Commissioner's jurisdiction was made in contravention of the regulations of the Economic Stabilization Director and the Commissioner, and will set forth his finding in a decision memorandum as provided in paragraph 11 (a) hereof.[1] If he finds that any such payment is not in contravention of the regulations, he will send his decision memorandum to the officer making the request (at the same time forwarding as many copies thereof to the Deputy Commissioner, Salary Stabilization Unit, as that officer may prescribe). If he finds that any such payment is in contravention of the regulations, he will submit his decision memorandum to the Deputy Commissioner for approval before transmitting it to the officer making the request. If, in the judgment of the head of the regional office, there is serious doubt as to whether any payment is or is not in contravention of the regulations, he may request advice from the Deputy Commissioner before making a decision. Unless and until modified or reversed as provided in paragraphs 13 to 15[2] hereof, a determination by the head of a regional office of the Salary Stabilization Unit shall be deemed to be the Commissioner's determination under § 4001.4 of the Director's general regulations[3] (§§ 1002.10 and 1002.11 of the Salary Stabilization Regulations).[4]

(b) At the direction of the Commissioner, similar determinations will be made at the request of duly authorized officers of any other Government agency.

(m) *Reconsideration and review.*

13. *Reconsideration and review of decisions.* If an application is disapproved wholly or in part and the applicant believes that all the facts in the case have not been fully presented and considered, he may submit a request for reconsideration to the head of the regional office having jurisdiction. Every such request shall be submitted in triplicate, shall be executed under oath in the manner provided by paragraph 8,[1] and shall set forth fully all the additional facts on which the applicant relies. The regional office having jurisdiction will examine every such request and may grant a conference thereon, if deemed advisable or if requested by the applicant, under the conditions set forth in paragraph 9;[2] but no such conference will be arranged until the regional office has had opportunity to consider the additional facts set forth in the request for reconsideration. On reconsideration, the head of the regional office may modify his prior decision if he finds that the facts warrant such action.

(m–1) *Review by Deputy Commissioner.*

13a. An applicant may request that the decision of the head of the regional office be reviewed by the Deputy Commissioner. If the applicant relies on additional facts as the basis for such a review, he shall submit with his request a full statement of such facts in triplicate, duly sworn to as provided in paragraph 8 hereof.[1] If the applicant does not wish to present additional facts as a basis for review, he shall so state in his request for review. If, on examination of any additional facts submitted, the head of the regional office finds grounds for considering the case further, he may proceed as provided in paragraph 13.[2] Otherwise, he will forward the file promptly to the Deputy Commissioner with a concise statement of the reasons for disapproval or partial disapproval of the application.

(n) *Review of application.*

14. On receipt in the Deputy Commissioner's office, every such request for review will be examined to determine whether or not it makes a prima facie showing of error on the part of the head of the regional office. If in the Deputy Commissioner's judgment it does not do so, the request will be denied. In cases in which a prima facie showing of error has been made, a conference may be granted, if deemed advisable or if requested by the applicant under the conditions set forth in paragraph 9;[2] but no such conference will be arranged until the Deputy Commissioner or his representative has had an opportunity to examine the file and determine whether further consideration of the case is warranted.

(o) *Action by Deputy Commissioner.*

15. If the Deputy Commissioner does not approve a decision of the head of a regional office, he may refer it back to such head for reconsideration, or may modify or reverse it by means of a decision memorandum signed in his own name following the words "By direction of the Commissioner." He will also sign a similar decision memorandum with respect to every application of which he assumes original jurisdiction.

(p) *Effect of modification or reversal.*

16. *Effect of modification or reversal.* If a decision with respect to any application is modified on reconsideration by the head of a regional office, or is modified or reversed by the Deputy Commissioner, such modification or reversal shall, from its effective date, be deemed to be the determination of the Commissioner under § 4001.4 of the general regulations of the Economic Stabilization Director,[4] (§§ 1002.10 and 1002.11 of the Salary Stabilization Regulations);[5] but no reversal or partial reversal of a prior decision approving an application, wholly or in part, shall take effect before the first day of the payroll period immediately following the date of such reversal, and payments for services rendered between the effective date of the prior decision and the effective date of the reversal shall not be held to be in contravention of the Salary Stabilization Regulations, T. D. 5186, except as provided in the last clause of paragraph 10 thereof.

(q) *Purposes of regulations.*

17. *Purposes of regulations.* The purposes of the salary stabilization regulations of the Economic Stabilization Director and the Commissioner, as stated in Executive Order 9250, approved October 3, 1942, are to stabilize the cost of living in accordance with the act of October 2, 1942, and to aid in the prosecution of the war. In order to carry out those purposes, salary rates prevailing on September 15, 1942, should not be increased or decreased unless necessary to correct maladjustments, inequalities or gross inequities, or to aid in the effective prosecution of the war.

§ 809.977aaa *Delegation by Commissioner of Internal Revenue to Secretary of War.* By letter dated December 24, 1942, the Commissioner of Internal Revenue delegated to the Secretary of War the authority to administer the provisions of Executive Order No. 9250, General Regulations of the Director of Economic Stabilization and the Salary Stabilization Regulations as they relate to salary adjustments, which come under the jurisdiction of the Commissioner of Internal Revenue, of all civilian employees employed by the War Department within the continental limits of United States and Alaska, the Army Exchange Service and Government-owned, privately-operated facilities of the War Department. The full text of the letter follows:

DECEMBER 24, 1942.

The Honorable the SECRETARY OF WAR.

MY DEAR MR. SECRETARY: Reference is made to your letter dated December 1, 1942, addressed to the Secretary of the Treasury, wherein it is suggested that an arrangement be adopted so that the Secretary of War may have the authority to administer the provisions of Executive Order No. 9250, General Regulations of the Director of Economic Stabilization and the Salary Stabilization Regulations, as they relate to salary adjustments which come under the jurisdiction of this office, of all civilian positions of the War Department within the continental United States and Alaska. The delegation of authority would also cover salary adjustments for personnel under the Army Exchange Service and in Government owned, privately operated plants. It is further requested that the authority delegated be exercised on behalf of the Secretary of War by the Wage Administration Section in the Civilian Personnel Division Headquarters, Services of Supply. Under the plan suggested the Wage Administration Section would have authority to act on cases covered by the policies of this office and will present to the Commissioner of Internal Revenue a request for a decision on any case not so covered. There was attached to your letter a Wage Administration Manual for ungraded civilian jobs.

In accordance with your request, there is hereby delegated to the Secretary of War, as the agent of the Commissioner, to be exercised on his behalf by the Wage Administration Section within the Civilian Personnel Division, Headquarters, Services of Supply (hereinafter referred to as the War Department Agency) authority to rule upon all applications for salary adjustments (insofar as approval thereof has been made a function of the Commissioner of Internal Revenue) covering civilian employees within the continental limits of the United States and

[1] Paragraph (k).
[2] Paragraphs (m) to (o).
[3] § 803.976d.
[4] §§ 809.977m and 809.977n.

[1] Paragraph (h).
[2] Paragraph (l).
[3] Paragraph (m).
[4] § 809.976d.
[5] § 809.977m and 809.977n.

Alaska, employed by the War Department, the Army Exchange Service and Government owned, privately operated facilities of the War Department.

This delegation is subject to the following conditions:

1. The War Department Agency, without making initial ruling thereon, may refer to the Commissioner of Internal Revenue for decision any case which in the opinion of the agency presents doubtful and disputed questions of sufficient importance to warrant direct action by the Commissioner.

2. The War Department Agency shall transmit to the Commissioner of Internal Revenue copies of its rulings and rules of procedure as they are issued and such additional data and reports as the Commissioner may from time to time deem necessary.

3. Any ruling by the War Department Agency shall be final, subject to

(a) the Commissioner's ultimate power to review rulings on his own initiative;

(b) the right of any aggrieved party to take an appeal to the Commissioner from the ruling of the War Department Agency within a period of ten days after the date of such ruling. An appeal shall be filed with the War Department Agency to be forwarded to the Commissioner for action.

Any ruling by the War Department Agency shall be deemed to be the act of the Commissioner of Internal Revenue, unless and until reversed or modified by him, and any such reversal or modification shall take effect from the date recited in the order of modification or reversal.

4. Any ruling of the War Department Agency under this delegation of authority shall be effective from the date of the receipt of the application for salary adjustment and in no case should the War Department Agency issue a ruling which would have a retroactive effect; except, however, in those cases where a salary adjustment was made in good faith and consistent with the provisions of Executive Order No. 9250, prior to the date of this letter, retroactive approval may be made if the application for approval is filed with the War Department Agency on or before January 15, 1943.

5. The "Government owned, privately operated facilites of the War Department" which are to be subject to the terms of this delegation shall be only those which are named in lists furnished from time to time to the Commissioner of Internal Revenue by the War Department Agency. The Commissioner of Internal Revenue may at any time, upon at least seven days' notice to the War Department Agency, strike from the list any facility if the Commissioner of Internal Revenue believes that the policies of the Executive Order No. 9250, the regulations promulgated by the Economic Stabilization Director and those of the Commissioner of Internal Revenue require that the Commissioner of Internal Revenue act directly upon the wage and salary adjustments of such facility.

Since the Wage Administration Section in the Headquarters, Services of Supply, has the technical staff and has made the necessary preparation to apply the provisions of the Executive Order No. 9250 and the regulations throughout the War Department, it is believed that the foregoing delegation of authority will aid in the expeditious handling of the salary adjustment program.

Very truly yours,

GUY T. HELVERING,
Commissioner.

(a) *Government-owned, privately-operated facilities.* The Government-owned, privately-operated facilities embraced within the delegation to the War Department Agency from the Commission of Internal Revenue are identical with those covered by the delegation from the National War Labor Board to the War Department Agency. For the names of such Government-owned, privately-operated facilities see § 809.980n (b).

§ 809.978 *Wage stabilization policy of the National War Labor Board.* The policy directive given the National War Labor Board by Congress and by the President is clear. Under that directive, the Board will act on the presumption that wage rates prevailing on September 15, 1942 are proper. The Board will grant wage increases over the level prevailing on September 15, 1942 only in exceptional cases and in accordance with the following paragraph of Executive Order No. 9250 of October 3, 1942:

The National War Labor Board shall not approve any increases in the wage rates prevailing on September 15, 1942, unless such increase is necessary to correct maladjustments or inequalities, to eliminate substandards of living, to correct gross inequities, or to aid in the effective prosecution of the war.

The National War Labor Board will examine carefully each claim for such exceptional treatment before approving any increase. In considering specific cases, the Board will be guided by the following general principles. The application of these principles by regional directors will be subject to all general orders of the Board and to its announced rules of procedure.

1. *Maladjustments.* If a group of employees has received increases amounting to 15% in their average straight-time rates over the level prevailing on January 1, 1941, the Board will not grant further increases as a correction for maladjustments.

Beginning about January 1, 1941 a race between wages and prices began. Between that date and May, 1942, when the President's seven point program to stabilize the cost of living was announced, the cost of living had risen 15% as measured by the general index of the Bureau of Labor Statistics.

In the same period, very considerable but varying increases in wage rates were made. The irregularity of wage increases caused many maladjustments in the wage relationships between different plants and industries. A substantial majority of industrial workers had received more than 15% increase; some had received less.

To correct these maladjustments, the Board will consider requests for general increases in straight-time rates up to 15% above the level prevailing on January 1, 1941. This policy sets a terminal point for general wage increases. It is not applicable to individual workers or to employees in particular job classifications. It will be applied only to groups composed of all the employees in a bargaining unit, in a plant, a company, or an industry, depending upon the circumstances of each case.

Adjustment of wage rates to correct maladjustments may be made by regional directors: *Provided, however,* That their authority in this regard will be limited to cases arising in those industries which have been specifically designated by the Board, and if in the judgment of a regional director a wage adjustment for the correction of a maladjustment would act to unstabilize wages, the case shall be referred by him to a tripartite regional panel.

A list of designated industries is attached hereto and may be enlarged or modified by the Board from time to time. Any proposed wage adjustments in industries not listed must be referred to the National War Labor Board at Washington for action.

2. *Inequalities and gross inequities.* The wage rate inequalities and the gross inequities which may require adjustment under the stabilization program are those which represent manifest injustices that arise from unusual and unreasonable differences in wage rates.

Wage differentials which are established and stabilized are normal to American industry and will not be disturbed by the Board.

The Board itself will review cases where evidence is submitted to show that existing differences in wage rates are so discriminatory as to make their continuance a manifest injustice. Such evidence may be submitted to the regional director. If the regional director is satisfied that the evidence submitted so justifies, the claim may then be transmitted to the National War Labor Board in Washington for consideration.

3. *Substandards of living.* In the President's message of April 27, 1942 and again in the Executive order of October 3, 1942, the word "substandard" is used with reference to the need for eliminating substandards of living. The National War Labor Board has dealt with but a very few cases in which the substandard issue has been a factor. Therefore, the Board is not in a position at this time to enunciate a general policy to govern the adjustment of wages to eliminate substandards of living. The Board will not undertake to measure substandards of living by any fixed wage rate.

Such cases involving substandards of living as may arise will be considered by the Board on their individual merits until sufficient experience has accumulated to permit the statement of a more general policy.

4. *Effective prosecution of the war.* Under Executive Order 9250, the National War Labor Board may approve any increase of the wage rates prevailing on September 15, 1942 if such an increase is necessary "to aid in the effective prosecution of the war." Every adjustment in September 15, 1942 wage levels that the Board may make will be, in its judgment, for a more effective prosecution of the war.

The National War Labor Board will not approve wage increases for the purpose of influencing or directing the flow of manpower.

When in a particular case management and labor, in cooperation with the War Manpower Commission and other government agencies, have taken concerted action to solve a manpower need, the Board will consider a request in that case to correct whatever inequalities or gross inequities may then need correction.

(a) *Policy directive clarifying Executive Order 9328.* Executive Order No. 9328 was issued April 8, 1943. (See § 809.984). On May 12, 1943, the Director of Economic Stabilization issued a policy directive clarifying and defining the basis of the War Labor Board in making wage adjustments under that order. The text of the directive follows:

Executive Order No. 9328, dated April 8, 1943, is hereby supplemented under Section 5 as follows:

1. In order to provide clear-cut guides and definite limits as a basis for correcting substandards of living, and as a basis for permitting the Board to make within the existing price structure and within existing levels of production costs, minimum and non-inflationary adjustments which are deemed necessary to "aid in the effective prosecution of the war or to correct gross inequities" within the meaning of Section 1 of the Act of October 2, 1942, the Board is authorized to establish as rapidly as possible, by occupational groups and labor market areas, the wage-rate brackets embracing all those various rates found to be sound and tested going rates. All the rates within these brackets are to be regarded as stabilized rates, not subject to

change save as permitted by the Little Steel Formula. Except in rare and unusual cases in which the critical needs of war production require the setting of a wage at some point above the minimum of the going wage bracket, the minimum of the going rates within the brackets will be the point beyond which the adjustments mentioned above may not be made. The careful application of these wage-rate brackets to concrete cases within the informed judgment of the War Labor Board will strengthen and reinforce the stabilization line to be held. Maladjustments between wages and the cost of living will be considered by the Board only for the purpose of correcting substandard conditions of living, or determining adjustments within the 15% limit of the Little Steel Formula. In connection with the approval of wage adjustments necessary to eliminate substandards of living or to give effect to the Little Steel Formula or in connection with the adoption of a longer work week, the Board may approve wage or salary adjustments for workers in immediately interrelated job classifications to the extent required to keep the minimum differentials between immediately interrelated job classifications necessary for the maintenance of productive efficiency.

2. All wage adjustments made by the Board which may furnish the basis either to increase price ceilings or to resist otherwise justifiable reductions in price ceilings, or if no price ceilings are involved which may increase the production costs above the level prevailing in comparable plants or establishments, shall become effective only if also approved by the Economic Stabilization Director. The Board shall cooperate with the Office of Price Administration or such other agency as the Economic Stabilization Director may designate with a view to supplying the Economic Stabilization Director with the data necessary to judge the effect of any proposed wage adjustment on price ceilings and the levels of production costs.

(b) *Statement of Director of Economic Stabilization regarding policy directive of May 12, 1943.* In issuing the general policy directive, the Director of Economic Stabilization stated:

1. The directive makes clear that alleged maladjustments between the cost of living and existing wage schedules will be considered by the Board only to the extent necessary to eliminate substandard conditions of living or to determine wage adjustments within the 15% limit of the Little Steel Formula.

2. The directive makes clear the ancillary authority of the Board to make wage adjustments to keep the minimum differentials between immediately interrelated job classifications necessary to maintain productive efficiency.

This authority is needed to enable the Board to avoid intraplant inequities which would otherwise be created by wage adjustments ordered by the Board to eliminate substandard conditions of living or to satisfy the Little Steel Formula.

Similar adjustments for immediately interrelated salary job classification may be necessitated, and are authorized, when a longer work week is adopted which creates a maladjustment between the pay of workers on an hourly basis and those on a salary basis.

Adjustments of this character, however, are to be so staggered as to avoid the need for adjustment in higher wage or salary brackets.

3. The directive also makes clear the authority of the Board to make wage adjustments within the existing price structure and within existing levels of production for the purpose of stabilizing wage schedules for recognized categories of employments in various labor markets. It does not permit adjustments to correct "inequalities" which were permitted by the Executive Order of October 3, 1942. It does, however, permit the Board to make adjustments in accordance with the language of the Act of Congress of October 2, 1942, "to aid in the prosecution of the war or correct gross inequities", provided such adjustments do not increase prices or increase production costs. Such adjustments, except where necessary to eliminate substandard conditions of living or to give effect to the Little Steel Formula, are not to bring the wages of the worker affected above the minimum of the going rates for comparable work in comparable plants or establishments in the same labor market.

In rare and unusual cases where critical war production cannot otherwise be obtained, the minimum of the pre-existing going rates may be stepped up to the next lowest of the going rates for other most nearly comparable work in the same labor market. A good example of such a case is the situation found in the canning and first processing of perishable foods and feeds industries in a number of localities where the necessary seasonal labor to process this year's crops cannot be recruited on the basis of last year's obsolete wage schedules. On May 10th a special directive was issued to deal with this situation.

Apart from the rare and exceptional case, adjustments to the minimum of the applicable going rates are to be made, not to increase existing wage schedules, but only to bring obvious and sporadic stragglers into line.

4. The directive again makes clear that any wage adjustments which may furnish the basis either to increase price ceilings or to resist otherwise justifiable reductions in price ceilings, or if no price ceilings are involved which may increase the production costs above the level prevailing in comparable plants or establishments, cannot become effective until approved by the Economic Stabilization Director.

§ 809.978a *List of designated industries referred to in § 809.978.* Abrasives; aircraft; automobiles; chemicals and allied products; cotton manufactures; dyeing and finishing textiles; footwear; iron and steel and their products; leather; logging; machinery; meat products; metal mining; nonferrous metals and their products; nonmetallic mining and quarrying; petroleum, coal and natural gas products; petroleum and natural gas production; planing mills; professional and scientific instruments, photographic apparatus and optical goods; railroad equipment; rayon manufactures; refractories products; rubber-products; sawmills; street and suburban railways and buses; surgical, medical and dental instruments, equipment, and supplies; tobacco products; woolen and worsted manufactures; work clothing.

§ 809.979 *Jurisdiction and procedure of Regional War Labor Boards.* On April 5, 1943, the War Labor Board created twelve Regional War Labor Boards and outlined the jurisdiction of these Regional Boards and the procedure to be followed in matters within their jurisdiction. This information is contained in the succeeding paragraphs.

(a) *Constitution of regions and Regional War Labor Boards.* (1) A Regional War Labor Board has been established in each of the following regions:

Region I: Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island. 209 Washington Building, Boston, Mass.

Region II: New York, the Northern part of New Jersey (including following counties: Sussex, Passaic, Bergen, Warren, Morris, Essex, Hudson, Union, Middlesex, Somerset, Monmouth, Hunterdon). 220 E. 42d Street, New York, N. Y.

Region III: Pennsylvania, Maryland, Delaware, District of Columbia, Southern part of New Jersey (including following counties: Mercer, Ocean, Burlington, Atlantic, Camden, Gloucester, Salem, Cumberland, Cape May). Room 428 Stephen Girard Building, 21 S. 12th Street, Philadelphia, Pa.

Region IV: Virginia, Tennessee, North Carolina, Mississippi, Alabama, Georgia, South Carolina, Florida. 116 Candler Building, Atlanta, Ga.

Region V: Ohio, Kentucky, West Virginia. 3d Floor, Guardian Building, 629 Euclid Avenue, Cleveland, Ohio.

Region VI: Illinois, Indiana, Wisconsin, Minnesota, North Dakota, South Dakota. 222 W. Adams Street, Room 533, Chicago, Ill.

Region VII: Missouri, Arkansas, Kansas, Iowa, Nebraska. 11th Floor, Fidelity Building, 911 Walnut Street, Kansas City, Mo.

Region VIII: Texas, Oklahoma, Louisiana. 9th Floor, New Mercantile Bank Building, Dallas, Texas.

Region IX: Colorado, New Mexico, Utah, Wyoming, Idaho, Montana. 504 Boston Building, Denver, Colo.

Region X: California, Nevada, Arizona. 1355 Market Street, San Francisco, Calif.

Region XI: Michigan. Room 1164 Penobscot Building, Detroit, Mich.

Region XII: Washington, Oregon, Alaska. White Henry Stewart Building, Seattle, Wash.

(2) Each regional war labor board consists of the following members appointed by the National War Labor Board:

(i) Representatives of labor, four of whom are to be available for service with the regional war labor board at any given time.

(ii) Representatives of industry, four of whom are to be available for service with the regional war labor board at any given time.

(iii) Representatives of the public, four of whom are to be available for service with the regional war labor board at any given time. There is a chairman and one or more vice-chairmen, designated by the National War Labor Board from among full-time members.

(3) Six members constitute a quorum and 12 constitute full attendance; the composition at any given time is to be equally tripartite.

(4) The National War Labor Board, after considering the recommendations of the regional war labor boards, appoints tripartite panels in appropriate places throughout the regions to serve in dispute cases, as hereinafter described.

(5) The staff of each regional war labor board consists of a wage stabilization director, a disputes director, a regional attorney, and such other assistants as the National War Labor Board may approve. The staff is under the general supervision of the regional war labor board.

(6) Regional representatives designated by the Director of the U. S. Conciliation Service of the Department of Labor act as liaison officers between each regional war labor board and the U. S. Conciliation Service.

(b) *Procedure in dispute cases not involving wages or salaries.* (1) If the National War Labor Board refers a labor

dispute over which it has obtained jurisdiction to a Regional War Labor Board, the Regional War Labor Board to which the case is referred will be notified and a formal certification, together with all other available data and reports, will be transmitted to it.

(2) Upon receipt of the certification, the case will be considered by a New Case Committee of the Regional War Labor Board, composed of the chairman or vice-chairman, one industry, and one labor member, and the disputes director. The New Case Committee, in determining what action to take, will consult with the regional representative of the Conciliation Service. If the committee does not consider the case ready for a hearing, it may refer the case back to the parties for further negotiation or to the regional representative of the Conciliation Service for further information or further investigation or conciliation. If the case is deemed ready for a hearing, the committee will designate a tripartite panel to hear the case. The labor representative on the panel shall be of the same affiliation (AFL or CIO) as the union involved. If an independent union is involved, the labor representative on the panel shall be associated with another independent union. If the parties agree to have the case heard by a single person, the Regional War Labor Board will designate one of the public panel members or some other suitable person to hear the case. Wherever the term "panel" is hereafter used, it will be deemed to include a single hearing officer in the cases just mentioned.

(3) If a case is assigned to a panel, the panel shall advise the parties that they may if they so desire, submit their evidence and argument in writing. If the parties mutually agree in writing to such a presentation, the disputes director shall transmit to them any requests for information required by the panel and shall advise them of the procedure to be followed in submitting their case. If the parties do not agree to present their case in writing, a public hearing shall be held in accordance with the Rules of Procedure of the National War Labor Board.

(4) Any member of the regional board who in a particular case serves as a hearing officer or on a panel shall be disqualified from participating in any other capacity in any further proceedings in the case.

(5) If the panel's report is unanimous, the Regional War Labor Board will not, save in exceptional cases, hear argument upon the matter but will proceed to a decision. If the report is not unanimous, the Regional War Labor Board may in its discretion hear argument upon the case before reaching a decision.

(6) Any Regional War Labor Board may certify to the National War Labor Board any case, or any question in any case, upon which it desires the National War Labor Board's decision; but the National War Labor Board may in its discretion reject such certification and require the Regional War Labor Board to decide the case or the particular question, with or without a subsequent review by the National War Labor Board.

(7) At any time before its decision of a dispute case, the Regional Board may, upon the request of a party or upon its own motion, order a further hearing to be held before the board or a panel for the purpose of receiving evidence not introduced at any prior hearing in the case. The conduct of such hearing shall be governed by the rules of procedure of the National War Labor Board.

(c) *Procedure in dispute cases and in arbitration proceedings involving wages or salaries.* The procedure will be the same as in other dispute cases (see paragraph (b), except as follows:

(1) If an agreement between the parties calling for a wage or salary adjustment is brought about, the conciliator assigned to the dispute or the panel chairman or the hearing officer, as the case may be, will file the agreement directly with the appropriate regional wage stabilization director together with a completed application Form 10, which he will assist the parties in preparing. Conciliators, through the regional representative and panels will be at liberty in all cases to consult the regional wage stabilization director in advance of any settlement regarding the application to the particular situation of the Board's wage stabilization policy.

(2) If an agreement to refer the wage or salary question to arbitration is brought about, whether as a result of conciliation or without it, and the arbitrator's award provides for a wage or salary adjustment, a copy of the award, together with all of the information submitted to the arbitrator relating to the wage or salary issue, shall be filed by the arbitrator directly with the regional board at the same time that it is issued to the parties. Arbitrators shall consult the regional wage stabilization director in advance of any award, regarding the application to the particular situation of the Board's wage stabilization policy.

(3) If an agrement calling for an adjustment has been reached the procedure therefore will be the same as in voluntary wage and salary adjustment cases. If the case has resulted in an arbitration award, the procedure will be that set forth in the Arbitration Policy of the National War Labor Board. A ruling of the National Board approving, modifying, or disapproving the award shall have the same effect, and be subject to the same provisions for stay and review, as similar rulings of the National Board on an application for the approval of a voluntary wage or salary adjustment. In all cases the conciliator, hearing officer, or panel chairman should remind the employer that he should promptly upon receiving the award or report (and without waiting for the Board's decision) apply to the Office of Price Administration for price relief if he intends to make any order requiring increased payment of wages and salaries the basis for asking such relief.

(d) *Procedure in voluntary wage and salary adjustment cases.* This procedure is set forth in paragraphs (e) to (h).

(e) *The handling of preliminary inquiries about jurisdiction.* (1) An employer or a union or an employee, or a group of employees not represented by a union) directly concerned in a proposed wage or salary adjustment, may, jointly or separately, ask the nearest designated officer of the Wage and Hour and Public Contracts Division of the United States Department of Labor in the region (hereinafter referred to as the Wage and Hour Office) for a ruling as to whether the proposed adjustment may be made without Board approval. The request for a ruling, if filed by the employer alone, shall state whether there is a duly recognized or certified collective bargaining agent for any or all of the affected employees which has not joined with the employer in the request for the ruling, and if so, the name and address of such collective bargaining agent. If filed by a union, or on behalf of any or all of the employees, without joinder by the employer, the request for ruling shall state the name and address of the employer. If the request for a ruling affects any employees represented by a duly recognized or certified collective bargaining agent, and the employer or the collective bargaining agent has not joined in the request, a copy of the request for the ruling and the ruling shall, after the ruling has been made, be sent to the employer or the collective bargaining agent, whichever has not joined in the request, and to the appropriate regional attorney by the Wage and Hour Office.

(2) If said ruling is that the proposed wage or salary adjustment may be made without approval of the Board:

(i) The ruling shall be deemed to be authoritative and shall remain in effect unless reversed as provided below.

(ii) If, on receipt of the ruling from the Wage and Hour Office, it is reversed by the regional attorney (after consultation, where necessary, with the regional wage stabilization director), the Wage and Hour Office shall be notified promptly, and it shall immediately notify the person or persons who made the inquiry that the adjustment requires approval. If in the meantime the employer has made the adjustment, relying upon the ruling by the Wage and Hour Office that it did not need approval:

(*a*) The adjustment may be continued in effect for a period of ten days following the notification by the Wage and Hour Office, within which period the employer may file with the Wage and Hour Office (jointly with a duly recognized collective bargaining agency, or by himself, as subsequently provided), an application for approval of the adjustment and

(*b*) If such an application is so filed, the adjustment may be further continued in effect until and unless it is finally disapproved. Such disapproval shall take effect only from the date of the issuance of the order of disapproval.

(iii) If the Wage and Hour Office to which an inquiry has been addressed rules that the proposed adjustment cannot properly be made without approval, the ruling shall be deemed to be authoritative. The person or persons who made the inquiry may seek from the regional attorney, by written petition filed within 10 days after the ruling of the Wage and Hour Office, a reversal of the ruling.

The regional attorney's ruling (after consultation, where necessary, with the regional wage stabilization director) on the question so submitted shall be final and shall be transmitted to the applicant and to the other parties, if any, required by subparagraph (1), through the Wage and Hour Office.

(f) *The filing of applications for approval of wage or salary adjustments.* (1) Each application for approval of proposed voluntary wage or salary adjustments (other than those described in paragraph (c)) shall be filed with the nearest Wage and Hour Office in the region. All applications shall be made upon appropriate forms prepared by the National War Labor Board.

(2) Such applications may be of two kinds. The first kind, in which approval is sought of an adjustment agreed upon by the parties, may be signed by any party (or jointly by any or all the parties) to the contract. The application shall state whether all the parties to the contract have signed the application and shall state the name and address of each party who has not signed the application. If there be any such party who has not signed, the Wage and Hour Office at which the application was filed shall, as agent of the Board, before acting on the application, send said party a notice of the application. The notice shall request the party to state whether he contests the fact of the contract having been made. If, within seven days of the sending of the notice, he has not filed a statement contesting such fact or if he files a statement admitting it, the application will then be acted upon. If he contests the fact of the contract having been made, the matter will be determined to be a dispute case and the application Form 10 will be returned to the party which filed the application, and a copy of the letter returning the application will be sent to the contesting party, unless (i) the contract was in writing (ii) the writing or a certified or otherwise authenticated copy thereof has been produced, and (iii) the Wage and Hour Office is satisfied that no substantial question exists as to the party being a party thereto. Where the Wage and Hour Office is so satisfied, it shall rule accordingly and proceed with the handling of the application. The ruling may be reviewed (on petition of the protesting party) by the regional attorney when the application is transmitted to the regional war labor board under subparagraph (7) below. His ruling shall be final.

(3) The second kind of application, in which an employer on his own initiative wishes to make a wage or salary adjustment, shall be signed either (i) jointly by the employer and a duly recognized collective bargaining agent for any or all of the employees who are to be affected by the proposed wage or salary adjustment, or (ii) by the employer alone. In either case the application shall state whether or not there is a duly recognized collective bargaining agent (for any or all of the affected employees) which has not joined with the employer in the application. If it appears that there is such an organization which has not so joined, the Wage and Hour Office at which the application was filed shall, before acting on the application, send to the appropriate local officials of such organization a notice of the application, requesting the organization, if it has any objections to the application being acted upon, so to inform the office. If no such objections are filed within seven days of the sending of the notice, or if the organization in question states that it has no objections, the application will then be acted upon. If objections are made within said period, the matter will be determined to be a dispute case and the application Form 10 will be returned to the party which filed it and a copy of the letter returning the application will be sent to the contesting party. No action shall, however, be taken by the Regional Board on any application after the National Labor Relations Board or a similar State agency has ordered the holding of an election to determine the status of a labor organization as the collective bargaining agent of any of the employees involved in the application. As used here the term "duly recognized collective bargaining agent" refers either to a labor organization which has actually been recognized by the employer for the purpose of collective bargaining or to a labor organization which has been certified by the National Labor Relations Board or a similar State agency where the legal result of such certification is that the employer is obligated to bargain with the union. Where a labor organization has not been duly recognized or certified, it may not receive a copy of the application, but upon inquiry it shall be told whether or not an application has been filed.

(4) In cases where the employer has signed or joined in signing an application for approval of a wage or salary increase he shall state in the application whether he intendes to make the proposed increase, if approved, the basis of the application to the Office of Price Administration for an adjustment of his maximum prices or for an amendment of the regulations establishing those prices.

(5) In cases where the employer has not signed or joined in signing an application for approval of a wage or salary increase, he shall be requested in the notice of the filing of the application sent to him by the Wage and Hour Office to state whether he intends to make the proposed wage or salary increase, if approved, the basis of an application to the Office of Price Administration for an adjustment of his maximum prices or for an amendment of the regulations establishing those prices. He shall be asked to make this statement (i) within seven days of the sending of said notice or (ii), if (as described in subparagraph (2) above) he contests the fact of the agreement or arbitration award having been made, within seven days of any ruling by the Wage and Hour Office finding him to be a party to said agreement.

(6) If the employer states that he intends to make the proposed wage or salary increase, if approved, the basis of an application to the Office of Price Administration for an adjustment of his maximum prices or for an amendment of the regulations establishing those prices, (i) his statement shall be entered in an appropriate place on the application before the application is acted on by the regional wage stabilization director as provided below, and (ii) the employer will be required to furnish further information, the nature and effect of which will be set forth under paragraph (j).

(7) When an application has been submitted to a Wage and Hour Office and no preliminary inquiry about jurisdiction has been made under paragraph (e) above, the office shall first make certain that the application needs approval. If the office believes that approval is not or may not be required by the applicable regulations and orders, the office shall proceed exactly as if the applicant had asked for a preliminary ruling on jurisdiction. If no jurisdictional question is involved or if such a question has been cleared up under paragraph (e) above, the Wage and Hour Office shall see that appropriate forms are fully and accurately filled out and shall transmit them to the regional wage stabilization director of the appropriate regional war labor board.

(8) Upon receipt of the application, the regional wage stabilization director, acting in collaboration with the regional attorney, shall first make certain that the application requires Board approval (unless this question has already been ruled upon and determined under paragraph (e) above). If it is determined by the regional attorney that the application does not require Board approval, a written ruling to that effect shall be made and copies sent to the applicant or applicants. If it is determined that the application requires Board approval, it shall be acted upon as provided in paragraph (i) below. In any case, the regional wage stabilization director may, before acting, obtain further needed information informally from the applicant or applicants, from the Wage and Hour Office, from the United States Bureau of Labor Statistics, or any other source or refer the application back to the Wage and Hour Office for such information as he may specify. In cases where the application reveals that the employer intends to make the proposed increase the basis of an application to the Office of Price Administration for an adjustment of his maximum prices or for an amendment of the regulations establishing those prices, the Regional Wage Stabilization Director shall send a copy of the application to the Office of the Economic Advisor, Office of Price Administration, Washington, D. C.

(g) *Application by Employers' Association for approval of wage or salary adjustment.* (1) Application for approval of a wage or salary adjustment may be made on a form approved by the National War Labor Board on behalf of more than one employer by an employers' association or other similar organization. Such an application may be executed by the appropriate representative of the association or other similar organization acting on behalf of all such employers.

(2) The application shall state, in addition to the other matters required by

paragraphs (e) to (h) the name and address of each employer on whose behalf it is made and who has not signed the application and shall be accompanied by (i) a written statement by each such employer stating that the association has been authorized to file the application on the employer's behalf, or (ii) a certification by the association that it is duly authorized to file the application on behalf of the employers covered thereby or (iii) a duly authenticated copy of the by-laws or regulations of the association, or an agreement or other document demonstrating its authority to file the application on behalf of the employers covered thereby. The application shall be filed with the Wage and Hour office, in the city where the association or other similar organization customarily carries on its wage or salary negotiations.

(3) The application shall be accompanied by individual statements which shall contain for each employer the information required by the National War Labor Board's Form No. 10, except that, where such information is identical for all or some of the employers, an appropriate consolidated statement containing such information may be filed with the application.

(4) In all other respects the procedure herein set forth shall obtain, and the word "employer" wherever used herein, shall, for the purpose of this section, include, "employers' association or other similar organization".

(h) *Single application by employer with plants or establishments in more than one region.* (1) In the case of an employer with plants or establishments in more than one region, a single application may be filed covering employees in all or some of such plants or establishments.

(2) The application may be filed at the regional Wage and Hour Office in the region where the employer maintains his principal place of business.

(3) The application shall be accompanied by individual statements which shall contain for each plant or establishment covered by the application all the information required by the National War Board's Form No. 10, except that the regional director of the Wage and Hour Office may, in appropriate cases and for good cause shown, modify this requirement so as to provide for one or more consolidated statements covering all or some of the plants or establishments.

(4) Upon receipt of the application, together with such statements, the said regional director of the Wage and Hour Office, if not satisfied that sufficient data and information have been presented with respect to each plant or establishment, may require the applicant to submit additional data or information or may refer any statement relating to a particular plant or establishment not in his region to the appropriate regional director of the Wage and Hour Office for such additional data or information as may be necessary.

(5) When the regional director of the Wage and Hour Office is satisfied that sufficient data and information have been presented, he shall transmit the application, together with the statements and all other pertinent information, to the appropriate regional war labor board which shall inform other affected regional war labor boards and shall act on the application unless it determines that due to the scope of the employer's operations, or because of important policy questions, the application should be referred to Washington.

(6) In all other respects, the procedure herein set forth shall obtain.

(i) *Disposition of applications for approval of wage or salary increases in which the application indicates that no price relief will be sought if approval is granted.* (1) In cases where he is authorized so to do by orders or regulations of the National War Labor Board, the regional wage stabilization director shall rule upon the application, subject to the rights of review hereinafter set forth and subject to his right to refer any case for decision with his recommendation to the regional war labor board, if he believes that the case is sufficiently important from a stabilization point of view or presents sufficiently serious and doubtful questions of interpretation of policy to justify such action.

(2) If the regional wage stabilization director disapproves the application (or approves a lesser increase than that requested), the applicant, or any applicant if there be more than one, may within ten days after the date of the issuance of the ruling file with the regional war labor board a petition for a review by that board of the action of the regional wage stabilization director. Upon receipt of such a petition the regional board shall rule upon the application on the basis of the entire record of the case and such other information as may be available to it.

(3) Copies of all rulings made by regional wage stabilization directors shall be promptly filed with the chairman of the regional war labor board, whose duty it will be to lay before the regional war labor board for such action as it may care to take all rulings which involve serious questions of policy. Copies shall also be promptly filed with the National War Labor Board's wage stabilization division together with such additional information as the division may require for purposes of review.

(j) *Disposition of applications for approval of wage or salary increases in which the applicant states that he intends to make the proposed wage or salary increase, if it is approved, the basis of an application to the Office of Price Administration for an adjustment of the maximum prices or for an amendment of the regulations establishing those prices.* The procedure shall be the same as in the cases described under paragraph (i) above except that:

(1) A copy of the application shall be sent by the regional wage stabilization director to the Offiffice of the Economic Advisor, Office of Price Administration, Washington, D. C. Copies of any forms which the employer has filled out, pursuant to the requirement of the Office of Price Administration (and which have been supplied for that purpose by said Office to the Wage and Hour Offices) shall be sent at the same time as the copy of the application to the Office of Price Administration.

(2) In those cases where the Office of Price Administration determines that the proposed wage or salary adjustment will not require an adjustment of the employer's prices or an amendment of the regulations establishing those prices, the Regional War Labor Board will be so notified. In cases where such notice has been received, the ruling of the regional stabilization director or of the regional war labor board may be made effective without further reference to the Office of Price Administration or the Office of Economic Stabilization.

(3) In those cases where the Office of Price Administration determines that approval of the wage or salary increase will necessitate an adjustment of the employer's prices or an amendment of the regulations establishing these prices, the regional war labor board will be so notified. In such cases, if the application for a wage or salary increase is approved, the ruling shall state that it will become effective only on final approval by the Economic Stabilization Director, as required by the provisions of Executive Order No. 9250.

(4) Unless the regional war labor board has been notified as in (2) above, copies of every ruling shall be sent to the Office of the Economic Advisor, Office of Price Administration, Washington, D. C.

(k) *Authority of regional war labor boards.* A description and the extent of this authority is set forth in paragraphs (l) through (s).

(l) *Applications for approval of voluntary wage or salary adjustments.* (1) Each Regional War Labor Board shall have authority to approve or disapprove applications for voluntary wage or salary adjustments.

(2) Each such ruling shall be final, subject only to the National War Labor Board's right to review on its own initiative, or on a petition for review, as provided for in paragraph (n). Any reversal or modification of such ruling by the National War Labor Board shall take effect only from the date of its issuance, provided, however, that if a ruling denying an application for permission to make a wage or salary adjustment is overruled, the final ruling of the National War Labor Board shall incorporate as the effective date of the adjustment the date specified in the application or such other date as the National War Labor Board shall specify.

(3) Copies of all such rulings and of any accompanying opinions (together with such other material as the Wage Stabilization Division may require) shall, when issued, be filed with the National War Labor Board.

(4) Rulings of the Regional Board on voluntary applications for approval of wage or salary adjustments shall take effect when issued to the parties. Such rulings may be issued to the parties when made unless two or more public members of the Regional Board who dissent from a ruling request that the issuance of the ruling or any specified portion thereof be stayed and at the same time state the reasons for their request. In

such event the ruling or the specified portion thereof and the accompanying request shall immediately be transmitted by the Regional Board to the National War Labor Board and may be issued to the parties only upon the expiration of ten days after its receipt in Washington, unless (i) the ruling is earlier approved by the Board or (ii) within such ten-day period the National War Labor Board sets the case down for review. In the latter event the Executive Assistant to the National War Labor Board shall communicate the National Board's action to the Regional Board, and the requested stay shall continue in effect until the case is finally disposed of. If only a specified portion of a ruling is asked to be stayed, as herein provided, the Regional Board may, in its discretion, issue to the parties any other unrelated provisions of the ruling at any time after the ruling is made.

(m) *Directive orders in dispute cases.* (1) Regional War Labor Boards are authorized to issue directive orders in dispute cases in conformity with the policy of the National War Labor Board. Each such directive order shall bear the date of its actual issue and shall be issued to the parties when made. The issuance of any provision of a directive order, however, which relates to a wage or salary adjustment, may be stayed if two or more public members of the Regional Board dissent from the provision and request that its issuance be stayed. In such event a copy of the directive order and the request for the stay, together with a statement of the reasons for such request, shall be immediately transmitted to the National War Labor Board. The provision so sought to be stayed shall not be issued to the parties until the expiration of ten days after receipt in Washington of the request for the stay, unless (i) the issuance of such provision is earlier approved by the National War Labor Board or (ii) within such ten day period the National War Labor Board sets the case down for review. In the latter event, the Executive Assistant to the National War Labor Board shall communicate the Board's action to the Regional Board, and the stay shall continue in effect until the case is finally disposed of.

(2) If after the issuance of a directive order no timely petition for review is filed (as provided in paragraph (n)), and if the National War Labor Board within such a period does not review the order on its own motion, the order shall on the day following the last day for filing such a petition stand confirmed as the order of the National War Labor Board and shall immediately be effective according to its terms: *Provided,* That the National War Labor Board may at any time prior to the expiration of the time for the filing a petition for review make such an order, or any part thereof, immediately effective pending any further proceedings. If a timely petition for review of a directive order of a Regional Board is filed by a party, or if the National War Labor Board reviews such an order on its own motion, the entire order shall be suspended, unless and until the National War Labor Board directs, or has directed, otherwise, or unless the parties otherwise agree. However, the date of expiration of the escape period fixed in a directive order of a Regional Board granting a maintenance of membership provision shall not be affected by the filing of a petition for review of this or any other provision of the order. If only a part of the order is sought to be reviewed, any party may petition the National War Labor Board to make the rest of the order immediately effective according to its terms. The parties may in any case mutually agree upon the date when the order, or any part thereof, shall take effect, except that where a wage or salary adjustment is made subject to the approval of the Economic Stabilization Director the parties may not by their agreement make such adjustment effective prior to the date of such approval.

(3) Copies of all directive orders and of any accompanying opinions (together with such other material as the Wage Stabilization Division may require) shall, when issued, be filed with the National War Labor Board.

(n) *Petitions for review.* Within fourteen days after a regional board mails to a party a directive order in a dispute case, or a ruling denying or modifying an application for approval of a voluntary wage or salary adjustment, such party may mail to the Regional Board an original and four copies of a petition, including supporting documents, seeking review by the National War Labor Board of such ruling or directive order. The petition shall (1) state the petitioner's reasons for believing that one or more of the criteria set forth below is satisfied, (2) set forth fully and in detail the contentions of the petitioner with respect to the merits of each issue raised by the petition, with specific references to any pertinent portions of the record in the case, and (3) state that a copy of the petition has been served upon the other parties to the case and the date of such service. No such petition seeking review by the National War Labor Board of a ruling or directive order of a Regional Board shall be granted unless the petitioner has demonstrated by substantial proof that (1) the ruling or order exceeds the National War Labor Board's justification, or (2) the ruling or order contravenes the established policies of the National War Labor Board, or (3) a novel question is involved of such importance as to warrant national action, or (4) the procedure resulting in the ruling or order was unfair to the petitioner and has caused substantial hardship. The party filing a petition shall at the same time serve a copy thereof, together with any supporting documents, upon each of the other parties to the proceeding.

(o) *The answer.* Within fourteen days after a copy of such a petition for review is mailed by the petitioning party to any other party to the case, such other party may mail an answer to the petition to the Regional Board which issued the directive order or ruling. An original and five copies of the answer shall be transmitted to the Regional Board and a copy shall at the same time be served upon each of the other parties to the case. Such an answer shall include a statement that a copy thereof has been served as required above, and shall show the date of such service. An answer may not contain a request for review of an order or any part thereof; such a request must be filed, if at all, in the form of a petition for review in the manner and within the time limit provided in paragraph (n). Each answer should state fully but concisely the respondent's reasons for believing (1) that the petition ought not to be entertained, and (2) that, if the National War Labor Board decides to entertain the petition, the petition should be denied on the merits.

(p) *Decisions of the Board.* The National War Labor Board will make its decision on a petition for review upon the basis of the record before the Regional Board and on the basis of the petition, the answer, if any, the recommendations of the Appeals Committee, and such further argument and proof as the National War Labor Board may require. If the petition for review is denied because the grounds for review set forth therein are deemed to be sufficient, the National War Labor Board shall issue an appropriate directive order or ruling adopting as its own the ruling or order to which the petition relates. If the petition for review is granted, the National War Labor Board will issue an appropriate directive order or ruling adopting, reversing, or modifying the order or ruling to which the petition relates or remanding the case to the Regional Board for such further action as is specified in the order or ruling of the National War Labor Board.

(q) *Review by the Board on its own motion.* The National War Labor Board may, on its own motion, assume jurisdiction over any case at any stage of the proceedings either before or after the issuance of the final order or ruling of the Regional Board.

(r) *Reconsideration of directive orders and rulings.* (1) Regional War Labor Boards may reconsider directive orders or rulings on their own motion or on petition, except, while the case is under consideration by the National Board following the granting of a petition for review, or the taking of review by the National Board on its own motion.

(2) The party petitioning for reconsideration shall serve a copy of the petition on all other parties at the same time that it is filed with the Regional Board. The filing of such petition does not preclude the filing of a petition for review, but shall not extend the time for filing a petition for review nor change the date when the directive order takes effect.

(3) The Regional Board shall not act on any petition for reconsideration of a directive order or ruling unless (i) the petition is mailed to the Regional Board within fourteen days after the mailing by the Regional Board of the order or ruling in question and sets forth with particularity the grounds upon which the petition is based, or, (ii) the petition is filed promptly upon the petitioner's discovering material and substantial evi-

dence which the petitioner was unable, despite due diligence, to discover in time to present to the Regional Board before it issued its order or ruling, and sets forth with particularity such evidence, or (iii) the petition is filed promptly upon the occurrence of events after the date of the order or ruling which make the order or ruling harsh or unfair, and set forth with particularity such events. If a petition for reconsideration is filed under subdivision (ii) or (iii) of this subparagraph, and the Regional Board deems that the evidence submitted warrants reconsideration of the directive order or ruling, it shall provide the parties a hearing on such new matters.

(4) Regional Boards may adopt rules further restricting reconsideration. Refusal of reconsideration by a Regional Board shall have no bearing on the validity of a petition for review.

(5) If the ruling or directive order issued by the Regional Board is modified by the Regional Board in response to a petition for reconsideration or upon its own motion, the Regional Board shall issue to the parties such ruling or order, as modified, in the same manner and with the same effect as is provided in paragraphs (l) and (m). The order or ruling as modified shall be subject to review in accordance with the provisions of paragraph (o), except that the period prescribed therein for filing a petition for review or answer thereto shall be seven instead of fourteen days.

(s) *Regional War Labor Boards subject to National War Labor Board policies.* Decisions, regulations, and policies which the National War Labor Board will continue to announce from time to time shall control the regional war labor boards, Wage and Hour Offices, and staffs in performing the duties and exercising the powers assigned to them herein.

§ 809.979a *War Labor Board instructions to Regional Boards re Executive Order 9328 and supplementary directive of May 12, 1943.* On May 29, 1943, the National War Labor Board announced that instructions for handling certain types of wage and salary cases under the "Hold-the-Line" Executive Order No. 9328 have been sent to its Regional Boards and industry commissions. The Board pointed out that under the Executive order "reasonable adjustments of wages and salaries in case of promotions, reclassifications, merit increases, incentive wage or the like" may be made by the Board if such adjustments "do not increase the level of production costs appreciably or furnish the basis either to increase prices or to resist otherwise justifiable reductions in prices."

(a) Within the meaning of the provision of the Executive order quoted above, the Regional Boards were instructed that they may deal with the following three types of cases within their sound discretion:

(1) Intra-plant adjustments which are necessary to do equity and to promote production and which are not mentioned in the May 12 directive of the Economic Stabilization Director.

(2) Applications by employers not under the Fair Labor Standards Act to pay time and one-half for hours over forty, or to change from a fluctuating to a fixed workweek for the purpose of computing overtime as currently permitted to employers who are under said act.

(3) Adjustments incident to the improvement of work conditions which do not involve increasing basic wage rates and which do not exceed the sound prevailing practice in the industry or area. The adjustments specified in subparagraph (3) include such items as vacation pay, sick leave plans, night shift bonuses, and holiday pay.

(b) The Board's instructions also stated that specific regulations for approval of incentive plans cannot be given until further experience with various types of cases have been reported to the National Board. The Board emphasized that the working out of such incentive plans is particularly suited to collective bargaining and that where a collective bargaining agency exists it should be consulted in the preparation of such plans. Reiterating that the Little Steel Formula usually requires that the adjustment be applied to the largest appropriate group, the Board stated that in unusual cases where adjustments are being sought by a single individual or for relatively few persons, the formula may be applied to them where the application would "afford an equitable and expeditious method of disposing of the case."

(c) In cannery cases, the Board stated that rates may be adjusted through use of the wage rate bracket section of the May 12 directive of the Economic Stabilization Director in cases where it would not be practicable to use the Director's earlier order on canneries issued May 11, 1943.

§ 809.979b *Wage and Hour Division regions; geographical jurisdictions and addresses.*

Region I: Massachusetts, New Hampshire, Maine, Vermont and Rhode Island. 294 Washington Street, Boston, Mass.

Connecticut: Cooperating State Agency Offices: 357 State Office Bldg., Hartford, Conn.

Region II: New York and New Jersey. Parcel Post Bldg., 341 Ninth Avenue, New York, N. Y.

Region III: Pennsylvania, and Delaware, and Bancock, Brooke, Ohio, and Marshall Counties in West Virginia. 1216 Widener Bldg. Chestnut and Juniper Sts., Philadelphia, Pa.

District of Columbia: Cooperating State Agency Office: 4050 New Municipal Center Bldg., Washington, D. C.

Region V: Virginia, West Virginia, and Maryland. 215 Richmond Trust Building, Richmond, Va.

North Carolina: Cooperating State Agency Office: Salisbury and Edenton Streets, Raleigh, N. C.

Region VII: Georgia, Florida, and South Carolina. 249 Peachtree St., N. E., Atlanta, Georgia.

Region VIII: Alabama, Mississippi, and Louisiana, 1007 Comer Bldg., Birmingham, Ala.

Region IX: Tennessee and Kentucky, 509 Medical Arts Bldg., Nashville, Tenn.

Region X: Ohio and Michigan and Boone, Kenton and Campbell Counties in Kentucky. Main Post Office, West Third and Prospect Avenue, Cleveland, Ohio.

Region XI: Illinois, Indiana, and Wisconsin, 1200 Merchandise Mart, 222 West North Bank Drive, Chicago, Illinois.

Region XII: North Dakota, South Dakota, Minnesota, and Montana. 406 Ponce Building, 730 Hennepin Avenue, Minneapolis, Minn.

Region XIII: Kansas, Nebraska, Iowa, Missouri, Colorado, and Wyoming. 504 Title & Trust Bldg., 10th & Walnut Sts., Kansas City, Mo.

Region XIV: Texas, Oklahoma, Arkansas, and New Mexico. 1100 Main Street, Dallas, Texas.

Region XV: California, Arizona, Nevada, Washington, Oregon, Idaho, and Utah. 500 Humboldt Bank Bldg., 785 Market St., San Francisco, Calif.

For addresses of Wage and Hour Division Field and Branch Offices, consult nearest Wage and Hour Division Regional Office.

§ 809.979c *Extension of authority of National War Labor Board Regional Directors; bonuses.* On December 17, 1942, the National War Labor Board delegated to its Regional Directors authority to pass on such bonus payments which require Board approval. The Regional Directors were authorized to approve the payment of gifts or bonuses not permissible under General Order No. 10 (§ 809.980j) only in exceptional cases where non-payment "would be grossly inequitable and would result in a manifest injustice."

§ 809.979d *Extension of authority of National War Labor Board Regional Directors; voluntary wage and salary adjustments.* On December 24, 1942, the National War Labor Board granted to its Regional Directors authority to make final decisions on all voluntary wage or salary (over which the NWLB has jurisdiction) adjustment cases involving employers of not more than 100 employees subject to the NWLB's procedure which provides for appeal to a tripartite regional panel from an adverse ruling by a Regional Director. The decisions of these panels are final, subject to the right of any panel member to request Board review and the Board's right of review on its own motion.

§ 809.980 *General orders of National War Labor Board.* From time to time the National War Labor Board issues general orders establishing procedures and regulations for the administration and interpretations of such portions of Executive Order No. 9250 as are administered by the National War Labor Board, as well as interpretations of such general orders. The full text of such general orders and interpretations is set forth in the succeeding sections which are designated §§ 809.980 followed by a letter or letters of the alphabet.

§ 809.980a *General Order No. 1.*

All increases in wage rates which have been directed by the War Labor Board prior to October 3, 1942, shall be put into effect in accordance with the terms of the Directive Order in each particular case.

(a) *General Order No. 1-A.*

General Order No. 1 issued by the National War Labor Board on October 7, 1942, shall apply also to salaries subject to the jurisdiction of the Board. (For definition of such salaries, see General Order No. 9, October 30, 1942, at § 809.980l).

§ 809.980b *General Order No. 2*

The procedures in the National War Labor Board for the adjustment of labor disputes affecting wages established under Executive Order No. 9017, dated January 12, 1942, shall remain in full force and operation, and in all present or future cases in which the jurisdiction of the Board has attached or shall attach by certification or otherwise, the parties shall be deemed to have given notice within the terms of Title II, section 1, of Executive Order No. 9250, dated October 3, 1942.

§ 809.980c *General Order No. 3.*

(a) The National War Labor Board hereby approves all increases in wage rates which were put into effect on or before Oct. 3, 1942. Such approval includes increases first reflected in a pay roll subsequent to Oct, 3, 1942, if applicable to work done, and provided for by written agreement, or formally determined and communicated to the employees, on or before that date. An adjustment taking effect after Oct. 3, 1942, or, regardless of its effective date, resulting from the award or decision of an arbitrator or referee made after Oct. 3, 1942, is however, subject to the approval of the Board, although the agreement providing therefor, or the order or agreement for arbitration or reference, may have been made prior to that date.

(b) All such inceases shall be subject to the right of the Board to review and to order the discontinuance of further payment of all or part thereof.

§ 809.980d *General Order No. 4.*

(a) Wage adjustments made by employers who, at the time the adjustment is agreed to, or if not made by agreement, at the time it is placed into effect, employ a total of not more than eight individuals in all their plants or units are exempted from the provisions of Executive Order No. 9250 of October 3, 1942, and Executive Order No. 9328 of April 8, 1943.

(b) Unless expressly exempted, the exemption granted by this order shall not apply to employers whose employees' wages, hours, or working conditions have been established or negotiated on an industry, association, area, or other similar basis, by a master contract or similar or identical contracts.

The National War Labor Board has, under this paragraph, approved the extension of the exemption provided for in paragraph (a) of this order to:

(1) Employees of barber shops (May 19, 1943).

(2) Employees of beauty shops and the like (May 28, 1943).

(c) The exemption granted by this order shall not apply to an employer who, during any given year following October 3, 1942, in the case of wages, or October 27, 1942, in the case of salaries, has made adjustments affecting eight specific employees.

(d) The Regional War Labor Boards may recommend to the National War Labor Board such exceptions to the provisions of this order as are necessary to effectuate the wage stabilization policies of the National War Labor Board, which exception, if approved by the National War Labor Board, shall, unless otherwise specified, apply only within the territorial jurisdiction of the Regional Board recommending them.

The National War Labor Board, under this paragraph, has approved the following exceptions to the exemption provided for in paragraph (a) of this order:

(1) Tool and die industry (General Order 4–A, October 23, 1942).

(2) Shoe repair industry in California (April 10, 1943).

(3) Tool and die industry in Region I (May 31, 1943).

(4) Logging, sawmill, and planing mill operations in California, Oregon, Washington, Idaho and Western Montana (General Order 4–C, June 26, 1943).

(5) Dental technicians, garage employees, and seed industry workers in Region XII (August 3, 1943).

(6) Cotton-ginning employees in Region VIII (August 17, 1943).

(7) Hotel and restaurant industry in Region X (October 2, 1943).

(8) Retail coal distributors in Region IX (October 29, 1943).

(9) Photo engravers (November 13, 1943).

(10) Schiffli embroidery industry in Region II (November 13, 1943).

(11) Grocery stores and meat markets in Region IX (November 13, 1943).

(12) Operators in the lumber and pulp industry in Region I (January 8, 1944).

(13) Retail lumber establishments in Regions VI, VII, VIII, IX, and XII (January 17, 1944).

(14) Retail butcher shops in Louisville, Ky., area, whether exclusively or in conjunction with or as a part of some other retail business (February 5, 1944).

(15) Employers engaged in the business of window cleaning in the Greater Cleveland Area (February 8, 1944).

(16) Employers in the rig-building branch of the petroleum industry in the area where uniform wage brackets have been set as provided in the order of the Board of March 3, 1944 (27 states in mid-continent area, in Regions IV, V, VI, VII, IX, and XI, inclusive).

(17) All employers in Cuyahoga County, Ohio, who are engaged in the business of repairing and/or rebuilding gasoline operated motor vehicles and/or trailers, both bodies and chassis, for others.

(18) All employees engaged in the automotive repair industry in the Tenth Region of the National War Labor Board, embracing the states of California, Nevada and Arizona, other than gasoline stations, tire and vulcanizing services.

(19) All employers engaged in the manufacture of jewelry in Region II of the National War Labor Board, embracing the State of New York and the northern counties of New Jersey (Sussex, Passaic, Bergen, Warren, Morris, Essex, Hudson, Union, Middlesex, Somerset, Monmouth, Hunterdon) (May 10, 1944).

(20) The jewelry industry in Albuquerque, New Mexico (May 10, 1944).

(21) Logging and sawmilling operations in the lumber industry in Region IX of the National War Labor Board, embracing the states of Colorado, New Mexico, Montana, Wyoming, Utah and Idaho (May 10, 1944).

(22) Pattern makers in the metropolitan areas of Portland, Oregon, and Seattle and Spokane, Washington (April 27, 1944).

(23) Machine shop workers in the metropolitan areas of Portland, Seattle, Spokane, Bellingham, Everett and the Willamette Valley in Region XII of the National War Labor Board (April 27, 1944).

(24) Truck drivers, shoe repair, radio repair, and watch repair shops, radio broadcasting stations, dry cleaning establishments, restaurants, wholesale and retail distribution establishments, and clerical workers in Region XII of the National War Labor Board, embracing the states of Washington and Oregon (April 27, 1944).

(25) Hotels in Region XII of the National War Labor Board, embracing the states of Washington and Oregon (May 16, 1944).

(26) Employers engaged in the packing and shipping of potatoes in the State of Maine.

(27) All employers in the Territory of Hawaii.

§ 809.980e *General Order No. 5.*

Subject to the requirements of General Order No. 31, wage adjustments may be made in wage-rates of individual employees, without approval of the National War Labor Board, if they are incident to the application of the terms of a wage agreement which existed previous to or has been approved since October 3, 1942, or incident to an established or approved wage rate schedule covering the work assignments of employees and are made as a result of—

(a) Individual promotions or reclassifications

(b) Individual merit increases within established rate ranges

(c) Operation of an established plan of wage increases based upon length of service within established rate ranges

(d) Increased productivity under piecework or incentive plans

(e) Operation of an apprentice or trainee system

Wage adjustments made under this order shall not result in any appreciable increase of the level of production costs and shall not furnish a basis either to increase prices or to resist otherwise justifiable reductions in prices.

§ 809.980f *General Order No. 6.*

(a) The hiring of an individual at a wage rate in excess of the rate previously established in the plant for employees of similar skill and productive ability within the classification in which the individual is employed is a "wage increase" within the meaning of Executive Order No. 9250.

(b) If a wage rate or range of rates for a job classification has not theretofore been established by the employer for the plant involved, the rate or rate range should bear the same relation to rates or ranges of rates for similar classifications in the area as the existing rates or rate ranges in the plant bear to comparable rates or rate ranges in the area: provided, however, that schedules covering new establishments or new departments within existing establishments must be submitted for approval as provided in General Order No. 31.

§ 809.980g *General Order No. 7.*

Since Title VI, section 1 of Executive Order No. 9250, dated October 3, 1942, states that "nothing in this Order shall be construed as affecting the present operation of the Fair Labor Standards Act," and since statutes and orders of the duly constituted authorities of the several states fixing minimum rates for certain types of workers carry out the true purposes and intent of the Fair Labor Standards Act, and are designed and intended to eliminate substandards of living within the meaning of section 2 of Title II of Executive Order No. 9250, the National War Labor Board hereby approves increases in wage and salary rates made in compliance with such statutes and orders, provided, however, that, if any changes in such statutes or orders are made or promulgated after April 8, 1943, increases directed thereby which would result in a wage or salary rate in excess of 50 cents per hour may not be made without the approval of the Board.

§ 809.980h *General Order No. 8.*

Exercising the authority vested in the National War Labor Board by Section 4001.14 of Part 4001, Regulations Relating to Wages and Salaries issued on October 27, 1942 by the Economic Stabilization Director and approved by the President, and deeming it necessary for the effective administration of the Act of Congress of October 2, 1942, the Board hereby determines that adjustments in any wages or salaries over which this Board has jurisdiction and which are paid in any territory or possession of the United States, except Alaska, are exempted from the operation of the said Regulations and therefore may be made without the approval of the Board.

§ 809.9801 *General Order No. 9.*

Adjustments in salaries totaling not in excess of $5,000 per annum.

I. *Jurisdiction of the National War Labor Board.* Section 4001.2 of Part 4001 "Regulations Relating to Wages and Salaries," issued on October 27, 1942 by the Economic Stabilization Director and approved by the President provides in part that the National War Labor Board "shall have authority to determine whether any * * * salary payments to an employee totaling in amount not in excess of $5,000 per annum where such employee

(a) In his relations with his employer is represented by a duly recognized or certified labor organization, or

(b) Is not employed in a bona fide executive, administrative or professional capacity, are made in contravention of the Act of Congress of October 2, 1942, or any ruling, orders or regulations promulgated thereunder."

In other words the Board has jurisdiction over the adjustment of salaries up to $5,000 a year, except for those employees employed in a bona fide executive, administrative or professional capacity who are not represented by duly recognized or certified unions.

Section 4001.7 of said regulations provides that "in the case of a salary rate of $5,000 or less per annum existing on the date of the approval of these regulations by the President" (namely, October 27, 1942) no increase shall be made without the prior approval of the Board.

The Board hereby defines what is meant by "employed in a bona fide executive, administrative or professional capacity". (For the convenience of employers and employees who have been accustomed to the practices prevailing under the Fair Labor Standards Act, these definitions have been taken from the regulations promulgated by the Wage and Hour Administrator, pursuant to section 13 (a) (1) of the Fair Labor Standards Act of 1938 (52 Stat. 1060), but no provisions of that act or of any regulations issued thereunder are in any way applicable to the regulations and orders of the National War Labor Board).

Executive. The term "employed in a bona fide executive capacity" shall mean any employee—

(A) Whose primary duty consists of the management of the establishment in which he is employed or of a customarily recognized department or subdivision thereof, and

(B) Who customarily and regularly directs the work of other employees therein, and

(C) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight, and

(D) Who customarily and regularly exercises discretionary powers, and

(E) Who is compensated for his services on a salary basis at not less than $30 per week (exclusive of board, lodging, or other facilities), and

(F) Whose hours of work of the same nature as that performed by employees not employed in an executive, administrative or profesional capacity do not exceed 20 percent of the number of hours worked in the workweek by the employees under his direction; provided that this subsection (F) shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment.

Administrative. The term "employed in a bona fide administrative capacity" shall mean any employee—

(A) Who is compensated for his services on a salary or fee basis at a rate of not less than $200 per month (exclusive of board, lodging, or other facilities), and

(B) (1) Who regularly and directly assists an employee employed in a bona fide executive or administrative capacity (as such terms are defined in these regulations), where such assistance is nonmanual in nature and requires the exercise of discretion and independent judgment; or

(2) Who performs under only general supervision, responsible nonmanual office or field work, directly related to management policies or general business operations, along specialized or technical lines requiring special training, experience, or knowledge, and which requires the exercise of discretion and independent judgment; or

(3) Whose work involves the execution under only general supervision of special nonmanual assignments and tasks directly related to management policies or general business operations involving the exercise of discretion and independent judgment; or

(4) Who is engaged in transporting goods or passengers for hire and who performs, under only general supervision, responsible outside work of a specialized or technical nature requiring special training, experience, or knowledge, and whose duties require the exercise of discretion and independent judgment.

Professional. The term "employed in a bona fide professional capacity" shall mean any employee who is—

(A) Engaged in work—

(1) Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work, and

(2) Requiring the consistent exercise of discretion and judgment in its performance, and

(3) Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time, and

(4) Whose hours of work of the same nature as that performed by employees not employed in an executive, administrative or professional capacity do not exceed 20 percent of the hours worked in the workweek by such employees; provided that where such nonprofessional work is an essential part of and necessarily incident to work of a professional nature, this subsection (4) shall not apply, and

(5) (a) Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes; or

(b) Predominantly original and creative in character in a recognized field of artistic endeavor as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training, and the result of which depends primarily on the invention, imagination, or talent of the employee, and

(B) Compensated for his services on a salary or fee basis at a rate of not less than $200 per month (exclusive of board, lodging, or other facilities); provided that this subsection (B) shall not apply in the case of an employee who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and who is actually engaged in the practice thereof.

II. *Effective date of the Board's jurisdiction.* Pursuant to § 4001.6 of the said regulations, increases in salaries which by written agreement executed on or before October 27, 1942, or by formal action communicated to the employees, on or before October 27, 1942, were made applicable to work done prior to October 27, 1942, do not come within the jurisdiction of the Board, notwithstanding such increases are first reflected in a payroll subsequent to October 27, 1942.

III. *Salary increases which do not require Board approval.* Subject to the requirements of General Order No. 31, salary adjustments may be made in salary rates of individual employees over which the Board has jurisdiction without the approval of the Board, if they are incident to the application of the terms of a salary agreement which existed previous to or has been approved since October 27, 1942, or incident to an established or approved salary rate schedule and are made as a result of:

(a) Individual promotions or reclassifications

(b) Individual merit increases within established rate ranges

(c) Operation of an established plan of salary increases based on length of service within established rate ranges

(d) Increased productivity under incentive plans

(e) Operation of an apprentice or trainee system, or

(f) Such other reasons, or circumstances as may be prescribed in orders, rulings, or regulations, promulgated under the authority of these regulations.

Salary adjustments made under this order shall not result in any appreciable increase of the level of production costs and shall not furnish a basis either to increase prices or to resist otherwise justifiable reductions in prices.

IV. *Exempt employers.* Pursuant to § 4001.11 of the said regulations salary adjustments made by employers who employ not more than eight individuals are exempted from the provisions of §§ 4001.6, 4001.7 and 4001.8 of the said regulations and may therefore be made without the approval of the National War Labor Board.

V. *Statutory salaries and wages.* The said regulations, pursuant to § 4001.13 thereof, are not applicable to any salary or wages paid by the United States, any state or political subdivision thereof, the District of Columbia, or any agency or instrumentality of any one or more of the foregoing where the amount of such salary or wages is fixed by statute. Adjustment in such salaries or wages may therefore be made without the approval of the National War Labor Board.

VI. *Decreases in salaries of less than $5,000 over which the National War Labor Board has jurisdiction as defined in section I of this order.* Pursuant to § 4001.7 of the said Regulations, no decrease in a salary rate paid to an employee for any particular work, and over which the National War Labor Board has jurisdiction as defined in section I of this order, may be made by the employer below the highest salary rate paid for such work between January 1, 1941 and September 15, 1942, without the prior approval of the Board.

(a) The straight time weekly or monthly rate being paid before an increase takes effect, and which, if paid over a period of 52 weeks would not exceed $5,000 a year is the basis of determining whether a salary is less than $5,000 for the purposes of General Order No. 9.

(b) A "duly recognized or certified labor organization" as set forth in subsection I (a) of General Order No. 9 means a labor organization representing some or all of the employees affected by the proposed adjustment which (1) is recognized by the employer as the representative of such employees in matters affecting wages or (2) has been certified by an appropriate government authority (a state agency or the National War Labor Relations Board) as the exclusive bargaining agent for some or all of the

employees affected by the proposed adjustment.

§ 809.980j *General Order No. 10.*

The payment to employees, whose wage or salary increases are subject to the jurisdiction of the National War Labor Board, of a bonus, fee, gift, commission or other form of compensation customarily paid to such employees in the past may be continued without the approval of the National War Labor Board provided that

(a) If in a fixed amount, the total amount so paid to an employee during the current bonus year does not exceed the total so paid to an employee for like work during the preceding bonus year, or

(b) If computed on a percentage, incentive or other similar basis, the rate and the method of computation are not changed in the current bonus year so as to yield a greater amount than that in the preceding bonus year, but a greater amount when resulting from the same rate and method of computation may be paid.

(a) *General Order No. 10–A.*

A bonus payment made by an employer to an employee severing his employment for the immediate purpose of entering the armed forces of the United States does not require the approval of the National War Labor Board.

(b) *Ruling of War Labor Board on payment of bonuses.*

On April 2, 1943, the National War Labor Board clarified its position on bonus payments by explaining that a bonus may not be paid without Board approval, if no bonus was paid in the year immediately preceding the proposed payment. The term "preceding bonus year" as used in General Order No. 10 has been interpreted to mean the year, calendar or fiscal, immediately preceding the year, calendar or fiscal, in which it is desired to pay a bonus. If no bonus was paid in the year immediately preceding, no bonus may be paid without Board approval.

§ 809.980k *General Order No. 11.*

To prevent hardships resulting from innocent action in the period of transition following the issuance of Executive Order No. 9250, dated October 3, 1942, and pursuant to the authority vested in the National War Labor Board by that Executive Order, it is hereby ordered that:

An employer who, on or prior to November 7, 1942, has in good faith given an increase in wages subject to the jurisdiction of the National War Labor Board without the prior approval of the National War Labor Board or exemption under its regulations may apply for approval of such increase on or before December 1, 1942. If satisfied that the employer made the increase in good faith and that the increase is consistent with Executive Order No. 9250, October 3, 1942, and should be approved, the National War Labor Board will make its approval retroactive to the date of the wage increase.

Except as herein provided, an increase which requires approval of the National War Labor Board must receive such approval before it is put into effect.

§ 809.980l *General Order No. 12–B.*

General Order No. 12, adopted November 12, 1942, was revoked as of December 29, 1942. In its stead the procedures set forth in the Joint Statement of the National War Labor Board and the Commissioner of Internal Revenue, dated December 26, 1942 were adopted as General Order No. 12–A on January 6, 1943. General Order No. 12–A was revoked on May 25, 1943, and in its stead there was adopted, as General Order No. 12–B, the Joint Statement of the National War Labor Board and the Commissioner of Internal Revenue, dated May 25, 1943, and set forth hereinafter.

JOINT STATEMENT OF THE NATIONAL WAR LABOR BOARD AND THE COMMISSIONER OF INTERNAL REVENUE

On November 12, 1942, and December 26, 1942, the National War Labor Board and the Commissioner of Internal Revenue issued joint statements with respect to the procedure to be followed in making adjustments in salaries and wages of state, county, municipal and other non-federal governmental employees. It was stated that Congress in the Act of October 2, 1942, clearly intended that all employers and all employees would be covered by the national stabilization policy, and since millions of public employees are engaged in the same kind of work as private employees, the duty of public employers to conform to that policy is as plain as that of private employers. It was also stated that the Joint Committee on Salaries and Wages had been authorized to advise whether particular adjustments were in accordance with the national stabilization policy.

It is presumed that public employers will continue to cooperate as they have in the past and will not make adjustments in wages or salaries which would be in contravention of the national stabilization policy as expressed in Executive Order 9250 of October 3, 1942, and Executive Order 9328 of April 8, 1943, and the Economic Stabilization Director's policy directive of May 12, 1943. Adjustments will continue to be deemed approved without the necessity of filing certificates for the information of the Board or the Commissioner, and adjustments will neither be approved nor disapproved by the National War Labor Board or the Commissioner of Internal Revenue.

The Joint Committee on Salaries and Wages will continue to advise, when requested, as to the national stabilization policy. However, it should be understood that reliable advice relating to the national stabilization policy may also be obtained from the Regional War Labor Boards and the regional offices of the Bureau of Internal Revenue, as well as from the Commissioner of Internal Revenue in Washington and the National War Labor Board.

(a) On November 25, 1942, the National War Labor Board determined that General Order No. 12 applies to employees of the District of Columbia. It is therefore to be assumed that General Order No. 12–B likewise applies to such employees.

§ 809.980m *General Order No. 13.*

(a) Title III, section 3 of Executive Order No. 9250 of October 3, 1942, provides "The National War Labor Board shall permit * * * the Wage Adjustment Board for the Building Construction Industry * * * to continue to perform its functions * * * except insofar as any of them is inconsistent with the terms of this order." Pursuant thereto, the Wage Adjustment Board, constituted as hereinafter described, shall continue to perform the duty ascribed to it by Administrative Order No. 101, as amended, of the Secretary of Labor, and by the Wage Stabilization Agreement of May 22, 1942, between the Building and Construction Trades Department of the American Federation of Labor and Several Government Agencies, all in accordance with the further provisions of this order.

(b) The Wage Adjustment Board for the Building Construction Industry shall consist of nine members, of whom three shall represent Labor, three shall represent Industry, and three, including the Chairman, shall represent the public.

(c) Applications for approval of revision of rates subject to the Wage Stabilization Agreement of May 22, 1942, which revision would otherwise require the approval of the National War Labor Board, shall be submitted for approval to the Wage Adjustment Board. In acting upon such applications, the Wage Adjustment Board shall be subject both to the provisions of the Wage Stabilization Agreement of May 22, 1942, and to the requirements of the national wage stabilization program, as set forth in paragraph (f) hereof.

(d) The Wage Adjustment Board for the Building Construction Industry shall, in addition to the powers set forth in paragraphs (a) and (c) hereof, have jurisdiction over labor disputes and voluntary wage or salary adjustments involving persons employed in the building construction industry (as hereinafter defined) who are not subject to the Wage Stabilization Agreement of May 22, 1942. The Wage Adjustment Board shall have power, subject to review by the National War Labor Board as provided in paragraph (k) hereof, (1) to hear, and issue directive orders, in labor dispute cases, and (2) to make final rulings on voluntary wage and salary adjustments requiring the approval of the National War Labor Board.

(e) The jurisdiction of the Wage Adjustment Board hereunder shall, as heretofore, be limited to mechanics and laborers in the building and construction industry employed directly upon the site of the work.

(f) In the performance of its duties hereunder, the Wage Adjustment Board, in addition to all pertinent policies of the National War Labor Board and the Director of Economic Stabilization, heretofore or hereafter announced, shall conform to the following principles and to any modification thereof hereafter promulgated by the National War Labor Board:

(1) General considerations. In acting upon revision of wage rates, in dispute or voluntary cases, the Wage Adjustment Board is subject both to the provisions of the Wage Stabilization agreement of May 22, 1942, and to the requirements of the national wage stabilization policy. Approvable adjustments in such rates must meet both sets of requirements.

(2) Sound and tested rates. The provisions of the May 12 supplement to Executive Order No. 9328 with respect to "brackets of sound and tested going rates" are inapplicable to the Building Construction Industry.

(3) Little Steel. The Little Steel formula, as heretofore defined by the National War Labor Board, shall be applied by the Wage Adjustment Board in the following manner:

(i) No employee or group of employees is entitled automatically to a Little Steel adjustment.

(ii) Generally, employees enjoying relatively high rates of pay should receive a smaller percentage adjustment than those receiving lower rates of pay.

(iii) In applying the Little Steel formula to the wage rates for a particular craft, some or all of the full 15% otherwise allowable should be withheld where allowance for the full amount would have an unstabilizing effect on wages in the industry or area. This limitation should be invoked when the wage rates of the employees involved are relatively high compared to the wage rates of other employees in related work, and when the formula is applied to individual occupational groups in the highest wage brackets.

(iv) No adjustment may be made which is in excess of the amount allowable under the Little Steel formula notwithstanding that the final rate resulting is below an appropriate Davis-Bacon rate.

(4) Substandards. The Wage Adjustment Board may approve adjustments which are "clearly necessary to correct substandards of living", in accordance with the provisions of Executive Order No. 9328 and the May 12, Supplement.

(5) Critical needs of war production. In rare and unusual cases adjustments not permissible within the above principles, which are, in the opinion of the Wage Adjustment Board, necessary to the critical needs of war production, shall be submitted through the National War Labor Board for the approval of the Economic Stabilization Director.

(g) In the handling of dispute cases, the Wage Adjustment Board shall comply with all appropriate provisions of the "Jurisdiction and Procedure of Regional War Labor Boards," of April 15, 1943, as amended and with the "Rules for Conduct of Hearings Under the War Labor Disputes Act", and all other pertinent rules of procedure of the National War Labor Board that may be hereafter announced.

(h) In accordance with the requirements of Executive Orders No. 9250 and 9328 and the Supplement thereto of May 12, 1943, issued by the Director of Economic Stabilization, any wage or salary adjustment approved or order by the Wage Adjustment Board "which may furnish the basis either to increase price ceilings or to resist otherwise justifiable reductions in price ceilings," or, if no price ceilings are involved, which may increase the costs to the government of a product or service being furnished under a procurement contract, shall become effective only if also approved by the Director of Economic Stabilization. Notice to this effect shall be contained in all rulings and orders requiring this approval which are issued by the Wage Adjustment Board.

(i) All applications for the revision or adjustment of wage rates within the jurisdiction of the Wage Adjustment Board shall be filed directly with the Wage Adjustment Board, Washington, D. C. Requests for the revision of wage rates subject to the Wage Stabilization Agreement of May 22, 1942, which are presented by local labor organizations affiliated with the Building and Construction Trades Department of the American Federation of Labor, shall be filed only with the approval of the international or national labor organization, and shall be submitted through and approved by the Building and Construction Trades Department of the American Federation of Labor.

(j) (1) All applications for the voluntary adjustment, or revision of wage rates shall contain, or the Wage Adjustment Board shall, before acting on the application, procure, a statement by the employer as to whether the adjustment or revision if approved (i) may furnish the basis to increase price ceilings or (ii) may furnish the basis for application by the employer for an increase to the government in the price of any product or service. If the statement is in the affirmative as to (i), the Wage Adjustment Board shall send to the Office of Price Administration a copy of the application and a copy of its ruling at the time of issuance thereof. If the statement is in the affirmative as to (ii) and an adjustment of the type that requires the approval of the Economic Stabilization Director is approved by the Wage Adjustment Board, the Wage Adjustment Board shall send to the appropriate procurement agency of the government a copy of its ruling at the time of issuance thereof.

(2) In any wage dispute case where it appears that the wage adjustment recommended or ordered may furnish the basis to increase price ceilings the Wage Adjustment Board shall send to the Office of Price Administration a copy of the recommendation of its panel or hearing officer at the time of its transmittal to the parties and of its directive order when issued. In any wage dispute case where it appears that the wage adjustment ordered may furnish the basis for an application by the employer for an increase to the government in the price of any product or service and the adjustment is of the type that requires the approval of the Economic Stabilization Director the Wage Adjustment Board shall send to the appropriate procurement agency of the government a copy of its directive order when issued.

(3) In all cases where the approval of the Director of Economic Stabilization is required, the Wage Adjustment Board shall, after its ruling or order is issued, send the case to the National War Labor Board for transmittal to the Director of Economic Stabilization. The Wage Adjustment Board shall, upon being notified, advise the parties of the action taken by the Office of Price Administration or by the Director of Economic Stabilization.

(k) All rulings of the Wage Adjustment Board on wage and salary adjustments, and all directive orders of the Wage Adjustment Board in dispute cases, shall have the same effect, and be subject to the same provisions for stay and review by the National War Labor Board, as rulings and orders of the Regional War Labor Boards, as set forth in section VII of the "Jurisdiction and Procedure of Regional War Labor Boards," as amended § 809.979 (k)).

(l) The Wage Adjustment Board shall transmit regularly to the National War Labor Board copies of its decisions and rulings hereunder, which, when issued, shall be made available to the public, and such additional data and reports as the National War Labor Board may from time to time require.

§ 809.980n *General Order No. 14.* General Order No. 14, adopted by the National War Labor Board on November 24, 1942, was amended on August 17, 1943, to read as follows:

Authorization to the War Department to Pass on Wage and Salary Adjustments for Designated Civilian Employees. (A) The National War Labor Board hereby delegates to the Secretary of War, to be exercised on his behalf by the Wage Administration Section within the Industrial Personnel Division, Headquarters, Army Service Forces (hereinafter referred to as the "War Department Agency"), the power to rule upon all applications for wage and salary adjustments (insofar as approval thereof has been made a function of the National War Labor Board) covering civilian employees within the continental limits of the United States, employed by

(1) The War Department.

(2) The Army Exchange Service, and

(3) Government-owned privately operated facilities of the War Department,

all in accordance with the further provisions of this Order.

(B) There shall be a standing tripartite Appeals Committee, to consist of two representatives to be appointed by the War Department Agency and two representatives each of industry and labor to be appointed by the National War Labor Board. The Committee may have such assistants as the Board may designate. The Board hereby delegates to the Appeals Committee the power to pass upon appeals from rulings by the War Department Agency under category A (3) above, and to perform such other duties as are hereinafter prescribed.

(C) In the performance of their respective duties the War Department Agency and the Appeals Committee shall comply with the terms of Executive Order No. 9250, dated October 3, 1942, Executive Order No. 9328, dated April 8, 1943, the Supplementary Directive of May 12, 1943, and all general orders and policies of the National War Labor Board announced thereunder.

Any wage or salary adjustment approved by the Agency "which may increase production costs above the level prevailing in comparable plants or establishments" shall become effective only if also approved by the Director of Economic Stabilization. Notice to this effect shall be contained in all rulings and orders issued by the War Department Agency in wage cases.

Applications for approval of voluntary wage adjustments within the jurisdiction of the War Department Agency shall state whether or not the adjustment if granted may increase production costs above the level prevailing in comparable plants or establishments. If the answer is in the affirmative, the War Department Agency shall send to the War Labor Board for processing to the Office of the Director of Economic Stabilization a copy of the application and a copy of its ruling at the time of issuance thereof, for approval as mentioned above.

The War Department Agency, without making an initial ruling thereon, may refer to the Board for decision by the Board any case which in the opinion of the Agency presents doubtful or disputed questions of sufficient seriousness and import to warrant direct action by the Board.

(D) The War Department Agency and the Appeals Committee shall transmit to the Wage Stabilization Division of the National War Labor Board copies of their respective rulings and rules of procedure as they are issued. In administering the provisions of this order the Agency shall also transmit monthly reports of its rulings to the Wage Stabilization Director of the National War Labor Board, and such additional data as said Division or the Board may from time to time deem necessary.

(E) Any ruling by the War Department Agency hereunder shall be final, subject

(1) To the National War Labor Board's ultimate power to review rulings on its own initiative, and

(2) In cases under category A (3) above, to the right of any aggrieved party, within a period of fourteen days after the issuance of the ruling, to file an appeal with the Appeals Committee.

(F) Any ruling by the Appeals Committee hereunder shall be final, subject

(1) To the National War Labor Board's ultimate power to review rulings on its own initiative, and

(2) To the right of any aggrieved party, including the War Department within a period of fourteen days after the issuance of the ruling, to petition the National War Labor Board for leave to appeal to the Board. The burden shall be upon the petitioner in such cases to show why the Board should be called upon to act.

(G) Any ruling by the War Department Agency hereunder shall be deemed to be the Act of the National War Labor Board unless and until reversed or modified by the Appeals Committee or by the Board.

(H) The term "government-owned, privately-operated facilities of the War Department" shall include for the purposes of this Order only those facilities (1) in which the War Department has contractual responsibility for the approval of pay roll costs, and (2) which are designated in lists furnished from time to time, to the Board by the War Department Agency. The Board may at any time, upon at least seven days' notice to the War Department Agency, strike from the list any facility if the Board believes that the policies of Executive Order No. 9017, Executive Order No. 9250, Executive Order No. 9328, or the Supplementary Directive of May 12, 1943, will be furthered by the Board's acting directly upon the wage and salary adjustments of such facility.

(I) Where disputes about wages and salaries arise between the private operators of said facilities and their employees, the following procedure shall be followed. The dispute shall first be referred for negotiation to the U. S. Conciliation Service. If an agreement is reached, that portion of the agreement pertaining to wages shall be submitted to the War Department Agency for approval. If no agreement is reached, the dispute shall be

referred for decision to the appropriate Regional Board, subject to the regular rules of procedure of the National War Labor Board. At the same time, the War Department Agency shall be notified of the dispute and the nature of the case. On its own initiative the Agency may request the Regional Board for any further information concerning the case. When a decision has been reached by the Regional Board, copies of the Board's decision shall be sent to the War Department Agency and the Wage Stabilization Director of the National War Labor Board at the same time that copies are sent to the parties in the dispute. Within the fourteen day period allowed for filing a petition for review, the War Department Agency may request a review of the case according to the rules of procedure, as amended, of the National War Labor Board.

(a) *Appeals Committee.* The standing tripartite Appeals Committee consists of:

For the War Department: Col. W. F. Volandt, assistant chief of staff, Army Air Forces, and Col. Ralph L. Hart, executive assistant to the Chief of Field Services, Ordnance Department.

For labor: John Brophy, director of industrial union councils of the CIO, and Fred Hewett, editor of the International Association of Machinists (AFL) Journal.

For industry: Clarence Skinner, Washington manager of the Automotive Parts and Equipment Manufacturers Association, and Henry S. Woodbridge, assistant to the president of the American Optical Co.

(b) *Government-owned, privately operated facilities.* The following Government-owned, privately operated facilities are embraced within the delegation to the War Department Agency:

Government-Owned, Privately Operated Ordnance Facilities

Alabama Ordnance Works #1 and 2, Sylacauga, Ala.
Allegany Ordnance Plant, Cumberland, Md.
Arkansas Ordnance Plant, Jacksonville, Ark.
Badger Ordnance Works, Baraboo, Wis.
Baytown Ordnance Works, Baytown, Tex.
Bluebonnet Ordnance Plant, McGregor, Tex.
Buckeye Ordnance Works, Ironton, Ohio.
Cactus Ordnance Works, Dumas, Tex.
Cherokee Ordnance Works, Danville, Pa.
Chickasaw Ordnance Plant, Millington, Tenn.
Coosa River Ordnance Plant, Talladego, Ala.
Cornhusker Ordnance Plant, Grand Island, Nebr.
Denver Ordnance Plant, Denver, Colo.
Des Moines Ordnance Plant, Des Moines, Iowa.
Dixie Ordnance Works, P. O. Box 1643, Monroe, La.
Dixon Gun Plant, Houston, Tex.
Eau Claire Ordnance Plant, Eau Claire, Wis.
Evansville Ordnance Plant, Evanville, Ind.
Elwood Ordnance Plant, Joliet, Ill.
Gadsden Ordnance Plant, Gadsden, Ala.
Gopher Ordnance Works, St. Paul, Minn.
Green River Ordnance Plant, Dixon, Ill.
Gulf Ordnance Plant, Aberdeen, Miss.
Holston Ordnance Works, Kingsport, Tenn.
Hoosier Ordnance Plant, Charlestown, Ind.
Illinois Ordnance Plant, Carbondale, Ill.
Indiana Ordnance Works, Charlestown, Ind.
Iowa Ordnance Plant, Burlington, Iowa.
Jayhawk Ordnance Works, Pittsburg, Kans.
Kankakee Ordnance Works, Joliet, Ill.
Kansas Ordnance Plant, Parsons, Kans.
Kentucky Ordnance Works, Paducah, Ky.
Keystone Ordnance Works, Meadville, Pa.
Kingsbury Ordnance Plant, LaPorte, Ind.
Kings Mill Ordnance Plant, Kings Mill, Ohio.
Lake City Ordnance Plant, Independence, Mo.
Lake Ontario Ordnance Works, Youngstown, N. Y.
Lone Star Ordnance Plant, Texarkana, Tex.
Longhorn Ordnance Works, Marshall, Tex.
Lordstown Ordnance Depot, Warrentown, Ohio.
Louisiana Ordnance Plant, Shreveport, La.
Lowell Ordnance Plant, Lowell, Mass.
Maumelle Ordnance Works, Little Rock, Ark.
Milwaukee Ordnance Plant, Milwaukee, Wis.
Missouri Ordnance Works, Louisiana, Mo.
Morgantown Ordnance Works, Morgantown, W. Va.
Nebraska Ordnance Plant, Fremont, Nebr.
New River Ordnance Plant, Pulaski, Va.
New York Ordnance Works, Baldwinsville, N. Y.
Oak Ordnance Plant, Decatur, Ill.
Ohio River Ordance Works, Henderson, Ky.
Oklahoma Ordnance Works, Tulsa, Okla.
Ozark Ordnance Works, El Dorado, Ark.
Pantex Ordnance Plant, Amarillo, Tex.
Pennsylvania Ordnance Works, Williamsport, Pa.
Pilgrim Ordnance Works, West Hanover, Mass.
Plum Brook Ordnance Works, Sandusky, Ohio.
Radford Ordnance Works, Radford, Va.
Ravenna Ordnance Plant, Apco, Ohio.
Rossford Ordnance Depot, Toledo, Ohio.
St. Louis Ordnance Plant, St. Louis, Mo.
Sangamon Ordnance Plant, Springfield, Ill.
Scioto Ordnance Plant, Marion, Ohio.
Sunflower Ordnance Works, Lawrence, Kans.
Twin Cities Ordnance Plant, Minneapolis, Minn.
Utah Ordnance Plant, Salt Lake City, Utah.
Vigo Ordnance Plant, Terre Haute, Ind.
Volunteer Ordnance Works, Chattanooga, Tenn.
Wabash River Ordnance Works, Newport, Ind.
Weldon Spring Ordnance Works, Weldon Spring, Mo.
West Virginia Ordnance Works, Point Pleasant, W. Va.
Wolf Creek Ordnance Plant, Milan, Tenn.

Government-Owned, Privately Operated Army Air Forces Facilities

Government Plant No. 1, Martin, Omaha, Nebr.
Government Plant No. 2, North American, Kansas City, Kans.
Government Plant No. 3, Douglas, Tulsa, Okla.
Government Plant No. 4, Consolidated, Ft. Worth, Tex.
Government Plant No. 5, Douglas, Oklahoma City, Okla.
Government Plant No. 6, Bell, Marietta, Ga.
Government Plant No. 7, Fisher Body, Cleveland, Ohio.
Government Plant No. 8, Douglas, Chicago, Ill.
Modification Center No. 1, Douglas, Daggett, Calif.
Modification Center No. 2, Consolidated, Tucson, Ariz.
Modification Center No. 3, Lockheed, Dallas, Tex.
Modification Center No. 4, North American, Kansas City, Kans.
Modification Center No. 5, Curtiss-Wright, Buffalo, N. Y.
Modification Center No. 6, Republic, Evansville, Ind.
Modification Center No. 7, Bell, Niagara Falls, N. Y.
Modification Center No. 8, Martin, Omaha, Nebr.
Modification Center No. 9, Vultee, Louisville, Ky.
Modification Center No. 10, United Airlines, Cheyenne, Wyo.
Modification Center No. 11, Northwest Airlines, Vandalia, Ohio.
Modification Center No. 12, Northwest Airlines, St. Paul, Minn.

Non-Manual Employees Employed on the following Fixed-Fee Engineers Projects Are Embraced Within the Delegation to the War Department Agency—Projects and Nearest City

Ainsworth Airfield, Ainsworth, Nebr.
Air Support Command Base, Colorado Springs, Colo.
Alabama Ordnance Works, Sylacauga, Ala.
Alexandria, Q. M. Depot, Alexandria, Va.
Allegany Ordnance Works, Cumberland, Md.
Alliance Glider Base, Alliance, Nebr.
Alterations and Additions to Existing Laundry, Chatham, Mass.
Alterations and Additions to Existing Laundry, Falmouth, Mass.
American Locomotive Company, Schenectady, N. Y.
Anacostia—Dalecarlia Reproduction Plant, Washington, D. C.
Anniston Ordnance Depot, Anniston, Ala.
Arlington Hall Station, Arlington, Va.
Army Airforce Advanced Flying School, La-Junta, Colo.
Army Airforce First Concentration Command, Halls, Tenn.
Army Airforce Storage Depot, Columbus, Ohio.
Ashford General Hospital, White Sulphur Springs, W. Va.
Ashford Internment Camp, White Sulphur Springs, W. Va.
Atlanta Ordnance Motor Base, Atlanta, Ga.
Atlas Building, Columbus, Ohio.
Atterbury, Camp, Columbus, Ind.
Aviation Mechanical Training School, Biloxi, Miss.
Badger Ordnance Works, Baraboo, Wis.
Barge Construction, Jacksonville, Fla.
Bartholomew County Airfield, Columbus, Ind.
Bayonne Terminal, Bayonne, N. J.
Belle Meade Q. M. Depot, Read Valley, N. J.
Beltsville Air Support Command Base, Beltsville, Md.
Belvoir, Fort, Accotink, Va.
Berry Hills Army Air Center, Nashville, Tenn.
Big Springs Army Airfield, Big Springs, Tex.
Billings General Hospital, Indianapolis, Ind.
Black Hills Ordnance Depot, Provo, S. Dak.
Bluegrass Ordnance Depot, Richmond, Ky.
Blytheville Advanced Twin Engine Training School, Blytheville, Ark.
Boeing Field, Seattle, Wash.
Bolling Field, District of Columbia.
Bowman Field, Louisville, Ky.
Bragg, Fort, Fayetteville, N. C.
Breckenridge, Camp, Morganfield, Ky.
Bruning Airfield, Bruning, Nebr.
Buckeye Ordnance Works, South Point, Ohio.
Buckley Field, Denver, Colo.
Buffalo Modification Center #5, Buffalo, N. Y.
Building 703–705 Columbia Pike, Arlington, Va.
Buchnell General Hospital, Brigham City, Utah.
Butler General Hospital, Butler, Pa.
Cactus Ordnance Works, Etter, Tex.
Camp Springs Airfield, Camp Springs, Md.
Campbell, Camp, Clarksville, Tenn.
Carson, Camp, Colorado Springs, Colo.
Carteret Ordnance Motor Reception Park, Carteret, N. J.
Casper Airbase, Casper, Wyo.
Castle Island Terminal, Boston, Mass.
Chaffee, Camp, Fort Smith, Ark.
Chanute Field, Rantoul, Ill.
Cherokee Ordnance Works, Danville, Pa.
Cheyenne Modification Center, Cheyenne, Wyo.
Chicago Aircraft Assembly Plant, Chicago, Ill.
Chickasaw Ordnance Works, Millington, Tenn.
Clarksville Airfield, Clarksville, Tenn.
Cleveland Aircraft Assembly Plant, Cleveland, Ohio.
Cleveland General Hospital, Parma, Ohio.
Colorado Springs Airfield, Colorado Springs, Colo.
Como Internment Camp, Como, Miss.
Congaree Ground Air Support, Congaree, S. C.
Consolidated Aircraft Plants, San Diego, Calif.
Construction for the Bureau of Standards, Loudoun County, Va.
Corinth Tent Camp, Corinth, Miss.
Crowder, Camp, Neosho, Mo.
Customhouse Wharf, Portland, Maine.

Daggett Modification Center #1, Daggett, Calif.
Davis, Camp, Camp Davis, N. C.
Dawes, Fort, Deer Island, Mass.
Del Valle Airfield, Del Valle, Tex.
Denison Dam & Reservoir, Denison, Tex.
Denver Ordnance Plant, Denver, Colo.
Detroit Tank Arsenal, Detroit, Mich.
Dickson Gun Plant, Houston, Tex.
Dix, Fort, Wrightstown, N. J.
Dix, Fort, Airfield, Wrightstown, N. J.
Dixie Ordnance Works, Sterlingtown, La.
Dog Training Center, Front Royal, Va.
Douglas Aircraft Corporation, Long Beach, Calif.
Douglas Elsegundo Plant, Inglewood, Calif.
Dyersburg Airfield, Dyersburg, Tenn.
Eastaboga Air Base, Eastaboga, Ala.
Edgewood Arsenal, Edgewood, Md.
Eglin Field, Valpariso, Fla.
Escanaba Ore Docks, Escanaba, Mich.
Evansville Ordnance Plant, Evansville, Ind.
Fairfax Aircraft Assembly Plant, Fairfax, Kans.
Fairmont Airfield, Fairmont, Nebr.
Fall Creek Ordnance Plant, Indianapolis, Ind.
Fort Crook Modification Center #8, Fort Crook, Nebr.
Fort Belvoir, Fort Belvoir, Va.
Fort Knox, Fort Knox, Ky.
Fort Monroe, Fort Monroe, Va.
Fort Myer, Fort Myer, Va.
Fort Peck Powerhouse, Fort Peck, Mont.
Fort Riley, Fort Riley, Kans.
Fort Worth Parts Plant, Fort Worth, Tex.
Fostoria Plant, Fostoria, Ohio.
Gainesville Airfield, Gainesville, Tex.
Gary Armor Plate Plant, Gary, Ind.
George Field, Lawrenceville, Ill.
Glasgow Airfield, Glasgow, Mont.
Gopher Ordnance Works, Rosemont, Minn.
Gore Airfield, Great Falls, Mont.
Grand Island Airfield, Grand Island, Nebr.
Great Brewster Island, Boston Harbor, Mass.
Great Falls Army Airfield, Great Falls, Mont.
Green River Ordnance Plant, Amboy, Ill.
Greenwood Airfield, Greenwood, Miss.
Grenada Air Support Command Base, Grenada, Miss.
Haan, Camp, Riverside, Calif.
Haddon Hall Alterations, Atlantic City, N. J.
Hale, Camp, Pando, Colo.
Halloran General Hospital, Staten Island, N. Y.
Harrison, Fort Benjamin, Indianapolis, Ind.
Harvard Airfield, Harvard, Nebr.
Headquarters 2nd Army, Memphis, Tenn.
Herington Satellite Airfield, Herington, Kans.
Holston Ordnance Works, Kingsport, Tenn.
Howze, Camp, Gainesville, Tex.
Huntington National Bank Building, Columbus, Ohio.
Huntsville Arsenal, Huntsville, Ala.
Indiana Ordnance Works, Charleston, Ind.
Iowa Ordnance Plant, Burlington, Iowa.
Jackson General Hospital, Jackson, Miss.
Jayhawk Ordnance Works, Baxter Springs, Kans.
Jerome Relocation Center, McGehee, Ark.
Jersey City Q.M. Sub Depot, Somerville, N. J.
Joyce Building, Columbus, Ohio.
Kankakee Ordnance Works, Joliet, Ill.
Kansas City Aircraft Assembly Plant, Kansas City, Kans.
Kansas City Q.M. Depot, Kansas City, Mo.
Kearney Airfield, Kearney, Nebr.
Kearney Equipment Repair Depot, Kearney, Nebr.
Keesler Field, Biloxi, Miss.
Kennedy General Hospital, Memphis, Tenn.
Kentucky Ordnance Works, Paducah, Ky.
Keystone Ordnance Works, Geneva, Pa.
Kingsbury Ordnance Plant, LaPorte, Ind.
Kodak Optical Works, Rochester, N. Y.
La Junta Airfield, La Junta, Colo.
La Junta Auxiliary Fields, Las Animas, Colo.
Lake City Ordnance Plant, Independence, Mo.
Lake Ontario Ordnance Works, Modeltown, N. Y.
Langley Field, Hampton, Va.
Laurinburg-Maxton Air Base, Laurinburg, N. C.
Lawson General Hospital, Atlanta, Ga.
Letterkenny Ordnance Depot, Chambersburg, Pa.
Lewis, Fort, Fort Lewis, Wash.
Lincoln Airbase, Lincoln, Nebr.
Lockheed Vega Aircraft Company, Burbank, Calif.
Longhorn Ordnance Works, Karnack, Tex.
Lordstown Ordnance Depot, Lordstown, Ohio.
Louisiana Ordnance Plant, Minden, La.
Louisville Ordnance Depot, Louisville, Ky.
Lowell Ordnance Depot, Lowell, Mass.
McCain, Camp, Grenada, Miss.
Malden Basic Flying School, Malden, Mo.
Manhattan District Projects,
Marietta Aircraft Assembly Plant, Atlanta, Ga.
Marshall Plant, New Martinsville, W. Va.
Martinsburg General Hospital, Martinsburg, W. Va.
Maumelle Ordnance Works, Marche, Ark.
Maury Plant, Columbia, Tenn.
Mead Equipment Repair Depot, Mead, Nebr.
McClellan, Fort, Anniston, Ala.
McCook Satellite Field, McCook, Nebr.
Memphis Airfield, Memphis, Tenn.
Memphis Q.M. Depot, Memphis, Tenn.
Midwest Air Depot (Tinker Army Airfield), Oklahoma City, Okla.
Milwaukee Ordnance Plant, Milwaukee, Wis.
Missouri Ordnance Works, Louisiana, Mo.
Monmouth, Fort, Red Bank, N. J.
Monroe Reception Center, Monroe, La.
Monticello Internment Camp, Monticello, Ark.
Morgantown Ordnance Works, Morgantown, W. Va.
National Park College, Forest Glen, Md.
New Orleans Port of Embarkation, New Orleans, La.
Newport News Staging Area, Newport News, Va.
New York Ordnance Works, Baldwinsville, N. Y.
Niagara Falls Modification Center #7, Niagara Falls, N. Y.
Niagara Falls Plant, Niagara Falls, N. Y.
Nichols General Hospital, Louisville, Ky.
Nitschke Building, Columbus, Ohio.
North American Aviation Plant, Inglewood, Calif.
North Camp Polk, Leesville, La.
Oklahoma City Aircraft Assembly Plant, Oklahoma City, Okla.
Oklahoma Ordnance Works, Choteau, Okla.
Orangeburg Staging Area, Orangeburg, N. Y.
O'Reilly General Hospital, Springfield, Mo.
Ozark Ordnance Works, El Dorado, Ark.
Pantex Ordnance Plant, Amarillo, Tex.
Paris Airfield, Paris, Tex.
Patterson Field, Osborne, Ohio.
Pennsylvania Ordnance Works, Allenwood, Pa.
Pentagon Building, Arlington, Va.
Phillips, Camp, Salina, Kans.
Pickett, Camp, Blackstone, Va.
Pierre Airfield, Pierre, S. Dak.
Pine Bluff Arsenal, Pine Bluff, Ark.
Pinker Army Air Field, Oklahoma City, Okla.
Pollock Air Support Command Base, Pollock, La.
Port Newark, Newark, N. J.
Portage Ordnance Depot, Ravenna, Ohio.
Potomac River Emergency Railroad Crossing, Arlington, Va.
Pueblo Ordnance Depot, Pueblo, Colo.
Quartermaster Market Center, Alexandria, Va.
Radford Ordnance Works, Radford, Va.
Rapid City Airbase, Rapid City, S. Dak.
Rapid City Cantonment, Rapid City, S. Dak.
Reading Airfield, Reading, Pa.
Red River Ordnance Depot, New Boston, Tex.
Redstone Ordnance Plant, Huntsville, Ala.
Richmond Holding and Reconsignment Point, Richmond, Va.
Richmond Q. M. Depot, Richmond, Va.
Ritchie, Camp, Camp Ritchie, Md.
Rocky Mountain Arsenal, Denver, Colo.
Rocky Mountain Arsenal, Labora, Colo.
Rohwer Relocation Center, McGehee, Ark.
Rome Army Air Depot, Rome, N. Y.
Russell City Airfield, Russell City, Calif.
Ruston Internment Camp, Ruston, La.
St. Joseph Municipal Airport, St. Joseph, Mo.
St. Louis Ordnance Plant, St. Louis, Mo.
St. Louis Plant, St. Louis, Ill.
St. Paul Ford Plant, St. Paul, Minn.
St. Paul Modification Center #12, St. Paul, Minn.
St. Paul Propeller Plant, St. Paul, Minn.
Salina Repair Depot, Salina, Kans.
Sangamon Ordnance Plant, Illiopolis, Ill.
Scioto Ordnance Plant, Marion, Ohio.
Scribner Airfield, Scribner, Nebr.
Second Army Headquarters, Memphis, Tenn.
Sedalia Glider Base, Sedalia, Mo.
Seneca Ordnance Depot, Kendia, N. Y.
Selman Field, Monroe, La.
Seymour Airfield, Seymour, Ind.
Shenango Personnel Replacement Depot, Transfer, Pa.
Sibert, Camp, Gadsden, Ala.
Sioux City Airfield, Sioux City, Iowa.
Sioux Falls Radio Mechanical School, Sioux Falls, S. Dak.
Sioux Ordnance Depot, Sidney, Nebr.
Smokey Hill Airfield, Salina, Kans.
Standish, Camp Myles, Taunton, Mass.
Stout Field, Indianapolis, Ind.
Sturgis Airfield, Sturgis, Ky.
Sunflower Ordnance Plant, Eudora, Kans.
Terre Haute Ordnance Depot, Terre Haute, Ind.
Tomah Radio School, Tomah, Wis.
Topeka Army Airfield, Topeka, Kans.
Topeka General Hospital, Topeka, Kans.
Tuscon Modification Center #2, Tuscon, Ariz.
Tuskegee Army Flying School, Tuskegee, Ala.
Twin Cities Ordnance Plant, St. Paul, Minn.
Tyson, Camp, Paris, Tenn.
Union Central Building Annex, Cincinnati, Ohio.
U. S. O. Building, Norfolk, Va.
U. S. X-Ray School, Memphis, Tenn.
Valley Forge General Hospital, Phoenixville, Pa.
Van Dorn, Camp, Centerville, Miss.
Victory Ordnance Plant, Decatur, Ill.
Vigo Ordnance Plant, Terre Haute, Ind.
Volunteer Ordnance Works, Chattanooga, Tenn.
Wabash River Ordnance Works, Newport, Ind.
Walker Satellite Airfield, Hays, Kans.
Walnut Ridge Airfield, Walnut Ridge, Ark.
Walterboro Airfield, Walterboro, S. C.
Washington, Fort, Silesia, Md.
West Virginia Ordnance Works, Point Pleasant, W. Va.
Westvaco C. W. S. Plant, South Charleston, W. Va.
Winter General Hospital, Topeka, Kans.
Woodrow Wilson General Hospital, Staunton, Va.
Wright Field, Dayton, Ohio.

Non-Manual Employees Employed on the Following Fixed-Fee Projects Within the Areas Encompassed by the Alaskan Department and the Northwest Service Command Are Embraced Within the Delegation to the War Department Agency

Project	*Location*
APO 980 Depot—Shipping, storage and quarrying facilities	APO 980
APO 980 Depot—Construction of all buildings, construction of utilities, perform all concrete work, operate mess and commissary	APO 980
APO 980 Depot—Rental of dredging equipment	APO 980
Depot and paving—Earth excavation	APO 980 and 726
Paving Program	APO 726
Paving Program	APO 980
Paving Program	APO 980
Harbor Improvements	APO 726

§ 809.980o *General Order No. 15.*

Where under the provisions of a bona fide collective agreement there has been established an impartial chairman, umpire, or arbitrator whose duties include the fixing of rates for new jobs, his decisions so rendered need not be submitted for approval to the National War Labor Board, provided that:

(1) The rate or rate range for each new job shall be fixed in an amount which is directly related to and in balance with the established rates or rate ranges of the other jobs covered by the agreement, and shall bear the same relations to rates or rate ranges for similar classifications in the area as the rates or rate ranges set forth in the agreement bear to comparable rates or rate ranges in the area.

(2) A bi-weekly report of rates so fixed shall be transmitted to the Division of Review, Analysis and Research of the National War Labor Board together with sufficient information to establish the aforesaid relationship and balance.

(3) Such decisions shall be subject to the Board's ultimate power of review but any modification or reversal thereof will not be retroactive.

(4) The establishment of such rates should not result in any substantial increase of the level of costs and shall not furnish a basis either to increase price ceilings of the commodity or service involved or to resist otherwise justifiable reductions in such price ceilings.

§ 809.980p *General Order No. 16.*

Adjustments which equalize the wage or salary rates paid to females with the rates paid to males for comparable quality and quantity of work on the same or similar operations, and adjustments in accordance with this policy which recognize or are based on differences in quality or quantity of work performed, may be made without approval of the National War Labor Board, provided that:

(1) Such adjustments shall be subject to the Board's ultimate power of review, but any modification or reversal thereof will not be retroactive;

(2) Such adjustments shall not furnish a basis either to increase price ceilings of the commodity or service involved or to resist otherwise justified reductions in such price ceilings.

(a) *Reporting of adjustments.* Adjustments under this order of wage and salary rates of females employed in facilities embraced within the delegation provided for in General Order No. 14 (§ 809.980n) should be reported to the Wage Administration Section within the Civilian Personnel Division, Headquarters, Army Service Forces.

(b) *Interpretation No. I to General Order No. 16.*

Interpretation No. I to General Order No. 16. Wage adjustments required by State statutes which prohibit wage discrimination between the sexes are "adjustments which equalize the wage or salary rates paid to females with the rates paid to males for comparable quality and quantity of work on the same or similar operations" within the meaning of General Order No. 16, and may be made without approval of the National War Labor Board.

(c) *Effect of Executive Order No. 9328 on General Order No. 16.* General Order No. 16 has neither been impaired nor amended as a result of Executive Order No. 9328. It remains in full force and effect. (Letter from National War Labor Board Chairman to Secretary of Labor, made public June 4, 1943.)

§ 809.980q *General Order No. 17.*

(a) The National War Labor Board authorizes the Office of Price Administration in establishing area pay scales for its local board clerks to apply in each area the appropriate area pay scale set forth in the instructions contained in its Field Administrative Letter No. 7, Revised, Supplement Number 1; provided, however, that before any such pay scale is made effective it must be certified by the Regional Director of the National War Labor Board that the pay scale appropriate to the area has been properly chosen in accordance with the provisions of said instructions.

(b) Upon approval by the Regional Director the new rates shall apply to all new appointments, promotions, demotions, transfers, and replacements, but they shall not be applied to reduce the rates of pay of present employees in their present positions.

(c) The Office of Price Administration shall file with the Board's appropriate Regional Office copies of any proposed changes in area pay scales, and shall supply any other information or reports the Board may require.

(d) The Regional Director is hereby authorized to approve such proposed changes in area pay scales, when so filed, unless he finds them inconsistent with Executive Order 9250 and the policies and orders of the National War Labor Board. His action on such proposed changes shall be subject to the review provided in the Board's "Procedure in Cases of Voluntary Applications for Wage Adjustments by Private Employers."

§ 809.980r *General Order No. 18.*

(a) The National War Labor Board hereby delegates to the Secretary of the Navy, to be exercised in his behalf by the Office of the Assistant Secretary of the Navy (hereinafter referred to as "The Navy Department Agency"), power to rule upon all applications for wage and salary adjustments (insofar as approval thereof has been made a function of the National War Labor Board), covering civilian employees within the continental limits of the United States and Alaska, employed directly by the Navy Department (but excluding persons employed in government owned, privately operated facilities of the Navy Department), all in accordance with the further provisions of this order.

(b) In performance of its duties hereunder the Navy Department Agency shall comply with the terms of Executive Order No. 9250, dated October 3, 1942, Executive Order No. 9328, dated April 8, 1943, the supplementary directive of May 12, 1943, and all general orders and policies of the National War Labor Board, announced thereunder.

Any wage or salary adjustment approved by the Agency "which may increase the production costs above the level prevailing in comparable plants or establishments" shall become effective only if also approved by the Director of Economic Stabilization. Notice to this effect shall be contained in all rulings issued by the Navy Department Agency hereunder.

Applications for approval of voluntary wage adjustments within the jurisdiction of the Navy Department Agency shall state whether or not the adjustment if approved may increase the production costs above the level prevailing in comparable plants or establishments. If the answer is in the affirmative, the Navy Department Agency shall send to the National War Labor Board for processing to the Office of the Director of Economic Stabilization a copy of the application and a copy of its ruling at the time of issuance thereof, for approval as mentioned above.

The Navy Department Agency, without making an initial ruling thereon, may refer to the National War Labor Board for decision, any case in which the opinion of the Agency presents doubtful or disputed questions of sufficient seriousness and import to warrant direct action by the Board.

(c) The Navy Department Agency shall, so far as is practicable, utilize the information and data of the National War Labor Board or the several Regional War Labor Boards in the determination of area rates in accordance with the wage rate brackets established by the Regional War Labor Boards.

(d) The Navy Department Agency shall transmit to the Wage Stabilization Division of the National War Labor Board copies of its rulings and rules of procedure, if any, and such additional data and reports as said Division or the Board may from time to time deem necessary.

(e) Any ruling by the Navy Department Agency or the Secretary of the Navy, hereunder shall be final, subject to the National War Labor Board's ultimate power to review rulings on its own initiative.

(f) Any ruling by the Navy Department Agency or the Secretary of the Navy hereunder shall be deemed to be the act of the National War Labor Board, unless and until reversed or modified by the Board. Any such order of reversal or modification shall allow a period of two weeks from the date of the Board's order within which to comply with the order.

§ 809.980s *General Order No. 19.*

(a) The Board of Governors of the Federal Reserve System and any of the twelve Federal Reserve Banks, which proposes to make adjustments in the salaries or wages of their employees not fixed by statute, which would otherwise require the prior approval of the National War Labor Board, may make such adjustment on certification to the Board that the adjustment is necessary to correct maladjustments or gross inequities, as permitted by the national wage and salary stabilization policy.

(b) A certificate by the official authorizing the adjustments, stating the nature and amount of such adjustment and briefly setting forth the facts meeting the foregoing requirement will be accepted by the Board as sufficient evidence of the propriety of the adjustment, subject to review by the Board. Modification by the Board of adjustments made pursuant hereto shall not be retroactive.

(c) In the case of adjustments made hereunder by any of the twelve Federal Reserve Banks, the certificate above mentioned shall, prior to transmittal to the Joint Committee hereafter described, be transmitted to and shall be subject to the approval of the Board of Governors of the Federal Reserve System.

(d) The certificate prescribed herein, together with four (4) copies thereof, shall be filed promptly with the Committee established by joint action of the National War Labor Board and the Commissioner of Internal Revenue, namely, the Joint Committee on Salaries and Wages, Room 5406, Department of Labor Building, Washington, D. C., which will forward the same to the Board or Commissioner, as the case may require.

(e) The certification procedure shall not apply to any adjustment which would raise salaries or wages beyond the minimum non-inflationary going rates for similar occupational groups in the labor market area.

§ 809.980t *General Order No. 20.*

(a) The United States Employment Service or any of its state administrative offices which proposes to make adjustments in the salaries or wages of its employees not fixed by statute, which would otherwise require the prior approval of the National War Labor Board, may make such adjustment on certification to the Board that the adjustment is necessary to correct maladjustments or gross inequities, as permitted by the national wage and salary stabilization policy.

(b) A certificate by the appropriate official of the United States Employment Service stating the nature and amount of such adjustment, and briefly setting forth the facts meeting the foregoing requirement, will be accepted by the Board as sufficient evidence of the propriety of the adjustment, subject to review by the Board. Modification by the Board of adjustments made by the United States Employment Service or one of its state administrative offices acting pursuant hereto shall not be retroactive.

(c) The certificate prescribed herein, together with four copies thereof, shall be filed promptly with the committee established by joint action of the National War Labor Board and the Commissioner of Internal Revenue, namely, the Joint Committee on Salaries and Wages, Room 5406, Department of Labor Building, Washington, D. C., which will forward the same to the Board or the Commissioner, as the case may require.

(d) The certification procedure shall not apply to any adjustment which would raise salaries or wages beyond the minimum noninflationary going rates for similar occupational groups in the labor market area.

§ 809.980u *General Order No. 21.*

(a) The National War Labor Board hereby delegates to the Secretary of the Interior, to be exercised on his behalf by the Special Adviser on Labor Relations to the Secretary of the Interior (hereinafter referred to as the Interior Department Agency), the power to approve or disapprove all applications for wage and salary adjustments (insofar as approval thereof has been made a function of the National War Labor Board) covering employees of the Interior Department within the continental limits of the United States and Alaska whose wages or salaries are not fixed by statute, all in accordance with the further provisions of this order.

(b) In the performance of its duties hereunder the Interior Department Agency shall comply with the terms of Executive Order 9250, dated October 3, 1942 and any other General Order or policy of the National War Labor Board heretofore or hereafter issued thereunder. The Interior Department Agency, without making an initial ruling thereon may refer to the Board, for decision by the Board, any case which in the opinion of the agency presents doubtful or disputed questions of sufficient seriousness and import to warrant direct action by the Board.

(c) The Interior Department Agency shall transmit to the Review and Analysis Division of the National War Labor Board copies of its rulings, and rules of procedure, if any, as they are issued, and such additional data and reports as said Division or the Board may from time to time deem necessary.

(d) Any ruling by the Interior Department Agency hereunder shall be deemed to be the act of the National War Labor Board and shall be final subject to the National War Labor Board's ultimate power to review rulings on its own initiative, and to reverse or modify the same. Any such order of reversal or modification shall not be retroactive and shall allow the Interior Department Agency a period of two weeks from the date of the Board's order, within which to comply with the order.

(e) Nothing herein contained shall be construed as affecting the advisory duties and functions of the following Wage Boards heretofore constituted by order of the Secretary of the Interior and any similar Boards so constituted in the future:

(1) Boulder Canyon Project Wage Board.
(2) Columbia Basin Project Wage Board.
(3) Central Valley Project Wage Board.
(4) Parker Dam Power Project Wage Board.
(5) Boulder City Experiment Station Wage Board.

§ 809.980v *General Order No. 22.*

(A) No clause contained in any labor agreement, commonly known as an "escalator clause", relating to wages or salaries subject to the jurisdiction of the National War Labor Board, regardless of when the agreement was made, which provides for an adjustment in wage rates after October 3, 1942, or an adjustment in salary rates after October 27, 1942 because of changes in the cost of living, shall be enforced, where such adjustment would result in rates in excess of fifteen per cent above the average straight time hourly rates or equivalent salary rates prevailing on January 1, 1942.

(B) Adjustments within the fifteen per cent limit must be submitted for approval by the Board in the usual manner.

§ 809.980w *General Order No. 23.*

General Order No. 23, adopted by the National War Labor Board on December 18, 1942, was revoked on May 14, 1943. In its place the following order was adopted.

(a) The Territory of Alaska is hereby made a part of Region XII of the National War Labor Board. Approval of voluntary applications for wage and salary adjustments and dispute cases arising within the Territory of Alaska shall be processed as hereinafter provided.

(b) The Territorial Representative of the Wage and Hour and Public Contracts Division of the United States Department of Labor shall receive all requests for rulings and applications for approval of voluntary wage and salary adjustments insofar as such matters are within the jurisdiction of the National War Labor Board.

(c) There is hereby created within the Territory of Alaska a Branch Office of the Regional War Labor Board for Region XII.

(d) There shall be appointed a Wage Stabilization Director within the Territory of Alaska, who shall exercise the same authority within the territory as that exercised by the Wage Stabilization Director in Region XII.

(e) There shall be appointed a Regional Attorney and Disputes Director within the Territory of Alaska, who shall exercise the same authority within the territory as that exercised by the Regional Attorney and Disputes Director in Region XII. As Disputes Director, he shall have authority to set up tripartite panels for hearings on dispute cases, the recommendations of the panels to be sent to the Twelfth Regional Board for approval or disapproval.

(f) Any ruling of the Regional War Labor Board, Region XII, shall be final, subject to the National War Labor Board's ultimate power to review rulings on its own initiative. No action of the National War Labor Board with respect to rulings of said Regional War Labor Board shall be retroactive.

(g) Disputes arising in the Territory of Alaska shall, unless otherwise directed by the National War Labor Board, be referred to the Regional War Labor Board for Region XII.

(h) Jurisdiction and Procedure for Regional War Labor Boards shall be applicable to the Branch Office of the Regional War Labor Board for Region XII, except that owing to difficulties of communication and transportation, time limitations may be relaxed in case of necessity.

§ 809.980x *General Order No. 24.*

(a) The National War Labor Board hereby delegates to the Secretary of Agriculture, to be exercised on his behalf by the Director of Personnel of the Department of Agriculture (hereafter referred to as Agriculture Department Agency), the power to approve or disapprove all applications for wage and salary adjustments (insofar as approval thereof has been made a function of the National War Labor Board) covering employees of the Department of Agriculture, and employees of instrumentalities of the Department of Agriculture, within the continental limits of the United States and Alaska whose wages and salaries are not fixed by statute, including

(1) Employees and members of Agricultural Conservation Committee.

(2) Employees under cooperative agreements.

(3) Employees of agencies under supervision of the Farm Credit Administration, and

(4) Persons engaged in the administration of marketing agreements, orders, and licenses.

all in accordance with the further provisions of this order.

(b) In the performance of its duties hereunder, the Agriculture Department Agency shall comply with the terms of Executive Order 9250, dated October 3, 1942 and any General Order or policy of the National War Labor Board heretofore or hereafter issued thereunder. The Agriculture Department Agency, without making an initial ruling thereon, may refer to the Board, for decision by the Board, any case which, in the opinion of the Agency presents doubtful or disputed questions of sufficient seriousness and import to warrant direct action by the Board.

(c) The Agriculture Department Agency shall transmit to the Review and Analysis Division of the National War Labor Board monthly reports of its rulings, and copies of its rules of procedure, if any, as they are issued, and such additional data and reports as said Division or the Board may from time to time deem necessary.

(d) Any ruling by the Agriculture Department Agency hereunder shall be deemed to be the act of the National War Labor Board and shall be final, subject to the National War Labor Board's ultimate power to review rulings on its own initiative, and to reverse or modify the same. Any such order of reversal or modification shall not be retroactive and shall allow the Agriculture Department Agency a period of two weeks from the date of the Board's order, within which to comply with the order.

§ 809.980y *General Order No. 25-A.*

General Order No. 25, adopted on December 22, 1942, is hereby revoked. In its place, the following Order is adopted:

(a) The National War Labor Board in accordance with the further provisions of this Order hereby delegates to the Board of Directors of the Tennessee Valley Authority the power to approve or disapprove all applications for adjustments of wages and salaries (insofar as approval thereof has been made a function of the National War Labor Board) of employees of the Tennessee Valley Authority; also applications to equalize the wages and salaries of laborers and mechanics while actually employed by contractors in performing contracts with the Tennessee Valley Authority within paragraph 2 section 3 of the Tennessee Valley Authority Act, as amended, with the wages and salaries of like employees of the Tennessee Valley Authority.

(b) In the performance of its duties hereunder, the Board of Directors of the Tennessee Valley Authority shall comply with Executive Order 9250, dated October 3, 1942, Executive Order 9328, dated April 8, 1943, the supplement thereto issued by the Director of Economic Stabilization on May 12, 1943, and all principles and policies of the National War Labor Board and the Director of Economic Stabilization heretofore or hereafter announced. In ruling on applications for adjustments of wages and salaries of laborers and mechanics employed by contractors, it shall approve them only if they fix the same wages and salaries for such employees as for the employees of the Tennessee Valley Authority performing like work. Disapproval of an application on the ground that it does

not fix such equal wages and salaries shall not preclude application through other channels of the National War Labor Board. The Board of Directors of the Tennessee Valley Authority, without making an initial ruling thereon may refer to the National War Labor Board, for decision by the Board, any application which in its opinion presents doubtful or disputed questions of sufficient seriousness and import to warrant direct action by the Board.

(c) The Board of Directors of the Tennessee Valley Authority shall transmit to the Review and Research Division of the National War Labor Board copies of its rulings, and rules of procedure, if any, as they are issued, and such additional data and reports as said Division or the Board may from time to time deem necessary.

(d) Any ruling by the Board of Directors of the Tennessee Valley Authority hereunder shall be deemed the act of the National War Labor Board and shall be final, subject to the National War Labor Board's right to review rulings on its own motion and to reverse or modify the same. Any such reversal or modification shall not be retroactive and shall allow the Tennessee Valley Authority or the contractor, as the case may be, a period of two weeks for compliance.

§ 809.980z *General Order No. 26.*

(a) Organizations established as nonprofit community chest funds, foundations or cemetery companies, and organizations operated without profit and exclusively for religious, charitable, scientific, literary or educational purposes, which have been exempted from the payment of income and social security taxes (including nonprofit organizations which maintain and operate hospitals), shall be exempt from the necessity of filing applications for approval of wage and salary adjustments of their employees within the jurisdiction of the National War Labor Board.

(b) Such organizations will, nevertheless, be expected to observe and abide by the national wage and salary stabilization policy in making any adjustments in the wages or salaries of their employees.

(c) The Regional War Labor Boards may recommend to the National War Labor Board such exceptions to the provisions of this order as are necessary to effectuate the wage and salary stabilization policies of the National War Labor Board, which exceptions, if approved by the National War Labor Board, shall, unless otherwise specified, apply only within the territorial jurisdiction of the Regional Board making the recommendation.

§ 809.980aa *General Order No. 27.*

(a) The National War Labor Board, in accordance with the further provisions of this order, hereby delegates to the Administrator of the National Housing Agency, to be exercised on his behalf by the Commissioner of the Federal Public Housing Authority (hereafter referred to as the Housing Wage Agency), the power to approve or disapprove all applications for adjustments of wages and salaries (insofar as approval thereof has been made a function of the National War Labor Board) of employees whose wages and salaries are not fixed by statute that are employed within the continental United States and Alaska by

(1) Federal Public Housing Authority

(2) Defense Homes Corporation, and

(3) Property managers of Defense Homes Corporation projects.

(b) In the performance of its duties hereunder the Housing Wage Agency shall comply with Executive Order 9250, dated October 3, 1942, Executive Order 9328, dated April 8, 1943, the supplement thereto issued by the Director of Economic Stabilization on May 12, 1943, and all principles and policies of the National War Labor Board and the Director of Economic Stabilization heretofore or hereafter announced. The Housing Wage Agency, without making an initial ruling thereon may refer to the National War Labor Board, for decision by the Board, any application which in its opinion presents doubtful or disputed questions of sufficient seriousness and import to warrant direct action by the Board.

(c) The Housing Wage Agency shall transmit to the Review and Research Division of the National War Labor Board copies of its rulings, and rules of procedure, if any, as they are issued, and such additional data and reports as said Division or the Board may from time to time deem necessary.

(d) Any ruling by the Housing Wage Agency hereunder shall be deemed the act of the National War Labor Board and shall be final, subject to the National War Labor Board's right to review rulings on its own motion and to reverse or modify the same. Any such reversal or modification shall not be retroactive and shall allow the Commissioner of the Federal Public Housing Authority a period of two weeks for compliance.

§ 809.980bb *General Order No. 30.*

In accordance with the provisions of Section 4 of Title II of Executive Order 9250, increases in wage or salary rates which do not bring such rates above 40¢ per hour may be made without the approval of the National War Labor Board.

§ 809.980cc *General Order No. 31.*

General Order No. 31 adopted by the National War Labor Board on 26 May 1943, was amended on 24 August 1943, to read as follows:

The following regulations supplementary to General Orders 5, 6, and 9 relating to wage and salary schedules and to plans for making individual wage and salary adjustments under such schedules are hereby adopted:

I. EMPLOYERS OF 30 OR FEWER EMPLOYEES

Without regard to the requirements of General Orders 5, 9, or 31, an employer of 30 or fewer employees may, without approval of the National War Labor Board, make individual increases in the wage or salary rates of his employees for particular jobs as a reward for improved quantity and/or quality of work or service, provided that:

A. The total of such increases to any individual employee (subject to National War Labor Board jurisdiction) shall not exceed ten cents per straight-time hour during any year (beginning July 1, 1943), and the total amount expended on such increases during any such year shall not exceed an average of five cents per straight-time hour for all the employees in the establishment whose wage or salary rates are subject to the jurisdiction of the National War Labor Board.

B. Such increases shall not be made the basis of an application to the National War Labor Board for approval of increases to eliminate intraplant inequities.

C. Such increases shall not result in the payment to any employee of a rate in excess of the highest rate paid by the employer between July 1, 1942, and June 30, 1943, for jobs of similar skill, duties, and responsibility.

D. Such increases shall not result in any appreciable increase in the level of production costs and shall not furnish a basis either to increase prices or to resist otherwise justifiable reductions in prices.

E. Such increases shall not be made contrary to the terms of any collective bargaining agreement covering any or all of the employees of such employer.

Such employer is not precluded from applying to the National War Labor Board for approval of a schedule of making individual wage or salary adjustments as provided below for employers of 31 or more employees.

II. EMPLOYERS OF 31 OR MORE EMPLOYEES

An employer of 31 or more employees may make individual increases in the wage or salary rates of his employees under General Orders 5 and 9 without National War Labor Board approval only under a schedule which conforms to the following standards:

In order to have a "schedule" within the meaning of General Orders 5 and 9, an employer must satisfy the following two requirements: He must have (a) job classification wage or salary rates or rate ranges and (b) a plan for making individual adjustments within and between such wage or salary rates or rate ranges.

A. Job-Classification Rates or Rate Ranges Properly in Existence Do Not Require Approval of the National War Labor Board.

1. A job classification is a category of jobs or positions which are similar in nature and content and in required amount of knowledge, skill, experience, and responsibility. A job classification involves more than a mere descriptive title; the classification must be clearly defined and described. Where jobs differ as to knowledge, skill, experience, and responsibility, there should be different job classifications. (For example, typists, stenographers, and secretaries should each be considered separate job classifications because the respective work differs as to skill, content, and responsibility. These three categories may not be grouped together in one job classification.

2. A job classification rate exists where an employer pays a single rate rather than a range of rates for a given job classification. Jobs remunerated on a piece-rate basis are normally considered to be in single-rate job classifications.

3. A job classification rate range exists where an employer pays, for a given job classification, a number of rates varying from a clearly designated minimum rate to a clearly designated maximum rate.

(a) A mere descriptive job title and a poorly defined or extremely wide rate range is not a job classification rate range.

(b) The minimum and maximum rates are not necessarily the lowest and highest rates being paid at a given time for a particular job classification. For special reasons (e. g., lack of experience or superior ability) particular employees may be receiving less than the minimum or more than the maximum rate. Moreover, it may happen at a given time that no employee is receiving the actual minimum or maximum rate for a particular job classification.

4. Job classification rates or rate ranges properly in existence are those (as defined above) which were (a) in existence prior to October 3, 1942, or (b) those resulting from permitted or approved adjustments subsequent to that date, or (c) rates set for new jobs under either the former or the revised General Order No. 6. Improper adjustments of rates for job classifications or for individual employees are not a basis for determining a job classification rate or rate range.

B. A Plan Properly in Existence Does Not Require Approval of the National War Labor Board.

1. A plan is an orderly, definite procedure or a group of procedures for making adjustments, within specified limits, in the wage or salary rates of individual employees (a) within particular job classifications and (b) when they move from one job classification to another.

Such a plan ordinarily includes (a) tests and procedures for determining whether employees are to be given individual rate adjustments and (b) limits on the number of adjustments, the timing of adjustments, and the average or total amount of money to be granted in the adjustments over a given period of time. (It is not essential that a given plan include all the foregoing items.)

2. A plan properly in existence is one (as defined above) under which individual rate adjustments are made in conformity with the provisions of (a) collective bargaining or other bona fide established agreement which was in effect on June 30, 1943, or (b) written statements, minutes, or memoranda of the employer which were in existence and effect on or before June 30, 1943, or (c) a plan approved by the National War Labor Board or by any of its authorized agents or agencies, or (d) the plan outlined below.

C. Employers Having No Existing Plan.

Employers who have no plan properly in existence (as defined under (a), (b), or (c) of the paragraph immediately above) may adopt the following plan without obtaining approval from the National War Labor Board.

Employers who wish to replace properly existent plans with the following plan may also do so without Board approval (but see Section III–A–3 below):

1. Merit Increases or Automatic Length-of-Service Increases:

(a) Merit increases are individual wage or salary rate adjustments made as a reward for improved quantity and/or quality of work or service. Automatic length-of-service increases are individual adjustments usually made automatically at the end of specified periods of satisfactory service.

(b) Both such increases must be made only within job classification rate ranges (as defined above).

(c) The total of such increases to any individual employee (subject to National War Labor Board jurisdiction) shall not exceed, during any year (beginning July 1, 1943), ten cents per straight-time hour or more than two-thirds of the difference between the appropriate minimum and maximum rates, whichever increase is greater; and the total amount expended on such increase during any such year shall not exceed an average of five cents per straight-time hour for all the employees in the establishment who are covered by the plan and whose wage or salary rates are subject to National War Labor Board jurisdiction.

2. Promotions or reclassifications involve individual adjustments which result from moving an employee into a different job classification. Promotions and reclassifications may be made between jobs which bear single rates as well as between jobs which bear rate ranges. When promoted or reclassified to a higher-rated job, an employee (subject to National War Labor Board jurisdiction) may receive a rate not in excess of 15 percent above his rate on his former job or the minimum rate for the new job, whichever is higher; provided, however, that where an employee has special ability and experience, he may be paid a rate within the appropriate range corresponding to such ability and experience.

3. Apprentice or trainee programs involve individual rate adjustments resulting from improvement over specified periods of time in the productive abilities of apprentices or trainees who are employed under a bona-fide apprentice or trainee program as defined below. Under these programs, adjustments may be made with respect to jobs which bear single rates as well as with respect to jobs which bear rate ranges. Apprenticeship or trainee programs for a given job classification—with respect to length of apprenticeship or learner period; proportion of number of apprentices or learners to number of experienced workmen; and relation of apprentice or learner wage rate at various periods to the rate paid to experienced workmen—should conform to the standards set forth in a collective bargaining agreement or in the applicable regulations of federal or state agencies. The reexamination or modification of existing apprentice or trainee programs in the interests of greater production for the war effort is not precluded. Any change in existing apprentice or trainee programs, however, requires Board approval unless made in conformity with changes in the applicable regulations of federal or state agencies.

D. Requirements of Schedules With Respect to All Schedules.

1. Each job classification must be clearly distinguished and described.

2. No appreciable increases in the level of production costs may result from individual rate adjustments, nor shall such adjustments furnish a basis either to increase prices or to resist otherwise justifiable reductions in prices.

3. Individual rate adjustments may not be made the basis for an application to the National War Labor Board for approval of wage or salary rate increases to eliminate intra-establishment inequities.

E. Records.

Any employer who makes individual wage or salary rate adjustments pursuant to a schedule must hereafter keep available in his establishment(s) for a period of two years records showing (1) for each job classification, (a) the rate or range of rates and (b) the description; (2) a statement of the plan making adjustments within the rate ranges and between the rates or rate ranges; (3) the date when the schedule was established; (4) for each employee who received an adjustment, his name, the date hired, the date of and the reason for adjustment, the job classification, and the rate of pay before and after the adjustment. No particular order or form is prescribed for these records, provided that the information required is readily obtainable.

III. GUIDES FOR OBTAINING BOARD APPROVAL WHERE REQUIRED

A. Requirements for Approval.

All wage or salary rate schedules (as defined) which are not exempt from the requirement of Board approval (as stated above) must be submitted for approval to the appropriate Regional War Labor Board. In order that the making and the examination of such applications for approval may be facilitated, certain requirements are outlined below.

1. Proposed rate ranges (where it is desired to make individual merit or automatic length-of-service increases) as well as promotions and reclassification involved.

2. Proposed single rates (where it is desired to make promotions or reclassifications but not to make merit increases or automatic length-of-service increases) should be set forth for each job classification involved.

3. Each job classification involved should be clearly distinguished and described.

4. So far as plans for making individual adjustments between rates or within and between rate ranges (either for existing establishments or for new establishments and departments) are concerned, a proposed plan should contain the following information with respect to one or more of the methods outlined below. The plan so submitted need not necessarily conform to the criteria of the plan set forth above, which does not require Board approval.

(a) Merit increases: The average amount of increase to be given during any year for all employees covered by the plan and the maximum amount (in cents per hour or in terms of the percentage of the difference between the minimum and maximum rates of the range) of the increase to be given during a given year to any employee.

(b) Automatic length-of-service increases: The average amount of increase to be given during any year for all employees covered by the plan and the maximum amount (in cents per hour or in terms of the percentage of the difference between the minimum and maximum rates of the range) of the increase to be given during a given year to any employee.

(c) Promotions or reclassifications: The rate to be paid upon promotion or reclassification to a higher-rated job, whether the minimum rate called for by the new job or a rate in excess of such minimum, and, if a rate in excess of the minimum called for by the new job is to be paid, the criteria that will determine the rate should be described (e. g., special skill and experience, other unusual qualifications, etc.).

(d) Apprentice or trainee systems: The conformity of the plan with the standards set forth in appropriate collective bargaining agreements or in appropriate regulations of federal or state agencies with respect to the following items: length of apprenticeship or learner period; proportion of number of experienced workmen in a given job classification; and relation of apprentice or learner rate at various periods to the rate paid experienced workmen.

The plan should also indicate the approximate percentage increase in payroll costs and in production (total) costs.

5. If there is a duly recognized or certified labor organization which is entitled to bargain on wage matters for any or all of the employees included in a proposed schedule or in a proposed change in an existing schedule, approval must be jointly requested by the employer and such labor organization, of that part of the schedule which directly involves employees represented by such labor organization. Similarly, agreement with such labor organization must be obtained by the employer before he can adopt or change to the plan which does not require Board approval. If an agreement on any point cannot be reached, the parties may jointly submit the issue to the appropriate Regional War Labor Board for determination or may ask the Regional Board to refer the matter to the National War Labor Board for determination. Failing joint submissions, the matter will be treated as a dispute case.

6. Where an application includes more than one establishment, it shall set forth separately a schedule for each establishment or for each group of similar establishments.

7. Companies having establishments in more than one region may apply for approval of schedule, where approval is necessary, in each of the regions where the establishments are located or in the region in which is located the company office at which the schedules are determined. In the latter case, the Regional Board may, if it considers that the application warrants national consideration, refer it to the National War Labor Board.

B. Changes in Existing Schedules

Any employer who wishes to make a change in one or more provisions of his properly existent wage or salary rate schedule (except changes in conformity with the plan which may be adopted without Board approval) may obtain consideration of such proposed change from the appropriate Regional War Labor Board without the necessity of having his entire schedule approved or reapproved.

§ 809.980dd *General Order No. 36.*

(a) Until further order of the National War Labor Board no increase or decrease in wages or salaries paid in the Territory of Hawaii shall be made without the prior approval of the National War Labor Board or its duly authorized agent, except such as are required by law; and no general order of the National War Labor Board authorizing the making of wage or salary increases or decreases without the prior approval of the Board shall apply to wages or salaries paid or received within the Territory of Hawaii.

(b) The exemption provided for by General Order No. 4, as amended, shall not apply to the Territory of Hawaii.

(c) As soon hereafter as practical, the Board will prescribe appropriate regulations and general orders for the making of such adjustments in wages and salaries in the Territory of Hawaii as are consonant with the

purposes of the Anti-inflation Act of October 2, 1942, and the executive orders and regulations issued thereunder and with the needs of stabilization in the Territory and for the peaceful adjustment of labor disputes pursuant to the War Labor Disputes Act. Pending the promulgation of such regulations and general orders the Wage and Hour Division of the United States Department of Labor, Honolulu, is hereby designated as the agent of the National War Labor Board authorized to receive applications for approval of proposed wage or salary adjustments and to issue rulings concerning the interpretation and application of these resolutions.

§ 809.981 *Delegations to industrial commissions.* From time to time the National War Labor Board delegates to Industrial Commissions the power to approve or disapprove applications for wage and salary adjustments (insofar as approval thereof has been made a function of the National War Labor Board) of employees within such respective industries. Such delegations are set forth in directive orders of the Board and appear in the succeeding sections which are designated 809.981a to 809.981f, inclusive.

§ 809.981a *West Coast Lumber Commission.*

By virtue of and pursuant to the powers vested in it by Executive Order No. 9017 of January 12, 1942, the Executive orders and regulations issued under the Act of Congress of October 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, on November 20, 1943, supplemented and amended its directive order of September 17, 1942, as amended by directive orders of October 14, 1942, and January 5, 1943, to read as follows:

1. The West Coast Lumber Commission, hereinafter called the Commission, shall consist of six members appointed by the National War Labor Board. Of the persons so appointed, two shall represent labor, two shall represent industry, and two shall represent the public. The two industry members of the Commission shall be appointed upon recommendation of the industry members of the National War Labor Board. One of the two labor members of the Commission shall be appointed upon recommendation of the AFL members of the National War Labor Board, the other upon recommendation of the CIO members of the National War Labor Board. The National War Labor Board shall designate one public member of the Commission to act as chairman. Four alternate industry members of the Commission shall be appointed by the National War Labor Board upon recommendation by the industry members of the National War Labor Board. Four alternate labor members of the Commission shall be appointed by the National War Labor Board, two of whom shall be recommended by the AFL members of the National War Labor Board and two by the CIO members of the National War Labor Board. The labor and industry members of the Commission, both regular and alternate, may be chosen from either within or outside of the lumber industry. Not more than two industry members and not more than two labor members of the Commission shall be permitted to sit and transact business of the Commission at any one time. Three members of the Commission shall constitute a quorum, providing labor, industry, and the public are represented in such quorum. The vote of a majority of the quorum shall be deemed sufficient to render a binding decision by the Commission.

2. The Commission shall have jurisdiction over labor disputes, voluntary wage adjustments, and salary adjustments (where the rate at which the salary, exclusive of bonuses and additional compensation and without regard to the contemplated adjustment, computed on an annual basis, is not in excess of $5,000 per annum) in all cases which involve the production of lumber and lumber products in Oregon, Washington, Idaho, Montana, and California. The Commission shall have power (a) to conduct hearings and labor disputes and to issue directive orders affecting the same and (b) to receive and make final rulings on applications for voluntary wage or salary adjustments in the lumber industry submitted for approval of the National War Labor Board in accordance with the national wage stabilization policy. All rulings and orders of the Commission shall be filed with the National War Labor Board.

3. That, in view of the vital importance of the lumber industry to the production of those things essential to the successful prosecution of the war, the Commission shall have the power to promulgate such rules and regulations, issue such orders and take such actions relating to the issues before it as may be necessary to effectuate a stabilization of labor conditions in the lumber industry of the area designated in paragraph two above, secure industrial harmony in said area, and assure maximum production of lumber and lumber products.

4. The Commission shall not take original jurisdiction over any dispute case but it shall have the power to determine whether, within the terms of this order, it may properly assume jurisdiction over any dispute after the dispute had been referred to the Commission by the Board. However, in case of a strike or threatened strike in the lumber industry, the Commission may issue an order requiring the workers to remain on their jobs or to return to their jobs and maintain the status quo as it existed prior to the dispute pending conciliation by the United States Conciliation Service, or if necessary, determination on the merits by the Commission after reference of the case to the Commission by the National War Labor Board. Such order shall be issued only after consultation with the United States Conciliation Service. Immediately upon being apprised of a dispute the Commission shall notify the liaison officer of the United States Conciliation Service or, in his absence, the conciliator nearest to the dispute. In the event that a strike should occur or be threatened subsequent to certification, the Commission shall order the workers to return to work or to remain on their jobs and shall refuse to exercise its jurisdiction until they have complied with the order. The United States Conciliation Service shall be free to call upon the Commission to cooperate with it in the settlement of any dispute during the period of conciliation and prior to actual certification. The Commission shall inform the National Board promptly of strikes or threatened strikes and shall keep the Board informed as to the status of such matters.

5. The rulings of the Commission on voluntary wage or salary adjustments, as well as its directive orders on wage issues in dispute cases, shall conform to the policies of the National War Labor Board, based on Executive Orders 9250 and 9328, the policy directive of May 12, 1943, issued by the Director of Economic Stabilization, and the War Labor Disputes Act of June 25, 1943. Accordingly, any wage or salary adjustment approved or ordered by the Commission "which may furnish the basis either to increase price ceilings or to resist otherwise justifiable reductions in price ceilings or, if no price ceilings are involved, which may increase the production costs above the level prevailing in comparable plants or establishments," shall become effective only if also approved by the Director of Economic Stabilization. Notice to this effect shall be contained in all rulings and orders issued by the Commission in wage cases. The Commission may give approval to all applications which request authority to adjust wages, including adjustment of piece rates, to conform with the wages determined by the Commission in cases involving wage disputes in the same community.

6. In cases of voluntary applications for approval of wage or salary adjustments and in dispute cases involving wage or salary issues, the Commission shall follow the procedure outlined in §§ 809.979 through 809.979 (l). The West Coast Lumber Commission shall exercise those powers, duties, and functions which are listed in said paragraphs as being applicable to regional war labor boards and regional attorneys. For the purpose of this order, and within the sphere of its jurisdiction, the Commission shall sit in lieu of said regional boards and regional attorneys.

7. The Commission shall, so far as practicable, utilize the information, data, and staff services of the National War Labor Board or the regional boards, and of other Federal departments and agencies. The employment by the Commission of additional personnel, facilities, or services shall be subject to the approval of the National War Labor Board.

8. The rulings of the Commission on voluntary wage or salary adjustments and upon preliminary inquiries concerning proposed wage or salary adjustments and the directive orders of the Commission in dispute cases shall have the same effect and shall be subject to the same provisions for stay and review by the National War Labor Board as rulings and orders of the regional war labor boards, as set forth in §§ 809.979 through 809.979 (l).

9. The decisions, general orders, and other actions of the Commission rendered pursuant to the authority conferred upon the Commission by the National War Labor Board's directive order of September 17, 1942, as amended by directive orders of October 14, 1942 and January 5, 1943, shall remain in full force and effect unless modified herein, or unless previously modified by the National War Labor Board action. All provisions of the aforesaid directive order of September 17, 1942, as amended shall remain in full force and effect unless and until further amended by the National War Labor Board.

10. The Commission shall submit to the National War Labor Board monthly reports concerning pending dispute and voluntary wage and salary cases and its actions during the preceding month relative to both pending and closed cases.

(a) On October 6, 1942, the National War Labor Board appointed the following persons as paid members of the West Coast Lumber Commission:

Chairman—Ben H. Kizer.
For industry—E. B. McNaughton and Dean Ballard.
For labor—James Landye and William Geurts.

(b) *Non-ferrous Metals Commission.* (December 3, 1942).

By virtue of the authority vested in it under Executive Orders #9017 and #9250, and in order to effectuate its resolution adopted October 23, 1942, establishing a Non-ferrous Metals Commission, the National War Labor Board hereby orders that:

1. The Non-ferrous Metals Commission shall have jurisdiction over and shall hear and determine labor disputes and requests for wage and salary adjustments affecting the stabilization of the mining, milling, smelting and refining of non-ferrous metals, referred to it by the Board or referred to it, under conditions to be established by the Commission, by the Regional Directors of the 9th, 10th and Alaskan regions of the Board.

The jurisdiction of the Commission shall not extend to those enterprises which supply materials and equipment to the above-named industries.

2. The Commission shall consist of a chairman and vice-chairman representing the public, two representatives of industry, and two representatives of labor. The National War Labor Board may, at any time, appoint alternates for the representatives of labor and industry.

3. In the determination of matters within its jurisdiction the Commission shall be governed by the provisions of Executive Orders #9017 and #9250; and it shall, subject to the approval of the National War Labor Board, have power to promulgate rules and regulations appropriate for the performance of its duties.

4. The determinations and orders of the Commission shall be final and binding upon the parties, subject only to review by the National War Labor Board on its own motion. Any ruling by the Commission shall be deemed to be the act of the National War Labor Board unless and until reversed or modified by the Board; and any such reversal or modification shall take effect only from the date of its issuance, provided, however, that if a ruling denying an application for permission to make wage adjustments is overruled, the final ruling shall incorporate as the effective date of the increase that date which was specified in the application as the effective date.

5. In any case where the employer at the time of the filing of the application for approval of a wage increase or at the time of referral of the case to the Commission indicates that he intends to seek price relief if a wage increase is approved, he shall state fully upon a form approved by the National War Labor Board the relation between the proposed wage increase and the employer's price situation, and what the effect would be on the employer's business if wages were increased without price itself. A copy of said form shall be sent to the Office of Price Administration.

Copies of all rulings of the Commission in cases in which an application for price increase is involved shall be sent to the Office of Price Administration, as well as to the parties.

If application for a wage increase in such a case is approved, the ruling shall state that it will become effective only on final approval by the National War Labor Board, and, when required by the provisions of Executive Order #9250, by the Economic Stabilization Director.

6. The Commission shall, so far as practicable, utilize the information, data and staff services of the National War Labor Board and of other Federal Departments and agencies. The employment by the Commission of additional personnel, facilities or services shall be subject to the approval of the National War Labor Board.

(a) On November 29, 1942, the National War Labor Board appointed the following members of the Non-Ferrous Metals Commission:

For the public—Charles A. Graham, Chairman and John Gorsuch, Vice Chairman.

For labor—James F. O'Brien and A. E. Stevenson.

For industry—Henry M. Hartman and S. M. Thompson.

Executive secretary—James M. Burns.

(b) By Directive Order the National War Labor Board amended the Order of December 3, 1942 (above) by deleting the second paragraph of subdivision 5 and substituting therefor the following:

Copies of all rulings of the Commission in cases in which an application for price increase is involved shall be sent to the National War Labor Board for transmittal to the Office of Price Administration.

§ 809.981c *Detroit Area Tool & Die Commission.*

(December 14, 1942).

(1) There shall be created immediately a National War Labor Board Detroit Area Tool and Die Commission which shall take jurisdiction over, hear, and determine all pending and future disputes, requests for interpretations, petitions for voluntary wage increases or adjustments in minima rates, and any other matters within the jurisdiction of the National War Labor Board concerning the tool and die industry in the area hereinabove specified.

(2) The Commission shall consist of a permanent Chairman appointed by the National War Labor Board and industry and labor representatives, serving on an ad hoc basis, chosen by the Chairman of the Commission from a panel of names approved by the National War Labor Board. In cases involving no disputes or conflicts of interests the Chairman may act alone. In selecting panels, the Chairman shall take into account the conflicting interests involved in the matter to be considered.

(3) The Commission shall have the power to determine whether, within the terms of this Order, it may properly assume jurisdiction over any dispute. All cases involving wage disputes within the terms of this Order may be referred by the parties directly to the Commission without prior recourse to the United States Conciliation Service. All petitions for approval of voluntary wage increases or adjustment of minima rates for tool and die workers within the area hereinabove specified shall be referred in the first instance to the Commission; provided, however, that the Commission shall in all such cases inform the Regional Director for the Fifth Region as to the action taken by it and shall send him copies of all wage agreements approved.

(4) The determinations of the Commission shall be final and binding upon all parties coming before the Commission except and until the National War Labor Board, in any given case, having decided to review the Commission's determination of that case, reverses or modifies the determination.

(5) A review by the National War Labor Board of any action, finding, or order of the Commission shall not be considered a right of parties coming before the Commission but will be granted only in the discretion of the National War Labor Board for good cause shown.

(a) The area covered by the Tool and Die Commission order shall include the counties of Wayne, Oakland, Macomb, Monroe, Washtenaw and Genesee in the State of Michigan and is subject to extension upon further order of the National War Labor Board. Tool and die workers in all jobbing and manufacturing plants in such area are covered by the Commission's jurisdiction. Manufacturing plants are defined to include those employing tool and die workers for the manufacture, repair and maintenance of tools and dies used primarily in their own manufacturing processes. The order, however, does not include production workers working outside the tool and die rooms under job classifications similar to the tool and die classifications, nor does it extend to companies supplying materials or equipment to the nonferrous mining industry.

(b) On December 14, 1942, the National War Labor Board designated Benjamin Aaron as the Chairman of the Detroit Area Tool and Die Commission.

§ 809.981d *Trucking Commission.*

By virtue of and pursuant to the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders and regulations issued under the Act of Congress of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, on Aug. 6, 1943, amended its directive order of Dec. 2, 1942, establishing the Trucking Commission, to resolution of Feb. 4, 1943, defining the jurisdiction of the Commission, to read as follows:

1. The Trucking Commission, hereinafter called the Commission, shall consist of three (3) members appointed by the National War Labor Board. Of the persons so appointed, one shall represent labor, one shall represent industry, and one shall represent the public and act as chairman. The Board may at any time appoint alternates for the members of the Commission.

2. The Commission shall have jurisdiction over labor disputes and voluntary wage or salary adjustments involving persons employed in the following types of trucking operations: over-the-road (common, contract, or private carrier), local pick-up, and delivery: transfer and storage. The Commission shall have power (1) to hear and determine and to issue directive orders in labor dispute cases, and (2) to make final rulings on voluntary wage or salary adjustments submitted for approval of the National War Labor Board in accordance with the National Wage Stabilization policy.

3. Labor disputes and voluntary wage or salary adjustments involving trucking employees (drivers, checkers, warehousemen or dockmen, stowers, lumpers or helpers) of businesses other than those specified in paragraph 2 above shall be subject to the jurisdiction of the regional boards, under the following conditions: A standing tripartite regional trucking panel for cases involving trucking employees within the jurisdiction of the regional board shall be established in each region, the members of which shall be designated by the Trucking Commission, after consultation with the regional board concerned. This panel shall (a) hear dispute cases and make recommendations to the regional board, which shall issue its directive order as in other dispute cases; (b) pass on voluntary wage adjustments, under such procedure as the regional board may prescribe; and (c) gather the necessary data and recommend to the regional board wage brackets or revision of existing brackets for trucking employees within its jurisdiction. Wage brackets established by a regional board for trucking employees within its jurisdiction shall not be published or become effective until approved by the Trucking Commission. The regional boards shall furnish the necessary assistants and facilities to the regional trucking panels. Petitions for review of directive orders or rulings of regional boards in cases involving trucking employees, filed with the National Board, shall be referred to the Trucking Commission for appropriate recommendation to the National War Labor Board, with a view to stabilization of the trucking industry.

4. The ruling of the Commission on voluntary wage or salary adjustments as well as its directive orders on wage issues in dispute cases shall conform to the policies of the National War Labor Board, based on Executive Orders 9250 and 9328, and the policy directive of May 12, 1943 (see § 809.978 (a)) issued by the Director of Economic Stabilization. Accordingly, any wage or salary adjustment approved or ordered by the Commission "which may furnish the basis either to increase price ceilings or to resist otherwise justifiable reductions in price ceilings, or if no price ceilings are involved which may increase the production costs above the level prevailing in comparable plants or establish-

ments," shall become effective only if also approved by the Director of Economic Stabilization. Notice to this effect shall be contained in all rulings and orders issued by the Commission in wage cases.

5. Applications for approval of voluntary wage adjustments within the jurisdiction of the Commission shall be filed with the nearest office of the Wage and Hour Division of the Department of Labor, which shall transmit the same to the Commission. The application shall state whether or not the adjustment if granted (1) may furnish the basis to increase price ceilings, or (2) may increase the production costs above the level prevailing in comparable plants or establishments. If the answer is in the affirmative as to (1) the Commission shall send to the Office of Price Administration a copy of the application and a copy of its ruling at the time of issuance thereof. In wage dispute cases the Commission shall send to the Office of Price Administration a copy of the recommendations of its panel or hearing officer, and of the Commission's order, in any case where it appears that the wage adjustment ordered may furnish the basis to increase price ceilings. In all voluntary or dispute cases involving wage or salary adjustments which may furnish the basis for price relief, the Commission shall notify the employer to apply promptly to the Office of Price Administration for such price relief. The Trucking Commission shall notify the parties of the action taken by the Office of Price Administration or by the Director of Economic Stabilization.

6. The Commission shall, so far as practicable, utilize the information data and staff services of the National War Labor Board or the regional boards, and of other federal departments and agencies. The employment by the Commission of additional personnel, facilities, or services shall be subject to the approval of the National War Labor Board.

7. The rulings of the Commission on voluntary wage or salary adjustments, and the directive orders of the Commission in dispute cases, shall have the same effect, and shall be subject to the same provisions for stay and review by the National War Labor Board, as rulings and orders of the Regional War Labor Boards, as set forth in § 809.979 (k).

(a) On December 16, 1942, the National War Labor Board appointed the following persons as paid members of the Trucking Commission:

For the public—Professor Howard Meyerhoff, Chairman.
For industry—Landis O'Brien.
For labor—Frank Tobin.

§ 809.981e *Shipbuilding Commission.*

By virtue of and pursuant to the powers vested in it by Executive Order No. 9017 of January 12, 1942, the Executive Orders and regulations issued under the Act of Congress of October 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, on August 9, 1943, vacated its directive order of January 7, 1943, relative to shipbuilding, and directed as follows:

1. A Shipbuilding Commission (hereinafter called the Commission) is hereby established which shall consist of six members who shall be appointed as paid officials of the National War Labor Board; two shall represent the public and shall serve as chairman and co-chairman; two shall represent labor; and two shall represent industry. The Board shall appoint such alternates from time to time as may be deemed necessary.

2. The Commission shall have jurisdiction over labor disputes and voluntary wage or salary adjustments involving persons employed in the shipbuilding industry. The Commission shall have power (1) to hear and determine and to issue directive orders in labor dispute cases, and (2) to make final rulings on voluntary wage or salary adjustments submitted for approval of the National War Labor Board in accordance with the national wage stabilization policy.

3. For the purpose of this order, shipbuilding, whether or not carried on subject to shipbuilding stabilization zone standards, is the construction, conversion, outfitting, and repair of floating marine structures, including floating drydocks, within the continental limits of the United States and Alaska, exclusive of establishments owned and directly operated by the United States, provided the activity is carried on in the water, in drydocks, in basins, on ways for launching, or on the premises of a shipyard or boatyard.

4. Representatives of the Secretary of Navy, the Secretary of War, the chairman of the Maritime Commission, and the chairman of the War Production Board may consult with the Commission for the purpose of presenting to it any information necessary to facilitate the conduct of the business of the Commission.

5. Applications for approval of voluntary wage adjustments, within the jurisdiction of the Commission, shall be filed with the nearest office of the Wage and Hour Division, U. S. Department of Labor, which shall transmit the same to the Commission. The application shall state (a) whether or not the adjustment, if granted, may furnish the basis for an increase in production cost above the level prevailing in comparable yards or establishments, or (b) whether or not the applicant will apply for reimbursement from any agency of the government in the event the application is approved. If the answer is in the affirmative, any ruling made by the Commission, or by the National War Labor Board upon the recommendation of the Commission, shall not take effect unless and until the action is approved by the Director of Economic Stabilization.

6. The rulings and orders of the Commission shall conform to the policies of the National War Labor Board, based on Executive Orders Nos. 9250 and 9328, and the policy directive of May 12, 1943, issued by the Director of Economic Stabilization, and shall so state.

7. The rulings and orders of the Commission shall have the same effect, and shall be subject to the same provisions for stay and review by the National War Labor Board as rulings and orders of the Regional War Labor Boards as set forth in § 809.979 (k).

8. The Shipbuilding Commission in conjunction with the Wage Stabilization Division of the National War Labor Board shall proceed forthwith to gather and analyze wage data pursuant to the Board's order of July 30, 1943, and to establish appropriate wage brackets in the industry. These brackets shall be submitted to the Regional Board for comment before they are approved by the Commission.

9. The Commission shall, so far as is practicable, utilize the information, data, staff, and services of the National War Labor Board or the several Regional War Labor Boards and of other federal departments and agencies. The Regional War Labor Boards shall furnish such necessary assistance and facilities to panels, referees, and arbitrators of the Shipbuilding Commission as may be required. The employment by the Commission of additional personnel, facilities, or services shall be subject to the approval of the National War Labor Board.

§ 809.981f *Shipbuilding Stabilization Committee.* Part I of the National War Labor Board's directive order of January 7, 1943, in accordance with Title III, Section 3, of Executive Order No. 9250, permitted the Shipbuilding Stabilization Committee to continue to perform its functions. Part II of the directive order created the Shipbuilding Commission. By directive order of August 9, 1943, the National War Labor Board vacated Part II of its directive order of January 7, 1943, and re-constituted the Shipbuilding Commission (§ 809.981e). Part I of the directive order of January 7, 1943, is as follows:

PART I—SHIPBUILDING STABILIZATION COMMITTEE

A. Title III, Section 3, of Executive Order No. 9250 of October 3, 1942, provides: "The National War Labor Board shall permit * * * the Shipbuilding Stabilization Committee * * * to continue to perform its functions * * * except insofar as any of them is inconsistent with the terms of this order." Pursuant thereto, the Shipbuilding Stabilization Committee shall continue to perform the functions ascribed to it by General Administrative Order No. 2-57 of the chairman of the War Production Board and by the Shipbuilding Stabilization Zone Standards Agreements as amended May 16, 1942.

B. No new wage rate fixed by Zone Standards Agreement shall become effective until approved by the National War Labor Board.

§ 809.982 *Interpretations of National War Labor Board.* From time to time the National War Labor Board interprets Executive Order No. 9250 and specific provisions of the order. Such interpretations are helpful in determining the applicability of the Order to various types of situations. Where such interpretations are pertinent to a specific provision of the Executive order or to one of the NWLB's General Orders, the interpretation will be found under the appropriate paragraph of the Procurement Regulations. Where, however, the interpretations are of a general nature they will be set forth in the succeeding sections which are designated §§ 809.982 followed by a letter of the alphabet.

§ 809.982a *Interpretation.*

Question: Where the custom and practice in an establishment has been for employees to be paid overtime compensation for all hours in excess of 48 hours per week and to receive pro rata reductions from their weekly salaries in the event they work less than 48 hours per week, may the payment of such additional compensation and the decreases in salaries be continued without the approval of the National War Labor Board? *Answer:* Yes. (Letter of General Counsel of NWLB dated 19 December 1942).

§ 809.982b *Interpretation.*

Question: Where an employee is hired for a stipulated weekly salary without any limitation on the number of hours to be worked, may the employer pay overtime without the approval of the National War Labor Board? *Answer:* No, unless, the Company is under the Fair Labor Standards Act which provides that all employees engaged in interstate commerce or the production of goods for interstate commerce shall be paid time and one-half for all hours in excess of 40 hours per week. Executive Order 9250 does not affect the operation of the Fair Labor Standards Act or of the Walsh-Healey Act. (Letter of General Counsel of NWLB dated 19 December 1942).

§ 809.982c *Interpretation.*

Question: Where an employee is paid for a 40-hour week, with a provision that overtime be paid for all hours over 40 hours per week, with no provision that there be any reduction if less than 40 hours per week are worked, may the amount of salary be reduced

for any week in which less than 40 hours are worked, without the approval of the National War Labor Board? *Answer:* No. (Letter of General Counsel of NWLB dated 19 December 1942).

§ 809.983 *Joint statements of the National War Labor Board and the Commissioner of Internal Revenue.* Occasionally the National War Labor Board and the Commissioner of Internal Revenue issue joint statements with respect to important matters in order that a single uniform policy may be established throughout the country. Such joint statements of the National War Labor Board and the Commissioner of Internal Revenue will be set forth in the succeeding sections which are designated 809.983 followed by a letter of the alphabet.

§ 809.983c *Joint statement of 23 January 1942, by the Commissioner of Internal Revenue and the National War Labor Board regarding the victory tax.*

Since the adoption by the Congress of the 5% Victory Tax two questions of importance to employers and employees have been asked of the Commissioner of Internal Revenue and the National War Labor Board. One question relates to whether under the Anti-Inflation Act, employers may pay the 5% Victory Tax for their employees without deducting and withholding it from the employees' pay, and without the approval of the Commissioner or the Board. The other question relates to whether or not it was intended that the tax should be withheld on that portion of a wage or salary increase awarded or approved by the Commissioner of Internal Revenue or the War Labor Board in 1943 which is made applicable retroactively to work performed in 1942.

To avoid the necessity of individual employers and employees making separate requests for rulings on these questions and in order that a single uniform policy shall exist throughout the nation on these important matters, the Commissioner of Internal Revenue and the National War Labor Board have jointly determined to make the following announcement:

(1) The payment by an employer of the 5% Victory Tax on behalf of his employees without deducting it from the employees' pay is a wage or salary increase requiring the prior approval of the Board or the Commissioner pursuant to Executive Order No. 9250 and the Regulations of the Director of Economic Stabilization.

(2) On January 23, the Commissioner of Internal Revenue issued a ruling interpreting the Revenue Act so that where the National War Labor Board or the Commissioner of Internal Revenue awards or approves an increase in wages or salaries retroactive to 1942, the tax need not be withheld on that portion of the increase which is applicable to work performed in 1942.

(3) Whether the 5% tax will ultimately be collected on such retroactive pay is a matter to which the Congress may give its attention during the current session.

§ 809.983d *Procedure under Executive Order 9250.* (a) Agencies of the War Department are not required to conduct audits, investigations, or payroll reviews merely for the purpose of ascertaining whether or not contractors have complied with Executive Order 9250 or the regulations promulgated thereunder. The technical services are neither required nor authorized to determine that the prime contractor has violated the Executive Order or the regulations thereunder.

(b) When, however, probable noncompliance by a prime contractor with Executive Order 9250 or the regulations thereunder is discovered by or brought to the attention of a technical service such agency should:

(1) Advise each such contractor of the particulars in which probable non-compliance appears and request that he consult the Regional War Labor Board or Salary Stabilization Regional Office which has jurisdiction over approval of wage rates in the case. (See §§ 809.977c (a) and 809.979 (a) for list of Regional Offices).

(2) Report such apparent violation to the Regional War Labor Board or Salary Stabilization Regional Office which has jurisdiction over approval of wage rates in the case. Any such reports should include the following information:

(i) Name and address of contractor.

(ii) Date, number and place of performance of contracts.

(iii) Resume of facts constituting apparent violation including approved wage rates, by whom approved, wages actually paid, names or classifications of persons paid, dates of apparent improper payments, and name of party making payments if other than contractor.

(c) The technical services have the responsibility of establishing within their services appropriate procedures for the reporting of apparent violations to the proper Government agency. Such procedures should be devised to restrict contacts with such agency solely to the transmittal of a report containing the information listed in paragraph (b) (2) of this section.

(d) No report should be supplemented by appearances or participation in hearings or other proceedings of the agency having jurisdiction in the matter except for the purpose of furnishing, upon request, pertinent information within the possession of the War Department.

(e) Determinations of violations will be made in all cases by the National War Labor Board or the Commissioner of Internal Revenue. If the appropriate Government agency finds that a violation of Executive Order 9250 or the Regulations thereunder has occurred, the Industrial Personnel Division, Headquarters, Army Service Forces, will be advised, and will issue specific instructions to the interested technical service.

(f) All responsibilities which the technical services had prior to issuance of Executive Order 9250 on this regulation with respect to reimbursement of contractors in accordance with other laws and regulations are in no way affected by this regulation.

§ 809.984 *Executive Order 9328.* The following is the full text of Executive Order No. 9328, issued under date of 8 April 1943 (8 F.R. 4681):

EXECUTIVE ORDER

By virtue of the authority vested in me by the Constitution and the statutes, and particularly by the First War Powers Act, 1941, and the Act of October 2, 1942, entitled "An Act to Amend the Emergency Price Control Act of 1942, to Aid in Preventing Inflation, and for Other Purposes," as President of the United States and Commander in Chief of the Army and Navy, and in order to safeguard the stabilization of prices, wages and salaries, affecting the cost of living on the basis of levels existing on September 15, 1942, as authorized and directed by said Act of Congress of October 2, 1942, and Executive Order No. 9250 of October 3, 1942, and to prevent increases in wages, salaries, prices and profits, which, however, justifiable if viewed apart from their effect upon the economy, tend to undermine the basis of stabilization, and to provide such regulations with respect to the control of price, wage and salary increases as are necessary to maintain stabilization, it is hereby ordered as follows:

1. In the case of agricultural commodities the Price Administrator and the Administrator of Food Production and Distribution (hereinafter referred to as the Food Administrator) are directed, and in the case of other commodities the Price Administrator is directed to take immediate steps to place ceiling prices on all commodities affecting the cost of living. Each of them is directed to authorize no further increases in ceiling prices except to the minimum extent required by law. Each of them is further directed immediately to use all discretionary powers vested in them by law to prevent further price increases direct or indirect, to prevent profiteering and to reduce prices which are excessively high, unfair or inequitable. Nothing herein, however, shall be construed to prevent the Food Administrator and the Price Administrator, subject to the general policy directives of the Economic Stabilization Director, from making such readjustments in price relationships appropriate for various commodities, or classes, qualities or grades thereof or for seasonal variations or for various marketing areas, or from authorizing such support prices, subsidies or other inducements as may be authorized by law and deemed necessary to maintain or increase production, provided that such action does not increase the cost of living. The power, functions and duties conferred on the Secretary of Agriculture under section 3 of the Emergency Price Control Act of 1942 (Public Law 421, 77th Cong.) and under section 3 of the Act of October 2, 1942 (Public Law 729, 77th Cong.) are hereby transferred to, and shall be exercised by the Food Administrator.

2. The National War Labor Board, the Commissioner of Internal Revenue and other agencies exercising authority conferred by Executive Order No. 9250 or Executive Order 9299 and the regulations issued pursuant thereto over wage or salary increases are directed to authorize no further increase in wages or salaries except such as are clearly necessary to correct substandards of living, provided that nothing herein shall be construed to prevent such agencies from making such wage or salary readjustments as may be deemed appropriate and may not have heretofore been made to compensate, in accordance with the Little Steel Formula as heretofore defined by the National War Labor Board, for the rise in the cost of living between January 1, 1941, and May 1, 1942. Nor shall anything herein be construed to prevent such agencies, subject to the general policies and directives of the Economic Stabilization Director, from authorizing reasonable adjustments of wages and salaries, in case of promotions, reclassifications, merit increases, incentive wages or the like, provided that such adjustments do not increase the level of production costs appreciably or furnish the basis either to increase prices or to resist otherwise justifiable reductions in prices.

3. The Chairman of the War Manpower Commission is authorized to forbid the employment by any employer of any new employee or the acceptance of employment by a new employee except as authorized in accordance with regulations which may be

issued by the Chairman of the War Manpower Commission, with the approval of the Economic Stabilization Director, for the purpose of preventing such employment at a wage or salary higher than that received by such new employee in his last employment unless the change of employment would aid in the effective prosecution of the war.

4. The attention of all agencies of the Federal Government, and of all State and municipal authorities, concerned with the rates of common carriers or other public utilities, is directed to the stabilization program of which this order is a part so that rate increases will be disapproved and rate reductions effected, consistently with the Act of October 2, 1942, and other applicable federal, state or municipal law, in order to keep down the cost of living and effectuate the purposes of the stabilization program.

5. To provide for the consistent administration of this order and Executive Order No. 9250, and other orders and regulations of similar import and for the effectuation of the purposes of the Act of October 2, 1942, the Economic Stabilization Director is authorized to exercise all powers and duties conferred upon the President by that Act, and the Economic Stabilization Director is authorized and directed to take such action and to issue such directives under the authority of that Act as he deems necessary to stabilize the national economy, to maintain and increase production and to aid in the effective prosecution of the war. Except insofar as they are inconsistent with this order or except insofar as the Director shall otherwise direct, powers and duties conferred upon the President by the said Act and heretofore devolved upon agencies or persons other than the Director shall continue to be exercised and performed by such agencies and persons.

6. Except insofar as they are inconsistent with this order, Executive Order 9250 and the regulations issued pursuant thereto shall remain in full force and effect.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
April 8, 1943.

SUBPART H—FORTY-EIGHT HOUR WORKWEEK

§ 809.985 *Executive Order No. 9301.* The following is the full text of Executive Order No. 9301 issued under date of February 9, 1943:

EXECUTIVE ORDER

ESTABLISHING A MINIMUM WAR-TIME WORK WEEK OF FORTY-EIGHT HOURS

By virtue of the authority vested in me by the Constitution and statutes, as President of the United States, and in order to meet the man-power requirements of our armed forces and our expanding war-production program by a fuller utilization of our available man power, it is hereby ordered:

1. For the duration of the war, no plant, factory or other place of employment shall be deemed to be making the most effective utilization of its man power if the minimum work week therein is less than forty-eight hours per week.

2. All departments and agencies of the Federal government shall require their contractors to comply with the minimum work week prescribed in this order and with policies, directives and regulations prescribed hereunder, and shall promptly take such action as may be necessary for that purpose.

3. The chairman of the War Man-Power Commission shall determine all questions of interpretation and application arising under this order and shall formulate and issue such policies, directives and regulations as he determines to be necessary to carry out this order and to effectuate its purposes. The chairman of the War Man-Power Commission is authorized to establish a minimum work week greater or less than that established in Section 1 of this order or take other action with respect to any case or type of case in which he determines that such different minimum work week or other action would more effectively contribute to the war effort and promote the purposes of this order.

4. All departments and agencies of the Federal government shall comply with such policies, directives and regulations as the chairman of the War Man-Power Commission shall prescribe pursuant to this order, and shall so utilize their facilities, services and personnel and take such action under authority vested in them by law as the chairman determines to be necessary to effectuate the purposes of this order and promote compliance with its provisions.

5. Nothing in this order shall be construed as superseding or in conflict with any Federal, state or local law limiting hours of work or with the provisions of any individual or collective bargaining agreement with respect to rates of pay for hours worked in excess of the agreed or customary work week, nor shall this order be construed as suspending or modifying any provision of the fair labor standards act (act of June 25, 1938; 52 Stat. 1060; 29 U.S.C. 201 et seq.) or any other Federal, state or local law relating to the payment of wages or overtime.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
February 9, 1943.

(a) The following is the text of the regulations issued by the War Manpower Commission to implement the 48-hour work week.

By virtue of authority vested in me as Chairman of the War Manpower Commission by Executive Order No. 9301 establishing a Minimum Wartime Workweek of 48 hours, and by Executive Orders Nos. 9139 and 9279, I hereby prescribe the following Regulations:

§ 903.1 *General policy for interpretation and application of Executive order.* Executive Order No. 9301 shall be so construed and applied as best to effectuate its fundamental purpose, which is to aid in meeting the manpower requirements of our armed forces and our expanding war production program by a fuller utilization of our available manpower. Effectuation of this purpose requires that in situations of labor shortage employers do not hire new workers when their manpower needs can effectively be met by a fuller utilization of their current labor force, and that workers who can be released by an extension of the workweek are released under circumstances which will permit and facilitate their effective utilization elsewhere in the war effort.

§ 903.2 *Application to areas and activities.* The Chairman of the War Manpower Commission will from time to time by order designate areas and activities as subject to the provisions of Executive Order No. 9301. Regional Manpower Directors may designate additional areas and activities within their respective regions as subject to the provisions of Executive Order No. 9301, if they find and by appropriate public notice so declare, that such action will aid in alleviating labor shortages which are impeding the war effort. Unless and until an area or activity has been so designated, employers therein will not be required to extend their workweek.

§ 903.3 *Delegation of authority.* Regional and Area Manpower Directors are authorized and directed to determine all questions arising within their respective regions and areas with respect to the interpretation and application of these Regulations, in conformity with such procedures and instructions as the Executive Director of the War Manpower Commission may issue in implementation thereof.

§ 903.4 *Minimum wartime workweek.* "Minimum Wartime Workweek" as used in these Regulations means a workweek of 48 hours, except in cases where a workweek of 48 hours (a) would be impracticable in view of the nature of the operations, (b) would not contribute to the reduction of labor requirements, or (c) would conflict with any Federal, State or local law or regulation limiting hours of work. In such cases "Minimum Wartime Workweek" means the greatest number of hours (less than 48) feasible in the light of the nature of the operations, the reduction of labor requirements or the applicable Federal, State and local law or regulation, as the case may be.

§ 903.5 *Extension of workweek in designated areas and activities.* If the workweek applicable to any worker employed in any plant, factory or other place of employment in an area or an activity designated as subject to the provisions of Executive Order No. 9301, is less than the Minimum Wartime Workweek, such workweek shall be extended to the Minimum Wartime Workweek as follows:

(a) Whenever extension of such workweek to the Minimum Wartime Workweek would not involve the release of any workers, the affected employer shall proceed promptly to extend the workweek to the Minimum Wartime Workweek.

(b) Whenever the Regional or Area Manpower Director or a designated representative of either determines that extension of such workweek to the Minimum Wartime Workweek would involve the release only of workers who can be promptly placed in suitable employment with other employers, the affected employer will be notified of such determination and thereupon shall proceed promptly to extend the workweek to the Minimum Wartime Workweek.

(c) If extension of such workweek to the Minimum Wartime Workweek would involve the release of some workers and the Regional or Area Manpower Director or designated representative has not determined and notified the employer that such workers can promptly be placed in suitable employment with other employers, the workweek shall not be extended except as authorized below. On or before April 1, 1943, the affected employer shall submit to the Regional or Area Manpower Directors or the designated representative of either Director a statement as to the number of workers whose release would be involved and their occupational classification, together with a proposed schedule for the timing of such releases. The Regional or Area Manpower Director or designated representative will authorize a schedule for the extension of the workweek to the Minimum Wartime Workweek and for the release of workers in terms of labor market needs and the employer shall thereupon proceed to extend the workweek in accordance with such schedule.

§ 903.6 *Restriction upon hiring of workers.* No employer shall hire any worker in an area or activity designated as subject to the provisions of Executive Order No. 9301, if the employer has failed in any manner to comply with the provisions of § 903.5 of these regulations in the plant, factory or other place of employment in which the worker would be employed.

§ 903.7 *Exclusions.* No provision of these Regulations shall be construed or applied so as to require the extension of a workweek:

(a) In any establishment or other place of employment in which less than eight workers are regularly employed;

(b) In any establishment or place of employment principally engaged in agriculture;

(c) Of persons in the employ of any State or any political subdivision thereof, or any instrumentality of any one or more of the foregoing;

(d) Of youth under the age of sixteen years; or

(e) Of individuals who on account of other employment, household responsibilities, or

physical limitations, are not available for full time work.

§ 903.8 *Definitions.* As used in these regulations:

(a) "Workweek" means the number of hours within a period of seven successive days, beginning with the same calendar day each week, during which workers are normally required to be on duty.

(b) "Agriculture" means those farm activities carried on by farm owners or tenants on farms in connection with the cultivation of the soil, the harvesting of crops, or the raising, feeding, or management of livestock, bees, and poultry, and shall not include any packing, canning, processing, transportation or marketing of articles produced on farms unless performed or carried on as an incident to ordinary farming operations as distinguished from manufacturing or commercial operations.

(b) By authority vested in the Chairman of the War Manpower Commission by Executive Order No. 9301, establishing a minimum wartime workweek of 48 hours and in accordance with the provisions of § 903.2 of the regulations prescribed by the Chairman of the War Manpower Commission, said Chairman may designate the areas subject to the provisions of Executive Order No. 9301. A current list of the areas so designated may be secured from any office of the United States Employment Service or of the War Manpower Commission.

(c) The following is the text of General Order No. 6, issued by the War Manpower Commission, designating certain activities as subject to the provisions of Executive Order No. 9301.

By virtue of the authority vested in me as Chairman of the War Manpower Commission, by Executive Order No. 9301, establishing a Minimum Wartime Workweek of 48 hours, and in accordance with the provisions of § 903.2 of the regulations prescribed by me on February 22, 1943, I hereby designate the following activities as subject to the provisions of Executive Order No. 9301.

1. The mining (including the development of ore properties) dressing, and beneficiating (milling) of the following nonferrous metals and their ores:

Aluminum.
Antimony.
Arsenic.
Beryllium.
Chrome.
Cobalt.
Columbium.
Copper.
Lead.
Magnesium.
Manganese.
Mercury.
Molybdenum.
Silver.
Tantalum.
Tin.
Titanium.
Tungsten.
Uranium.
Vanadium.
Zinc.
Zirconium.
All other non-ferrous metals and their ores.

2. (a) All logging operations.

(b) All operations of all:

Sawmills.
Planing mills.
Veneer mills.
Plywood mills.
Cooperage-stock mills.
Cooperage establishments.
Shingle mills.
Wooden box factories.
Wood pulp mills.

(2) A current list of the activities subject to the provisions of Executive Order No. 9301 can be obtained from any office of the United States Employment Service or of the War Manpower Commission.

(d) *Statement re adoption of forty-eight hour week.* Under date of March 11, 1943, the National War Labor Board defined the extent of its jurisdiction in the matter of overtime pay in the light of Executive Order No. 9301, as follows:

In order to answer the many inquiries received as to the effect of Executive Order 9250 on wages and salaries in the light of the Executive Order of February 9, establishing the minimum wartime work-week of 48 hours, the National War Labor Board today issued the following statement:

1. *Effect of the Order on Employer's Obligation to Pay Over-time.*—Any employer who adopts a 48 hour week in compliance with Executive Order 9301 of February 9, 1943 and the regulations of the War Manpower Commission issued thereunder is under the same obligation with respect to over-time pay as if he had adopted a 48 hour week before the Order was issued. That is, his obligation to pay or not to pay over-time rates is in no way affected by the Order.

This interpretation is based on the following provision of section 5 of the Order:

"Nothing in this order shall be construed as superseding or in conflict with the provisions of any individual or collective bargaining agreement with respect to rates of pay for hours worked in excess of the agreed or customary work-week, nor shall this Order be construed as suspending or modifying any provision of the Fair Labor Standards Act or any other Federal, State or local law relating to the payment of wages or over-time."

2. *Necessity to Secure War Labor Board Approval for the Payment of Over-time.*—Approval of the War Labor Board is not required for payment of overtime rates to wage and salary employees for hours worked in excess of 40 made in accordance with the provisions of the Fair Labor Standards Act or any other similar Federal, State or local law or by the provisions of a collective bargaining agreement or by the employer's past custom and practice.

If none of these applies, then payment for the hours worked in excess of 40 at other than straight time rates would be a wage increase and would therefore require approval by the War Labor Board.

3. *Salaried Employees.*—Salaried employees within the jurisdiction of the War Labor Board, whose over-time pay is not covered by the Fair Labor Standards Act or any other similar Federal, State or local law, or by a collective bargaining agreement or their employer's past practice, may not, without the prior approval of the War Labor Board, be paid at more than straight time rates proportionate to the additional hours worked.

4. Application for approval of the increases referred to above may, of course, be made, in accordance with the National War Labor Board's regular procedure, at any local office of the Wage and Hour Division of the U. S. Department of Labor.

§ 809.986 *Interpretation of regulations.* Generally, the order and the regulations prescribe a 48-hour workweek in the areas and activities designated in general orders. However, the regulations provide for several exceptions. Whether the orders and regulations issued under the Executive order in question will affect particular concerns and what their effect will be are questions that must be determined in every case by the War Manpower Commission or its regional or local representatives. Neither contracting officers nor labor officers are authorized to interpret or construe the Executive order or the regulations. Therefore, all contractors and subcontractors presenting questions concerning the interpretation or application in particular cases of the orders and regulations will be referred to the War Manpower Commission officials in the appropriate area.

§ 809.987 *Enforcement procedure.* Until the War Manpower Commission has advised the War Department that a particular contractor is failing to comply with the order and the regulations, no action will be taken by any representative of the supply service, either to withhold contracts from such contractor or to require compliance with the order and the regulations by any such contractor. In cases where the War Manpower Commission has found that a particular War Department contractor is not complying with said order and regulations and has so advised the War Department, the chief of the supply service will be notified immediately by the Director, Industrial Personnel Division, Headquarters, Army Service Forces, and it will be the duty of the chief of the supply service or his designated representative promptly to request such contractor to comply with said order and regulations. Whenever any such contractor shall thereafter fail or refuse to comply therewith, report thereof will be made immediately by the chief of the supply service involved to the Director, Industrial Personnel Division.

§ 809.988 *Adjustments to cover increased cost of compliance.* The War Department policy in regard to adjustment for the increased cost of performance occasioned by compliance with said order and regulations is set out in the following Joint Statement of the War and Navy Departments, dated April 1, 1943:

(1) Executive Order No. 9301 and the Regulations promulgated thereunder by the War Manpower Commission require all employers in certain areas and all employers in certain industries to adopt the minimum wartime workweek as defined by said regulations. The Executive Order directs all Procurement Agencies of the Government to require their contractors to comply with the Order and with the Regulations.

(2) While many Government contractors and subcontractors may not be affected, the War Department and Navy Department recognize that some contractors and subcontractors will be obliged to extend the workweek of their employees and will be required to pay premium rates for the additional hours involved, with the result that their labor costs will be increased. The Departments also recognize that such compliance may result in hardship to some contractors who have cooperated with the Departments in efforts to secure prices as close to cost plus a fair profit as is possible under war conditions, and that such hardship may result in the impairment of the ability of many contractors, particularly small contractors, to continue effectively to produce war goods.

(3) Accordingly, the following policy has been adopted by the War Department and Navy Department:

(a) Where, during the course of performance of a lump sum contract or subcontract, a contractor or subcontractor has been required to increase the workweek of employees in order to comply with Executive Order No. 9301 and the regulations of the War Manpower Commission promulgated thereunder; and where, because of premium overtime rates required by Federal law or Executive Order, such compliance has resulted in an increase in the cost of performance of such contract or subcontract, over and above cost of performance had such increase in the workweek not been so required; and where such increase in the cost of performance would cause hardship to such contractor or subcontractor, the War Department and Navy Department will give consideration in appropriate cases to granting relief from such hardship.

(b) Generally speaking, it will be regarded that hardship exists only in cases where the increase in the cost of performance of a War Department or Navy Department contract resulting from compliance with the Order and the regulations operates to deprive the contractor of a fair profit on the contract.

(c) Where contracts under which such increases are sought relate to commodities, supplies or articles which are subject to OPA ceiling prices, any adjustment to be made must be within such ceiling prices or subject to approval in particular cases by the Office of Price Administration.

(d) Requests by subcontractors for such relief must in all cases be presented through prime contractors and adjustments, made for the benefit of subcontractors, shall be made only through prime contractors.

(a) *Time limit for filing requests for adjustment.* No requests for adjustments of the type above described will be considered unless they are presented to the contracting officer prior to the time the contracting officer has administratively determined the final amount due under the contract under which the request is presented by communicating his determination to the contractor or by the approval of the final voucher therefor.

(b) *Procedure for adjustment.* Requests for adjustment must be presented to the contracting officer of the supply service involved. Such adjustments as are made in the amount of the contract price with prime contractors will be made by supplemental agreement between the supply service and the prime contractor. No adjustment will be made by direct contract with subcontractors. The latter should make request for adjustments through their prime contractors and the amounts of such adjustments as are appropriate, made for the benefit of such subcontractors, will be included in supplemental agreements with the prime contractors.

(c) *Nature of showing required for adjustment.* No adjustment will be made without a proper showing which must include the following:

(1) That the contractor or subcontractor was required by the Executive Order in question as interpreted and applied to his case by the War Manpower Commission Regulations, to increase the workweek of some or all of his employees.

(2) The amount of the increased labor costs incurred because of premium overtime rates involved in compliance with the minimum wartime workweek.

(3) The amount of savings, through reduced overhead costs or otherwise, resulting from the adoption of the longer workweek.

(4) The total contract price of War Department contracts or subcontracts on which an adjustment is sought; the estimated amount of net earnings before taxes that would have accrued thereon had not the increased labor costs been incurred.

(d) *Authority to execute supplemental agreements.* Whenever the chief of the supply service, or such person within the supply service to whom the authority so to act has been delegated by the chief of the supply service, shall find in the light of the showing made by the contractor and verified to the extent feasible within the supply service:

(1) That the increase in the cost of performance of a War Department contract or subcontract, resulting from compliance with Executive Order No. 9301 and the regulations promulgated thereunder, operates to deprive the contractor or subcontracfor of a fair profit on the contract, or subcontract, and

(2) That it is appropriate, in the light of all the facts known to him, or reasonably ascertainable by him, bearing upon the earnings of the contractor or subcontractor from its war business, to grant relief;

he is authorized to enter into a supplemental agreement pursuant to the First War Powers Act and Executive Order No. 9001 awarding the contractor an additional amount, not in excess of the diminution of the amount of a fair profit on such contract or subcontract, caused by such compliance.

SUBPART I—EMPLOYMENT OF ALIENS

§ 809.990 *Joint statement.* Under date of June 7, 1943, the Secretary of War, the Attorney General, the Secretary of the Navy and the Chairman of the Maritime Commission issued a joint statement on the employment of aliens. This statement reads as follows:

I. INTRODUCTORY STATEMENT

1. The protection of the war effort against espionage, sabotage, and subversive activities is paramount to all other considerations. The Departments of War, Justice and Navy, and the Maritime Commission, recognize clearly the importance of meeting to the fullest possible extent the expanding military and industrial demands for manpower. The governmental agencies herein named are, therefore, making this joint statement with respect to the national policy to the end that the available manpower may be utilized by contractors and sub-contractors to the maximum degree consistent with the paramount importance of internal security.

2. The granting of full employment opportunities to all loyal and qualified workers irrespective of national origin or citizenship is urged upon and expected of all contractors and sub-contractors of the government agencies herein named. The applicable national policy was clearly stated by the President in his statement of July 11, 1942, in which he said:

"Persons should not hereafter be refused employment, or persons at present employed discharged, solely on the basis of the fact that they are aliens or that they were formerly nationals of any particular foreign country. A general condemnation of any group or class of persons is unfair and dangerous to the war effort. The Federal Government is taking the necessary steps to guard against, and punish, any subversive acts by disloyal persons, citizens as well as aliens."

3. The policy and procedure herein outlined apply to the employment of aliens by Government contractors and sub-contractors within the continental United States. Special regulations apply to the employment of aliens on shipboard and in territories outside of the continental United States.

II. PERMISSION TO EMPLOY AN ALIEN IS REQUIRED IN ONLY TWO CLASSES OF CASES

4. Contractors and sub-contractors are required to obtain the written consent of the head of the Government department concerned, before employing aliens under the following conditions only:

(a) *Aeronautical Contracts:* Written consent is required before an alien employee may be permitted to have access to the plans or specifications or the work under construction or to participate in the contract trials under contracts involving aircraft, aircraft parts, or aeronautical accessories for the United States.

(b) *Classified Contracts:* Written consent is required before aliens employed by a contractor in the performance of secret, confidential, or restricted Government contracts shall be permitted to have access to the plans or specifications, or the work under such contracts, or to participate in the contract trials.

5. War and Navy Department and Maritime Commission contractors and sub-contractors may employ aliens as freely as American citizens except under the specific conditions specified in paragraph 4, (a) and (b), above.

III. APPLICATION OF ANTI-DISCRIMINATION CLAUSE

6. Pursuant to Executive Order No. 8802, dated June 25, 1941, an anti-discrimination clause (sometimes called "non-discrimination" clause) has been included in all War and Navy Department and Maritime Commission contracts entered into since June 25, 1941. This clause requires the granting of full employment opportunities to all loyal and qualified workers regardless of race, creed, color, or national origin. This clause is intended to apply equally to citizens and non-citizens. For contractors or sub-contractors of the War or Navy Departments, or of the Maritime Commission to require American citizenship as an essential condition for employment is considered a breach of the clause in the contract and is contrary to the national policy as expressed in the Executive Order.

7. Even on aeronautical and classified contracts, if a qualified applicant whose services the contractor needs is an alien whose loyalty to the United States the contractor has no reason to doubt, the contractor is obligated to cooperate with the applicant in applying for consent to his employment. Failure to request consent for the employment of, or to employ such an alien upon securing consent, if except for his alien status he would have been employed, constitutes a breach of the anti-discrimination clause of the contract and is contrary to national policy as expressed in the Executive Order. If a contractor refuses employment to a qualified and authorized alien worker, he should be prepared to present specific and sufficient reasons to avoid a charge of discrimination.

8. In no case, except those in which an individual alien is denied employment by the specific action of the War or Navy Departments or the Maritime Commission, is a contractor justified in informing an applicant

that he is being refused employment because of Government regulations. The same considerations apply to removal from employment.

IV. PROCEDURE FOR REQUESTING CONSENT TO EMPLOY ALIENS FOR WORK ON AERONAUTICAL OR CLASSIFIED CONTRACTS

9. In order to obtain consent of the Head of the Government Department concerned, for the employment of an alien on an aeronautical or classified contract, the alien and the contractor are required to fill out their respective parts of an Alien Questionnaire form. The procedure in this connection is as follows:

(a) The alien may go to the nearest office of the United States Employment Service, which will furnish him with the application form and will assist him in filling out his portion of the Questionnaire. However, if the contractor has forms and office facilities conveniently available, the alien may go directly to the contractor's plant and may there fill out his portion of the questionnaire. The Plant Security Officer is instructed to furnish to contractors the Alien Questionnaire forms. However, the form may also be secured from the local office of the United States Employment Service.

(b) When the alien's portion of the Questionnaire has been completed, the form will then be submitted to the employer who will fill out his portion of the Questionnaire. Insofar as possible, statements made by the contractor or reported by him, regarding the loyalty of the alien, should be factual rather than simply expressions of opinion.

(c) When the contractor has completed the Alien Questionnaire, (seven copies), he will retain one copy and will deliver the others to the plant security officer. This officer will retain one copy and will forward the others to the authorized representative of the head of the department concerned.

(d) This representative, after full investigation of the loyalty of the alien applicant, makes his recommendation, pursuant to which the Secretary of War, the Secretary of the Navy, or the Chairman of the Maritime Commission grant or deny consent to employ the alien. Notice of such action is sent directly to the contractor. In the normal case, the employer should receive a decision on his request within less than two weeks from the date the application is filed with the plant security officer.

V. SIGNIFICANCE OF, AND APPEALS FROM DENIAL OF CONSENT

10. The denial of consent does not necessarily indicate a decision that the alien concerned has disloyal tendencies, but may merely mean that his loyalty to the United States has not yet been positively proved.

11. If consent is denied, the contractor should promptly so inform the alien applicant, and at the same time advise him as to possible reconsideration.

12. Reconsideration of a denial of consent may be requested by either the alien or the contractor and additional evidence of loyalty, and letters of recommendation, may be sent direct to the Office of the Provost Marshal General.

13. Aliens whose applications for employment on aeronautical or classified contracts have been denied by the Secretary of War, the Secretary of the Navy, or the Chairman of the Maritime Commission, should be directed to the United States Employment Service for referral to other work.

VI. NO PENALTIES APPLY IF CONSENT IS OBTAINED BEFORE EMPLOYING ALIENS ON AERONAUTICAL AND CLASSIFIED CONTRACTS

14. Some contractors and sub-contractors have hesitated to employ aliens because of a lack of clear understanding of the statutory restrictions, and concern as to the penalty for violation thereof. It is repeated and emphasized that the only restrictions are those set forth in paragraph 4 above, and that an employer is not subject to any penalty if, in good faith, he obtains the written consent of the head of the Government department concerned before an alien is permitted to have access to the work, plans, or trials under aeronautical or classified contracts.

VII. RESPONSIBILITIES FOR PLANT SECURITY

15. The contractor is responsible for the protection of the plant against all persons who might endanger its security, regardless of their citizenship. Contractors will comply with detailed regulations concerning plant security issued from time to time by the War and Navy Departments and the Maritime Commission, including:

(a) complying with the provisions of their contracts respecting the safeguarding of all plans and specifications and all work under these contracts;

(b) in any case and at any time where there is a definite indication that an employee is subversive or engaged in subversive activities, no investigation will be conducted by the employer, but the facts will be furnished to the Federal Bureau of Investigation for appropriate consideration. (Employees have the same duty of reporting in this regard as have employers.)

VIII. PRIOR STATEMENTS AND CONTRACT PROVISIONS

16. This joint statement is applicable with equal force to the employment of aliens under all existing contracts. If any clause of any existing contract prescribes greater restrictions on the employment of aliens than are hereby required or permitted, the Government will waive compliance with such clause, to the extent that it conflicts with this Statement.

17. All previous statements of the Departments of War, Navy, Justice, and the Maritime Commission with respect to the policy and procedure in connection with the employment of aliens, are hereby superseded insofar as they may be inconsistent with any statements contained herein.

HENRY L. STIMSON,
Secretary of War.
FRANCIS BIDDLE,
Attorney General.
FRANK KNOX,
Secretary of the Navy.
E. S. LAND,
Chairman, U. S. Maritime Comm.

(a) *Anti-discrimination contract clause.* The anti-discrimination clause (see § 803.325) required in contracts under the provisions of Executive Order No. 9346 issued under date of 27 May 1943 (see Subpart K of this part) prohibits discrimination against any employee or applicant for employment because of "national origin". This is construed as prohibiting discrimination based on non-citizenship as well as discrimination based on country of origin.

(b) *Procedure.* It is to be noted that under Article IV of the joint statement set forth in § 809.990, it is contemplated that the alien questionnaire, when completed, will be delivered to the plant security officer. If, at a given plant, there is no plant security officer, the questionnaire should be delivered to the Director of Internal Security at the Headquarters of the Service Command within the limits of which the plant is located.

SUBPART J—STATE LABOR LEGISLATION

§ 809.993 *Requests for relaxation of State labor legislation.* In all cases in which manufacturers engaged in war production deem necessary to the achievement of full war production the relaxation of State labor statutes or administrative orders which are restricting or are allegedly restricting war production, the following procedure will be observed:

(a) (1) The interested contractor will submit the initial request for such relaxation to the State Labor Commissioner or other State officials charged with the enforcement of labor legislation in the State or region where the plant of the manufacturer involved is located.

(2) In the event that the contractor's request for relaxation is denied, the technical service, Army Air Forces, or the service command, as the case may be, whichever has the operating responsibility for labor problems for said contractor, may assist the contractor by supporting the request for relaxation by direct representation to the appropriate State official.

(3) The labor branches of the service commands may be called upon to render staff assistance relative to the foregoing.

(4) If the desired relaxation has not been obtained after exhausting the above procedure, and the appropriate War Department agency continues to urge its necessity, the matter may be referred through channels to the Director, Industrial Personnel Division, Headquarters, Army Service Forces, Attention: Chief, Labor Branch. Such referrals should contain the following information:

(i) Provision or provisions of law the relaxation of which is required.

(ii) Extent of relaxation required.

(iii) Criticalness or relative scarcity of the material.

(iv) Circumstances necessitating the relaxation (such as, for example, a shortage in the local supply of skilled labor).

(v) Remedial action being taken by the manufacturer (such as, for example, training and up-grading).

(vi) Efforts previously made to obtain the relaxation.

(b) Requests for assistance in obtaining a relaxation will be refused in cases in which:

(1) The contractor has not already requested the proper State authorities for such relaxation.

(2) Such relaxation is clearly unnecessary to maintain full production.

(3) The granting thereof would result in a clearly excessive increase in hours of work, in an unreasonable curtailment of rest and lunch periods, or in an undesirable impairment of working conditions.

SUBPART K—FAIR EMPLOYMENT PRACTICE

§ 809.994 *Executive Order No. 9346.* The following is the full text of Executive Order No. 9346, issued under date of May 27, 1943:

EXECUTIVE ORDER

FURTHER AMENDING EXECUTIVE ORDER NO. 8802 BY ESTABLISHING A NEW COMMITTEE ON FAIR EMPLOYMENT PRACTICE AND DEFINING ITS POWERS AND DUTIES

In order to establish a new Committee on Fair Employment Practice, to promote the fullest utilization of all available manpower, and to eliminate discriminatory employment

practices, Executive Order No. 8802 of June 25, 1941, as amended by Executive Order No. 8823 of July 18, 1941, is hereby further amended to read as follows:

WHEREAS the successful prosecution of the war demands the maximum employment of all available workers regardless of race, creed, color, or national origin; and

WHEREAS it is the policy of the United States to encourage full participation in the war effort by all persons in the United States regardless of race, creed, color, or national origin, in the firm belief that the democratic way of life within the nation can be defended successfully only with the help and support of all groups within its borders; and

WHEREAS there is evidence that available and needed workers have been barred from employment in industries engaged in war production solely by reason of their race, creed, color, or national origin, to the detriment of the prosecution of the war, the workers' morale, and national unity:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes, and as President of the United States and Commander in Chief of the Army and Navy, I do hereby reaffirm the policy of the United States that there shall be no discrimination in the employment of any person in war industries or in Government by reason of race, creed, color, or national origin, and I do hereby declare that it is the duty of all employers, including the several Federal departments and agencies, and all labor organizations, in furtherance of this policy and of this order, to eliminate discrimination in regard to hire, tenure, terms or conditions of employment, or union membership because of race, creed, color, or national origin.

It is hereby ordered as follows:

1. All contracting agencies of the Government of the United States shall include in all contracts hereafter negotiated or renegotiated by them a provision obligating the contractor not to discriminate against any employee or applicant for employment because of race, creed, color, or national origin and requiring him to include a similar provision in all subcontracts. [See § 803.325.]

2. All departments and agencies of the Government of the United States concerned with vocational and training programs for war production shall take all measures appropriate to assure that such programs are administered without discrimination because of race, creed, color, or national origin.

3. There is hereby established in the Office for Emergency Management of the Executive Office of the President a Committee on Fair Employment Practice, hereinafter referred to as the Committee, which shall consist of a Chairman and not more than six other members to be appointed by the President. The Chairman shall receive such salary as shall be fixed by the President not exceeding $10,000 per year. The other members of the Committee shall receive necessary traveling expenses and, unless their compensation is otherwise prescribed by the President, a per diem allowance not exceeding twenty-five dollars per day and subsistence expenses on such days as they are actually engaged in the performance of duties pursuant to this Order.

4. The Committee shall formulate policies to achieve the purposes of this Order and shall make recommendations to the various Federal departments and agencies and to the President which it deems necessary and proper to make effective the provisions of this Order. The Committee shall also recommend to the Chairman of the War Manpower Commission appropriate measures for bringing about the full utilization and training of manpower in and for war production without discrimination because of race, creed, color, or national origin.

5. The Committee shall receive and investigate complaints of discrimination forbidden by this Order. It may conduct hearings, make findings of fact, and take appropriate steps to obtain elimination of such discrimination.

6. Upon the appointment of the Committee and the designation of its Chairman, the Fair Employment Practice Committee established by Executive Order No. 8802 of June 25, 1941, hereinafter referred to as the old Committee, shall cease to exist. All records and property of the old Committee and such unexpended balances of allocations or other funds available for its use as the Director of the Bureau of the Budget shall determine shall be transferred to the Committee. The Committee shall assume jurisdiction over all complaints and matters pending before the old Committee and shall conduct such investigations and hearings as may be necessary in the performance of its duties under this Order.

7. Within the limits of the funds which may be made available for that purpose, the Chairman shall appoint and fix the compensation of such personnel and make provision for such supplies, facilities, and services as may be necessary to carry out this Order. The Committee may utilize the services and facilities of other Federal departments and agencies and such voluntary and uncompensated services as may from time to time be needed. The Committee may accept the services of State and local authorities and officials, and may perform the functions and duties and exercise the powers conferred upon it by this Order through such officials and agencies and in such manner as it may determine.

8. The Committee shall have the power to promulgate such rules and regulations as may be appropriate or necessary to carry out the provisions of this Order.

9. The provisions of any other pertinent Executive order inconsistent with this Order are hereby superseded.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
May 27, 1943.

§ 809.994a *Interpretations of Executive Order No. 9346.* Pursuant to the authority vested in it by Executive Order No. 9346, the Committee on Fair Employment Practice, in order to effectuate the purposes of the Order, has issued certain interpretations under the Order. Such interpretations are set forth in succeeding paragraphs.

(a) *Contracts.* (1) The words "all contracts hereafter negotiated or renegotiated" include all contracts made, amended or modified.

(2) A non-discrimination provision is required in leases, grants or easements, right of way, etc., to the same extent that it is required in other contracts.

(3) The obligation to include the non-discrimination clause exists even though the contract involves non-war activity.

(4) The obligation to include the non-discrimination clause exists even though the contract is required to be awarded to the lowest bidder.

(5) The obligation to include the non-discrimination clause exists even though the contract is between a Federal Government agency and a State agency or subdivision of a state.

(6) The obligation to include the non-discrimination clause does not depend on the amount of money or other consideration involved in the performance of the contract.

(7) The non-discrimination provision required does not refer to, extend to or cover the activities or business of the contractor which are not related to or involved in the performance of the contract entered into.

(8) Inclusion of a non-discrimination provision is not required in contracts the performance of which does not involve the employment of persons.

(9) Inclusion of a non-discrimination provision is not required in contracts with foreign contractors for work to be performed outside the continental or territorial limits of the United States where no recruitment of workers within the said limits of the United States is involved.

(b) *Employment of aliens.*—See Subpart I of this part relating to employment of aliens, particularly § 809.990 (a).

[Procurement Reg. 10]

PART 810—PLANT FACILITIES EXPANSIONS

SUBPART A—POLICY

Sec.

810.1001 General policy in regard to new facilities.
810.1002 Rental or allowance for the use of Government-financed facilities.
810.1003 Reconversion and storage costs.
810.1004 Tax amortization.
810.1004a Use of War Department owned machine tools and other industrial equipment for other than War Department production.
810.1004a.1 Use by contractor under other contracts or for commercial production.

SUBPART B—METHODS FOR PROVIDING NEW FACILITIES AND PROTECTION OF THE GOVERNMENT'S INTEREST IN GOVERNMENT-FINANCED FACILITIES

810.1005 Protection of the Government's interest.
810.1006 Methods of providing new facilities.
810.1007 Other methods of protecting the Government's interest in Government-financed facilities.

SUBPART C—PROCEDURE FOR OBTAINING CLEARANCE AND APPROVAL OF FACILITIES EXPANSIONS

810.1008 Submission of projects.
810.1009 Applications for approval of projects and for release of Expediting Production Funds ("site letters").
810.1010 War Production Board clearance.
810.1011 Increased costs and continuing capital expenditures.
810.1012 Application for release of Expediting Production Funds.
810.1013 Notice of approvals.
810.1014 Obtaining the letter of commitment in connection with Defense Plant Corporation lease agreements.
810.1015 Approval of contracts or agreements required in certain cases.
810.1015a Termination or cancellation of Emergency Plant Facilities Contracts.

SUBPART D—PROCESSING APPLICATIONS FOR NECESSITY CERTIFICATES IN CONNECTION WITH FACILITIES EXPANSIONS

810.1015b Transfer to the War Production Board of authority to issue certificates of necessity.
810.1016 Information to be submitted in application.
810.1017 Place of filing application.
810.1018 Procedure for processing applications.

Sec.
810.1019 Certificates of Non-Reimbursement and Government Protection Discontinued.
810.1020 Memorandum of the Under Secretary of War.

SUBPART A—POLICY

§ 810.1001 *General policy in regard to new facilities.* The conservation of critical material and the fullest possible utilization of existing facilities, whether structures, machinery, or equipment, requires that preference in placing contracts should be given first to contractors who have existing buildings or machinery available, and, second, to contractors who need to acquire the least amount of additional facilities for performance of the contract. Where it has been determined that new facilities are essential, preference should be given to contractors who will themselves finance such facilities. So far as practicable, direct payment or direct reimbursement by the Government for the cost of new facilities should be confined to facilities which themselves form a separate unit (on land covered by the facilities contract or controlled by a long-term lease) or which are readily removable or separable from the contractor's existing plant without unreasonable expense or loss of value. Thus, so far as practicable, buildings should not be erected at the Government's expense on land owned by the contractor unless the Government is given an option to lease on an appropriate basis for a substantial term (e. g. ten years) after the emergency, or an option to buy land at a reasonable price, now or later determined by negotiation.

In connection with new construction projects, the following measures will be observed in order to conserve critical materials:

(a) The site will be selected with a view to minimizing the requirements for additional utilities, transportation, and housing facilities. An effort will also be made to avoid the necessity of multiple-storied structures.

(b) Whenever possible, structures should be of a temporary nature and should be of the simplest construction consistent with the proposed use of the structure and the applicable building codes.

(c) Air conditioning will be employed in only those structures or portions of structures where the manufacturing process makes such use essential. Air conditioning will not be employed for the comfort or for increasing the efficiency of personnel.

(d) Construction of new facilities will, insofar as possible, be of materials the use of which is not prohibited by applicable orders of the Army-Navy Munitions Board or the War Production Board.

(e) Unless otherwise specifically provided, compliance with any provision of this part or of any amendment thereto which requires a change in contract procedure or in any contract provision shall not be mandatory until thirty days after the issuance of such regulation or amendment.

§ 810.1002 *Rental or allowance for the use of Government-financed facilities.* In cases where competition in a price sense will or may exist between the contractor receiving Government-financed facilities and other manufacturers (not using comparable Government facilities on a no-rental basis), appropriate steps will be taken to equalize insofar as possible the competitive situation. To this end, a reasonable rental not less than normal depreciation during the period of use will ordinarily be charged in such cases. Where there is direct Government construction or installation of Government-owned machinery or equipment (not including construction or installation under a Defense Plant Corporation Lease), in lieu of the rental charge, cognizance may be taken of the difference in the ownership or rental status of the facilities, as between the several manufacturers, and this factor taken into account in placing the contract.

Where Government-financed facilities are employed for the performance of contracts other than those directly with the Government, a rental will usually be charged for the facilities so employed. However, where the facilities are furnished as a part of an integrated production program under which a reduction commensurate with the facilities furnished is obtained in the cost of the supplies to the Government, and the furnishing of the facilities without rental does not create an unfair competitive advantage, the rental charge need not be made. Rental may also be waived with respect to production for a foreign Government for cause deemed adequate by the chief of the technical service.

§ 810.1003 *Reconversion and storage costs.* Where, pursuant to the policy stated in § 810.1001 hereof, the Government undertakes to finance the conversion of plants to war production (including required new machinery, equipment, and building installations), the cost of such conversion may include the cost of removing existing commercial machinery, equipment, and installations, and the cost of incidental building rehabilitation and alteration. In such cases, provision may be made for payment, on termination of production for the Government, of the costs of removal of Government-financed machinery and equipment, including preparation for shipment and storage. No provision may be made, however, for the Government's bearing, either directly or indirectly, any part of the cost of reconverting the contractor's plant to commercial production (including reinstallation of privately-owned machinery and equipment), nor will the Government bear the cost of storing such machinery and equipment during the period between conversion and reconversion. This policy is equally applicable to all types of contracts, whether facilities contracts, cost-plus-a-fixed-fee contracts, or fixed-price contracts.

§ 810.1004 *Tax amortization.* Under the provisions of section 124 of the Internal Revenue Code, the cost of facilities incurred by a contractor may, under certain circumstances, but only for the purpose of computing taxable income (see § 802.238 (a)) be amortized over a period of 60 months (or in some instances, a shorter period). To obtain the benefit of such amortization, a Certificate of Necessity must first be obtained. The procedure for obtaining such certificates is set forth in Subpart D of this part. Said section 124 is inapplicable to the acquisition or construction of facilities under a plan of the type described in Plans III, IV or V in § 810.1006 below.

§ 810.1004a *Use of War Department owned machine tools and other industrial equipment for other than War Department production*—(a) *Use by contractor under other contracts or for commercial production.* To promote the most effective possible use of Government owned machine tools and other industrial equipment which have been furnished to private concerns under War Department facilities contracts, the chief of each technical service, or his duly authorized representative, is authorized hereby to permit the use of such machine tools or equipment by the contractor under the conditions hereinafter set forth, provided that the War Department does not for the time being require such machine tools and equipment for its own production at the contractor's plant. Such use may be permitted:

(1) Where such machine tools and equipment are to be used by the contractor for the performance of other war contracts, either as a prime contractor with any Government department or agency or as a subcontractor.

(2) Where such machine tools and equipment are to be used by the contractor for the production of items determined by the Director, Production Division, Headquarters, Army Service Forces or by the chief of the technical service, or by the duly authorized representative of either of them, to be of importance in some direct and immediate manner to the prosecution of the war or to the national defense. In such cases instruments authorizing the use shall provide for a limitation of such use to a definite period of time or to a definite quantity of production.

(3) Where such machine tools and equipment are to be used by the contractor for other commercial production not directly connected with war procurement and not of the type mentioned in subparagraph (2) above, *Provided*, That the instrument permitting such use expressly states that such permission is granted subject to termination at any time by the chief of the technical service or his duly authorized representative upon written notice to the contractor.

(b) *Lease agreement.* In all instances a fair and reasonable rental will be charged for the use of such machine tools and equipment in an amount determined by the chief of the technical service or his duly authorized representative to be adequate to protect the Government's interest. The lease agreement must make provision for proper repair and maintenance of such machine tools and equipment.

(c) *Quarterly summary report.* A summary report (Control Approval Sym-

bol UPS–44) will be made by the chief of each technical service quarterly (as of 31 March, 30 June, 30 September and 31 December) to the Director, Production Division, Headquarters, Army Service Forces, giving a summary statement of the approximate value of such machine tools and equipment so leased or used and the number of units involved.

(d) *Statutory authority for lease.* Each instrument authorizing the lease or use of such machine tools and equipment in accordance with these regulations will be made pursuant to Public Law 703, 76th Congress (as amended by Public Law 580, 77th Congress, section 13) and to Title II of the First War Powers Act and Executive Order No. 9001.

(e) *Determination as to benefits from permitted use of machine tools and other industrial equipment.* It is hereby determined that the use to full advantage of Government owned machine tools and other industrial equipment which have been furnished to War Department contractors under facilities agreements, when such machine tools and equipment would otherwise be idle or unproductive,

(1) Will increase production required for war purposes and for the national economy, thereby promoting the interest of national defense and facilitating the prosecution of the war, and

(2) Will tend to reduce the cost to the Government of the war procurement program by obtaining fair compensation for the use of such machine tools and equipment, when idle, much of which is rapidly depreciating in value, and

(3) Will tend to enable war contractors to maintain their plants and working forces in efficient standby condition in intervals between the performance of contracts related to war procurement.

(f) *Authorized procedures not to delay circularization of idle property or declaration as surplus.* It is War Department policy to dispose promptly, in accordance with existing regulations, of all machine tools and equipment which the War Department no longer needs. The procedures authorized by the preceding paragraphs (especially paragraph (a) (3)) will not delay circularization to all Government agencies of idle machine tools and other equipment (excessive at the point of use) or its declaration as surplus. The primary purpose of the authority granted by paragraph (a) (3) is to provide for the effective use of machine tools and other equipment (1) during the period of circularization and pending determination of its appropriate disposition, and (2) during intervals in war production in the plant of the contractor having custody of such machine tools and equipment.

SUBPART B—METHODS FOR PROVIDING NEW FACILITIES AND PROTECTION OF THE GOVERNMENT'S INTEREST IN GOVERNMENT-FINANCED FACILITIES

§ 810.1005 *Protection of the Government's interest.* The duty of protecting the Government's interest in facilities for which the Government has paid in whole or in part rests upon the contracting officer. Where the new facilities are paid for by the contractor, and the cost thereof is not to be borne by the Government directly or indirectly, there is no problem of protecting the interest of the Government in the facilities. (See Plan I, § 810.1006.) Where the new facilities are to be financed by the Government, protection of the Government's interest therein will ordinarily be accomplished by the use of Plan II, III, IV, or V, as outlined in § 810.1006 hereof. In exceptional cases, such protection may be accomplished by the use of Special Facilities Contracts or Lease Agreements or through the use of the procedure outlined in § 810.1007 hereof.

§ 810.1006 *Methods for providing new facilities.* The following methods are typical of those which may be used for providing new facilities:

PLAN I—PRIVATE OWNERSHIP—WITH NO GOVERNMENT INTEREST

Purpose—For cases in which the contractor is not to be paid by the Government directly or indirectly for the cost of the facilities except to the extent of normal depreciation included in the price of articles sold to the Government.

Financing—Financed by the contractor.

Title—Vested in the contractor.

PLAN II—PRIVATE OWNERSHIP—WITH GOVERNMENT INTEREST (EMERGENCY PLANT FACILITIES CONTRACT)

Purpose—For cases in which the contractor is to be reimbursed by the Government and desires to retain a future interest in the facilities.

Financing—By the contractor until repaid by the Government.

Title—Vested in the contractor with option to purchase such interest as the Government may have acquired by having repaid the contractor partially or wholly for facilities.

PLAN III—GOVERNMENT OWNERSHIP—WAR DEPARTMENT CONSTRUCTION CONTRACT

Purpose—For cases in which the contractor is constructing facilities for the Government and at Government expense.

Financing—By the Government.

Title—Vested in the Government. When the facilities will constitute an addition to or an extension of an existing plant of the contractor, the contractor may be given an option to purchase the facilities.

PLAN IV—GOVERNMENT OWNERSHIP—DEFENSE PLANT CORPORATION LEASE

Purpose—For cases in which the Defense Plant Corporation pays for the facilities.

Financing—Defense Plant Corporation, upon recommendation by the War Department, enters into an Agreement of Lease with the contractor which, as agent for and in the name of Defense Plant Corporation, constructs the buildings and purchases the machinery and then leases the facilities from Defense Plant Corporation at an agreed rental. In most cases where the rental agreed upon is insufficient to reimburse Defense Plant Corporation in full over the term of the lease, part of the financing is borne by the War Department under an agreement with Defense Plant Corporation.

Title—Vested in Defense Plant Corporation, with option in contractor to buy at the end of the lease.

PLAN V—GOVERNMENT OWNERSHIP—SUPPLY CONTRACT

Purpose—For cases in which the contractor will acquire facilities (other than real estate and buildings) for the account of and to be paid for by the Government; facilities to be used by contractor to manufacture supplies under War Department supply contract; contractor responsible for return of facilities in good condition, except for reasonable wear and tear and loss due to stated perils. This type of government financing is provided for by the article entitled Government-Owned Facilities set forth in § 803.332.

Financing—Government Funds.

Title—Vested in the Government, with option in contractor, in certain cases, to buy at cost less depreciation.

§ 810.1007 *Other methods of protecting the Government's interest in Government-financed facilities.* Where, because of special circumstances (such as the inseparability of the new facilities from existing privately owned facilities), the adoption of none of the methods set forth in § 810.1006 is practicable and the Government bears, as a part of the contract price, all or a portion of the cost of the facilities to the contractor, the contracting officer will include in the contract which provides for such payment by the Government for the facilities suitable provisions for the protection of the Government's interest in the facilities and will state in the contract the amount of such payment. Ordinarily, in such cases the provisions hereinafter set forth should all be included. However, in exceptional circumstances one or more of such provisions, with the approval of the Director, Purchases Division, Headquarters, Army Service Forces, may be omitted from the contract with or without substitution of modified provisions directed to the same end:

(a) Requirement that the contractor maintain the facilities, or an appropriate portion thereof, in good condition at its own expense for a period provided for in the contract extending beyond the period of existing supply contract, unless upon request the contracting officer releases it from such obligation;

(b) Requirement that the contractor retain title to the facilities, or an appropriate portion thereof, during said period free of encumbrances not consented to in writing by the contracting officer;

(c) Requirement that the contractor makes no material alteration in the nature of the facilities, or an appropriate portion thereof, without the written consent of the contracting officer;

(d) Requirement that the contractor give priority to Government orders during said period;

(e) Requirement that the contractor shall not include in any price in any supply contract with the Government any sum for depreciation or amortization of the facilities, or an appropriate portion thereof, during said period;

(f) Provision that the contractor may at any time be released from the above requirements upon payment to the Government of a sum agreed upon between the contractor and the contracting officer as constituting fair and just return to the Government for its payment for the facilities.

Where reference is made in the above to "an appropriate portion" of the facilities, that portion for which payment is made by the Government is intended.

SUBPART C—PROCEDURE FOR OBTAINING CLEARANCE AND APPROVAL OF INDUSTRIAL FACILITY EXPANSIONS

§ 810.1008 *Submission of projects.* Except as provided in paragraph (c) of this section and § 810.1010 (b) and (c) below, all requests for the construction, modification, expansion, or conversion of an industrial facility to be financed by the War Department or by the Defense Plant Corporation under War Department sponsorship (including those which involve only a contingent War Department liability) will be submitted by the sponsoring technical service to the Production Division, Headquarters, Army Service Forces for approval and clearance by all interested agencies, if such projects involve:

(1) Use of Expediting Production Funds, or

(2) Use of other War Department funds or Defense Plant Corporation funds and are estimated to cost in excess of $100,000, excluding costs of jigs, dies, fixtures and gages, such cost including the value of machinery and equipment to be obtained from excess stocks, as well as all new expenditures, whether financed privately or by the Government.

(a) *Definition of industrial facility.* An industrial facility, as used in this part, is defined as a manufacturing plant, whether privately or Government-owned, with all necessary appurtenances thereto, including machinery and equipment, utilities, warehouses, testing buildings, and similar items. Manufacturing plants, together with the facilities required to supplement such plants, at War Department-owned and operated arsenals, depots, and similar establishments, are also considered industrial facilities.

(b) *Preliminary inquiry to Production Division.* In order to minimize delays and the possibilities of unfavorable action, when new facilities are first being considered, it is desirable that the initiating office communicate with the Production Division, Headquarters, Army Service Forces to ascertain the availability of existing facilities suitable for the required production.

(c) *New construction, additions or alterations at Class IV installations.* All requests for new construction, additions or alterations, the cost of which exceeds $1,000, at industrial facilities in Class IV installations will be approved personally by the chief of the interested technical service (without delegation) and will be submitted for approval to the Production Division, Headquarters, Army Service Forces through the Office, Chief of Engineers. Such requests will contain the information required under paragraph 1009 below to the extent applicable, and must contain complete justification for the proposed work.

§ 810.1009 *Application for approval of projects and for release of Expediting Production Funds ("site letters").* Applications for approval of any proposed facilities expansions or conversions of the type described in § 810.1008 above, and for the release of Expediting Production Funds, will be made to the Production Division, Headquarters, Army Service Forces except as provided for the Army Air Forces in § 810.1010 (b) and (c) below. If the projects involve Expediting Production Funds in excess of $25,000, or other funds in excess of $100,000, such applications will supply the following information in quadruplicate. Items not applicable to a particular project will be so indicated.

(1) Name and location of project.

(2) Name and address of operator.

(3) Product and production rate to be created by this project.

(4) General statement of processing operations to be performed in the plant on the item to be produced and the principal types of machine tools and other machinery and equipment necessary therefor. Indicate nature of additional machine tools and other machinery and equipment included in the proposed project.

(5) General description of proposed construction or rehabilitation, if any. For new construction, state number of buildings and approximate floor space of each.

(6) Labor information as follows:

(i) Current employment in the entire plant.

(ii) Expected peak employment as the result of expansions previously authorized and now under way, excluding this proposal.

(iii) Labor presently engaged on production of item for which expansion is requested.

(iv) Additional labor required to staff the expansion. If the project is located in a labor area in which an Area Production Urgency Committee has been established, there must be attached to the site letter a signed copy of the Form GA-862 indicating approval by the Committee.

(7) Maximum additional power required, in kilowatts, and sources of supply.

(8) Additional fuel required, quantity, and type.

(9) Statement of adequacy of water, sewage disposal, rail and highway transportation, and housing.

(10) Brief reasons for selection of this facility or site.

(11) Statement of estimated costs:

(a) Land (number of acres)	------
(b) Purchase of existing plant	------
(c) Construction and rehabilitation including installation costs of (d)	------
(d) Machine tools and other machinery and equipment	------
(e) Automotive furniture and fixtures	------
(f) Dies, jigs, fixtures and gages, and other manufacturing aids	------
(g) Contingencies, overhead, and miscellaneous	------
(h) Total (excluding portion privately financed)	------
(i) Private financing[1]	------
(j) Total cost	------

[1] Explain part of project to be privately financed.

The figures shown for machine tools and other machinery and equipment will be the value of all the tools and equipment to be physically added to the operation. There will be an indication of the portion of each which it is estimated will be secured from available excess lists.

(12) Statement of requirements for item to be produced and existing capacity for such production. Include under this heading:

(i) Total requirements for each year 1944 and 1945.

(ii) List of existing producers, including those in process of expansion.

(iii) Scheduled 1944 production from each.

(iv) Maximum monthly capacity of each facility and month when that capacity will be reached.

(13) Method of financing. If use of Expediting Production Funds is required, make a request for a specific amount or state that such a request will be submitted separately, stating, also, how the remainder of cost, if any, is to be financed.

(14) (i) Estimated date of initial operation.

(ii) Estimated date of completion of construction.

(iii) Estimated date of full operation.

(a) Where it is deemed essential, in the interest of expedition, to file any application before the complete data required above are available, the missing information will be supplied promptly in a second letter following the original application.

(b) Except for the projects of the Army Air Forces (see § 810.1010 (b) and (c)), all applications by the technical services must be approved by the Director, Production Division, Headquarters, Army Service Forces.

(c) Projects under $25,000 involving Expediting Production Funds: In order to simplify the procedure for processing projects in this class, the technical service should, whenever possible, submit them in groups, listing the projects, together with the amounts of funds requested for each, in a single memorandum in triplicate. The detailed information required by paragraph 1009 for larger projects need not be furnished, but the following information will be furnished with respect to each project covered by the memorandum:

(1) Name and location of project.

(2) Total cost, including breakdown of cost into construction, machinery and equipment, etc.

(3) Purpose of project.

(4) Adequate information to establish essentiality.

§ 810.1010 *War Production Board clearance.* Except as provided in paragraph 1011 below, every proposed industrial facility expansion estimated to cost in excess of $100,000 (including any portion to be privately financed and any portion of equipment to be provided from available excess) must be approved by the Facilities Committee, War Production Board.

(a) *Procedure for obtaining approval of the Facilities Committee.* The following procedure is established for all projects requiring approval by the Facilities Committee:

(1) When a project has been approved by the Director, Production Division, Headquarters, Army Service Forces, the Production Division will submit the proposal to the Facilities Committee, War Production Board, for approval. It will be the responsibility of the Production Division to maintain liaison with the Fa-

cilities Committee to expedite action on proposals which have been submitted.

(2) After notification by the Production Division that the project has been cleared by all necessary agencies, the technical service will instruct the contractor (except where the work is under the jurisdiction of the Corps of Engineers) to submit to the War Production Board, through the technical service, a WPB–617 application covering the entire project if construction is involved, or a PD–3A if the proposal includes only machine tools and equipment. To these applications will be attached a copy of the memorandum of approval from the Facilities Committee, War Production Board, which will eliminate the necessity for any further check by the War Production Board as to essentiality. If a Necessity Certificate for Tax Amortization is to be requested, the application therefor will accompany the WPB–617 or PD–3A.

(3) Prior to forwarding the PD–3A to the War Production Board, the technical service will fully complete the certificate and will assign the appropriate preference rating, as established in the Army and Navy Munitions Board Priorities Directive, and will be responsible for checking the list of equipment, in order to eliminate items which can be obtained from available surpluses. If it is not practicable to submit the entire list of equipment on the initial PD–3A, a statement to that effect will be made. Subsequent PD–3A's on the project will be submitted as indicated above and will be accompanied by a list of serial numbers and amounts of PD–3A certificates previously submitted. It will not be necessary to submit Form PC–20 with PD–3A's on projects covered by this memorandum. Forms WPB–1548 (Amendment to original WPB–617's), when necessary, will be submitted through the same channels.

(4) The technical service must assure itself that the WPB–617 or PD–3A is in agreement with the information required by § 810.1009 above, or attach supporting data to justify any over-run of cost when submitting the forms to the War Production Board.

(5) The approved WPB–617 or PD–3A will be transmitted to the contractor through the technical services. To assure that this step is taken by the War Production Board, the technical service will make such a request in each case.

(b) *Army Air Forces projects requiring WPB approval.* For projects of the Army Air Forces which require approval by the War Production Board and which involve Expediting Production Funds, the Army Air Forces will address and submit two originals of the application containing the information specified in § 810.1009 directly to the Facilities Committee, War Production Board, and will send the remaining two copies of the original application to the Production Division, Headquarters, Army Service Forces, for its information and record. The Facilities Committee will notify the Army Air Forces directly of the action taken, sending an information copy to the Production Division, Headquarters, Army Service Forces.

(c) *Army Air Forces projects not requiring WPB approval.* When projects of the Army Air Forces do not require approval of the War Production Board but involve Expediting Production Funds, the Army Air Forces will make application for such funds to the Under Secretary of War through the Production Division, Headquarters, Army Service Forces, including in such application the following certification as to necessity, signed for the Commanding General, Army Air Forces, by the Chief, Resources Division, Office, Assistant Chief of Air Staff, Matériel, Maintenance and Distribution, or one of his superior officers:

It is hereby certified that the items of expenditure herein referred to are essential to enable this facility to attain the production capacity required of it in order to meet the peak requirements of the currently authorized aircraft program.

The merits of such projects will not be reviewed by the Production Division, Headquarters, Army Service Forces.

§ 810.1011 *Increased costs and continuing capital expenditures*—(a) *Increased costs only.* Increases in costs of projects previously approved by Headquarters, Army Service Forces, or by the Under Secretary of War, which are due to a low initial estimate and do not involve a change in the scope of the project or production output, do not require approval of the War Production Board but do require clearance by the Production Division, Headquarters, Army Service Forces. All such applications of the technical services must include a clear statement of the particular factors justifying the increased costs, and will be subject to the approval of the Production Dvision, Headquarters, Army Service Forces, except as indicated under § 810.1010 (c).

(b) *Continuing capital expenditures.* Applications may be made by a technical service for approval of continuing capital expenditures required in connection with an existing project theretofore sponsored by or transferred to sponsorship of such technical service. Such application shall state:

(1) The estimated costs of the additional capital facilities required for a specified current or ensuing quarter year (giving breakdown thereof in accordance with § 810.1009 (k) above), together with estimated dollar amount required for the next succeeding three quarter-years, the total amount of such four quarter-years not to exceed five percent of the total estimated cost of the project as heretofore approved;

(2) The necessity for such continuing capital expenditures; and

(3) The method of financing thereof, the amount of Expediting Production Funds, if any, required therefor, and the manner in which the balance of such expenditures will be financed.

Such application shall be submitted to the Production Division, Headquarters, Army Service Forces, and, except as indicated under § 810.1010 (c), shall be subject to approval by the Division. Approval of the War Production Board of such application is not required, regardless of the amount.

(c) *Conditions of approval.* Approval of applications for continuing capital expenditures shall be subject to the following terms and conditions:

(1) Expenditures shall be limited to items normally classified as capital charges and shall not be used for items which may properly be charged to maintenance, repairs, or operations;

(2) Expenditures shall be only for construction, alterations, extension, machinery, equipment, or other facilities required to round out or improve operating efficiency, balance production, or otherwise develop maximum utilization of the existing project;

(3) Expenditures shall not be used for any new structure, the estimated cost of which exceeds $25,000, nor for camouflage or any new administration buildings or cafeterias, but may be used for alterations or extensions of existing facilities of this character.

(4) New construction, additions or alterations at Class IV installations, the estimated cost of which exceeds $1,000, will be processed in accordance with the provisions of § 810.1008 (c) above regardless of the other provisions of this paragraph.

(5) When a project which has been financed solely with Expediting Production Funds has been completed, the technical service must immediately return all unexpended funds in excess of 3% of the total cost of the project. The funds retained may be used for continuing capital expenditures, in which case the technical service must notify the Production Division, Headquarters, Army Service Forces of the amount being so held. The use of such excess funds will be subject to the terms and conditions outlined in subparagraphs (1) through (4) above.

§ 810.1012 *Application for release of Expediting Production Funds.* When a project requires release of Expediting Production Funds, application therefor shall be made in accordance with § 810.1009 (m) above. When a project for which Expediting Production Funds are requested has received approvals herein required to be given by the Production Division, Headquarters, Army Service Forces, the War Production Board, or both, or has been certified in behalf of the Commanding General, Army Air Forces, in accordance with § 810.1010 (c) above, the Production Division, Headquarters, Army Service Forces, will submit the project, with all supporting information, to the Under Secretary of War for approval and release of Expediting Production Funds.

§ 810.1013 *Notice of approvals.* In all cases involving approval by the Production Division, Headquarters, Army Service Forces, or release of Expediting Production Funds, the Production Division, Headquarters, Army Service Forces, will advise the interested technical service in writing when the project has received all necessary approvals.

§ 810.1014 *Obtaining the letter of commitment in connection with Defense*

Plant Corporation lease agreements. Where the proposed expansion is to be financed through a Defense Plant Corporation lease agreement, the letter of commitment from the War Department to the Defense Plant Corporation will be submitted to the Under Secretary of War. Such submission will be through the Office of the Under Secretary of War, Attention: Contracts and Facilities, and will be accompanied by a brief statement of the nature, location, estimated cost and productive capacity of the project, together with a statement that the project is essential and that the estimated cost thereof is believed reasonable.

§ 810.1015 *Approval of contracts or agreements required in certain cases.* The following contracts will be submitted to the Director, Purchases Division, Headquarters, Army Service Forces, for approval:

(a) All Emergency Plant Facilities Contracts.

(b) All Special Facilities Contracts.

(c) Contracts containing provisions which are required to be submitted under § 810.1007.

(d) Supply contracts containing "Government-Owned Facilities" clauses which deviate in substance from § 803.332 or any provision of which is required to be submitted under the notes to § 803.332.

(e) Separate lease agreements referred to in § 807.304 (b) except those which are (1) written on a standard form of contract for lease of equipment (see § 803.304 (a)), or (2) embody substantially the provisions of § 803.332, and do not contain any provisions which is required to be submitted under the notes to § 803.332.

§ 810.1015a *Termination or cancellation of Emergency Plant Facilities contracts.* Whenever it is desired to effect termination or cancelation of an Emergency Plant Facilities contract and permit the contractor to acquire all or any part of the interest of the Government in the facilities, the matter will be submitted in detail for the approval of the Under Secretary of War, through the Director, Purchases Division, Headquarters, Army Service Forces.

SUBPART D—AMORTIZATION DEDUCTION AND CERTIFICATES OF NECESSITY

§ 810.1016 *Amortization deduction.* For Federal income tax purposes, the cost of construction, reconstruction, erection, installation or acquisition of facilities may, pursuant to section 124 of the Internal Revenue Code, be amortized over a period of 60 months (or a shorter period under certain circumstances) when a Certificate of Necessity has been issued certifying that such construction, reconstruction, erection, installation or acquisition of facilities is necessary in the interest of national defense during the emergency period. (See § 810.1004.) The procedure for obtaining such a certificate is set forth in the following paragraphs.

(a) *Transfer of authority to issue certificates to War Production Board.* Prior to 17 December 1943 the Secretary of War and the Secretary of Navy were authorized to issue such certificates. However, on that date and by Executive Order No. 9406, "* * * the functions, powers and duties of the Secretary of War and the Secretary of the Navy with respect to the certification, pursuant to Section 124 (f) of the Internal Revenue Code * * * [were] transferred to the Chairman of the War Production Board."

(b) *Issuance of certificates prior to effective date of transfer.* Executive Order No. 9406 provided that the regulations of the Secretary of War and the Secretary of the Navy in effect prior to 5 October 1943 should govern the issuance of Certificates of Necessity for all applications therefor describing facilities, the beginning of the construction, reconstruction, erection, installation, or the date of acquisition of which was prior to 5 October 1943. The order also indicated that the Secretary of War and the Secretary of Navy would act upon applications for certificates filed with either of them before 17 December 1943 describing facilities, the beginning of the construction, reconstruction, erection, installation, or date of acquisition of which was prior to 5 October 1943. All other applications for certificates are to be filed with and pursuant to regulations of the War Production Board.

(c) *Automatic ineligibility.* Any application for a necessity certificate which was filed after 5 April 1944 for facilities which were acquired prior to 5 October 1943 is automatically ineligible because of the lapse of more than six (6) months between their date of acquisition and the date of filing the application therefor. Furthermore, any application for a certificate for a facility which was acquired after 5 October 1943 with respect to which no predetermination had been made is likewise automatically ineligible by reason of the promulgation, on that date, of the predetermination requirement, i. e., that the necessity for such a facility be determined by the certifying authority before its acquisition. (See Executive Order No. 9406.)

§ 810.1017 *Regulations.* Pursuant to Executive Order No. 9406, regulations governing the Certificates of Necessity have been promulgated by the Chairman of the War Production Board and appear in 8 F.R. 16964, 21 December 1943. Copies of such regulations may be obtained from the War Production Board.

§ 810.1018 *Policy and procedure.* Paragraphs (a) to (d) summarize the policy and procedure with regard to Certificates of Necessity as prescribed in the War Production Board regulations referred to above. Paragraphs (e) and (f) set out the procedure within the War Department except with regard to applicants with whom the Army Air Forces are principally concerned.

(a) *General.* Certificates of Necessity will be issued only where the facilities to be constructed or acquired are (1) clearly necessary to the war effort and (2) it is to the advantage of the Government that they be privately financed. In general, it may be stated that whenever the Government cannot readily take title to a proposed facility, it is to the advantage of the Government that such a facility be privately financed, i. e., in cases of plant rehabilitation, attached structural additions and equipment such as brick furnaces.

(b) *Applications for certificates.* Applications for Certificates of Necessity, from and after 17 December 1943, will be made in triplicate on the form prescribed and provided by the War Production Board (Form WPB 3467) together with six copies of Appendix A thereto, which form is likewise prepared and provided by the War Production Board. All such applications must precede the construction, reconstruction, erection, installation or acquisition of a facility in order that the certifying authority may determine whether such construction, reconstruction, erection, installation, or acquisition is necessary, within the meaning of section 124 of the Internal Revenue Code. Where priority assistance or specific authorization of the War Production Board is necessary to effect acquisition, the application for a Certificate of Necessity and the application for priority assistance or specific authorization must be filed together.

(c) *Filing application.* Applications for certificates will be filed directly with the War Production Board in Washington, D. C., as prescribed by paragraph (7) of the aforesaid regulations. An application will be deemed to be filed when it is received at the office of the War Production Board in Washington, D. C.

(d) *Data required.* Where possible, all information called for on the standard form of application must be clearly and concisely given and it must be executed in the manner and by the person prescribed therein.

(e) *Processing applications.* The War Production Board, in order to obtain recommendations as to the desirability of issuing the certificate, may transmit a copy of the application to the Production Division, Headquarters, Army Service Forces, which maintains liaison between the War Production Board and the technical services in matters pertaining to amortization. In such cases, the Production Division will forward a copy of the application to the chief of the technical service concerned with a request for report and recommendation. The chief of the technical service concerned will transmit this copy of the application to the officer most appropriately qualified for investigation and report.

(f) *Reports on applications.* Fifteen days after this receipt of the application, the reporting officer will transmit his report to the Production Division, Headquarters, Army Service Forces, through such channels as the chief of the technical service may prescribe. When the report cannot be furnished in the prescribed time, the reporting officer will transmit a statement assigning the reasons for the delay. In all cases, the report must contain a recommendation as to the granting or denial of the Certificate of Necessity.

§ 810.1019 *War Department policy regarding certificates.* Only in extraordinary cases will an affirmative recommendation for the issuance of a certificate be

made. While it is recognized that some additional facility expansions will be necessary, it is the policy of the War Department that they be accomplished either by Government financing, the purchase or lease of Government-owned facilities, or private financing without amortization.

(a) The need for this policy was emphasized by the Under Secretary of War on 14 August, 1943 in a memorandum to the Commanding General, Army Air Forces, and Commanding General, Army Service Forces, in which he stated:

> The need of material and manpower for production of munitions has required curtailment in the creation of new facilities. This applies to expansion of industrial facilities as well as others, and makes it imperative that such expansion be curtailed. * * *
>
> Reporting officers (of the Technical Services and Army Air Forces reporting on applications for Necessity Certificates) should recommend in each case that an Application for a Necessity Certificate be denied unless they are able to establish definitely that the needs of the Army Supply Program can not be effectively obtained without additional facilities of the type which are the subject of the application.

[Procurement Reg. 11]

PART 811—MISCELLANEOUS PURCHASE INSTRUCTIONS

SUBPART A—MARKING OF CONTAINERS

Sec.
811.1101 Marking of containers.
811.1102 Numbering of compressed gas cylinders.

SUBPART B—PATENTS

811.1109 Interchange of patent rights and industrial information.
811.1110 Agreement with the United Kingdom for the interchange of patent rights and industrial information.
811.1111 List of lend-lease and reciprocal aid agreements.
811.1112 Adjustment of royalties for use of inventions.

SUBPART C—LITIGATION AND RELATED MATTERS

811.1120 Procedure for handing litigation involving cost-plus-a-fixed-fee contractors.
811.1121 Reports of criminal conduct in connection with War Department contracts.
811.1122 Joint action with Navy with respect to contingent fees.

SUBPART D—PRICE REGULATIONS

811.1130 General.
811.1131 Applicable OPA regulations.
811.1132 Exemptions.
811.1133 Procedure for obtaining exemption under developmental and secret contracts and emergency purchases, or for relief from a price regulation.
811.1134 Compliance.
811.1135 Index of Army Purchase Items.

SUBPART E—CONTROLLED MATERIALS PLAN

811.1140 Revision of existing supply contracts to conform to production schedules authorized under Controlled Materials Plan.
811.1141 Allotment of materials for new contracts.

SUBPART F—CONTRACTS INVOLVING RUBBER OR SYNTHETIC RUBBER

811.1150 Agreement with Rubber Reserve Company.

62000—29

Sec.
811.1151 Administration of agreement.
811.1152 Effect of agreement on contracts involving natural rubber.
811.1153 Existing contracts involving synthetic rubber.
811.1154 Conversion from use of natural rubber to use of synthetic.
811.1155 Price adjustment provisions.

SUBPART G—MISCELLANEOUS MATTERS

811.1180 Discounts in purchasing.
811.1181 Contingent fees.
811.1182 Track-scaling of loaded railroad cars.
811.1182a Ordering of less than full carloads to be avoided.
811.1183 Ordering of spare parts.
811.1184 Contracts with foreign nationals.
811.1185 Contracts with blocked nationals.
811.1186 Limitation on purchase of arms, ammunition and implements of war.
811.1187 Restrictions on purchases of selected items for the duration of the war.
811.1188 Advertising.

SUBPART A—MARKINGS OF CONTAINERS

§ 811.1101 *Marking of containers destined for overseas shipment*—(a) *Limitations on marking of containers.* The following regulations for the marking of all boxes, crates, and other containers to be used in making deliveries to War Department agencies destined for overseas shipment are prescribed:

(1) Markings showing contents, quantity, cubage, and weight will be stenciled or printed on the container on the upper two-thirds of one surface; except that in the case of containers of ten or more cubic feet, such markings may be made on the upper two-thirds of two surfaces.

(2) All contract data markings will be limited to a maximum area of 42 square inches and will be placed on one surface of the container; except that in the case of containers of ten or more cubic feet, such markings may be made on two surfaces of the container.

(3) Service color and oversea markings will be placed on containers when required and as directed by the chief of the technical service concerned.

(4) On less-than-carload shipments, the name and address of both consignor and consignee will be placed on one or two surfaces of the container in an area not to exceed 28 square inches. This information may be placed with the contract data markings either in adjoining spaces or on the same label.

(5) Markings or labels required by law, governmental regulations (for example, on inflammables, explosives, etc.), or by carrier tariff, and additional markings required by the various supply services will be placed on one surface. This surface will, if practicable, be the surface containing the contract data markings.

(6) The markings on boxes, crates, and other containers will be limited so far as practicable to the markings referred to in (1) through (5) above.

(7) All markings other than those referred to in (5) above will be confined to two surfaces of the box, crate, or container. The markings referred to in (5) will also be placed on the same two surfaces if practicable, but may if necessary be placed on a third surface.

(b) The one-third of a surface which is not used (see paragraph (a) (1) of this section) will be reserved for oversea markings.

(c) Markings on barrels, drums, and other containers which are not rectangular in shape will be applied in such a manner as to carry out so far as practicable the intent of the instructions contained in paragraph (a).

(d) Trade names, brands, and other advertising matter will be limited to the area or the label containing the contract data.

(e) The supply services will provide either in the contract specifications or by instructions to contracting officers for the marking by contractors of containers in conformance with the principles set forth in the preceding paragraphs. (See § 803.364.)

(f) The foregoing has been published pending the issuance of a revised United States Army Specification 100-2 which will make uniform the requirements for marking shipping containers.

(g) This section does not require remarking of any containers already marked and will be applied to containers used in connection with existing contracts only to the extent reasonably practicable.

§ 811.1102 *Numbering of compressed gas cylinders.* See in this connection AR 850-60 (September 29, 1942) covering the safe handling, storing, shipping and using of compressed gas cylinders.

(a) *Specifications of Interstate Commerce Commission.* Cylinders for compressed gases must be made under specifications of the Interstate Commerce Commission. Deviations from those specifications are permitted in certain cases. Those specifications require identification of the cylinders by a serial number and by an identification symbol.

(b) *Assignment of serial numbers.* The serial numbers which are to be used by the purchasing officers of the War Department will be assigned by the Director, Purchases, Division, Headquarters, Services of Supply, to the chief of the supply service concerned upon request. Letters should be prefixed and suffixed to those serial numbers to indicate type and size of cylinder as indicated below.

(c) *Identification symbol.* The registered identification symbol of the War Department is WD.

(d) *Maintenance of records.* Chiefs of supply services will furnish to their field agencies such serial numbers as may be required from those assigned as indicated in paragraph (b) above. A record will be maintained of the numbers that have been actually used by their field agencies, together with a record of cylinders which have been manufactured or purchased.

(e) *Markings on cylinders.* Ordinary markings for a cylinder are illustrated by the following example:

ICC-3A480 (Specification mark)
E211234H (Serial No.)
WD (Symbol)

Any special markings desired on cylinders are permissible but must be specified as "additional marks" and must not in-

terfere with the ordinary marks as above noted.

NOTE: The mark ICC–3A480 means that the cylinder has been made under specification 3A with service pressure 480 lbs. per square inch, and that it is limited to use for gas with pressure not over 480 lbs. per square inch at 70° F., and not over 480×5/4=600 lbs. per square inch at 130° F.

(f) *Safety devices.* Cylinders must be fitted with safety devices of approved type as required by regulations of the Interstate Commerce Commission. Manufacturers of cylinders and valves are familiar with those requirements.

(g) *Types of cylinders* — (1) *Anhydrous ammonia.* Cylinders for anhydrous ammonia should preferably be of types ICC–4 or ICC–4A480. Type ICC–3A480 is also authorized but will probably be found more expensive.

(2) *Chlorine.* Cylinders for chlorine will be type ICC–3A480.

(3) *Hydrogen sulphide.* Cylinders for hydrogen sulphide should preferably be of type ICC–4B480. Types ICC–3A480, ICC–3B480, and ICC–4A480 are also authorized but will probably be found more expensive.

(4) *Methyl chloride; sulphur dioxide.* Cylinders for methyl chloride and for sulphur dioxide should preferably be of type ICC–4B300. Types ICC–3A300, ICC–3B300, ICC–4A300, and ICC–4 are also authorized but will probably be found more expensive.

(5) *Acetylene.* Cylinders for acetylene will be of type ICC–8.

(6) *Oxygen and other nonliquefied gas; carbon dioxide; nitrous oxide.* High pressure cylinders, for oxygen and other nonliquefied gas, and for carbon dioxide and nitrous oxide, should preferably be of type ICC–3A2015. Type ICC–3A1800 is also authorized but is less efficient and not less expensive. Cylinders of 75 lbs. and 100 lbs. capacity for carbon dioxide and nitrous oxide will be of type ICC–3A2300.

(7) *Compressed gases (except acetylene).* Cylinders of type ICC–3E are also authorized for all compressed gases except acetylene. These will be less than 2 inches outside diameter and not over 12 inches long, exclusive of neck.

(8) *Phosgene; mustard gas; other highly poisonous gases.* Cylinders for phosgene, mustard gas, and other highly poisonous materials (class A poison under regulations of the Interstate Commerce Commission) will be of type ICC–3D480 except as follows: Chlorpicrin, or mixtures of chlorpicrin with nonpoisonous liquid or gas, and monochloracetone, are authorized in any cylinder, except type ICC–8, of sufficient strength. See note under paragraph (e) above.

(h) *System of serial numbers.* The use of serial numbers, together with letters prefixed and suffixed thereto will conform with the following:

(1) *High pressure cylinders made under Interstate Commerce Commission specification 3A for service pressure, 1,800 lbs. per square inch and higher.*

Prefix:	Required for cylinders—
A	2⅛" i.d. x 7⅜" (approximately).
C	3⅛" i.d. x 13" (approximately).
D	3⅛" i.d. x 16¾" (approximately).
DE	3⅛" i.d. x 21¼" (approximately).
E	3⅛" i.d. x 25¾" (approximately).
EE	4⅛" i.d. x 26" (approximately).
EF	5" i.d. x 26" (approximately).
F	5" i.d. x 51" (approximately).
FG	6⅝" i.d. x 43" (approximately).
G	8" i.d. x 51" (approximately).
H	8½" i.d. x 51" (approximately).
J	of internal capacity of 2,750 cu. in. up to and including 4,100 cu. in.
JC	For 75 pounds of carbon dioxide.
L	Having internal capacity of over 4,100 cu. in.
LC	For 100 pounds of carbon dioxide.

Examples: E1234; H1234; etc.

NOTE.—Suffix letters to serial numbers are not to be used.

(2) *High pressure cylinders made under Interstate Commerce Commission specification 3E.* Serial numbers will not be used. Cylinders will be, in all cases, not over 1.99 inches outside diameter and not over 12 inches long, exclusive of neck.

(3) *Acetylene cylinders made under Interstate Commerce Commission specification 8.* Prefix W required in all cases.

Suffix letters required in all cases, dependent on rated gas capacity (approximately) as follows:

Suffix	Rated gas capacity required (approx.) feet
B	50
C	100
H	150
J	250
K	300

Examples: W1234H; W1234K; etc.

(4) *Low pressure cylinders made under Interstate Commerce Commission specifications 3A, 3B, 3C, 4, 4A, 4B, and 4C for service pressure not over 480 lbs. per square inch.*

Prefix:	Required for cylinders marked—
KC	ICC–3A150
KF	ICC–3A240
KJ	ICC–3A300
KM	ICC–3A480
NC	ICC–3B150
NF	ICC–3B240
NJ	ICC–3B300
NM	ICC–3B480
OA	ICC–3C90
OC	ICC–3C150
OF	ICC–3C240
OJ	ICC–3C300
P	ICC–3D480
RC	ICC–4A150
RF	ICC–4A240
RJ	ICC–4A300
RM	ICC–4A480
S	ICC–4
TC	ICC–4B150
TF	ICC–4B240
TJ	ICC–4B300
TM	ICC–4B480
UA	ICC–4C90
UC	ICC–4C150
UF	ICC–4C240
UJ	ICC–4C300

Suffix letters also required, dependent on size, as follows:

Water capacity (pounds):	Suffix required
Below 4	None
4 to 7.99	A
8 to 11.99	B
12 to 15.99	C
16 to 19.99	D
20 to 39.99	E
40 to 59.99	F
60 to 79.99	G
80 to 99.99	H
100 to 129.99	K
130 to 159.99	M
160 to 229.99	P
230 to 319.99	S
320 to 399.99	U
400 to 499.99	W
500 to 749.99	Y
750 to 1000.00	Z

Example: KM1234K for a cylinder marked ICC–3A480 of 125 pounds water capacity; etc.

(i) *Cylinders originally made for other agencies.* Cylinders, new or second hand, originally made for any agency other than the War Department, including commercial firms, may be purchased when authorized by chiefs of technical services. In such cases, the following procedure will be followed:

(1) Cylinders shall have been manufactured or retested within 12 months prior to date of delivery except as follows: Acetylene cylinders, Interstate Commerce Commission specification 8, less than 5 years old; cylinders made under Interstate Commerce Commission specification 3E.

(2) Cylinders of less than 12 pounds water capacity (332.8 cu. in.), will be marked with an added mark WD. Report of such purchase will be made to the chief of the technical service concerned giving the following data: Name of agency or firm from which purchased, contract or purchase order number and date, list of serial numbers, and the corresponding identification symbols (see paragraph (a)); also statement that the symbol WD has been applied. Example of such marking is as follows:

Original marks	*Added marks*
ICC–3A2015 75678 XYZ	WD

(3) Cylinders of 12 pound water capacity (332.8 cu. in.) and above will be marked with added marks WD and the War Department serial numbers with prefix and suffix letters as prescribed herein. Report of such purchase will be made to the chief of the technical service concerned, giving the following data: Name of agency or firm from which purchased; contract or purchase order number and date; serial numbers of War Department applied (including prefix and suffix letters), listed consecutively; corresponding original serial numbers; original identification symbols; statement that the symbol WD and War Department serial numbers have been applied. Example of such marking is as follows:

Original marks	*Added marks*
ICC–4B240 17652 XYZ	WD TF1234K

(4) The added marks will be stamped plainly into the metal at some convenient point so that they will not obscure or be confused with the original marks.

(5) If such cylinders are required for export and it is not practicable in the time available to stamp the added marks, any or all of the procedure specified in the foregoing subparagraphs may be omitted.

(j) *Packing compressed gases, filling limit.* The Interstate Commerce Commission has amended section 303 (j) (3)

of its regulations by adding the following note:

NOTE: Because of the present emergency and until further order of the Commission, ICC-3A cylinders may be charged with compressed gases, other than liquefied or dissolved gases, to a pressure 10 percent in excess of their marked service pressures.

(7 F.R. 2911)

SUBPART B—PATENTS

§ 811.1109 *Interchange of patent rights and industrial information*—(a) *General.* Under the Lend-Lease Act (55 Stat. 31) and the International Reciprocal Aid Agreements under the Act (see § 811.1111 and 811.1111 (a) below), it is established as the policy of the United States that full and complete dissemination be made of inventions, manufacturers' processes, technical information, designs and patent rights between the United States and our Allies with proper safeguards for security and the protection of the industrial property rights of citizens of the United States. Any such exchange shall be for war purposes and for the duration of the war.

(b) Under the Agreements each Government will bear the cost of procurement from its own nationals. Accordingly, insofar as practicable, the procurement of the information and rights referred to in the foregoing paragraph (a) for use by our Allies should be on the same basis as procurement for such use by the United States.

(c) Contractors who would be interested should be advised of the fact that under the Agreements referred to in § 811.1111 and 811.1111 (a) below, licenses under United States patents and applications for patents owned by nationals of the signatories to the said Agreements can be secured.

(d) Requests by our Allies forwarded to the War Department for military items other than those pertaining to aeronautics will be received by the Director, International Division, Headquarters, Army Service Forces, who will refer such requests to the appropriate service to effect such procurement. Military items pertaining to aeronautics will be received by the Chief, International Section, Matériel Division, Office of Assistant Chief of Air Staff, Matériel, Maintenance and Distribution, Army Air Forces.

§ 811.1110 *Agreement with the United Kingdom for the interchange of patent rights and industrial information*—(a) *General.* Under date of August 24, 1942 an Agreement was entered into between the United States of America and the United Kingdom with relation to the interchange of patent rights, information, inventions, designs or processes (Executive Agreement Series 268).

(b) *Terms of agreement.* The following is a summary of the terms of the agreement.

(1) Each government, insofar as it may lawfully do so, will, upon request, procure and make available to the other government, patent rights, information, inventions, designs or processes requested by the other government.

(2) Each government will bear the cost of the procurement from its own nationals.

(3) All patent rights so acquired will be for the purposes of and until the termination of the war only.

(4) Information, inventions, designs, or processes will be acquired upon such terms as may most expeditiously make such information available for the purposes of the war, with provision, to the extent practicable, for the limitation of the use thereof, for the purpose of and until the termination of the war.

(5) The agreement is deemed to have been in effect and operation as from January 1, 1942.

(6) The obligations of the United Kingdom pursuant to section 7 of the Lend-Lease Act (55 Stat. 31) as such obligations may be interpreted by the President or by the courts are to be performed by the United Kingdom.

(7) Each government agrees to take such steps as it deems practicable to ensure the appropriate degree of military secrecy in manufacture and use.

(8) License agreements or other contractual obligations existing on January 1, 1942 are not deemed to be within the scope of the agreement.

(9) The agreement provides that under certain conditions the United Kingdom will indemnify the United States on any claim brought by British nationals arising out of the use of items obtained under the Agreement. Prompt notice of any such claim of infringement will be given to the appropriate representative of the United Kingdom as provided in paragraph (i) below.

(c) *Handling of requests by the United Kingdom.* Requests by the United Kingdom for military items other than those pertaining to aeronautics will be handled as follows:

(1) The request will be submitted to the Director, International Division, Headquarters, Army Service Forces, in an original and 8 copies. The information contained therein will be similar to that contained in the form set forth in paragraph (j) below.

(2) The International Division will refer the request to the appropriate technical service for procurement. Such procurement shall be effected pursuant to § 811.1109 (b) and paragraph (f) of this section and otherwise, as may be directed by the chief of such technical service.

(3) In the event that the technical service is of the opinion that it is impracticable or for any reason undesirable to procure and transfer the item desired to the United Kingdom, or if in the opinion of the technical service concerned licenses under another patent or patents should also be obtained, a full report embodying the relevant circumstances and the recommendation of the technical service shall be submitted to the Director, International Division, Headquarters, Army Service Forces.

(4) Financing items under the Agreement will be done in accordance with established procedure for lend-lease procurement. The extent to which such funds are used for the purposes set forth herein should be currently reported on form DDA-7 "Statement of Defense Articles procured from appropriations made to the President for Lend-Lease purposes and other appropriations and delivered to Foreign Governments" under the Lend-Lease Act (55 Stat. 31).

(5) A form of license to be used in procuring items under the agreement is in course of preparation. Pending completion thereof, licenses used for such procurement will be cleared with the Legal Branch, Purchases Division, Headquarters, Army Service Forces.

(6) The provisions of AGO letter AG 400.3295 (6-18-42) MS-D-M of June 24, 1942, pertaining to the transfer of technical information, shall not apply to the transfer of items under the agreement.

(d) *Handling of requests by the United States to the United Kingdom.* Requests by the United States for military items other than those pertaining to aeronautics will be handled as follows:

(1) Requests will normally originate in a technical service, and will be submitted to the International Division together with a full description of the item requested, the organization originating the request, its intended use and other relevant particulars.

(2) The International Division will prepare S. O. S. I. D. Form Number 4 (Reverse Request for Patent Rights, Information, Inventions, Designs or Processes), will forward the request to the appropriate representative of the United Kingdom and will send copies thereof to the Office of Lend-Lease Administration and the technical service originating the request. A sample of such form is set forth in paragraph (j) below.

(3) The International Division will follow up the request and arrange for the delivery to the requesting technical service of the item requested.

(e) *Handling of requests for aeronautical items.* Requests by the United Kingdom and by the United States will be handled as provided in paragraphs (a) and (d) above except that the duties therein assigned to the Director, International Division, Headquarters, Army Service Forces, will be performed by the Chief, International Section, Matériel Division, Office of Assistant Chief of Air Staff, Matériel, Maintenance and Distribution, Army Air Forces and requests by the United States will be forwarded by the Chief, International Section, Matériel Division, Office of Assistant Chief of Air Staff, Matériel, Maintenance and Distribution, Army Air Forces to the United Kingdom.

(f) *Consultation with patent and technical officers.* Officers charged with procurement should consult with the patent and technical officers of the technical service in reaching a determination as to the amount, if any, to be paid for the item requested. The patent officer will ascertain whether the United States has the right without further payment to transfer the item requested. Advice with respect to the foregoing may be obtained from the Chief, Patents Di-

vision, Office of The Judge Advocate General.

(g) *Acquainting contractors of rights under agreement.* The technical services should bring to the attention of such contractors as would be interested the right, under the agreement, to have secured for their use in war production licenses under patents of the United States or of the United Kingdom owned by British nationals.

(h) *Questions of policy or procedure under agreements.* All questions of policy or procedure arising under the agreement as well as under the agreements referred to in §§ 811.1111 and 811.1111 (a) below, shall be referred to the Director, Purchases Division, Headquarters, Army Service Forces.

(i) *Notice of claim of infringement.* As stated in paragraph (b) (9) above, prompt notice of any claim of infringement should be given (1) to the Director, International Division, Headquarters, Army Service Forces, or to the Chief, International Section, Matériel Division, Office of Assistant Chief of Air Staff, Matériel, Maintenance and Distribution, Army Air Forces, as the case may be, for the purposes specified in paragraph (b) (9), and (2) to the Chief, Patents Division, Office of The Judge Advocate General for record purposes.

(j) *Form of request by the United States to the United Kingdom.* The sample of the form referred to in the foregoing paragraph (d) (2) above is as follows:

S. O. S. I. D. FORM 4

No._____

REQUISITION TO UNITED KINGDOM FROM UNITED STATES

Date_____

British Ref. No._____

1. Description of Patent Rights, Information, Inventions, Designs or Processes desired (Use continuation sheet if necessary)

2. Will any accompanying drawings information or explanations be necessary?_____ If so, state:_____

3. Are any personal technical services required or will they be required in the future? State when and the nature of the services:

4. Where and for what purpose will the patent rights, information, inventions, designs, or processes be used?_____

5. State reasons for request:

§ 811.1111 *List of lend-lease and reciprocal aid agreements.* The published lend-lease and reciprocal aid agreements are as follows:

	Date	Executive Agreement Series No.
United Kingdom of Great Britain and Northern Ireland	Feb. 23, 1942	241
Belgium	June 16, 1942	254
China	June 2, 1942	251
Czechoslovakia	July 11, 1942	261
Greece	July 10, 1942	260
Netherlands	July 8, 1942	259
Norway	July 11, 1942	262
Poland	July 1, 1942	257
U. S. S. R.	June 11, 1942	253
Yugoslavia	July 24, 1942	263

RECIPROCAL AID AGREEMENTS

United Kingdom	September 3, 1942
Australia	September 3, 1942
New Zealand	September 3, 1942
France (Fighting)	September 3, 1942

PATENT INTERCHANGE AGREEMENT

Agreement Between the United States and the United Kingdom of Great Britain and Northern Ireland on the Interchange of Patent Rights, Information, Inventions, Designs, or Processes, August 24, 1942; Executive Agreement Series No. 268.

(a) Copies of the agreements referred to above as well as agreements entered into with other governments are available upon request to the State Department in Washington, D. C.

§ 811.1112 *Adjustment of royalties for use of inventions*—(a) *Basic statute.* The act of October 31, 1942 (Public Law No. 768, 77th Congress, 2d Session) makes provisions for adjusting royalties for the use of inventions for the benefit of the United States, in aid of the prosecution of the war, and for other purposes. The succeeding paragraphs contain a summary of the provisions of the Act as applied to the War Department.

(b) *Applicability and notice.* Whenever an invention, whether patented or unpatented, is manufactured, used, sold or otherwise disposed of for the United States (for this purpose, the War Department) under the conditions set forth in the basic statute, and the license includes provisions for the payment of royalties, the rates or amounts of which are believed to be unreasonable or excessive by the Secretary of War, the Secretary of War shall give notice of such facts to the licensor and the licensee. By definition, the manufacture, use, sale or other disposition of an invention, whether patented or unpatented, by a contractor, subcontractor, or any person, firm, or corporation for the Government and with the authorization or consent of the Government is construed as manufacture, use, sale or other disposition for the United States.

(c) *Fixing of rates and order.* The act further provides that within a reasonable time after the effective date of the notice, in no event less than ten days, the Secretary of War shall by order, fix and specify such rates or amounts of royalties, if any, as he shall determine are fair and just, taking into account the conditions of wartime production and shall authorize the payment thereof by the licensee to the licensor on account of such manufacture, use, sale or other disposition. Either the licensor or the licensee is privileged, if he so requests within ten days from the effective date of the notice, to present within thirty days from the date of his request, in writing or in person, any facts or circumstances which may in his opinion have a bearing upon the rates or amount of royalties, if any, to be determined, fixed, and specified as aforesaid. Any order fixing the rates and amounts of any royalties shall be issued within a reasonable time after such presentation.

(d) *Prohibition against payment of excessive royalties.* The licensee is forbidden after the effective date of the notice (upon receipt of notice, or five days after the mailing thereof, whichever date is earlier) to pay to the licensor, or to charge directly or indirectly to the United States a royalty in excess of that specified in the order. It is provided that, whenever a reduction in the rates or amounts of royalties is affected by order, the reduction shall inure to the benefit of the Government by way of a corresponding reduction in the contract price to be paid directly or indirectly for such manufacture, use, sale, or other disposition of such inventions, or by way of refund, if already paid to the licensee.

(e) *Remedies of licensor.* The act contains certain provisions as to the remedies of the licensor, which, in general, limit him to a claim against the United States in a suit in the Court of Claims or a District Court of the United States.

(f) *Settlement of claims.* The Secretary of War is authorized, before suit has been instituted against the United States, to enter into an agreement with the owner or licensor of an invention in full settlement and compromise of any claim accruing under the provisions of the act, and for compensation to be paid such owner or licensor based upon future manufacture, use, sale, or other disposition of said invention.

(g) *Authority of Secretary of War to delegate powers and issue regulations under Act.* The Secretary of War is authorized in his discretion and under such rules and regulations as he may prescribe, to delegate any powers conferred by the act to such qualified and responsible officers, boards, agents or persons as he may designate or appoint. He is also authorized to issue such rules and regulations and to require such information as may be necessary and proper to carry out the provisions of the act. In accordance with the provisions of the act, rules and regulations have been prescribed and delegations of authority have been issued, the terms of which are set forth in the succeeding paragraphs.

(h) *Delegations.* By memorandum of the Secretary of War dated 20 November 1942, as amended under date of 30 January 1943, and 19 June 1943, there has been delegated to the Chiefs of the Technical Services (and in the case of the Army Air Forces, also the Assistant Chief of Air Staff, Matériel, Maintenance and Distribution, Army Air Forces and the Chief, Procurement Branch, Matériel Division, Office of the Assistant Chief of Air Staff, Matériel, Maintenance and Distribution, Army Air Forces) the powers, duties and authorities conferred upon him by the act:

(1) To determine that the written notice, referred to in paragraph (b) should be given and to give written notice of the fact that the rates or amounts of royalties are believed to be unreasonable or excessive;

(2) To receive and hear such facts or circumstances as may be presented in writing or in person as specified in paragraph (c);

(3) To fix and specify by the order refered to in paragraph (c) fair and just rates or amounts of royalties and to authorize the payment thereof by the licensee to the licensor, subject, however, to the approval of such order by the Director, Purchases Division, Headquarters, Army Service Forces; and

(4) To enter into an agreement before suit against the United States has been

instituted with the owner or licensor of an invention, in full settlement and compromise of any claim against the United States accruing to such owner or licensor by reason of the manufacture, use, sale or other disposition referred to in paragraph (b) and for compensation to be paid such owner or licensor based upon future manufacture, use, sale or other disposition of such invention, subject, however, to the approval of such agreement of settlement and compromise by the Director, Purchases Division, Headquarters, Army Service Forces.

By said memorandum a like delegation was made to the Commanding General, Army Service Forces and to the Director, Purchases Division, Headquarters, Army Service Forces.

(i) *Further delegations.* The authority referred to in subparagraphs (1) and (2) of paragraph (h) has been further delegated to the following:

(1) All Division Engineers of the Corps of Engineers,

(2) Director of Research and Development Division, Signal Corps, and

(3) Royalty Adjustment Board, Army Air Forces, Matériel Command, Wright Field, Dayton, Ohio.

The Secretary of War or the Under Secretary of War upon request will make further delegations. In the event the chief of any technical service desires that the authority referred to in subparagraphs (1) and (2) of paragraph (h) be delegated to other officers, such chief shall forward to the Director, Purchases Division, Headquarters, Army Service Forces, a memorandum specifying the officer to whom such delegation should be made and the extent of such delegation. The title of the position held and not the name of the individual officer should be specified. The powers, duties and authorities referred to in paragraph (h) shall not be redelegated by the chiefs of the technical services under the authority to redelegate conferred in § 801.107 (i).

(j) *Giving of notice.* The notice referred to in this and the succeeding paragraphs is the written notice, specified in Section 1 of the Act, of the fact that the rates and amounts of royalties are believed to be unreasonable or excessive. Such notice shall not be given to the licensor and licensee until:

(1) There has been obtained from the Director, Purchases Division, Headquarters, Army Service Forces, such information, if any, as his records contain as to the service of a notice, or the consideration which has or is being given to the service of a notice, by any technical service or by any governmental agency with respect to the same invention; and

(2) (i) The licensor has been advised that the issuance of a notice under the Act is contemplated and in the opinion of the authority contemplating the issuance of a notice, an opportunity voluntarily to effect a prompt and satisfactory adjustment of the royalties has been afforded and such adjustment cannot be effected, or

(ii) A recommendation has been made that no such advice as to the issuance of a notice be given to the licensor and such recommendation has been approved by the Director, Purchases Division, Headquarters, Army Service Forces.

(k) *Procedure in the event more than one technical service is concerned.* In the event more than one technical service is concerned with the rates or amounts of royalties, any such technical service may exercise, subject to the direction of the Under Secretary, as to such royalties the authority referred to in subparagraph (1) of paragraph (h) under all contracts or subcontracts with, or purchases by or for, the War Department. Where more than one supply service is concerned with the rates or amounts of royalties, the Director, Purchases Division, Headquarters, Services of Supply, shall be advised of such fact and thereupon directions shall be issued by him as to how, and by whom, the authority referred to in subparagraph (2), (3) and (4) of paragraph (h) shall be exercised for the War Department.

(l) *Appropriate action to be taken by each supply service.* Subject to the foregoing, the chief of each supply service shall cause such action to be taken as may be appropriate in order that the purpose of the act to prevent the inclusion in the prices paid by the War Department of unreasonable or excessive royalties may be achieved. Such action shall be taken pursuant to such instructions as may be issued by the chief of the supply service concerned.

(m) *Information to be obtained from and furnished to the Purchases Division.* When it appears to any supply service that the issuance of a notice as referred to in paragraph (j) (2) (i) of this section is contemplated, it shall:

(1) Obtain from the Director, Purchases Division, Headquarters, Services of Supply, the information referred to in paragraph (j) (1), and

(2) File, in triplicate, with the Director, Purchases Division, Headquarters, Services of Supply, a memorandum giving the names and addresses of the licensor and licensee and such other pertinent information as is set out in the form contained in paragraph (t) as may be reasonably practical.

If the proceedings referred to in paragraph (j) (2) (i) of this section have resulted in a satisfactory adjustment of royalties, without the service of a notice, a report, in triplicate, with respect thereto shall be filed by the supply service with the Director, Purchases Division, Headquarters, Services of Supply.

(n) *Factors to be considered.* In determining what are fair and just rates and amounts of royalties payable for an invention there will be taken into account:

(1) The conditions of wartime production;

(2) The production and use of the invention prior to any increase due to wartime procurement, including:

(i) Any established royalty rate;

(ii) The volume on which royalty was paid;

(iii) The yearly aggregate royalty paid; and

(iv) The circumstances under which the licensing and the establishment of the royalty rate occurred.

(3) The character of the invention and any patent protection therefor, the value of its contribution to the art in which it is used, and the character and expense of research and development that have been devoted to the invention.

(4) The extent of use and proposed use of the invention by other departments or agencies of the Government and the amounts of royalties involved in the aggregate in such use.

(5) All other considerations which are ordinarily and properly taken into account in determining fair and just royalties or which appear to be appropriate to the particular case.

(o) *Form of notice.* The following form of notice is approved for use subject to such deviations as may be appropriate in any given case:

Pursuant to the Act of October 31, 1942 (Public Law 768, 77th Congress, 2nd Session), notice is hereby given that the royalties now being paid directly or indirectly by the United States under contracts or subcontracts with or purchases by or for the War Department (including, without prejudice to the generality of the foregoing language contract No. ------) are believed to be unreasonable or excessive.

It is understood that these payments are made by virtue of an agreement between ---------- as licensee and ---------- as licensor. This notice becomes effective upon receipt hereof or five days after the mailing hereof, viz, ----------, 194----, whichever date is the earlier.

Under the Act the licensee or the licensor, if he so requests within ten days from and after the effective date of this notice, may within thirty days from the date of such request present in writing or in person any facts or circumstances which may, in his opinion, have a bearing upon the rates or amounts of royalty, if any, to be determined, fixed and specified, all as provided in said Act.

Within a reasonable time after the effective date of this notice an order will be made fixing and specifying the rates or amounts of royalty, if any, which are determined to be fair and just taking into account the conditions of wartime production. Such order will authorize the payment of such rates or amounts of royalty by the licensee to the licensor.

The act provides that the licensee shall not after the effective date of this notice pay to the licensor, nor charge directly or indirectly to the United States a royalty, if any, in excess of that which may be specified in the order to be hereafter made. Until the making of such order no royalties should be paid on account of the manufacture, use, sale or other disposition for the United States.

The foregoing notice shall be mailed to the last known address of the licensor and the licensee.

(p) *Forwarding of copies of notice.* Copies of all notices served shall be forwarded promptly to:

(1) The chief of the supply service concerned,

(2) The chief patent officer or, if that service has no patent officer, to its chief legal officer,

(3) The Chief, Patents Division, Office of The Judge Advocate General, and

(4) Director, Purchases Division, Headquarters, Services of Supply (in duplicate).

(q) *Form of order.* The following form of order is approved for use subject

to such deviations as may be appropriate in any given case:

Order No._____

Adjusting Royalties in connection with Contract No._____

Contractor and Address_____

For: Whereas, under date of_____ pursuant to the authority contained in the Act of October 31, 1942 (Public Law 768, 77th Cong., 2d Sess.), written notice was given to _____ and _____
(Licensor) (Licensee)

that the rates or amounts of royalties as set forth in Column 5 of Schedule A,[1] attached hereto and by reference made a part hereof, provision for the payment of which by Licensee to Licensor is evidenced in the manner set out in Column 6 of said Schedule A, and directly or indirectly charged or chargeable to the United States for the manufacture, use, sale or other disposition for the United States, of the inventions set forth in Columns 1, 2, 3, and 4 of said Schedule A, under the terms of the above-identified contract, were believed to be unreasonable or excessive, and that after the date of the receipt of said Notice, or five days after the mailing thereof, whichever date was the earlier, no royalty should be paid by the Licensee to the Licensor, and charged directly or indirectly to the United States, for or on account of the manufacture, use, sale, or other disposition of said invention for the United States, as provided for in said Act; and

Whereas, an opportunity has been afforded Licensor and Licensee to present in writing or in person any facts or circumstances which may, in the opinion of either or both of said parties, having a bearing upon the rates or amounts of royalties hereinafter determined, fixed and specified; and

Whereas, the undersigned, having taken into account the representations of the Licensor and Licensee,[1] the conditions of wartime production and all other considerations which are ordinarily and properly taken into account in determining a fair and just rate or amount of royalty in the premises:

Now, therefore, it is hereby determined, fixed, and specified that a fair and just rate or amount of royalty, to be paid by Licensee to Licensor, after the effective date of said Notice, is that rate or amount set forth in Column 7 of said Schedule A, and payment thereof by the Licensee to the Licensor on account of the manufacture, use, sale or other disposition of the inventions set forth in Columns 1, 2, 3, and 4 of said Schdule A, insofar as such payment is consistent with the provisions of said Act, is hereby authorized.

Dated: _____

Approved: _____ _____

_____

_____

(Director, Purchases Division, Headquarters, Army Service Forces)

NOTE: Schedule A appears in the following form:

SCHEDULE A

Column 1	Column 2	Column 3	Column 4	Column 5		Column 6				Column 7
Title or short description of invention	U. S. Patent No.	Application Serial No.	Foreign patents	Royalty stipulated prior to date of notice		Instrument in which royalty stipulated				Fair and just royalty
				Rate	*Amount*	*Executed*	*Date rec'd U. S. Pat. Off.*	*Liber*	*Page*	*Rate*

(r) *Submission of order or settlement for approval.* In transmitting to the Director of Purchases for approval the order or the agreement of settlement and compromise referred to in subparagraphs (3) and (4) respectively of paragraph (h), there shall be included, in duplicate, the following:

(1) A statement showing compliance with the requirements of paragraph (j);

(2) A copy of the notice;

(3) A complete statement of any facts or circumstances presented in writing or in person by the licensor or the licensee; and

(4) The facts upon which are based the conclusion that the rates or amounts or royalty fixed in the order are fair and just, or in the case of a settlement, the facts which support the agreement in full settlement and compromise.

(5) A copy of the order or of the agreement of settlement and compromise as the case may be.

[1] Strike out inapplicable portions.

(s) A copy of the documents referred to in paragraph (r) shall be forwarded promptly to the Chief, Patents Division, Office of The Judge Advocate General.

(t) *Records of Purchases Division.* From the information contained in the documents herein required to be filed with the Director, Purchases Division, Headquarters, Army Service Forces, a card index is prepared. The form of card is as follows:

Record No.:_____ X-Ref:____

CENTRAL FILE
Royalty Adjustment Act
(Public Law 768, 77th Cong., 2d Sess.)

Licensor (or Inventor)_____
Pat. No._____ Date_____
Licensee (or Contractor)_____
App. No._____
Invention, Title of_____
Foreign Pat. No. & Country_____
Assignor_____
Assignee_____
Government Contractor____ Contract No.____
Technical Serv. Issuing Notice_____
Date_____
Rate or Amount of Royalty Prior to Notice____
Date_____
Rate or Amount of Royalty fixed by Order____
Date_____
Request for Hearing_____
Date_____
Total amount of Royalty_____
Settlement Agreement_____
Contract Item_____
Contract Price_____

It is recomended that the technical services, in filing with the Director, Purchases Division, Headquarters, Army Service Forces, the documents herein required to be filed, shall cause to be disclosed in the documents filed so far as reasonably practicable the information necessary to complete the above form.

SUBPART C—LITIGATION AND RELATED MATTERS

§ 811.1120 *Procedure for handling litigation involving cost-plus-a-fixed-fee contractors*—(a) *General.* It is of the utmost importance that The Judge Advocate General be promptly notified of the institution of all suits in which the interests of the United States are involved including all suits against cost-plus-a-fixed-fee contractors and subcontractors. This will make it possible to take steps to remove suits instituted in state courts to the federal courts and to take all other steps necessary to protect the interests of the Government. Likewise it is essential that the information furnished be full and complete and not fragmentary.

(b) *Procedure.* The following procedure is prescribed with respect to litigation involving cost-plus-a-fixed-fee contractors and subcontractors:

(1) Such contractors should be advised immediately upon receipt of process in any action filed against them to furnish a copy of all papers to the contracting officer or appropriate War Department representative. This will be in addition to any similar requirement of any outstanding insurance policy.

(2) Teletype, radio, or telegraphic notification of such suit should be sent immediately to The Judge Advocate General, Washington, D. C., by the War Department representative in charge of the project or activity out of which the suit arises, giving all pertinent facts concerning the suit. In the usual case, these facts will include the court in which the suit has been filed, the names of parties to the suit, the date of service of process, a statement of the alleged cause of action, the amount sued for, the date on which answer to the suit must be filed, a statement of the principal defense to the suit which the defendant may raise, and a statement as to whether the amount sued for is fully covered by insurance and if so, whether or not the insurance carrier will accept full responsibility for the defense of the suit.

(3) Copies in triplicate of all suit papers and a statement of available facts will be forwarded immediately to The Judge Advocate General, Washington, D. C. If a board of inquiry is convened to investigate, or acts on the case, copies of all reports of the board's proceedings and findings will be included in the papers transmitted. Since The Judge Advocate General, has the duty of maintaining all

War Department legal liaison with the Department of Justice and other Government departments, the chief of the technical service concerned, upon request of The Judge Advocate General, will immediately transmit to his office any information in his possession that may be requested. Requests for Government representation will not be made to the Department of Justice by War Department field representatives but will be made directly to The Judge Advocate General. Violations of this well-established War Department policy have caused confusion and prevented proper co-ordination in the handling of litigation with the Department of Justice.

(4) The agreement for representation to be signed by the cost-plus-a-fixed-fee contractor or other defendant, three copies of which will be forwarded to The Judge Advocate General, Washington, D. C., will read as follows:

The undersigned hereby requests the Attorney General of the United States to designate counsel to defend on behalf of the undersigned the action entitled _____ v. _____. It is further understood that by assuming the defense of said action, the obligations of the United States under United States Contract No. _____ are not altered or increased; it is further agreed that such representation will not be construed as a waiver or estoppel of any rights which any interested party may have under said contract.

(c) *Procedure to determine legal position to be taken in suits based upon the Fair Labor Standards Act of 1938.* (1) In order that any differences of opinion between the War or Navy Departments and the Department of Labor as to the legal position which should be taken by the Government in suits against cost-plus-a-fixed-fee contractors based upon the Fair Labor Standards Act may be resolved, the War Department, the Navy Department, the Department of Labor and the Department of Justice have entered into the following agreement as to the administrative procedures to be followed to determine the position to be taken by the Government in such suits:

MEMORANDUM OF AGREEMENT ON UNIFORM ADMINISTRATIVE PROCEDURES

1. *Purposes:* The procedures herein outlined are provided in order to:

(a) Secure in the disposition of litigated claims settled and uniform application of the Fair Labor Standards Act to the types of work performed by cost-plus-a-fixed-fee contractors.

(b) Obtain either an effective and economical defense by the Department of Justice against claims under the Fair Labor Standards Act, or the quick payment of such claims, depending upon whether such claims are determined pursuant to these procedures to be valid or invalid; and

(c) Establish a method for handling claims which is fair and equitable in protection of the claimant, the United States, and the cost-plus-a-fixed-fee contractor.

2. *Definitions:* For purposes of this agreement, the term—

(a) "Contracting Agency" means the War Department, or the Navy Department, as the case may be.

(b) "Cost-Plus-a-Fixed-Fee Contractor" means a contractor who has entered into a contract with a contracting agency, acting in its own behalf, or in behalf of the United States, pursuant to which the contracting agency, or the United States, is obligated to pay the labor costs of the work performed under the contract.

(c) "Claim" means a suit based upon the Fair Labor Standards Act for additional payments for work performed for a cost-plus-a-fixed-fee contractor; and the term "claimant" means a person by whom or on whose behalf such suit is instituted.

3. *Prompt Investigation, Determination, and Payment of a Valid Claim:* Claims will be immediately investigated by the contracting agency. If in the judgment of the contracting agency the claim should be paid, the United States Attorney will be promptly notified and he will effect settlement of the claim and disposition of the suit. If such is not the judgment of the contracting agency, the claim, together with the contracting agency's recommendation and report of the investigation, will be referred to the appropriate regional office of the Wage and Hour Division for such further and prompt investigation as may be necessary, and for determination. Contemporary or joint investigations will be held by both agencies when found feasible.

4. *Review of Determination of the Regional Office of the Wage and Hour Division:* Within ten days after notice of the determination of the regional office of the Wage and Hour Division, the contracting agency may, if dissatisfied with, and unwilling to settle on the basis of the determination of the regional office of the Wage and Hour Division, appeal to the Wage and Hour Administrator for his final determination of the claim. If part or the whole of the claim is found valid by the Administrator, the United States Attorney will effect settlement of the claim and disposition of the suit accordingly, except that if the contracting agency should conclude that the determination of the Administrator is in its view so clearly unsound as to render assent thereto improper, such agency may elect not to be bound by such determination and to proceed as provided in Paragraph 5.

5. *Participation of the Department of Justice in Discussions:* At the instance of either contracting agency or of the Administrator, the Department of Justice will, if the case appears sufficiently important and the legal issues sufficiently doubtful, join in any discussion among the parties preceding the determination of the Administrator, and will informally accord to the parties the benefits of its views on the legal issues. It is understood that the Department of Justice is not intended to act as an appellate tribunal and that requests for its participation in discussions will be limited to the few important and doubtful cases. Each case in which a contracting agency has elected, pursuant to Paragraph 4, not to be bound by a determination of the Administrator shall be made the subject of discussion with the Department of Justice. Whenever any such case is the subject of discussion with the Department of Justice that Department may determine the Government's litigation position. If the Department of Justice makes such determination the action of all parties hereto with respect to the disposition of the particular case shall be in accord with the determination of the issues so made. In the event the Department of Justice declines in such cases to make such determination of the issues, the Department may decide not to provide further legal representation in any litigation of such case, in which event the cost-plus-a-fixed-fee contractor shall be represented by private counsel and neither the Administrator nor the contracting agency nor any of their representatives shall appear or participate in the litigation.

6. *Suits on Claims Against Cost-Plus-a-Fixed-Fee Contractors To Be Handled by the Department of Justice:* The Department of Justice will have its United States Attorneys appear for cost-plus-a-fixed-fee contractors in all suits on claims filed against them, and will seek extensions of time sufficient to permit the foregoing procedures to operate. Subject to the Attorney General's usual discretion to avoid untenable positions in court, the conduct of such litigation will be in conformity with the administrative determinations made pursuant to such procedures.

7. *Duration:* The procedures provided in this agreement are recognized as experimental in nature, and any signatory hereto shall be free to withdraw from this agreement. In the absence of such withdrawal, the procedures shall endure until the purposes set forth in Paragraph 1 are accomplished.

(2) The Under Secretary of War by memorandum dated 15 December 1943, to the Commanding Generals of the Army Air Forces and the Army Service Forces, with reference to the above agreement, directed that:

To carry out the purposes of the agreement the procedure set forth below will be followed:

(i) The Judge Advocate General will be notified, as provided in AR 410-5 and other applicable regulations, promptly upon receipt of notice that suit based upon the Fair Labor Standards Act has been filed against a War Department cost-plus-a-fixed-fee contractor. He will request the Attorney General to direct the United States District Attorney to appear in the suit on behalf of the contractor and to obtain the extension of time contemplated by Paragraph 5 of the agreement.

(ii) The Judge Advocate General will determine the position of the War Department in respect of such suits, to the same extent as in other cases referred to him under AR 410-5, and will further determine which cases should be appealed by the War Department to the Wage and Hour Administrator or the Attorney General, pursuant to the provisions of the attached agreement. He will also represent the War Department in all such appeals.

(3) In conformity with the above agreement and directive, upon notification of the institution of a suit based upon the Fair Labor Standards Act against a cost-plus-a-fixed-fee contractor as provided in paragraph (b) of this section, the Judge Advocate General will request the Attorney General to direct the United States District Attorney to appear in the suit on behalf of the contractor and to obtain the extension of time contemplated by paragraph 5 of the agreement. The technical service promptly will make or cause to be made such investigation as may be necessary to ascertain the precise nature of the work performed by the complaining employee during the period for which he seeks additional compensation, and promptly will report such information and such other information as the Judge Advocate General may request to the Judge Advocate General with the technical service's recommendation as to the position to be taken by the War Department in respect of the suit. Such investigation as to the nature of the employee's employment during the period may be made in collaboration with an investigator of the Wage and Hour Division of the Department of Labor in any case in which the technical service deems this appropriate.

(4) The Judge Advocate General will determine which claims in litigation shall be referred to the Department of Labor for the further investigation and for determination as permitted by paragraphs 3 and 4 of the agreement and which claims shall be referred by the War Department to the Department of Justice as permitted by paragraph 5 of the agreement, and will represent the War Department in connection therewith.

(5) In those cases in which the Department of Justice determines the legal position to be taken by the Government and decides that the claim should be litigated, it will conduct the litigation in accordance with the course of action determined upon as provided in the agreement. Should the Department of Justice refuse to determine the legal position to be taken by the Government and should the Judge Advocate General decide that the claim should be litigated, he will so advise the technical service in order that private counsel may be engaged to represent the contractor. Attention is called to 22 Comp. Gen. 993 to the effect that cost-plus-a-fixed-fee contractors in proper cases may be reimbursed the reasonable and necessary costs, including attorneys' fees, incurred in the defense of such suits. (See also the Comptroller General's opinion to the Secretary of War of 15 December 1943 (B-38642) affirming such position).

(6) The Judge Advocate General will advise the technical services as to claims which it has been determined should be compromised rather than litigated. Attention is called to the Comptroller General's opinion to the Secretary of War of 15 December 1943 (B-38642) to the effect that the War Department properly may, upon proper administrative determination as therein indicated that the settlement in each instance was fully warranted as being in the best interest of the Government, reimburse contractors for payments to employees in settlement of claims for overtime asserted in section 7 of the Fair Labor Standards Act, in amounts less than the total amounts which would be required to be paid in the event adverse judgments were obtained, even if the consummation of the settlement necessitated adjustment of disputed questions as to the amounts of overtime involved as well as questions pertaining to the application of the act.

§ 811.1121 *Reports of criminal conduct in connection with War Department contracts.* (a) There has been set up in the Criminal Division of the Department of Justice a special unit whose duty it is to take appropriate action as expeditiously as possible in all cases in which criminal conduct is shown to exist in connection with contracts entered into by the Government with business concerns in connection with the war program.

(b) The Under Secretary of War desires that a report be made to his office of any instances of criminal conduct in connection with War Department contracts. A report of such an instance should contain a full statement of the facts indicating criminal conduct. Such reports to the Under Secretary of War should be transmitted through channels to the Director, Purchases Division, Headquarters, Army Service Forces, for submission to the Office of the Under Secretary.

§ 811.1122 *Joint action with Navy with respect to contingent fees.* (a) The Director, Purchases Division, Headquarters, Army Service Forces, has been designated to coordinate with the appropriate representatives of the Navy on problems involving the subject of contingent fees and excessive compensation of sales representatives for obtaining Government prime contracts and subcontracts thereunder.

(b) The Director, Renegotiation Division, Headquarters, Army Service Forces, will be in charge of relations with the Navy in the matter of renegotiation of brokers and commission and selling agents under section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942 as amended. Such brokers and agents, so far as subject to statutory renegotiation (See Public Law 149, 78th Congress) are assigned for that purpose to the Service and Sales Renegotiation Section, Procurement Legal Division, Office of the Under Secretary of the Navy with the exception of those engaged in the sale of textiles and foodstuffs which are assigned to the Price Adjustment Section of the Quartermaster General (See Joint Renegotiation Manual, pars. 133, 202.2, 203.4, 336). Information coming to the attention of War Department personnel indicating that commissions or other compensation may have been paid to a broker or selling agent subject to statutory renegotiation will be reported to the Assignment and Statistics Branch, Renegotiation Division, Headquarters, Army Service Forces.

(c) The chief of each technical service shall designate an officer primarily charged with the duty of coordinating the activities of such service with those of the other technical services, in matters relating to contingent fees and excessive sales expenses of contractors. The name of the officer so designated shall be furnished to the Director, Purchases Division, Headquarters, Army Service Forces, by memorandum, giving the full name, title, position, mailing address, and telephone extension number of such representative.

SUBPART D—PRICE REGULATIONS

§ 811.1130 *General*—(a) *Scope of this section.* This section deals with problems arising from or associated with the application of the maximum price regulations issued by the Office of Price Administration to purchases made by the War Department. The basic authority for OPA actions is to be found in the Emergency Price Control Act of 1942 (Public 421, 77th Congress), as amended by Act of October 2, 1942 (Public 729, 77th Congress), and in Executive Order 9250, promulgated October 3, 1942. The following discussion of maximum price regulations and various orders issued by OPA is introductory and is not intended to be complete. Complete details and the text of OPA regulations may be procured from the FEDERAL REGISTER, or may be had from any OPA office. Should these sources fail, inquiries should be sent through the chief of the technical service concerned to the Price Regulation Branch, Purchases Division, Headquarters, Army Service Forces, Washington, D. C.

(b) *Function of Price Regulation Branch.* (1) Because of penalties imposed by the Emergency Price Control Act upon manufacturers who violate price ceilings, manufacturers must proceed with caution in the acceptance of contracts. To accelerate the placing of contracts, it is important that procurement personnel be familiar with the problems involved and able on occasion to be of assistance or guidance to contractors. It is an important function of the Price Regulation Branch to expedite the solution of specific problems.

(2) Whenever contact or negotiation is necessary between one of the services and the Office of Price Administration on any price regulation or rationing problem which involves a general policy or might affect more than one of the services, the negotiations will be conducted through the Chief, Price Regulation Branch, Purchases Division.

§ 811.1131 *Applicable OPA regulations*—(a) *Specific commodity price regulations.* Beginning in February 1941, the OPA began promulgating "maximum price schedules". 105 such schedules were issued prior to February 11, 1942, when the Administrator took office under the Emergency Price Control Act of 1942. Up to that time, there was no directly applicable statute authorizing price control. However, the Emergency Price Control Act of 1942 expressly validated previous schedules and gave the Administrator express power to issue "maximum price regulations". Up to the end of December 1942, some 289 specific commodity price regulations (or schedules) had been issued. Certain "price schedules" have been re-promulgated as "price regulations;" but whether or not re-promulgated, a "price schedule" is equally effective as a "price regulation" in imposing a maximum price. See § 811.1135 for a list of maximum price regulations and schedules of possible interest to procurement officers.

(b) *The General Maximum Price Regulation.* On April 28, 1942, the OPA Administrator issued the General Maximum Price Regulation, commonly known and hereafter referred to as the GMPR, placing a price ceiling on practically all commodities and services sold or rendered by manufacturers, wholesalers and retailers, if not covered by specific price regulations. (See § 811.1132 for exemptions.) Except for certain procedural requirements, this regulation, however, does not apply to transactions covered by any other price regulation, either past or future. The OPA is continuing to issue new specific price regulations. With respect to sales or deliveries to or contracts with the War Department or the Navy Department, the effective date of the GMPR is July 1, 1942. In general, ceiling prices on items covered by this regulation are based on the highest

prices charged in March 1942. Reference should be made to the regulation itself for an exact statement of such provisions and of the methods for determining maximum prices for articles to which the formula for determining maximum price in accordance with the highest price charged in March 1942 cannot apply. Commodities and services that are included under specific price regulations, past or future, remain or become subject to the specific price ceilings, even though they may be exempt from the GMPR under a supplementary regulation, unless specifically exempted by the terms of the specific price regulation itself. (See § 811.1132 (d).)

(c) *War Department—OPA Agreement, September, 1942.* From the foregoing, it will be noted that items now entirely exempt from regulation may by some future date be brought under regulation by a new specific price regulation. However, by recent agreement between the OPA and the War Department, military items exempt in September, 1942, will remain exempt, whether exempted from the GMPR by Supplemental Regulation No. 4 (§ 811.1132 (a)) or from a specific regulation by its terms. Under this agreement, the OPA has reserved the right to resume control over exempt items if it develops that the War Department is unable to control prices effectively through its own procurement policies.

(d) *The Service Regulation; MPR 165.* As above noted (paragraph (b)) all services (along with commodities) were brought under control of OPA by the GMPR. Effective August 19, 1942, Maximum Price Regulation 165 brought under specific control a long list of services, leaving those not specifically listed still covered by the GMPR, subject to exemptions (see paragraph § 811.1132 (e)).

§ 811.1132 *Exemptions*—(a) *Exemptions under Revised Supplementary Regulation No. 1 of the GMPR.* (1) Revised Supplementary Regulation No. 1, effective April 22, 1943, regroups in a single regulation commodity transactions formerly exempted from the GMPR by Supplementary Regulation No. 1 and Revised Supplementary Regulation No. 4, which regulations are now revoked. Reference in any Price Regulation or other document issued by the OPA to any provision in Supplementary Regulations Nos. 1 and 4 shall be deemed to refer to its counterpart in the new Revised Supplementary Regulation No. 1.

(2) The new regulation is confined to exceptions from the GMPR. Commodities and transactions listed as excepted from the GMPR may be subject to other applicable regulations unless specifically excepted in others.

(3) Revised Supplementary Regulation No. 1 provides that the GMPR shall not apply to sales or deliveries of the following commodities or in the following transactions:

(i) Aviation gasoline and components, synthetic rubber and components, toluene manufactured from petroleum, and agricultural components used in the manufacture of furfural, under the conditions and to the extent stated in the regulation.

(ii) Sales and deliveries, when made to the United States or any agency thereof, or to the Government of any country whose defense the President deems vital to the defense of the United States, under the terms of the Act of March 11, 1941, entitled "An Act to Promote the Defense of the United States" or any agency of any such Government, of the following commodities, and also in certain cases of related transactions when made to others as specifically provided in the Regulation:

(*a*) Aircraft, ammunition, armored trains, artillery, balloon barrage equipment, bombs, bomb sights, caissons, fire control equipment, gas masks, grenades, gun sights, military bridges, mines, mortars, projectiles, pyrotechnics, small arms, ships and boats and torpedoes.

(*b*) Amphibians, armored vehicles, automobiles, tanks, trailers and trucks, when sold for military purposes.

(*c*) Component parts and subassemblies of any product excepted under paragraphs (*a*) and (*b*) above, regardless of the person to whom sold or delivered, including all metallic and nonmetallic component parts, adjuncts and accessories which have been machined or fabricated but not including raw or unfinished materials or any other materials which are in such form as to permit their use in the manufacture of products other than those excepted under paragraphs (*a*) and (*b*) above.

(*d*) Military propellants and explosives.

(*e*) The following Army field and emergency rations and commodities: Completed rations: C; D; K; Five-in-One; Mountain; Bail Out; Combat; Jungle; Life Raft; Corned Beef Hash; (5½ lb. can); Meat and Vegetable Hash (6 lb. 12 oz. can); Chili Con Carne (6 lb. 8 oz. can).

(iii) Dried apples, dried apricots, raisins, dried peaches, dried pears, or dehydrated vegetables sold to the armed forces of the United States.

(iv) Developmental contracts or subcontracts, and emergency purchases (see paragraph (f).

(v) Sales and deliveries of waste materials, including but not limited to metal, paper, cloth and rubber scrap, sold to a purchaser other than an industrial consumer, but not including scrap burlap or scrap bagging or bale coverings composed of jute, hemp, istle, sisal or similar fibers, nor cotton mill waste, nor fat bearing and oil bearing animal waste materials. This exception frees the War Department from price restrictions in the sale of most miscellaneous materials. However, the more important scrap materials, such as ferrous and non-ferrous metals, paper, rubber and rags, are covered by specific price schedules or maximum price regulations.

(4) The foregoing is not an exact or complete quotation. In specific cases reference should be made to the text of Revised Supplementary Regulation No. 1 which also contains other exceptions.

(b) *Exemption of sales pursuant to secret contracts or subcontracts.* (1) By Supplementary Order 42, effective April 22, 1943, sales and deliveries of any commodity or service made under a contract or subcontract certified as secret to the Office of Price Administration (see § 811.1133 (b)) are exempted from price regulation.

(2) The exemption applies only for such period as is necessary for the preservation of secrecy. The purchasing agency certifying the contract as secret must notify the Office of Price Administration in the manner provided in § 811.1133 (b) whenever such contract or subcontract ceases to be secret, and thereafter the exception will no longer apply.

(c) *Exemption of sales by Army stores.* By Supplementary Order 27 effective November 14, 1942, all sales and deliveries of any commodity by the War Department through the Department's sales stores, including commissaries, Army canteens, and post exchanges, were exempted from all price regulation. The OPA retained the right, however, to bring such sales under control by specific provisions inserted in a regulation issued at a later date.

(d) *Exemptions contained in specific price regulations.* Certain of the specific maximum price regulations contain exemptions of the commodities covered by them of interest to procurement officers. These exemptions may be in whole or in part, and are effected by various methods, among which may be enumerated:

(1) By the incorporation by general reference of all supplementary regulations to the GMPR, including Revised Supplementary Regulation No. 1;

(2) By exempting sales to the United States and all agencies thereof;

(3) By incorporating by reference certain of the clauses of Revised Supplementary Regulation No. 1;

(4) By clauses specifically excluding developmental contracts or emergency purchases or both from the coverage of the specific price regulation. (See paragraph (f))

(e) *Exemptions of services.* (1) By Supplementary Regulation No. 11 effective August 19, 1942, a large number of special services were exempted from the provisions of the GMPR. By an amendment effective December 3, 1942, the provisions of MPR 165 were specifically made nonapplicable to the services exempted by Supplementary Regulation No. 11, as well as to those services exempted by Supplementary Regulation No. 1 (see paragraph (a)).

(2) Of special interest are the following exempted services:

(i) Any service rendered in connection with the lubrication, painting, rental, storage, washing, operation, repair, conversion, modification, maintenance or other servicing of airplanes or of engines, parts, accessories, instruments and other equipment used in connection with airplanes.

(ii) Any manufacturing service performed by a person (other than the manufacturer) in the production of any war material and component parts and subassemblies thereof, exempted from price regulation by Revised Supplementary Regulation No. 1 (see paragraph (a)).

(iii) Any service supplied pursuant to a development contract or subcontract.

(iv) Any machinery service, as defined in Maximum Price Regulation No. 136.

(3) The above is not an exact or complete quotation. In specific cases reference should be made to the text of Revised Supplementary Regulation No. 11 which also contains other exceptions.

(f) *Exemption of developmental and secret contracts and emergency purchases.* (1) By Revised Supplementary Regulation No. 1, developmental contracts and subcontracts entered into, and emergency purchases made by, the United States or any of its agencies are exempt from the GMPR. In addition, certain of the specific Maximum Price Regulations exempt such contracts and purchases, either specifically or by incorporating by general or specific reference the exemptions of such contracts and purchases contained in Supplementary Regulation No. 1. Reference must be made in each case to the applicable MPR to ascertain whether or not these contracts and purchases are excluded therefrom. In the case of both developmental contracts, the exemption applies only during such period as is necessary for development. A contract or subcontract is deemed to be "developmental" if the manufacturer or supplier requires a period of time for the accumulation of sufficient production experience to permit him to make a fair estimate of his manufacturing costs, or if the purchaser under such contract or subcontract requires a period of time to select a product, or both. To satisfy the definition of "emergency" for purposes of the exemption:

(i) the subject matter of the purchase must be needed at once, and

(ii) At least a portion of the purchase must be capable of immediate delivery either from stock or after a short period of production. In any case, the emergency exemption is applicable only to the quantity immediately deliverable. The exemption will not apply to contracts or agreements for future delivery.

2. By the terms of the Service Regulation (MPR 165) sales of services pursuant to developmental contracts and subcontracts entered into, and emergency purchases made by, any war procurement agency were exempted from the application of this Regulation and also the GMPR. In general, the same qualifications apply to developmental contracts and to emergency purchases as described above in this paragraph in connection with Revised Supplementary Regulation No. 1; except that for services the developmental period is limited to ninety days.

§ 811.1133 *Procedure for obtaining exemption under developmental and secret contracts and emergency purchases or for relief from a price regulation*—(a) *Procedure under developmental contracts.* To obtain exemption of the sale or delivery of any commodity manufactured or service supplied pursuant to a developmental contract or subcontract it is necessary (1) that the contract or subcontract be certified in writing to the OPA, Washington, D. C. by the United States or its agency as being a developmental contract or subcontract and (2) that the manufacturer of the commodity or supplier of the service file a report with the OPA, Washington, D. C. within ten days after entering into any such contract or subcontract. The form of certification to be used by the purchasing agency is not standardized, but all that need be stated is: "In accordance with the provisions of Maximum Price Regulation No. _____, Section _____, (or General Maximum) the following contract is hereby certified as 'developmental', Contract No. _____, Date of Contract _____, Name and Address of the supplier _____, Commodity covered _____." This certification should be sent in duplicate to the Office of Price Administration, Washington, D. C., Attention War Goods Price Coordinator.

(b) *Procedure under secret contracts.* To obtain exemption of the sale or delivery of any commodity manufactured or service supplied pursuant to a secret contract or subcontract it is necessary that it be certified as such to the OPA by the purchasing agency. Such certification need only set forth the date of the secret contract and its number or other designation, not including the commodity covered or the name or address of the supplier. This certification should be sent to the Chief, Office Services Branch, Security Officer, Office of Price Administration, Federal Office Building No. 1, Washington (25), D. C.

(c) *Procedure under emergency purchases.* To obtain exemption of the emergency purchase for any commodity for immediate delivery or of services for immediate performance, it is necessary that the purchasing officer, whenever such a purchase is made above maximum prices, file a report with OPA in Washington within five days (ten days in the case of services) after the purchase is made. This report must certify that it was imperative to secure the commodity or service immediately and that it was impossible to secure or unfair to require immediate delivery or performance at the applicable maximum price. The report should set forth (1) the name and address of the seller (2) the date of purchase (3) the date of delivery or performance (4) the description of the commodity purchased or service performed (5) the quantity purchased or performed (6) the price at which purchased or supplied, and (7) a brief statement of the facts giving rise to the emergency situation. This report should be sent in duplicate to the Office of Price Administration, Washington, D. C. Attention: War Goods Price Coordinator. No report is required in the case of services unless the total price thereof exceeds $500.00 and a similar exemption is extended in some specific MPR's to emergency purchases.

(d) (1) *Procedure for obtaining relief.* OPA Procedural Regulation No. 6, effective July 3, 1942, sets forth the procedure to be followed in all cases except when otherwise specifically provided to obtain prompt adjustments of maximum prices for commodities or services under Government contract or subcontract. The regulation provides that any person who has entered into or proposes to enter into a Government contract, or subcontract under a Government contract, and who believes that an established maximum price impedes or threatens to impede production, of a commodity or supply of a service which is essential to the war program, may apply for adjustment of that maximum price. Any Government agency may appear as an interested party under any such application. Upon the filing of an application and pending the issuance of an order by the OPA granting or denying the application, contracts or subcontracts may be entered into, and deliveries made at the price requested in the application, subject to later refunds and price reduction if the application is denied. Applications involving contracts exceeding $5,000,000 in value must be filed with the OPA in Washington, D. C. Other applications (with a few exceptions) may be filed either with the appropriate regional office of the OPA or with the OPA in Washington, D. C.

(2) By an amendment effective April 12, 1943, special adjustment procedure is provided in MPR 136 (Machines and Parts and Machinery Services), to which reference is made for complete details. This procedure is available to any person who has entered into a "war contract", defined as a contract for the sale of a machine or part purchased for the ultimate use of the armed forces of the United States or for lend-lease purposes, or for use in the production or manufacture of any such commodity. A new ground for adjustment, provided by the amendment, is an agreement by the manufacturer to make a reduction in the selling price of other products or services which will equal or exceed the total dollar amount of the upward adjustment granted. Manufacturers whose total dollar sales for the calendar or fiscal year ending in 1942 exceeded $500,000 must file application with the Office of Price Administration at Washington, D. C. Other applications may be filed with the nearest regional office of the Office of Price Administration.

§ 811.1134 *Compliance*—(a) *Responsibility of contracting officers.* (1) Contracting officers, in executing contracts, unless otherwise specifically directed, are not required to verify the prices charged by any vendor or contractor against the maximum prices fixed in accordance with the Emergency Price Control Act of 1942, and in the absence of actual knowledge of violation of price limitations, they may assume that prices charged do not exceed maximum prices. Likewise, in connection with cost-plus-a-fixed-fee contracts, contracting officers in approving items for reimbursement are not responsible for determining whether the costs of materials, supplies, tools, equipment or machinery exceed the maximum prices thus fixed. In the interests of economical purchasing, however, contracting officers are expected to exert reasonable effort to be familiar with the OPA regulations that apply to the commodities and services which they buy.

(2) Where a contracting officer is definitely informed that the price or proposed price of a commodity or service is in excess of the OPA maximum, he should proceed as follows:

(i) Try to negotiate a reduction in the price to conform to the OPA standard;

(ii) If such a reduction proves impossible, endeavor to have the contractor file an application for an adjustment of the established maximum price with OPA under Procedural Regulation 6 (see § 811.1133 (d));

(iii) If necessary, and if immediate deliveries can be made, make emergency purchases for immediate delivery in excess of the OPA maxima, complying with the requirements set forth in § 811.1133 (c);

(d) If recourse to the foregoing methods proves unsuccessful and the contracting officer believes an impairment of production of essential war material is threatened, report should be made at once to the chief of the technical service concerned and the services of the Price Regulation Branch enlisted to remove the impediment.

(e) As a last resort, the statutes provide for the requisition of needed articles already in existence, and for mandatory orders to compel the supply of essential military items. For the conditions and procedures governing the use of these methods, see § 802.246 (a) and Part 814.

(b) *Acceptance of contractor's certification.* The action of certifying and disbursing officers in connection with such price limitations is governed by Fiscal Directive SPBFA–11A, June 19, 1942, providing as follows:

1. The certification now required on Standard Form No. 1034–revised, as used in connection with payments made to vendors or contractors for purchases or services rendered other than personal will be continued in use and is a proper and sufficient warranty of compliance by the vendor or contractor with the price ceilings established in accordance with the provisions of the Emergency Price Control Act of 1942, Public Law 421, approved January 30, 1942.

2. In the absence of actual knowledge of violation of price limitations, certifying officers may rely upon the certificate of the vendor or contractor as to the correctness of the prices charged and will not be required to verify such prices against maxima established by the Office of Price Administration. Disbursing Officers may rely upon their records and the certificate of the vendor or contractor and will not be required to verify such maxima prices.

3. Disbursing officers will make payment in accordance with the above outlined procedure.

The form of certification (Standard Form 1034) is as follows:

I certify that the above bill is correct and just; that payment therefor has not been received; that all statutory requirements as to American production and labor standards, and all conditions of purchase applicable to the transactions have been complied with; and that State or local sales taxes are not included in the amounts billed.

The words "the above bill is correct and just" and "all conditions of purchase applicable to the transactions have been complied with" constitute a proper and sufficient warranty by the vendors and contractors that the prices billed are within any applicable price ceilings established by the OPA. Accordingly, no additional certificate or statement by the vendors and contractors with respect to maximum prices should be required. Also, no special certificate accompanying quotations, or warranty in the contract with respect to compliance with price regulations will be required.

(c) *Exemption from liability of contracting and finance officers.* Supplementary Order No. 7, entitled "Removal of Liability of War Procurement Agencies and Governments whose Defense is Vital to the Defense of the United States," effective July 11, 1942, provides that prohibitions contained in maximum price regulations against buying or receiving a commodity or service at a price higher than the permitted maximum shall not apply to (1) any War Procurement Agency of the United States or any contracting or paying finance officer thereof or (2) the Government of any country whose defense is deemed by the President to be vital to the defense of the United States under the terms of the act of March 11, 1941. It provides further that any such War Procurement Agencies or contracting or paying finance officers of any such government or agency, shall be relieved of any criminal or civil liability imposed by a maximum price regulation or by the Emergency Price Control Act of 1942. The OPA statement of considerations involved in the issuance of Supplementary Order No. 7 states such purchases are typically not purchases "in the course of trade or business" within the meaning of the act.

(d) *Non-exemption of contractors holding War Department contracts.* The OPA has advised, however, that this exemption is applicable only to Government contracting officers in connection with Government purchases and does not extend to purchases made by contractors even when operating under cost-plus-a-fixed-fee contracts, and even though purchases made by them are reimbursable by the Government. Cost-plus-a-fixed-fee contractors, as well as all other prime contractors, are buyers "in the course of trade or business" within the meaning of section 4 (a) of the Emergency Price Control Act of 1942, and are, therefore, subject to the prohibitions of that section.

§ 811.1135 *Index of Army purchase items.* For convenience of identification of applicable price regulations an index of articles commonly purchased for the Army, taken substantially from Army Purchase Information Bulletin, is incorporated in this section (paragraph (b)) followed by a further list of the Price Regulations by numerical sequence (paragraph (c)). These lists are subject to revision and must be used with caution, bearing in mind that OPA is constantly issuing changes and revisions, and from time to time is placing articles now under the GMPR under the control of specific price regulations, or shifting them from the coverage of one MPR to another.

(a) *OPA revisions of price regulations.* Whenever the Office of Price Administration makes an industry-wide revision of ceiling prices on any item purchased by the War Department, or other revision in ceiling prices affecting products purchased by the War Department, the chief of the technical service involved will notify all contracting officers concerned and the service's Price Analysis Section.

(b) *General index of articles purchased and applicable OPA regulations.*[1]

(c) *Maximum price regulations and price schedules by number and title.*[1]

SUBPART E—CONTROLLED MATERIALS PLAN

§ 811.1140 *Revision of existing supply contracts to conform to production schedules authorized under Controlled Materials Plan*—(a) *Effect of reduced allotments of materials.* Under the Controlled Materials Plan (CMP) some Army suppliers from time to time will receive allotments of controlled materials which are less than the materials necessary to meet the production schedules in effect under existing contracts. Normally, the production schedule authorized on Form CMP–10 will reflect these reduced quantities. In cases where the end item schedule has not been reduced in line with the reduced allotments, a letter is sent to the contractor explaining the factors (for example, changed specifications, reduced requirements of spare parts, and prior allocations) which will enable him to meet the required production schedule with the materials allotted to him.

(b) *Coordination with CMP officers.* Schedules of production authorized on Form CMP–10 are controlling and must be put into effect by appropriate contract adjustments. CMP officers have been instructed to inform contracting officers of revised schedules, and whenever practicable to consult with them concerning the distribution of any reduced allotment among the various contractors concerned. Close coordination between contracting officers and CMP officers is required in order that changes in or amendments of outstanding contracts may be promptly effected where made necessary by revisions in schedules.

(c) *Protection of contractor.* Under the usual "Delays-Damages" article (see § 803.352) in most War Department contracts, the delay of a contractor is treated as excusable if it is without fault or negligence on the part of the contractor and is due to "unforeseeable causes beyond his control, including any preference, priority, or allocation order issued by the Government." A possible statutory exemption from liability for delay is also to be found in a clause of Title III of the Second War Powers Act, 1942, reading as follows:

(7) No person shall be held liable for damages or penalties for any default under any contract or order which shall result directly or indirectly from compliance with this subsection (a) or any rule, regulation, or order issued thereunder, notwithstanding that any such rule, regulation, or order shall thereafter be declared by judicial or other competent authority to be invalid.

Nevertheless, a contractor is entitled to the protection of an amendment to

[1] Filed with the Division of the Federal Register.

his contract to reflect accurately the changes in the production schedule which are made necessary or appropriate by the reduction in allotments. Such changes will be effected promptly by appropriate supplemental agreement (or change order where a change order can effect the necessary adjustment).

(d) *Adjustment of schedules in contracts.* Appropriate adjustment of a contract to conform to reduced schedules made necessary under the Controlled Materials Plan or otherwise may in many cases be made under contract provisions already in effect, if the contract contains such provisions (see, for example, §§ 803.329, 803.329a and 803.351 (c)). Where a contract contains no provision permitting such an adjustment, the chief of the supply service concerned is authorized to amend the contract by supplemental agreement, inserting one or more of the contract articles contained in §§ 803.329, 803.329a and 803.351 (c) so as to provide in the contract itself authority for the making of any later adjustments made necessary by changes in the CMP allotments (see § 811.1233).

(e) *Upward adjustment of price.* Where a reduction in allotments so changes or interrupts the contractor's operations as substantially to increase the unit costs of any of the items procured, an equitable adjustment in the contract price in addition to a modification of the production schedule is also authorized to be made, either under an appropriate contract provision providing such an adjustment or by supplemental agreement (see § 812.1233).

(f) *Downward adjustment of price.* In cases where production schedules are to be stepped up as a result of a speedier flow of materials under a CMP allotment, the contract will be appropriately amended to accomplish this result. Where an increase in allotment so accelerates the contractor's operations as to produce a substantial saving in unit costs, contracting officers will, where possible, negotiate a reduction in unit price in connection therewith (see § 812.1251 (b)).

§ 811.1141 *Allotment of materials for new contracts.* Under the Controlled Materials Plan, it is essential that each new contract let be accompanied by a sufficient allotment of material to enable the contractor to enter into production as called for under the contract. Consequently, before a contract is let or a letter contract or letter of intent executed, contracting officers should coordinate with CMP officers to make sure that controlled materials are expected to be available in the quantity required, and that each contractor is asked to submit an estimate of the controlled materials required along with his proposal or bid. Upon the execution of a contract, arrangements should be made with CMP officers to issue allotments as required to meet the production schedules of the contract.

SUBPART F—CONTRACTS INVOLVING RUBBER OR SYNTHETIC RUBBER

§ 811.1150 *Agreement with Rubber Reserve Company.* (1) Rubber Reserve Company, a subsidiary of Reconstruction Finance Corporation, owns and controls the supply of all natural rubber and substantially all synthetic rubber in this country. Effective June 1, 1943 Rubber Reserve Company found it necessary to increase its price for natural rubber from 22½ cents per pound to 40 cents per pound, but reduced its prices for synthetic rubber to 36 cents per pound for GRS (Buna S); 33 cents per pound for GRI (Butyl); and 45 cents per pound for GRM (Neoprene Type GN).

(2) In order to avoid the necessity of adjusting the outstanding contracts of the War Department and subcontracts therunder based on a price for natural rubber of 22½ cents per pound and in order to facilitate transition from natural to synthetic rubber and to simplify future procurement of rubber products, the War Department has made an agreement with Rubber Reserve Company to pay directly to it part of the cost of such natural and synthetic rubber used for War Department purposes and thereby to maintain lower, stable, prices to rubber manufacturers for such natural and synthetic rubber.

(3) Under this agreement Rubber Reserve Company will supply natural and synthetic rubber to War Department contractors and subcontractors upon payment by them to Rubber Reserve Company at the following rates per pound.

Type	Price per pound (cents)
Natural	22½
GRS Synthetic (Buna S)	18½
GRI Synthetic (Butyl)	15½
GRM Synthetic (Neoprene Type GN)	27½

These rates apply to natural, GRS and GRI Synthetic used after June 1, 1943 and to GRM synthetic used after August 1, 1943.

(4) The War Department will pay Rubber Reserve Company the difference between these amounts and the prices fixed by Rubber Reserve Company specified in subparagraph (1) above, or such lower prices as the Rubber Reserve Company may fix from time to time. This contract will remain in force until June 30, 1944 unless extended by the War Department or terminated on ninety days' notice before that date.

§ 811.1151 *Administration of agreement.* (a) To simplify administration of this agreement with Rubber Reserve Company the Ordnance Department is handling the contract on behalf of the entire War Department and will administer it for all of the technical services.

(b) Rubber Reserve Company will obtain from rubber manufacturers reports of the amount of natural and synthetic rubber used on account of War Department contracts and subcontracts and will bill the War Department monthly through the Ordnance Department on the basis of these reports showing the amount due with respect to the contracts and subcontracts of each technical service.

(c) The chief of each technical service has been directed to make available to the Ordnance Department by special allotment or otherwise sufficient funds to cover the estimated amounts payable to Rubber Reserve Company under this agreement with respect to its contracts and subcontracts up to June 30, 1944. The Chief of Ordnance is authorized to issue such directives or instructions to the chiefs of the other technical services as he deems necessary for the administration of the agreement and the furnishing of such allotments.

§ 811.1152 *Effect of agreement on contracts involving natural rubber.* (a) Since natural rubber will continue to be supplied to rubber manufacturers by Rubber Reserve Company at 22½ cents per pound as heretofore, existing contracts made on this basis will not need to be adjusted.

(b) Likewise, future contracts involving the use of natural rubber can continue to be made on the same basis of 22½-cent rubber, as heretofore.

§ 811.1153 *Existing contracts involving synthetic rubber.* (a) The prices for synthetic rubber specified in the agreement between Rubber Reserve Company and the War Department are substantially lower than the prices previously in effect for the same types of synthetic rubber.

(b) Accordingly, the prices under existing contracts involving the use of synthetic rubber and made on the basis of the prices in effect before the agreement, should be promptly adjusted to reflect the reduced prices for such synthetic rubbers.

(c) By its Circular No. 21 dated May 31, 1943, the Rubber Reserve Company has directed all rubber manufacturers to report to it all existing contracts made on the basis of prices for natural or synthetic rubber higher than those fixed by the agreement with the War Department and has directed such rubber manufacturers promptly to adjust their prices under such contracts to reflect the reduced prices for synthetic.

§ 811.1154 *Conversion from use of natural rubber to use of synthetic.* (a) At the present time the cost of processing synthetic rubber is greater than the cost of processing natural rubber for many types of articles. The lower price per pound for synthetic rubber as compared to natural rubber will offset to the extent of the price differential the additional costs of processing such synthetic rubber.

(b) In the cast of certain types of commodities such as tires, the shift from natural to synthetic rubber involves an additional factor affecting costs of production. When such commodities are made from natural rubber it is often possible to use a substantial amount of reclaimed rubber which is much less expensive than either natural or synthetic. When the same commodities are made from synthetic rubber, however, it is at present not feasible to use reclaimed rubber to the same extent or at all. Consequently, synthetic must be substituted not only for the natural rubber but also for the reclaimed rubber in such cases.

(c) When it becomes necessary to amend the specifications under existing contracts under the "changes" article to substitute synthetic rubber for natural rubber, the contract price must be equitably adjusted in accordance with

that article. In fixing this adjustment it is necessary to take into account, (1) any additional costs of processing synthetic in place of natural rubber; (2) the lower price per pound of synthetic as compared with natural rubber; (3) the extent to which reclaimed rubber is superseded by synthetic; (4) any other factors relevant in the particular case. Accordingly, the adjustment under any particular contract will depend primarily on the circumstances with respect to processing and the ratio of natural and reclaimed rubber in the particular type of commodity.

(d) Likewise, when new contracts are made for the manufacture from synthetic rubber of commodities previously made from natural rubber, the proper price will depend on the consideration of the same factors discussed in paragraph (c).

§ 811.1155 *Price adjustment provisions.* In order to assure rubber manufacturers that they may fix their prices on the basis of the cost for natural and synthetic rubber specified in the agreement between the War Department and Rubber Reserve Company a special price adjustment article contained in § 803.351 (a) has been authorized for use in contracts involving natural or synthetic rubber (see § 812.1232 (b)). It provides for equitable adjustment in the contract price to the extent that any change in the price payable for natural or synthetic rubber affects the cost of performing the contract.

SUBPART H—MISCELLANEOUS MATTERS

§ 811.1180 *Discounts in purchasing—*(a) *General rule.* Frequently contractors include in their bids offers of discounts for cash or prompt payment. In view of the volume of purchasing being presently done, it is frequently not practicable to effect prompt payment and thus take advantage of these provisions. It is therefore apparent that if these offers were taken into account in deciding whether to award a contract to one contractor rather than another, the decision to award the contract to one might be made on the basis of an offer of a cash discount the benefit of which the Government would never receive. The rule has therefore been established that offers of a discount for cash or prompt payment will be disregarded in deciding between two possible contractors.

(b) *Example.* Let us assume that bids are solicited, informally, or otherwise, and two contractors submit bids. Contractor A quotes a price of $1.00 per unit with an offer of a 10% discount for prompt payment. Contractor B quotes a price of $1.10 per unit. Disregarding A's offer of a 10% discount, the contracting officer nevertheless decides that the contract will be awarded to contractor A because his unit price of $1.00 is lower than that quoted by contractor B. The question now arises whether the rule set forth in paragraph 1180.1 requires that A's offer of discount for prompt payment should be disregarded. The answer obviously is that it should not be disregarded. The discount provision should be included in the contract. It was disregarded in making the decision to award the contract to A, but once the contract was awarded to A, the Government should take advantage of all of the terms offered by contractor A.

(c) *Ratification of past action.* Because of the misunderstanding of previous regulations, it appears that in some instances contracting officers have felt that it was necessary, under the circumstances set forth in paragraph (b), to omit from the contract any provision with respect to discounts. Their action in doing so is hereby ratified.

(d) *Fiscal aspects of discounts.* For fiscal aspects of cash discounts, see AR 35-6200, as amended by Change No. 1, published under date of July 29, 1943.

§ 811.1181 *Contingent fees.* In connection with purchases and subcontracting by cost-plus-a-fixed-fee contractors, the vendor or subcontractor involved should not be permitted to pay third-party intermediaries a commission, percentage, brokerage, or contingent fee based upon the amount of the order or subcontract where the services performed by such intermediaries are merely the obtaining of the order of, if additional services are in fact performed by such intermediaries, the fees are disproportionate. To accomplish the foregoing it is essential that the attention of contracting officers be directed to the necessity of taking effective administrative measures so as to bring such practices to light with a view to their elimination. In some cases the prime contractor may be directed to require the disclosure by the vendor or subcontractor, as a condition to award, of any contingent or broker's fee or commission which may be included in the price quoted by such vendor or subcontractor.

In many cases third-party intermediaries and others in similar categories are capable of and do perform valuable services in connection with the purchasing and subcontracting, for which they are entitled to a return. In such cases it is not the purpose to limit the opportunities to obtain increased production by prohibiting altogether the use of such intermediaries by vendors and subcontractors. The purpose to be accomplished, however, is to prevent the abuses inherent in the inclusion in the purchase price or subcontract price of a commission, percentage, brokerage, or contingent fee in an amount not related to the services performed and the payment of such fees where the only service performed is the obtaining of the order for the vendor or subcontractor.

§ 811.1182 *Track-scaling of loaded railroad cars.* Provisions should not be inserted in construction or supply contracts in which payment for the materials or supplies is based on "railroad weights." The result of inserting such a provision is frequently to require railroads to incur unnecessary delay and expense in arriving at such weights, sometimes necessitating back-hauling for track-scaling. The railroads through territorial weighing bureaus enter into agreements with many of their shippers under which the railroads accept the invoice-weight of the shipper subject to periodical checks and test weights. This avoids the necessity for track-scaling the car. All reference to "railroad weights" will be omitted from requests for quotations or estimates and from the resulting contracts or orders for all materials and supplies including coal. Particular care should be taken to insure that the words "railroad weights" do not appear in the Schedule of Supplies (Schedule A) of future contracts or in any "Instructions to Bidders" or Purchase Conditions. In lieu of the words "railroad weights", there will be inserted the words "weights acceptable to railroad for freight charge purposes." Outstanding construction and supply contracts containing the words "railroad weights" should be amended to change those words to the wording indicated above. Reference is made to Circular No. 284, War Department, 1942 for the terms of the War Department Traffic Weight Agreement entered into by the War Department with representatives of certain carriers.

§ 811.1182a *Ordering of less than full carloads to be avoided.* In view of the shortage of transportation facilities, it is apparent that it is wasteful to have a railroad car move with less than a full load. Therefore, unless other factors make such action unwise, supplies should be ordered in amounts equal to one or more full carloads; and the practice of ordering amounts that will result in the loading of a portion of a railroad car should be avoided.

§ 811.1183 *Ordering of spare parts.* The chief of each technical service will adopt definite policies with respect to the ordering of spare parts for use in connection with all equipment purchased.

(a) Every order providing for the delivery of air-cooled engines of 32 horsepower and under, or for units of which such engines are a component part, shall provide for delivery simultaneously with the first shipment of engines of not less than 10% of the total engine spare parts called for in such order. Such order shall further provide for the subsequent delivery of spare parts so that when 20% of the engines have been delivered at least 30% of all such spare parts will likewise have been delivered and so that deliveries of spare parts shall thereafter parallel deliveries of engines.

§ 811.1184 *Contracts with foreign nationals.* (a) By virtue of Executive Order No. 8389, April 10, 1940, as amended, and Treasury Department regulations issued pursuant thereto, the award of contracts in which certain foreign countries or nationals thereof have any interest is prohibited.

(b) The above prohibition does not apply to contracts with individuals, partnerships, associations, corporations, or other organizations which have been granted a general or special license by the Secretary of the Treasury.

(c) Whenever a contracting officer has reason to believe that any prospective contractor is subject to the above prohibition he should inquire of the chief of the technical service concerned or the nearest Federal Reserve Bank as

to the eligibility of the prospective contractor.

§ 811.1185 *Contracts with blocked nationals.* (a) The Secretary of State from time to time publishes lists of persons and organizations deemed to be acting directly or indirectly for the benefit of the enemy. Copies of these lists will be made available to the chiefs of the technical services.

(b) No contract will be knowingly awarded to any person or organization so listed.

§ 811.1186 *Limitation on purchase of arms, ammunition and implements of war.* (a) No purchase of arms, ammunition, or implements of war shall be made on behalf of the United States by any officer, executive department, or independent establishment of the Government from any person who shall have failed to register under the provisions of subsection 12 (g) of Public Resolution of November 4, 1939 (Pub. Res. No. 54—76th Cong.).

(b) Articles which are considered arms, ammunition and implements of war will be proclaimed from time to time by the President. Chiefs of the technical services concerned will publish such information to the contracting officers concerned and secure compliance with the above limitation.

§ 811.1187 *Restrictions on purchases of selected items for the duration of the war.* Circular No. 420 issued by the Director, Bureau of the Budget, under date of May 21, 1943, provides as follows:

TO THE HEADS OF EXECUTIVE DEPARTMENTS, INDEPENDENT ESTABLISHMENTS AND AGENCIES

Subject: Restrictions on Purchases of Selected Items for the Duration of the War

The necessity for maximum curtailment of expenditures by all agencies, and the scarcity of materials used in the manufacture of numerous office equipment and supply items, require immediate administrative action to limit the purchase of luxury and nonessential items.

The head of each Government agency is hereby requested to issue instructions to all offices under his jurisdiction, prohibiting, for the duration of the war, the purchase in the commercial market of the following list of items, as well as any additional items which he may choose to add.

1. All items of steel furniture, such as desks, tables, chairs, stands, file cabinets, supply cabinets, wardrobes, costumers, coat racks, etc.
2. All items of leather upholstered furniture, such as chairs, davenports, etc.
3. Baskets, waste, metal.
4. Book ends.
5. Calendar pads and stands, other than standard Government specification, as furnished from Procurement stock or from the General Schedule of Supplies.
6. Carafes and carafe sets.
7. Carpets.
8. Cases, brief, leather.
9. Clocks.
10. Cushions, chair, rubber, cork, or from similar critical material.
11. Cuspidors.
12. Desks (over $100).
13. Frames, picture (except frames for maps or charts).
14. Guards, telephone wire or coil.
15. Lamps, desk and floor.
16. Letter openers, metal.
17. Mats, chair, from rubber or similar critical material.
18. "Memo-pal" or similar metal roller-type memo pads.
19. Mirrors.
20. Pens, fountain, desk sets (over $2.00).
21. Plate glass tops for desks, tables, etc.
22. Rugs.
23. Shears.
24. Stands, smoking.
25. Tables (over 96 inches).
26. Trays, ash.
27. Trays, desk, metal.
28. Work organizers, leather.

Many of the items listed above will be available from time to time from Federal surplus property stocks and may be obtained from that source by filing Purchase Authority with the appropriate Regional Property Officer of Treasury Procurement. [See paragraph 613 and following.]

In the event any of the items listed herein are found to be absolutely necessary for operation and unavailable from surplus stores of the Procurement Division, requests for purchase in the commercial market should be submitted to the head of the agency for advance approval.

Instances have been reported where agencies, especially through their field offices, have ignored War Production Board priority regulations and purchased such items as stapling machines, staples, gem clips, rubberbands, twine, etc., in local markets at exorbitant prices. Any steps necessary should be taken to prevent such purchases.

It will be appreciated if three copies of instructions issued pursuant to this circular are forwarded to the Equipment and Supply Section, Estimates Division, Bureau of the Budget, upon issue.

HAROLD D. SMITH,
Director.

(a) The purchase of the items referred to in the circular set forth above, is prohibited for the duration of the war except for essential war needs. No such item will be purchased without the prior approval of the Director, Purchases Division, Headquarters, Army Service Forces. Requests for such approval will be forwarded through channels and must be accompanied by a complete statement of facts showing that the proposed purchase is for an essential war need.

§ 811.1188 *Advertising*—(a) *Basic statutes.* (1) No advertisement, notice, or proposal for any Executive Department of the Government, or for any Bureau thereof, or for any office therewith connected, shall be published in any newspaper whatever, except in pursuance of a written authority for such publication from the head of such Department; and no bill for any such advertising, or publication, shall be paid, unless there be presented, with such bill, a copy of such written authority. (R. S. 3828; 44 U.S.C. 324; M. L., 1929, sec. 1829)

(2) Hereafter all advertisements, notices, proposals for contracts, and all forms of advertising required by law for the several departments of the Government may be paid for at a price not to exceed the commercial rates charged to private individuals, with the usual discounts; such rates to be ascertained from sworn statements to be furnished by the proprietors or publishers of the newspapers proposing so to advertise: *Provided,* That all advertising in newspapers since the tenth day of April, eighteen hundred and seventy-seven, shall be audited and paid at like rates; but the heads of the several departments may secure lower terms at special rates whenever the public interest requires it. Act June 20, 1878 (20 Stat. 216; 44 U. S. C. 322; M. L., 1929, sec. 1827).

(3) First War Powers Act: The Judge Advocate General, in an opinion dated 4 August 1943 (SPJGC 1943/10580) has expressed the view "that compliance with the provisions of section 3828 of the Revised Statutes would limit and restrict the freedom of action granted by the First War Powers Act, 1941, to facilitate the prosecution of the war, and that the operation of such statute to the extent that it limits the broad authority granted by the First War Powers Act, 1941, is suspended thereby."

(b) *Delegation of authority.* (1) The responsibility for authorizing advertising has been assigned by the Secretary of War to the Under Secretary of War (see § 801.107 (c)). Pursuant to Circular 181, War Department, 10 June 1942, this responsibility was further delegated "subject to the direction of the Under Secretary of War, to the Commanding General, Army Air Forces, so far as [it relates] to supplies or equipment peculiar to the Army Air Forces; and subject to the same direction, so far as [it relates] to all other supplies and equipment, to the Commanding General, Services of Supply, or to such person or persons as they may designate." The authority so delegated is hereby further delegated to the chiefs of the technical services.

(2) The responsibility for authorizing advertising through the medium of newspapers or otherwise, which is delegated to the chiefs of the technical services by subparagraph (1), is not to be confused with the responsibility for authorizing the placing of contracts by formal advertising rather than by negotiation. This latter responsibility is vested in the Director, Purchases Division, Headquarters, Army Service Forces (see § 802.240 (b)).

(c) *Ratification.* Prior to the promulgation of paragraph (b), the chiefs of the technical services had not expressly been delegated authority to authorize advertising. The Judge Advocate General, however, in the opinion referred to in paragraph (a) expressed the view that the delegations set forth in § 801.107 (f) gave the Director, Purchases Division, Headquarters, Army Service Forces authority to approve advertising; and that the action of the chiefs of the technical service in authorizing advertising may "be ratified by the Director of the Purchases Division, if it is determined that such action facilitated the prosecution of the war". Accordingly, if any advertising was done subsequent to June 29, 1942, without approval of the Director, Purchases Division, Headquarters, Army Service Forces (or some higher authority) a request may be made to said Director that such advertising be ratified. The request should be accompanied by a full statement of the facts and a determination by the chief of the technical service that such advertising facilitated the prosecution of the war.

[Procurement Reg. 12]

PART 812—RENEGOTIATION AND PRICE ADJUSTMENT

Sec.
812.1200 Scope of part.

SUBPART A—STATUTORY RENEGOTIATION

812.1201 Definitions; scope of subpart.

Renegotiation Statute and Exemptions

812.1202 Statutory provisions.
812.1203 Effect of 1943 act.
812.1204 Mandatory exemption from statutory renegotiation.
812.1205 Discretionary power to exempt certain contracts and subcontracts.

Contract Articles for Renegotiation

812.1207 Articles authorized.
812.1208 Use of articles.
812.1209 Optional provisions in subcontracts.
812.1210 Use of other articles.

Statutory Renegotiation; Policy and Procedure

812.1213 Administration of statutory renegotiation.
812.1214 Effect of statutory renegotiation on price adjustments by contracting officers.

SUBPART B—CONTRACT ARTICLES FOR PRICE ADJUSTMENT ON THE BASIS OF PRODUCTION EXPERIENCE

812.1220 Scope of subpart.
812.1221 Effect of articles.
812.1222 Relation to other price adjustment articles.
812.1223 Price redetermination by formula.
812.1224 Negotiated revision of entire contract price, upward or downward.
812.1225 Article for converting fixed-fee contracts to fixed price basis.
812.1226 Incentive provisions for fixed-fee contracts.

SUBPART C—CONTRACT PROVISIONS FOR PRICE ADJUSTMENT UPON CONTINGENCIES AND SHORT-TERM PRICING

812.1230 Scope of subpart.
812.1231 Changes article.
812.1232 Escalation.
812.1233 Interruption of production schedules by Government action.
812.1234 Operation of articles.
812.1235 Article for short-term pricing.
812.1235a Article for optional periodic adjustment of price.
812.1236 Periodic adjustment of price without provision for exemption from renegotiation.

SUBPART D—CONTRACT ARTICLES FOR PERIODIC READJUSTMENT OF PRICE AND EXEMPTION FROM RENEGOTIATION

812.1240 Articles authorized.
812.1241 Effect of articles.
812.1242 Purpose of articles.
812.1243 Use of articles.
812.1244 Insertion of statutory renegotiation article.
812.1245 Deleted.
812.1246 Price adjustments under the articles.
812.1247 Inserting articles in existing contracts.

SUBPART E—PRICE ADJUSTMENTS WITHOUT CONTRACT PROVISIONS

812.1250 Scope of subpart.
812.1251 Amendments with consideration.
812.1252 Amendments without consideration.

SUBPART H—AUDITS AND INSPECTIONS UNDER TITLE XIII OF THE SECOND WAR POWERS ACT

812.1260 Basic statute.
812.1261 Executive order.
812.1262 Delegations of authority under Title XIII of the Second War Powers Act, 1942.
812.1263 Preliminary steps before audit or subpena.

SUBPART I—MANDATORY PRICING AND REPRICING OF ARTICLES AND SERVICES

812.1270 Statutory basis for mandatory pricing and repricing.
812.1271 Delegations of authority.
812.1272 Definitions.
812.1273 Scope of statute.
812.1274 General application of the statute.
812.1275 Voluntary negotiation with respect to prices deemed to be unfair or unreasonable.
812.1276 Mandatorily requiring negotiation.
812.1277 Agreements resulting from voluntary or mandatory negotiation.
812.1278 Issuance of order fixing fair and reasonable price.
812.1279 Notification of technical services of service of order.
812.1280 Preservation of data upon which orders are based.
812.1281 Method of service.
812.1282 Form of requirement to negotiate fair and reasonable prices.
812.1283 Form of order fixing fair and reasonable price.

APPENDIX

812.1289 Reference to Renegotiation Regulations.
812.1290 Rulings of War Contracts Price Adjustment Board relating to exclusions or mandatory exemptions from statutory renegotiation.
812.1291 Rulings of War Contracts Price Adjustment Board relating to discretionary exemptions from statutory renegotiation.
812.1292 Determination by the Quartermaster General of perishable commodities.

§ 812.1200 *Scope of part*—(a) *General.* This part deals with policies and contract provisions of all types relating to the adjustment of prices under contracts with the War Department and subcontracts thereunder. Subpart A deals with the contract provisions and procedure for statutory renegotiation under those provisions of the Renegotiation Act pertaining to fiscal years ending after June 30, 1943. Subparts B to D discuss various optical clauses providing for price adjustment independently of statutory renegotiation. Subpart E discusses the adjustment of prices under the First War Powers Act in order to adapt contracts to changing conditions and to relieve contractors from hardship. These contract clauses and policies are intended to carry out the general purchase policies stated in Part 802.

(b) *Regulations rescinded.* Temporary Procurement Regulations 10–T and 17–T, issued April 30, 1942 and May 11, 1942, by Headquarters, Army Service Forces, and all directives and instructions relating to contract provisions for revision and renegotiation of contract prices, issued prior to 1 July 1942 have been rescinded (see § 801.104).

SUBPART A—STATUTORY RENEGOTIATION

§ 812.1201 *Definitions; scope of subpart*—(a) *Definitions.* As used in this part, the following terms have the meaning set forth below:

(1) "Renegotiation Act of 1943"; "1943 act": These terms mean section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942 (Public Law 528, 77th Congress, approved April 28, 1942) as amended by section 701 of the Revenue Act of 1943 (Public Law 235, 78th Congress, enacted February 25, 1944) and as effective with respect to fiscal years ending after June 30, 1943;

(2) "Renegotiation Act of 1942"; "1942 act": These terms mean section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended through July 14, 1943, and as further amended by those provisions of section 701 of the Revenue Act of 1943 which are made effective as if they had been a part of Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended, on the date of its enactment. (See Public Law 235, 78th Congress, sec. 701 (d).)

(3) "Statutory renegotiation": This term means renegotiation pursuant to the provisions of the Renegotiation Act of 1943.

(4) "Department": This term means the War, Navy, and Treasury Departments, the Maritime Commission, the War Shipping Administration, the Defense Plant Corporation, Metals Reserve Company, Defense Supplies Corporaton and Rubber Reserve Company.

(5) "Secretary": This term means the Secretary of the War, Navy, and Treasury Departments, the Chairman of the Maritime Commission, the Administrator of the War Shipping Administration, and the Boards of Directors of the Defense Plant Corporation, Metals Reserve Company, Defense Supplies Corporation and Rubber Reserve Company.

(6) "War Contracts Board": This term means the War Contracts Price Adjustment Board established by the Renegotiation Act of 1943.

(b) *Scope of subpart.* This subpart A discusses the various aspects of statutory renegotiation. Sections 812.1202 to 812.1205 deal with the provisions of the Renegotiation Act of 1943 (§ 812.1201 (a) (1)) and the exemptions and exclusions therefrom. Sections 812.1207 to 812.1210 discuss the contract articles for statutory renegotiation and their use. Sections 812.1213 and 812.1214 deal generally with the policies and procedures governing statutory renegotiation. Renegotiation pursuant to the Renegotiation Act of 1942 (§ 812.1201 (a) (2) is not discussed herein. For the text of the 1942 act and the procedures, policies and interpretations thereunder, reference is made to the Joint Renegotiation Manual and the Army Renegotiation Manual, Part I, which are applicable to fiscal years ending before 30 June 1943.

Renegotiation Statute and Exemptions

§ 812.1202 *Statutory provisions*—(a) *Renegotiation Act of 1943.* For the complete text of the 1943 act, reference is made to the renegotiation regulations issued by the War Contracts Board.

(b) *Section 3806 of the Internal Revenue Code.* Section 3806 of the Internal Revenue Code referred to in subsection (c) (2) of the 1943 act provides that the amount of federal income and excess profits taxes paid or payable with respect to any excessive profits must be credited against the amount of such profits in

computing the amount to be refunded by the contractor or subcontractor, or otherwise recovered.

§ 812.1203 *Effect of 1943 act*—(a) *Coverage.* (1) The 1943 act applies to all contracts made by the Departments and subcontracts thereunder, with the exceptions stated under §§ 812.1203 (d), 812.1204 and 812.1205. With those exceptions the 1943 act directs the War Contracts Board to renegotiate with every contractor with a Department, and every subcontractor under a contract with a Department, whenever in its opinion the profits received or accrued under such contracts or subcontracts may reflect excessive profits, whether or not the contract or subcontract contains a renegotiation article (subsection (c) (1)).

(2) Subcontracts as defined in the 1943 act include purchase orders or agreements to perform all or any part of the work, or to make or furnish any article, material, part, assembly, mahinery, equipment or other personal property (except office supplies), required for the performance of another contract or subcontract, and any agreements to procure such contracts or subcontracts. Such subcontracts are not limited to those made by the prime contractor but include those made by subcontractors and lower tiers of subcontractors unless specifically exempt (subsection (a) (5)).

(b) *Contract articles.* With certain exceptions discussed under §§ 812.1204 and 812.1205, the 1943 act requires that each prime contract over $100,000 contain a contract article dealing with renegotiation. (See §§ 812.1207 to 812.1210, 803.342 (a), (b) and (c). As stated in paragraph (a), contracts or subcontracts which do not include a renegotiation article are nevertheless subject to the 1943 act unless such contracts or subcontracts are expressly excluded.

(c) *Administration of renegotiation.* In connection with the provisions of the 1943 act relating to its administration and the application of such provisions, reference is made to the renegotiation regulations to be issued by the War Contracts Board and the supplementary instructions issued thereunder.

(d) *Exclusions.* (1) The 1943 act is inapplicable to any contract or subcontract on which final payment was made before April 28, 1942.

(2) The 1943 act is inapplicable if the aggregate amount received or accrued by the contractor or subcontractor and all persons under the control of or controlling or under common control with it under contracts with the Departments and subcontracts thereunder during its fiscal year ending after June 30, 1943, will not exceed $25,000 from subcontracts for procuring contracts or subcontracts or $500,000 from all other contracts with the Departments or subcontracts thereunder.

(3) Certain contracts or subcontracts are exempt or may be exempted from the provisions of the 1943 act under subsection (i) of such act. These exemptions are discussed in §§ 812.1204 and 812.1205.

(e) *Expiration of the act.* Subsection (h) of the 1943 act provides that it shall apply only to profits from contracts and subcontracts which are attributable to performance prior to the "termination date" of the act. Reference is made to subsection (h) of the 1943 act and to the renegotiation regulations issued by the War Contracts Board for the definition of "termination date" and the determination of the profits which are deemed attributable to performance prior to such date.

§ 812.1204 *Mandatory exemptions from statutory renegotiation.* In addition to the treatment of such mandatory exemptions in this § 812.1204 et seq., reference is made to § 812.1290, concerning rulings of War Contracts Board relating to exclusions or mandatory exemptions from statutory renegotiation. This matter is treated at length in the Renegotiation Regulations issued by the War Contracts Board.

(a) *Contracts with governmental agencies.* (1) In this paragraph the term "other Government Agency" includes (i) any department, bureau, agency or governmental corporation of the United States, (ii) any territory, possession or state or any agency thereof, and (iii) any foreign government or any agency thereof.

(2) The 1943 act does not apply to (i) any contract between a Department and any other Government agency; (ii) any contract between a contractor with a Department or a subcontractor thereunder, and any other Government agency; (iii) any contract made by the other Government agency in connection with a contract with one of the Departments, or one of their contractors, or subcontractors, unless the other Government agency is acting merely as an agent for the Department concerned (subsection (i) (1) (A) of the 1943 act).

(3) Accordingly, no article for statutory renegotiation under the 1943 act will be included in any such contract or subcontract.

(4) With respect to contracts with War Supplies Limited see §805.509 (h).

(5) See § 805.1290 (a) for ruling by the War Contracts Board relating to the governmental agency exemption.

(b) *Contracts and subcontracts for products of natural deposits and timber.* (1) By subsection (i) (1) (B), the 1943 act does not supply to

(B) any contract or subcontract for the product of a mine, oil or gas well, or other mineral or natural deposit, or timber, which has not been processed, refined, or treated beyond the first form or state suitable for industrial use.

(2) Contracts hereafter made with the War Department solely for the product of a mine, oil or gas well, or other mineral or natural deposit or timber, should include the standard renegotiation article, if otherwise required, unless it is clear that the product is exempt under this subsection. If the application of this exemption is uncertain, the following provision may be added at the end of the article:

If any regulation issued pursuant to subsection (i) (2) of the Renegotiation Act interprets and applies subsection (i) (1) (B) to exempt from the provisions of said Act, contracts for any product or products covered by this contract, then the contract price for such product or products, if separately stated herein, shall not be subject to renegotiation under this article.

(3) See § 812.1290 (b) for ruling by the War Contracts Board relating to the raw material exemption.

(c) *Contracts and subcontracts for agricultural commodities.* (1) By subsection (i) (1) (C), the 1943 Act does not apply to

(C) any contract or subcontract for an agricultural commodity in its raw or natural state, or if the commodity is not customarily sold or has not an established market in its raw or natural state, in the first form or state, beyond the raw or natural state, in which it is customarily sold or in which it has an established market. The term "agricultural commodity" as used herein shall include but shall not be limited to—

(i) commodities resulting from the cultivation of the soil such as grains of all kinds, fruits, nuts, vegetables, hay, straw, cotton, tobacco, sugar cane, and sugar beets;

(ii) natural resins, saps and gums of trees;

(iii) animals such as cattle, hogs, poultry, and sheep, fish and other marine life, and the produce of live animals, such as wool, eggs, milk and cream.

(2) Contracts hereafter made with the War Department solely for an agricultural commodity should include the standard renegotiation article, if otherwise required, unless it is clear that the commodity is exempt under this subsection. If the application of this exemption is uncertain, the following provision may be added at the end of the article:

If any regulation issued pursuant to subsection (i) (2) of the Renegotiation Act interprets and applies subsection (i) (1) (C) to exempt from the provisions of said Act, contracts for any product or products covered by this contract, then the contract price for such products or products, if separately stated herein, shall not be subject to renegotiation under this article.

(3) See § 812.1290 (b) for ruling by the War Contracts Board relating to the agricultural exemption.

(d) *Contracts and subcontracts with certain religious, charitable and educational organizations.* (1) Subsection (i) (1) (D) provides that the 1943 act shall not apply to

(D) any contract or subcontract with an organization exempt from taxation under section 101 (6) of the Internal Revenue Code.

(2) Contracts hereafter made by the War Department with any charitable, religious or educational organization should include the standard renegotiation article, if otherwise required. If the contracting organization claims the benefit of this exemption, the following provision may be added at the end of the article:

This article shall be inapplicable if it is determined that the Contractor is exempt from the provisions of the Renegotiation Act by reason of subsection (i) (1) (D) of said Act.

(e) *Construction contracts awarded as a result of competitive bidding.* (1) By subsection (i) (1) (E), the 1943 act does not apply to

(E) any contract with a Department, awarded as a result of competitive bidding, for the construction of any building, structure, improvement, or facility.

(2) The War Contracts Board has issued an interpretation and application of this exemption (see § 812.1290 (c)).

(3) Accordingly, no renegotiation article will be inserted in any construction contract which meets the conditions of this exemption. If the application of this exemption is uncertain, the renegotiation article should be inserted in the contract although the following provision may be added:

If by regulation issued pursuant to subsection (i) (2) of the Renegotiation Act, subsection (i) (1) (E) is interpreted and applied to exempt this contract from the provisions of said Act, then the contract price stated herein shall not be subject to renegotiation under this article.

(f) *Subcontracts under exempt contracts or subcontracts.* (1) Subsection (i) (1) (F) provides that the 1943 act shall not apply to

(F) any subcontract, directly or indirectly under a contract or subcontract to which this section does not apply by reason of this paragraph.

(2) Accordingly, it is not necessary to insert in a contract or subcontract which is exempt by reason of subsection (i) (1) of the 1943 act (paragraphs (a) to (e), inclusive) a provision requiring a renegotiation article to be inserted in subcontracts made thereunder.

(3) If a renegotiation article is inserted in a contract or subcontract and the application of subsection (i) (1) to such contract or subcontract is uncertain, the renegotiation article, if otherwise required, should be inserted by the contractor or subcontractor in all subcontracts made by him. However, the provision set forth in § 812.1209 may be added at the end of the article.

(4) See § 812.1290 (d) for ruling by the War Contracts Board relating to the exemption of subcontracts under exempt contracts or subcontracts.

(g) *Subcontracts for office supplies.* The definition of "subcontract" contained in subsection (a) (5) (A) of the 1943 act specifically excludes therefrom subcontracts for office supplies. See § 812.1290 (e) for ruling by the War Contracts Board relating to articles included within the term "office supplies".

(h) *Interpretation and application of mandatory exemptions.* Subsection (i) (2) of the 1943 act provides that the War Contracts Board is authorized to interpret and apply the exemptions discussed in paragraphs (a) to (f) with respect to fiscal years ending after June 30, 1943.

§ 812.1205 *Discretionary power to exempt certain contracts and subcontracts.* In addition to the treatment of such discretionary exemptions in this § 812.1205, et seq., reference is made to § 812.1291 concerning rulings of War Contracts Board relating to discretionary exemptions from statutory renegotiation. This matter is treated at length in the Renegotiation Regulations issued by the War Contracts Board.

(a) *Statutory provisions.* Subsection (i) (4) of the 1943 act provides that the War Contracts Board, in its discretion, may exempt from some or all of the provisions of such Act individually or by general classes or types:

(1) Any contract or subcontract to be performed outside the United States or in Alaska;

(2) Any contracts or subcontracts, the profits from which can be determined with reasonable certainty when the contract price is established;

(3) Any contract or subcontract to the extent that the contract provisions are otherwise adequate to prevent excessive profits;

(4) Any contract or subcontract for a standard commercial article if competitive conditions with respect to the making of such contract or subcontract will reasonably protect the Government against excessive prices. The term "standard commercial article" is defined by subsection (a) (7) of the 1943 act;

(5) Any contract or subcontract if there is effective competition with respect to the contract or subcontract price;

(6) Any subcontract or group of subcontracts if it is not administratively feasible to segregate the profits attributable to the subcontract or group of subcontracts from profits on business not subject to renegotiation.

(b) *Discretionary power to exempt certain contracts and subcontracts by general classes or types.* The authority to exempt by general classes or types contracts and subcontracts of the kind described in subsection (i) (4) of the 1943 act is vested in the War Contracts Board and has not been delegated by it.

(c) *Discretionary power to exempt certain individual contracts or subcontracts.* (1) The Director, Purchases Division, Headquarters, Army Service Forces, may exempt from statutory renegotiation any individual contract or subcontract of the types specified in paragraph (a) in connection with the placement of such contract or subcontract or any amendment or revision thereof.

(2) The chief of a technical service may exempt any such individual contract or subcontract from statutory renegotiation only where express authority to do so is granted (i) by the provisions of Procurement Regulations (see e. g. paragraphs (d) (1), (e), (f), (g), (h), or (2) by special delegation from the Director, Purchases Division, Headquarters, Army Service Forces.

(3) When an individual contract is to be exempted from renegotiation pursuant (i) to subparagraphs (1) and (2) above or other provisions of procurement regulations, or (ii) to any special delegation of authority, the renegotiation article (Form II) described in § 803.342 (b) will be used in the contract so exempted, unless all subcontracts thereunder have also been so exempted. Each contract or subcontract exempted or under which any part of the performance is exempted from statutory renegotiation must contain an explicit statement to that effect and also a statement showing the extent of the exemption, by whom it was granted and the provision of the 1943 act upon which it is based, with appropriate findings of the existence of facts necessary to support the exemption.

(4) When a prime contract is exempted from renegotiation the statement in the contract as to the exemption will contain a statement whether or not and to what extent subcontracts thereunder are to be exempted from renegotiation.

(5) A written report of each exemption granted will be made to the Director, Renegotiation Division, Headquarters, Army Service Forces (through the Director, Purchases Division and the chief of the technical service) giving:

(i) The name of the contractor or subcontractor;

(ii) The number and date of the contract or subcontract;

(iii) The contract price;

(iv) The nature of the work, supplies, or other items furnished under the contract or subcontract.

(d) *Contracts and subcontracts outside of the United States.* (1) The chief of a technical service is authorized, in his discretion, to exempt from some or all of the provisions of the 1943 act any individual contract with his technical service, or any subcontract thereunder, which is to be performed outside of the territorial limits of the continental United States, or in Alaska. This authority applies to contracts and subcontracts heretofore or hereafter made or performed.

(2) Circular No. 43, War Department, 1943, delegated to each commanding general outside of the United States or in Alaska, like authority with respect to contracts made or administered under his authority, and subcontracts thereunder.

(e) *Patent licenses.* The chief of a technical service may exempt from some or all of the provisions of the Renegotiation Act of 1943 any individual contract or subcontract granting a license under a patent or patent application or transferring a patent or patent application to the Government, or to a contractr or subcontractor, if the aggregate royalty payable under the contract or subcontract for its duration or for any stated period is either (1) a fixed amount determinable at the time of the execution of the contract, or (2) limited by contract to a maximum amount determinable at the time of the execution of the contract, and if, in his opinion, the fixed amount or maximum amount will not yield excessive profits to the contractor or subcontractor.

(f) *Exemption from renegotiation in connection with periodic adjustment of prices.* Subpart D of this part authorizes the use under certain conditions of contract articles providing for periodic readjustment of price and corresponding exemption from renegotiation. Where these contract articles are used, the contracting officer in charge of the individual contract is authorized in his discretion, in connection with the placement of such contract or any amendment or revision thereof, to grant exemption from renegotiation in accordance with the contract provisions and the related procurement regulations.

(g) *Exemption of individual contracts and subcontracts for less than $5,000,000.* (1) A chief of a technical service may exempt from statutory renegotiation any individual contract or subcontract for

an amount of less than $5,000,000 of the types specified in § 812.1205 (a). Such exemption shall be granted only in connection with the placement of such contract or subcontract, or any amendment or revision thereof. Exemption from statutory renegotiation of any contract or subcontract for $5,000,000 or more shall be granted only with the approval of the Director, Purchases Division, Headquarters, Army Service Forces. Any request for the approval of an award of a contract for $5,000,000 or more (see § 803.305 (b)) where it is proposed to exempt the contract from statutory renegotiation will disclose that fact.

(2) The authority conferred by subparagraph (1) above will be exercised in any particular case by the chief of a technical service or by anyone to whom such authority has been redelegated only when:

(i) Articles or services the same or substantially similar to those called for in the contract or subcontract have been produced or rendered by the contractor for a period of at least six months prior to the commencement of production or the rendering of service under the contract or subcontract;

(ii) It appears to the person exercising such authority, in the light of the circumstances then known to him, that the total costs of performance to be exempted under the contract or subcontract can be estimated with reasonable accuracy at the time the contract price therefor is established;

(iii) A price analysis has been made and the contract or subcontract price, in the opinion of the person exercising such authority, is established in accordance with the principles enunciated in Army Service Manual M–601 ("Pricing in War Contracts"), if and so far as applicable, and is considered fair and reasonable in the light of prices being currently paid for comparable articles or services and other relevant circumstances;

(iv) The contract contains no provision for price adjustment other than standard articles authorized in these Procurement Regulations;

(v) If the contract contains any of the articles set forth in §§ 803.341 (a) and (b), 803.360a, 803,360a (a) and 803.360 (b), the initial period of production has been completed; and

(vi) If the contract contains the article set forth in § 803.342a the price is finally determined.

(3) In determining whether to grant exemption from renegotiation the person exercising such authority will normally consider the following further factors among others:

(i) Whether and to what extent contingency allowances or charges have been excluded from estimated costs in fixing the price and, so far as included in costs, have been disclosed, segregated and justified in the contractor's proposal;

(ii) Whether in the light of circumstances known to the person exercising such authority, the contemplated profit margin and profit are relatively low;

(iii) Whether in the light of the probable term of the contract the whole period of performance can properly be exempted from statutory renegotiation; and

(iv) Whether, if the contractor's costs are an important factor in price analysis in the particular case, the contractor's cost accounting system is based upon sound and accepted accounting principles consistently applied.

(4) If the contract involves a period of performance of over six months, the person exercising authority to exempt should consider whether some approved price adjustment provision (e. g. the article set out in § 803.360a or in § 803.360 (a)) should not be included in the contract and the exemption limited in length appropriately.

(5) Each proposed exemption should ordinarily be discussed informally with the Price Adjustment Section of the procurement office which is placing the contract.

(6) Where a contract contains a periodic pricing article (see § 803.360 (a) and (b), or an article like those set forth in § 803.360a and 803.360a (a), exemption from renegotiation should not be granted with respect to the entire contract but only until the next succeeding price adjustment.

(h) *Exemptions of individual contracts within stated classifications where profits can be determined with reasonable certainty when the contract price is established.* (1) In connection with the placement, revision or amendment of any contract or subcontract falling within a classification set forth below, the chief of each technical service is authorized to exempt from statutory renegotiation (pursuant to section (i) (4) of the 1943 act) any individual contract falling within such classification or the subcontracts thereunder or any individual subcontract falling within such classifications:

(i) Foods: contracts and subcontracts for such types of foods as the Quartermaster General may from time to time determine to be perishable (see par. 1292).

(ii) Clothing and equipage: contracts and subcontracts for clothing and equipage, including footwear.

(iii) Textiles or textile products: contracts and subcontracts for textiles or textile products.

(2) The authority conferred by subparagraph (1) will be used only where the person exercising such authority is of the opinion in the individual case, in the light of circumstances then known to him:

(i) that the profits to be derived from any such contract or subcontract can be determined with reasonable certainty when the contract price is established;

(ii) that negotiations fixing the price under any contract or subcontract to be exempted have taken place or will take place in general consistently with the pricing principles set forth in Army Service Manual M–601, (if and so far as applicable); and

(iii) that the price set or to be set is fair and reasonable.

(3) Attention is directed to the fact that this paragraph (h) does not authorize the chief of any technical service to exempt all contracts of the types listed herein as a class or by groups. It merely authorizes the exemption of individual contracts and the subcontracts thereunder or individual subcontracts falling within the above mentioned classifications. The provisions of the memorandum formerly quoted in § 812.1204 (h) (as amended 12 November 1943) are no longer in effect.

(i) *Redelegation of authority to exempt individual contracts and subcontracts from renegotiation.* (1) The Director, Purchases Division, Headquarters, Army Service Forces, may delegate and authorize successive redelegations of the authority conferred upon him by § 812.1205 (c) (1).

(2) The chief of a technical service may delegate and authorize successive redelegations of the authority conferred upon him by (c) (2), (d) (1), (e), (g) (1) and (h) of this section.

Contract Articles for Renegotiation

§ 812.1207 *Articles authorized.* Standard forms of contract articles approved for use in accordance with this part are set forth in § 803.342 (a) (Form I), (b) (Form II), (c) (Form III) of these regulations. Except as expressly authorized in this part or subsequent instructions, deviations from the standard articles will not be used.

§ 812.1208 *Use of articles.* (a) Form I will be used in all fixed price or cost-plus-a-fixed-fee contracts made after 26 March 1944 involving an estimated amount of more than $100,000 unless such contract is exempt under subsection (i) (1) of the 1943 Act (§ 812.1204) or is exempted pursuant to subsection (i) (4) (§ 812.1205).

(b) If a contract involving an estimated amount of more than $100,000 and made after 26 March 1944 is exempted pursuant to subsection (i) (4) of the 1943 act (§ 812.1205), Form I will not be used and Form II will be inserted, unless all subcontracts thereunder are also exempt. If the contract is exempt under subsection (i) (1) of the 1943 act (§ 812.1204 (a) to (e), inclusive), no renegotiation article will be inserted.

(c) Form III will be inserted (in addition to any renegotiation article contained in the original contract as amended) in each supplemental agreement (including change orders) involving an estimated amount of more than $100.000 unless such supplemental agreement is exempt, or unless the original contract as amended contains Form I or Form II. If the supplemental agreement is exempt under subsection (i) (1) of the 1943 act (§ 812.1204 (a) to (e), inclusive), no renegotiation article need be inserted. If the supplemental agreement has been exempted pursuant to subsection (i) (4) of the 1943 act (§ 812.1205 et seq.), Form II will be used, unless all subcontracts thereunder are also exempt, and section (c) of Form III will be added.

§ 812.1209 *Optional provisions in subcontracts.* Where a contractor with the War Department or a subcontractor under a prime contract with the War Department is required by his contract or subcontract to insert a renegotiation article in his subcontracts, and there is

doubt (a) whether an agreement or order which he proposes to make or place is a subcontract under the Renegotiation Act, or (b) whether it is exempt from renegotiation under subsection (i) of the Renegotiation Act, he should insert the prescribed renegotiation article in the agreement or order, but may add the following additional provision at the end of the article:

This article shall apply to this contract only if it is a "subcontract" subject to renegotiation under the Renegotiation Act.

§ 812.1210 *Use of other articles.* Statutory renegotiation under the contract articles discussed in this section is for the purpose of eliminating excessive profits and is handled by the War Contracts Price Adjustment Board, the War Department Price Adjustment Board and Price Adjustments Sections. As authorized by the 1943 act, it is conducted on an over-all basis for the contractor's fiscal year rather than by individual contracts, although the Board may renegotiate by individual contracts at the request of the contractor or subcontractor. Various other articles discussed in the following sections designed to provide for adjustment of the price of the specific contract to meet various types of conditions may be used in addition to the contract articles for statutory renegotiation.

Statutory Renegotiation; Policy and Procedure

§ 812.1213 *Administration of statutory renegotiation*—(a) *Agencies responsible.* Statutory renegotiation under the 1942 and 1943 acts, and under contract provisions inserted pursuant to such acts, is conducted by the War Contracts Board, Price Adjustment Boards or Price Adjustment Sections and not by contracting officers.

(b) *Procedure and principles.* The procedure and principles to be followed in renegotiation pursuant to the 1943 act, pertaining to fiscal years ending after June 30, 1943, are prescribed by the War Contracts Board and the Chairman, War Department Price Adjustment Board and will be published respectively as "Renegotiation Regulations" and "Army Renegotiation Manual, Part II".

§ 812.1214 *Effect of statutory renegotiation on price adjustments by contracting officers*—(a) *Restrictions during and after statutory renegotiation.* While renegotiation pursuant to the 1943 act is in progress or after it has been concluded with respect to a fiscal period of a contractor, contracting officers will not accept or seek price reductions or refunds in lieu thereof, which will affect the sales or earnings of the contractor for such fiscal period without the prior consent of the Price Adjustment Board or Section which is conducting or has conducted such statutory renegotiation.

(b) *Inquiry by contracting officers regarding statutory renegotiation.* Before accepting price reductions or refunds in lieu thereof and before initiating or continuing negotiations seeking reductions or refunds from a contractor, and at reasonable intervals during the continuance of such negotiations, contracting officers will make inquiry of the contractor or of the Price Adjustment Board or Section to whom the contractor is assigned for statutory renegotiation to determine whether such renegotiation is in progress or has been concluded with respect to the fiscal period of the contractor which will be affected by the reductions or refunds proposed.

(c) *When statutory renegotiation is in progress.* Statutory renegotiation shall be deemed to be in progress for a fiscal period of a contractor upon the mailing of the notice of time and place of a conference to be held with respect thereto as required by subsection (c) (1) of the 1943 act.

(d) *Price adjustments not restricted.* Nothing herein contained shall preclude a contracting officer from at any time:

(1) Proposing and arranging adjustments in prices or fees in individual contracts containing express provision for redetermination or renegotiation of prices or fees, other than a provision for statutory renegotiation, or

(2) Making price adjustments to compensate for changes made by the Government in specifications, design, quantities to be delivered, delivery schedules, or similar matters, or

(3) Accepting the benefit of the price reductions resulting from maximum price regulations of the Office of Price Administration or orders of other Government price fixing agencies, or

(4) Negotiating with respect to the prices to be included in new contracts in connection with the making thereof, or

(5) Proposing and arranging price reductions or refunds in lieu thereof which will not affect the sales or earnings of the contractor for any fiscal period for which statutory renegotiation is in progress or has been previously concluded.

(e) *Provision in supplemental agreements making price adjustment.* The contract price as renegotiated or redetermined by the contracting officer or as voluntarily reduced will still be subject to statutory renegotiation under the 1943 act and any contract article pursuant thereto. The supplemental agreement or other instrument affecting the adjustment in price or fixed-fee will therefore include a provision substantially as follows:

The adjustment hereby made in the contract price is without prejudice to the determination of any excessive profits of the contractor upon subsequent renegotiation under the Renegotiation Act, or any contract article inserted pursuant to that act.

SUBPART B—CONTRACT ARTICLES FOR PRICE ADJUSTMENT ON THE BASIS OF PRODUCTION EXPERIENCE

§ 812.1220 *Scope of subpart.* In certain cases the cost of production under a contract cannot be estimated with reasonable accuracy at the time of its execution. For example, the item may be entirely new or the particular contractor may lack experience with its production or its design may still be experimental or subject to radical changes or development. This subpart deals with contract provisions designed to meet these situations by adjusting the price on the basis of production experience after part performance. It includes articles for (1) price redetermination by formula, (2) price revision by negotiation, (3) conversion of fixed-fee contracts to fixed price contracts and (4) incentive adjustments in fixed-fees.

§ 812.1221 *Effect of articles.* The effect of these various articles and the differences between them are briefly as follows:

(a) *Redetermination by formula.* Under this article (§ 803.341 (a)) an itemized estimate of costs is stated in the contract. After a specified percentage of the work under the contract is completed the contractor is required to submit similarly itemized statements of the cost of a "preliminary run" and a "test run". Then the original price is reduced, not by negotiation but by formula reflecting the extent to which the total costs as indicated by the preliminary and test runs are less than the original estimate of costs.

(b) *Negotiated revision of entire price.* Under this article (§ 803.341 (b)) the entire contract price may be revised either upward or downward by negotiation in good faith after a specified part of the contract has been performed. The revised price applies both to past and future performance. It differs from redetermination (1) by relying on negotiation instead of a formula for making the adjustment, and (2) by permitting adjustment upward as well as downward.

(c) *Conversion of fixed-fee to fixed price contracts.* Two articles apply only to fixed-fee contracts. One of these (§ 803.341 (c)) provides for converting the fixed-fee contract to a fixed price contract by negotiation after part performance.

(d) *Fixed-fee incentive provisions.* The other article for fixed-fee contracts (§ 803.341 (d)) provides for adjustments in the fee either upward or downward on the basis of efficiency in performance.

§ 812.1222 *Relation to other price adjustment articles.* (a) The articles discussed in this Subpart B are distinct from those for statutory renegotiation under the Renegotiation Act. While statutory renegotiation is intended to eliminate excessive profits and is generally conducted on an over-all fiscal year basis, the articles in this section contemplate readjusting the price of the individual contract during its performance on the basis of production experience. These articles are for use in addition to statutory renegotiation provisions which must also be included in the contract which must also be included in the contract in accordance with § 812.1207 et seq., unless the contract is exempt from renegotiation (see §§ 812.1204 and 812.1205).

(b) Likewise, the articles in this section, which assume a general uncertainty as to production costs when the contract is made, differ in purpose and scope from the articles covered by Subpart C which provide for price adjustments to meet specific kinds of contingencies. In appropriate cases, however, both types of article may be included in the same contract.

(c) These articles also differ from those discussed in Subpart D. While

those provide for exemption from statutory renegotiation, the articles in this section do not so provide and also contemplate only one revision in the price and not its periodic adjustment. Furthermore, the articles for periodic adjustment of price assume reasonable certainty as to costs, while those in this section are for cases of great uncertainty in costs.

§ 812.1223 *Price redetermination by formula*—(a) *Article authorized.* The article for price redetermination by formula set out in § 803.341 (a) is authorized for use in accordance with this regulation. Minor deviations may be made in this article but it will never be changed to allow redetermination of the price upward. When upward as well as downward price adjustment is desired, the article discussed in § 812.1224 will be used.

(b) *Use and operation of article.* In using and operating this article for price redetermination the following principles will be observed:

(1) Before agreeing to the use of this article the contracting officer will analyze or examine the cost accounting system of the contractor to satisfy himself that it is sufficiently accurate to permit the effective operation of this aricle.

(2) The "preliminary run" is intended to cover the initial performance while production is getting under way and before costs have become stabilized. Accordingly it should include the percentage of the work or period which the contracting officer estimates will be needed before costs level off and become reasonably typical. The "test run" should cover an adequate period after such costs are expected to become reasonably stable. Unless these two periods will be completed before forty per cent of the contract is performed this article will not be used without special permission from the Director, Purchase Division, Headquarters, Army Service Forces.

(3) After the contractor submits the itemized statements of costs for the "preliminary run" and for the "test run" the contracting officer should make sufficient check to satisfy himself that they are accurate and reliable. If necessary he may examine the books and records of the contractor for this purpose.

(4) On the basis of the statements submitted and any other data obtained from the books and records of the contractor or otherwise, the contracting officer should determine the total costs for the "preliminary run" and for the "test run" and for the remainder of the contract. This should be done objectively as a factual determination. If the contractor disagrees with the decision of the contracting officer he may appeal under the Disputes Article. The contract price should be reduced by the difference between the total costs as so determined and the original estimated costs.

(5) Upon redetermination of the price, amounts paid for items theretofore delivered in excess of the new price shall be refunded to the Government or applied against subsequent deliveries, as the contracting officer may direct. The new price and provisions for refunds will be evidenced by a supplemental agreement.

§ 812.1224 *Negotiated revision of entire contract price; upward or downward*—(a) *Article authorized.* The article for a negotiated price revision set out in § 803.341 (b) is authorized for use in accordance with this regulation. Under this article the contract price for past and future deliveries is revised upward or downward by negotiation after a specified part of the contract has been performed. This will be used only in special cases where the developmental or experimental nature of the item or the lack of previous production experience with it or other causes, prevent reliable estimates of costs when the contract is made and make it essential to provide in the contract for later revision of the initial price in the light of actual production experience. Minor deviations may be made in this article, but it will never be changed to obligate the Government to increase the price on the basis of costs or any other formula, or to do more than negotiate in good faith to revise the price.

(b) *Use and operation of article.* In using and operating this article (§ 803.341 (b)) the following principles will be observed:

(1) When the article is to be used the contracting officer will satisfy himself that the cost accounting system of the contractor is sufficiently accurate to provide reasonable information as to costs of production experienced in performing the contract.

(2) The time fixed in the contract for negotiation to revise the price will depend upon the circumstances in each case. The period before revision should be sufficient to allow costs to become reasonably stable and capable of estimation with reasonable accuracy, but it should not be longer than is necessary for this purpose. Generally, performance of about twenty per cent of the contract should be an adequate trial period; in no case will the trial period exceed forty per cent of the contract without special permission from the Director, Purchases Division, Headquarters, Army Service Forces.

(3) In return for the agreement by the Government to negotiate to revise the price upward the contractor will be required to eliminate from the original prices substantially all allowances for contingencies.

(4) When the contractor submits the statements of costs for the trial period and estimates for the remainder of the contract, the contracting officer will make a sufficient check to satisfy himself that they are reasonably accurate and reliable. If necessary he may examine the books and records of the contractor for this purpose.

(5) Negotiations to revise the price should be conducted upon much the same basis as an original contract negotiation when like information on costs is available. Consideration will be given to all pertinent factors which have affected the contractor's costs during the trial period or which are likely to affect such costs during the remainder of the contract, and to all pertinent factors bearing upon the profit margin which it is reasonable for the contractor to earn under the circumstances, including the fact that the contract article reduces certain of the risks of performmance. As a standard the contracting officer should estimate costs of producing the item in the contractor's plant by efficient management and operation, plus a reasonable profit. If the contracting officer concludes that the contractor's operations are inefficient and that his costs are high, he will limit the revised price accordingly; on the other hand, if the contractor has reduced his costs by skillful management, careful buying or efficiency of production, the contemplated margin of profit under the contract may be increased in recognition of these facts. The contracting officer should bear in mind that the costs of production during the first part of the contract will almost always be substantially higher than those during the remainder of the contract. Consequently average costs during the trial period are generally not an accurate index of the costs for the remainder of the contract. Allowance should be made for this fact in fixing the revised prices.

(6) A revised price will be evidenced by a supplemental agreement, which will also provide for making appropriate credits or payments by the contractor or payments to him for the difference between the prices actually paid for items theretofore delivered and the revised price.

§ 812.1225 *Article for converting fixed-fee contracts to fixed price basis*—(a) *Use of article.* In accordance with § 802.232 (c), fixed-fee contracts will include, whenever feasible, the article set out in § 803.341 (c) providing for conversion to a fixed price basis by negotiation after part performance. The time specified for conversion should be the earliest at which sufficient experience and cost data will be available to fix a fair price. Where possible, existing contracts will be amended to include this article.

(b) *Basis of conversion.* Such conversion is simpler if the fixed price basis is substituted for the entire contract, including past as well as future performance, and not merely for the remainder of the contract. When this is done, the price should be negotiated on the basis of the earlier experience, with appropriate allowance for declining costs, and should be fixed to yield approximately the cost plus the proportionate part of the fee for the past performance and a fair profit for the remainder of the contract. All previous payments made to the contractor should be applied against the amount due or to become due under the converted contract, or as advance payments, or partial payments against amounts to become due under it. By this method it will be unnecessary to evaluate the work in process or materials on hand, which will then assume their ordinary status under a fixed price contract, subject to any interest of the Government retained as security for advance or partial payments or for other purposes in accordance with the agreement to convert.

§ 812.1226 *Incentive provisions for fixed-fee contracts*—(a) *Use of article.* Section 803.341 (d) sets out an article providing for increasing or reducing the fixed-fee under cost-plus-a-fixed-fee contracts on the basis of efficiency in performance. Under it the fee is adjusted by comparing a target estimate of costs fixed after part performance with actual costs for the same period. This article is designed to provide incentives for reductions in costs and efficient operations under such contracts, and will be used wherever feasible if conversion of the contract to a fixed price basis is not practical.

(b) *Operation of article.* In the operation of this article (§ 803.341 (d)) the following principles will be observed:

(1) The trial or test period specified in the contract should be sufficient to allow costs of production to become reasonably stable and to provide reliable data on production costs.

(2) In fixing the estimate of costs for the remainder of the contract, the contracting officer will take into account the fact that costs during the first part of the contract will not necessarily be typical for the remainder.

(3) The increase or reduction in the fee will be based on the amount by which costs during the remainder of the contract have been reduced or increased by the efficiency or inefficiency of the contractor. In determining this amount the contracting officer will make allowance for changes in costs resulting from other causes.

(4) The amount of the increase or decrease of the fee shall be evidenced by supplemental agreement.

SUBPART C—CONTRACT PROVISIONS FOR PRICE ADJUSTMENT UPON CONTINGENCIES AND SHORT-TERM PRICING

§ 812.1230 *Scope of subpart.* Frequently at the time the contract is negotiated, cost data and experience are sufficient to permit the fixing of a fair price on the basis of existing conditions, but some of the elements of cost which are not under the control of the contractor are expected to change during the life of the contract. Under such circumstances the contractor will seek to include in his price allowances to protect himself against such changes unless the Government agrees to adjust the price to compensate for them if they occur. It is therefore necessary in each case to decide which course is more to the advantage of the Government in the particular instance. This section deals with various types of contract provisions under which the Government assumes certain of the risks of such changes in conditions. When they are used the contractor will be required to eliminate from the price any allowances to cover such contingencies.

§ 812.1231 *Changes article.* The standard contract article for changes allows the Government to modify the specifications or shipping and packing instructions by written order and provides for an equitable adjustment if such changes cause increases or decreases in the amount due under the contract or the time required for its performance. Often, however, it is necessary for the Government to increase or decrease the quantity to be delivered under the contract in order to conform to changes in needs, material allotments and other factors. To facilitate such variations a modified form of the "Changes" article has been authorized by § 803.329a, which allows the Government to reduce or enlarge the quantity to be delivered under the contract within prescribed limits and provides for an equitable adjustment in price either up or down depending on the effect of the change.

§ 812.1232 *Escalation*—(a) *Based on indices.* During the early stages of the procurement program a standard escalator clause providing for price adjustments on the basis of general indices for various classes of labor and materials was authorized to protect contractors against serious inflationary price and wage rises during performance. With the greater stability of wages and material prices the need for such escalator clauses has decreased. Since the administration of such clauses is complex and requires extensive accounting and auditing, authority for their use has been rescinded and they will therefore not be included in contracts hereafter negotiated.

(b) *For Government-fixed prices.* In cases where the Government directly fixes the price of a component material required for the performance of a contract, the contract may include a provision for equitable adjustment of the contract price to compensate for changes made by the Government in the price of the component material (see § 803.351 (a)). This article will not be used where the Government merely fixes a maximum price for the component material, as by the Office of Price Administration (but see paragraph (d)). It will be used only where the Government fixes the actual sale price as in the case of rubber sold by the Rubber Reserve Company. Likewise, a provision may be included for adjustment based on increased freight rates fixed by the Interstate Commerce Commission (§ 803.339) when such a provision does not violate any maximum price regulation of the Office of Price Administration. Finally § 803.357 contains a provision for price adjustment based on changes in certain taxes paid by the contractor.

(c) *Adjustment based on allocations.* (1) In the case of certain commodities such as cotton duck and certain classes of lumber, the Government controls the entire supply and allocates production sources among contractors. Where this is the case, the actual price paid by a particular contractor will depend on the source from which he is required to obtain such material. Since this is determined solely by the Government it is preferable to agree to adjust the price to the contractor on the basis of the amount paid by him for the allocated material than to include in the price an allowance against this risk. The article contained in § 803.351 (a) may be used for this purpose but only where the Government actually controls and allocates available sources of supply and requires the contractor to procure from the designated source.

(2) Under the system of priorities and allocations applicable to certain materials, a contractor may be obliged to purchase such materials from sources of supply at greater distances from his plant than normal and pay additional freight costs which may represent a serious burden; in such cases the contract may include the article contained in § 803.351 (b) if the contractor eliminates from his price any allowance for such additional expenses.

(3) The articles authorized in this section will generally be used only where the costs of the materials or freight will constitute an appreciable element in the total cost and inclusion of the article will eliminate the need for substantial allowances in the price. If this is not the case, the benefit from their use will be too slight to justify the time and effort involved in their operation.

(d) *Escalation in relation to OPA ceiling prices; lumber, coal, steel and gasoline.* Escalation in relation to OPA ceiling prices is not permitted, except that escalation articles may be included in contracts for the purchase of certain basic commodities to the extent and in the form set forth in § 803.351 (d) (lumber; coal; basic steel products on Schedule I of CMP Regulation 1, as amended from time to time), and § 803.351 (f) (gasoline and fuel oils).

§ 812.1233 *Interruption of production schedules by Government action.* Government allocations, priorities, and other actions may prevent a contractor from maintaining a constant schedule of production and thereby increase his costs of operation substantially, especially in mass production industries. To avoid the inclusion in price of an allowance against such interruptions, a contract article providing for equitable adjustment in the contract price and the time for performance under such circumstances is contained in § 803.351 (c). Whenever an interruption in the production schedules of a contractor will substantially affect his cost of performance and there is serious risk of such interruption as a result of Government action, this article may be included in the contract if the contractor has eliminated from his price any allowances and reserves for such contingencies.

§ 812.1234 *Operation of articles*—(a) *Upon request by contractor.* When the contractor requests equitable adjustment in the price in accordance with a contract article therefor, the following principles will be observed:

(1) The contracting officer will determine from information supplied by the contractor and, if necessary, by inspection of its books and records (i) whether the contingency covered by the article has occurred; and (ii) the amount, if any, by which the costs of the contractor have been increased by the change or contingency.

(2) The adjustment in price should be sufficient to compensate the contractor for the net amount by which his costs have been increased by the change or

contingency. Care must be taken to eliminate increases due to other factors, and to allow for any offsetting reductions in costs which have also resulted from the change or contingency.

(3) The contracting officer will promptly notify the contractor in writing of the amount of the adjustment which he has determined to be equitable.

(b) *On initiative of contracting officer.* Certain of these articles provide for equitable adjustment of the contract price downward when specified contingencies reduce the costs. When the contract contains such a provision, the following principles will be observed:

(1) The contracting officer should determine before final payment under the contract (i) whether the specified contingency has occurred and the costs of the contractor have thereby been reduced; and (ii) if so, the amount by which the contract price should be adjusted under the contract article.

(2) In making this determination, care must be taken to eliminate reductions in costs resulting from other factors such as the efficiency of the contractor, and to take into account any offsetting increases in cost which may also have resulted from the same change or contingency.

(3) The contracting officer will promptly notify the contractor of any such downward adjustment in the contract price.

§ 812.1235 *Article for short term pricing*—(a) *Purpose of article.* Orderly scheduling of materials, production, subcontracting and deliveries often makes long term contracts necessary or desirable. Cost data and experience may be sufficient for fixing a fair price for part of the performance, but uncertainty of future conditions may prevent this for the remainder of the contract. Thus the contractor may be able to predict conditions for a reasonable period in advance sufficiently to agree to a close price for that period, but may fear that changes in conditions will seriously affect his costs after that time and seek contingency allowances to protect himself. The article for negotiated price revision set out in § 803.361 (a) is designed to meet this situation and is authorized for use in accordance with this part.

(b) *Nature of article.* Under this article (§ 803.361 (a)) the original price is fixed for a specified period and thereafter price is revised upward or downward by negotiation but the revised price applies only to the remainder of the contract and not to deliveries made during the specified period. While this article is similar to § 803.341 (b), they differ basically in purpose. Section 803.341 (b) covers cases where lack of experience and data prevent the fixing of a fair price when the contract is made and allows adjustment of the entire price for past as well as future deliveries. Section 803.361 (a) assumes that the original price can be fairly fixed, but that future conditions cannot be adequately predicted. This article is similar to the contract article (§ 803.360 (a)) for periodic adjustment of price, except that it does not provide for exemption from statutory renegotiation and provides for only one revision in the price and not for periodic adjustment.

(c) *Use and operation of article.* In using this article (§ 803.361 (a)) the following principles will be observed:

(1) The contracting officer should satisfy himself that the contractor can supply reliable data on which to base the price revision at the end of the specified period.

(2) The time fixed in the contract for negotiation to revise the price will depend on the circumstances in each case. The original price should be kept in effect for as long a period as conditions will permit without undue contingency allowances and revision provided for thereafter.

(3) In return for the use of this article, the contractor will be required to eliminate from his original price substantially all allowances for future contingencies.

(4) The negotiations to revise the price should be carried on promptly after the time specified in the contract. The contracting officer should obtain sufficient information from the contractor and other sources to permit the new price to be well negotiated. If necessary, he may examine the books and records of the contractor for this purpose. Negotiations should be conducted upon much the same principles as the original negotiation and in accordance with § 812.1224 (b) (5).

(5) The revised price will be evidenced by supplemental agreement specifically providing that the revised price applies only to performance after the original period.

§ 812.1235a *Article for optional periodic adjustment of price*—(a) *Purpose of article.* The purpose of the article (see § 803.360a) is much the same as in the case of the article for negotiated price revision set out in § 803.360 (a), except that no fixed periods for negotiated price revision are included in the article set out in § 803.360 (a), and negotiations for price revision takes place under the article only when one party or the other requests such negotiations.

(b) *Nature of article.* Under this article (see § 803.360a) the original price is set out in the contract. At any time after the expiration of a stipulated period from the date of the contract, the price on subsequent deliveries of items may be revised by negotiations. As an optional provision, it may be stpulated that demands shall not be made more frequently than once every ninety days. The article is intended to make it unnecessary for either the contractor or the contracting officer to request a price revision unless one or the other is of the opinion that substantial changes in conditions have taken place making negotiations desirable. Like the article set out in § 803.360 (a), the article set out in § 803.360a assumes that the original price can be fairly fixed for a reasonable period but that future conditions cannot be adequately predicted. However, by including the changes in and additions to the article set out in § 803.360a (a), the article may be adapted to use in cases where the original price cannot be fairly fixed for a reasonable period, because of lack of experience in the particular production called for by the contract or for other reasons.

(c) *Use and operation of the article.* In using this article (see § 803.360a) the following principles will be observed:

(1) The contracting officer should satisfy himself that the contractor can and will supply reliable data on which to negotiate any requested price revisions. This involves, among other things, assurance that the contractor's cost accounting methods are reasonably satisfactory and accurate and adapted to developing the type of data appropriate to the use of the article.

(2) In appropriate cases the optional provision for an interval of 90 days between demands for price revision may be altered, if the chief of the technical service is of the opinion that a period other than 90 days is appropriate. Similarly, other periods of days specified in the article may be increased or decreased if the chief of the technical service so authorizes.

(3) In return for the use of this article and the reduced risks incurred by the Contractor when this article is used, the Contracting Officer should be satisfied that the Contractor has agreed to a close price, from which substantially all allowances for contingencies have been eliminated and which the Contracting Officer believes (in the light of the circumstances then known to him) will not result in unreasonable profits.

(4) Negotiations to revise the price will be carried on promptly after each demand for such revision, allowing only sufficient time to obtain adequate information from the contractor and other sources to permit a proper negotiation. If necessary, the contracting officer may examine the books and records of the contractor He will conduct negotiations on much the same principles as in the case of the original negotiations and will give full weight to the principles discussed in § 812.1224 (b) (5) and in ASF Manual M-601. In the event of delay in reaching an agreement as to a revised price that will be determined promptly by order as provided in paragraph (f) of the article.

(5) In negotiating a price revision under the article the contracting officer ordinarily should not give consideration to an increase in price beyond the amount estimated to be the excess of (i) any increases in costs beyond the contractor's control, over (ii) any offsetting unanticipated reductions in the contractor's costs. However, this rule should not be applied to deprive a contractor of a reasonable reward, in the form of an increased estimated allowance for profit, for especially efficient and economical production.

(6) In negotiating a price revision the contracting officer and the contractor should recognize that wage increases in the prices of materials will not necessarily immediately increase the costs of items to be delivered by the contractor. For example, some of the labor on work in process at the time of a wage increase may have been performed while lower rates of wages were in effect. Similarly,

a contractor may have an inventory on hand or materials on order at prices on a basis which does not reflect current increases in the price of such materials.

(7) Any agreed revised price will be set forth promptly in a supplemental agreement as provided in the article.

(8) The contract article does not obligate the Government to increase the price by negotiation on the basis of actual costs or of any other formula or to do more than to negotiate in good faith to revise the price. If an order is entered in accordance with paragraph (f) of the article § 803.360a under section 801 of the Revenue Act of 1943, the price set by such order will be fixed in accordance with the provisions of section 801 (see § 812.1270 et seq.).

(9) It is not necessary or intended that the data furnished for use in connection with negotiations to be conducted under the articles set forth in § 803.360a and 803.360a (a) shall be audited figures or that the contracting officer shall delay negotiations in order to audit such figures and data. It is intended merely that the contracting officer shall be satisfied that the data furnished have been prepared in good faith and are sufficiently accurate for him to place reliance on the information as a general guide to negotiations.

(d) *Where the contractor has had no adequate experience in the production of the items called for by the contract.* The article set forth in § 803.360a may be modified by the changes and additions set out in § 803.360a (a) to make it appropriate for use in contracts where the contractor has had no adequate prior experience in the production of the item called for by the contract. The article set out in § 803.360a as modified by the changes and additions set out in § 803.360a (a) permits the revision of the whole price for all deliveries, both past and future, on demand of either party at any time prior to the delivery of 30% of the principal items to be furnished under the contract. Such a revision does not prevent a later revision of the price for deliveries after the effective date of the demand for such later revision, if such a later revision shall in fact be requested by either party.

The article (§ 803.360a) as so modified (§ 803.360a (a)) will be used only in those cases where the developmental or experimental nature of the item, the lack of previous production experience with the item on the part of the contractor or other causes, prevent the making of reliable estimates of cost when the contract is executed and make it desirable to provide in the contract for later revision of the initial price, to be applicable to deliveries during the early stages of the contract, in the light of actual production experience.

§ 812.1236 *Periodic adjustment of price without provision for exemption from renegotiation*—(a) *Articles authorized.* Subpart D below authorizes the use of two articles (§ 803.360 (a) and (b)) providing for periodic adjustment of the contract price and for exemption of the contract price from statutory renegotiation under certain conditions. Where a technical service desires to provide in a contract for such periodic adjustment of the contract price at regular intervals but does not desire to provide for exemption or for the power to exempt the contract price from statutory renegotiation in accordance with Subpart D, either § 803.360 (a) or (b) may be revised to eliminate exemption of the contract price from statutory renegotiation or the power of the contracting officer to exempt it therefrom. The article in § 803.360 (a) will be so modified by deleting the second and third sentences of subsection (b) (2) and the second sentence of subsection (d) (3). The article in § 803.360 (b) may be so modified by deleting the second sentence of subsection (d) (3). With these deletions § 803.360 (a) or (b) may be used in the discretion of the chief of a technical service without special permission from the Director, Purchases Division, Headquarters, Army Service Forces.

(b) *Use and operation of articles.* In using § 803.360 (a) and (b), modified in accordance with paragraph (a), the following principles will be observed:

(1) The contracting officer should satisfy himself that the contractor can supply reliable data on which to base the price adjustment at the end of each period.

(2) The contract will include the standard form of contract article for statutory renegotiation, if required by § 812.1207, et seq.

(3) The contract price will be adjusted for each period in the manner described in Subpart D of this part, except that no exemption from renegotiation will be granted and the price will remain subject to statutory renegotiation unless otherwise exempt therefrom.

SUBPART D—CONTRACT ARTICLES FOR PERIODIC READJUSTMENT OF PRICE AND EXEMPTION FROM RENEGOTIATION

§ 812.1240 *Articles authorized.* Alternative contract articles providing for periodic readjustment of the contract price, and for exemption from statutory renegotiation under the Renegotiation Act under certain conditions, are set forth in § 803.360 (a) and (b) (Form II). These articles are approved for use in lump sum or fixed price contracts in accordance with this section. Except as expressly authorized in this section or subsequent instructions, deviations from the standard articles will not be used.

§ 812.1241 *Effect of articles.* Both articles divide performance under the contract into specified periods for the purpose of adjusting the contract price. Under § 803.360 (a) the original contract price is exempt from statutory renegotiation for the first period of performance, but under § 803.360 (b) the price for the first period will be adjusted at the end of that period and appropriate credit or refund made, and this adjusted price may be exempted from statutory renegotiation by the contracting officer, as hereafter described. Under both articles the contracting officer and contractor will negotiate at the end of each period on the basis of cost experience and other data, and the contracting officer, at his discretion, may exempt the price so fixed from statutory renegotiation, if he believes that the cost data are sufficiently accurate and that the price is fair to the Government and will not result in excessive profits to the contractor.

§ 812.1242 *Purpose of articles.* These articles are intended to carry out the policy of the War Department to promote efficiency in operation and production, reductions in costs by its contractors, and lower prices to the Government. They are designed to obtain these results as follows:

(a) Since the periods for which prices are fixed are to be relatively short, uncertainty and the risks of future changes in conditions are reduced, and the need for reserves and allowances for contingencies should be correspondingly decreased. At the end of each period, the prices for the next period will be fixed on the basis of recent past experience, current conditions, and more accurate forecasts.

(b) If a firm price exempt from statutory renegotiation during the specified period is granted, the contractor is expected to agree in return to a close price with a narrow profit margin and to rely on his managerial skill to increase his profit by improved methods and efficiency.

(c) If costs are reduced in one period through efficiency, then when the prices are adjusted for the succeeding period, the Government and the contractor will share the benefit of the reduced costs in the form of lower prices but with a higher allowed profit margin.

§ 812.1243 *Use of articles.* In using these articles the following principles will be observed:

(a) Since the operation of these articles requires reliable and accurate data on the actual costs of performance, they will be used only when the contracting officer is convinced that the contractor can and will supply reliable cost information in accordance with the contract provisions. Before using these articles in any contract, the contracting officer will therefore examine and analyze the cost accounting system of the contractor and satisfy himself that it is accurate and adequate for these purposes.

(b) These articles also assume that the costs of performance during a succeeding period can be predicted with reasonable accuracy; otherwise there is no sound basis for predicting the probable profits with assurance, or for exempting them from statutory renegotiation. Accordingly, it will not ordinarily be feasible to use these articles unless the contractor has had previous experience in producing substantially similar articles, or the costs are reasonably standardized or can be accurately determined after a short period of performance.

(c) Section 803.360 (a), which provides for a firm price exempt from statutory renegotiation for the first period of performance, will be used only where accurate data are available at the time the contract is made, on the cost of producing substantially the same articles under substantially the same conditions. In general, it will be used only for repeat orders for materials or equipment previously produced by the same contractor.

(d) Section 803.360 (b), under which the contract price for the first period is readjusted at the end of the period, will be used when the available data on costs of performance are insufficient to allow § 803.360 (a) to be used, but where reasonably accurate costs data will become available toward the end of the first period of performance.

(e) Use of these articles will be limited to contractors who are willing substantially to eliminate allowances in the price for contingencies in view of the short-term pricing and to accept a smaller original profit margin in return for the other benefits of the contract.

(f) The length of the periods of performance to be specified for adjusting the price will depend upon the circumstances of each case. When § 803.360 (b) is used, the first period should be sufficient to allow costs of production to become reasonably stable. The succeeding periods under § 803.360 (b) and all periods under § 803.360 (a) should range from three or four months in most cases up to a maximum of six months where conditions are unusually stable and costs are accurately predictable. Where it will be simpler or more convenient to do so, the contract article may fix the periods by reference to the production or delivery of a prescribed number of articles instead of in terms of days or months, if the length of the periods so fixed will substantially conform to the required duration.

(g) When either § 803.360 (a) or (b) is used, the contract will not include any other provisions for price adjustment (such as escalation, redetermination, upward renegotiation) except (i) the statutory renegotiation article in accordance with § 812.1244, and (ii) provisions for equitable adjustment of the price in case of changes in specifications, deliveries, rates of production, or increased expenses resulting from allocations or other Government action (see § 803.351).

(h) Section 803.360 (a) or (b) will be used only with the permission of the Director, Purchases Division, Headquarters, Army Service Forces. Each request for such permission (i) will show that the principles set forth in the foregoing paragraphs of this section were applied by the contracting officer, (ii) will be sufficiently full and detailed to enable the Director to determine whether the proposed use of the article conforms to these principles, and (iii) will show specifically, the effect of the proposed use of the article on the prices and profits of the contractor under the contract.

§ 812.1244 *Insertion of statutory renegotiation article.* Under both articles (§ 803.360 (a) and (b)) for periodic price adjustment, the contract price for any period (except the first period under § 803.360 (a)) will remain subject to statutory renegotiation under the Renegotiation Act, unless it is exempt under the terms of the statute or is exempted by the contracting officer in the exercise of his discretion under the contract article. Accordingly, any contract which contains an article for periodic adjustment of the contract price will also include the contract article for statutory renegotiation, if it is required by the provisions of § 812.1207 et seq., but an additional sentence will be added to the statutory renegotiation article in such cases. When § 803.360 (a) is used this added sentence will read as follows:

> Section (a) of this Article does not apply to the prices fixed for the first period under this contract and exempt from statutory renegotiation by Article ____ or to the prices fixed for any other periods thereunder which are exempted from statutory renegotiation by the Contracting Officer in the exercise of his discretion under that Article.

When § 803.360 (b) is used this added sentence will read as follows:

> Section (a) of this Article does not apply to the prices fixed for any period under Article ____ of this contract which are exempted from statutory renegotiation by the Contracting Officer in the exercise of his discretion under that Article.

§ 812.1246 *Price adjustments under the articles.* In the operation of contracts containing § 803.360 (a) or (b), contracting officers will observe the following principles:

(a) When the contractor submits the cost data, estimates, and proposed prices in accordance with the contract terms, the contracting officer will make such tests or checks of the data submitted, by examining the records of the contractor or otherwise, as he deems necessary to satisfy himself of their accuracy and sufficiency.

(b) Negotiations with the contractor to adjust the price will be begun and completed as expeditiously as possible in order to avoid delay in fixing the adjusted price. If, in the opinion of the contracting officer, the contractor unreasonably prolongs or delays the negotiations or refuses to agree upon a reasonable adjusted price, the contracting officer will promptly report the facts to the chief of the technical service who may then initiate appropriate action to protect the interest of the Government either by termination of the contract, by statutory renegotiation of the contract price for any period not exempt therefrom, by compulsory order, or by other means.

(c) In determining the price for the first period under § 803.360 (b) or for succeeding periods under § 803.360 (a) or (b), the contracting officer will allow more liberal profit margins where the contractor by skillful management, careful buying, or efficiency has reduced costs, and will demand lower profit margins where performance has been inefficient or below standard.

(d) The contracting officer will exercise his power to exempt from statutory renegotiation the adjusted prices agreed upon for the first period under § 803.360 (b) or for succeeding periods under § 803.360 (a) or (b), only if he is convinced (1) that the cost data and cost estimates are reliable and provide a sufficient basis for fixing fair adjusted prices for the next period, and (2) that the adjusted prices are fair to the Government and, in his opinion based on the cost data and estimates and other available information, will not result in excessive profits. The contracting officer has full responsibility for granting or withholding the exemption. When he is convinced that the foregoing conditions are met, however, he should ordinarily grant the exemption for the period involved. In making this determination he will consult with the Price Adjustment Section of the technical service.

(e) Whenever the contracting officer grants an exemption under a contract containing either § 803.360 (a) or (b), he will make a report to the Director, Purchases Division, Headquarters, Army Service Forces, stating the adjusted price agreed upon, and containing copies of the data submitted by the contractor and any other data on which the adjusted price was based.

(f) After the entire contract is completed, the contracting officer will request from the contractor a statement showing the actual costs of performing the entire contract, and the prices paid during each period, and will send a copy of the statement to the Director, Purchases Division, Headquarters, Army Service Forces.

§ 812.1247 *Inserting articles in existing contracts.* Where it is practicable and to the advantage of the Government to do so, existing contracts may be amended by supplemental agreement to insert either § 803.360 (a) or (b) upon the conditions prescribed by these regulations, and with the permission of the Director, Purchases Division, Headquarters, Army Service Forces.

SUBPART E—PRICE ADJUSTMENTS WITHOUT CONTRACT PROVISIONS

§ 812.1250 *Scope of section.* (a) As the preceding sections emphasize, war conditions frequently require adjustment of contract terms to prevent unfairness to the contractor or the Government. While the provisions discussed above make the contract terms sufficiently flexible to meet many kinds of changes, they do not cover all contingencies and many contracts do not contain these provisions. Accordingly, contracts must often be amended to adapt them to new or unexpected developments.

(b) Such amendments arise from two main sources: (1) Changes in the procurement program arising from changes in war equipment or in the relative needs for various types of equipment or from other causes; (2) unexpected difficulties by the contractor in performing the contract. This section deals with policies and methods governing both classes of amendment.

§ 812.1251 *Amendments with consideration*—(a) *Price adjustment upward.* The chief of a technical service may amend contracts to increase or modify the price or other contract terms in order to adjust contracts to new conditions:

(1) Whenever the amendment changes the contract specifications, delivery schedules, conditions of manufacture or similar contract terms.

(2) Whenever the amendment restricts or modifies the right of the contractor to perform the contract as he sees fit or on the basis most advantageous to him. Examples are cases where a contractor, who is not bound to do so by his existing contract, agrees to use particular methods of manufacture, substitute

materials, specified or costlier sources of supply or subcontractors, or other specified methods or devices to conform with Government policy. (See, for example, § 802.225 (f)).

(3) Wherever the amendment modifies the volume or rate of production so as to affect adversely the contractor's costs (see, for example, §§ 802.227 and 803.307).

(4) In any other case where the amendment is to the advantage of the Government and is based on legal consideration.

The chief of the technical service may make any such amendments in accordance with § 803.306 (c) and following without the approval of higher authority, except as expressly required in those paragraphs.

(b) *Price adjustment downward.* Not all such amendments will require an increase in the price and some will justify a reduction in the price. For example, where the contract is amended to increase production or the rate of production under the contract, the costs of production may be reduced. Inasmuch as many of the fixed expenses have been provided for by the original volume, they should not be charged at all or to the same extent against the increased or accelerated production, and this saving will often more than offset any added costs involved in the increased volume or accelerated rate of production. Accordingly, the effects of any increase, speed-up or other change should be carefully analyzed in each case in order to obtain the proper adjustment.

§ 812.1252 *Amendments without consideration*—(a) *Authority.* Under the First War Powers Act, 1941 and Executive Order No. 9001 the War Department has power to amend and modify contracts without consideration whenever such amendments will facilitate the prosecution of the war. (See § 802.204, and Opinion of The Attorney General dated August 29, 1942). The following paragraphs do not delegate to the technical services any authority to make amendments without consideration. Such amendments will be made only in accordance with §§ 803.306 (d), 803.308a and 803.308b or express authority conferred by other provisions of the regulations (such as § 803.380).

(b) *General policy.* The general policy is to amend contracts to meet changed conditions whenever such action will facilitate the prosecution of the war. A liberal policy of granting amendments in appropriate cases will (1) assist in obtaining close prices and reasonable cost estimates without excessive allowances in the price for contingencies against unforeseen risks, and (2) insure maximum cooperation and production by assuring contractors of fair treatment. By this policy it is believed that the costs of War Department procurement as a whole will be materially reduced and that the efficiency of production will be substantially increased. The general principles for carrying out this policy are stated in the following paragraphs.

(c) *Basic principle.* Any amendment without consideration under authority of the First War Powers Act must be based upon a finding that such action will facilitate the prosecution of the war. Precise rules for deciding whether this finding is justified in a particular case cannot be prescribed, for in each instance the determination is a matter of sound judgment on the basis of all of the facts, but certain guides can be given as to the matters which should be considered and the type of circumstances where relief may be appropriate.

(d) *Types of cases.* While it is obviously impossible to predict or classify all of the grounds upon which amendments without consideration may be appropriately made, examples of certain types or classes of cases where such relief may be proper are as follows:

(1) Where a contractor has suffered or is threatened with loss or diminished profit on a particular contract as a result of a mutual mistake or a bona fide mistake by the contractor alone as to existing fact (for example, through a clerical error or reasonable misunderstanding as to specifications), the contract price or terms should generally be corrected in accordance with the provisions of § 803.308b.

(2) Where a contractor suffers a loss or a diminished profit on a particular contract as a result of Government action, the character of the Government action will generally determine whether any adjustment will be made and its extent.

(i) Where the governmental action is directed primarily at the contractor and is taken by the Government in its capacity as the other contracting party, the price may be equitably adjusted to compensate the contractor for the effect of the action if fairness so requires. Thus where such action by the representatives of the Government, although not creating any liability on its part, increases the cost of performance, or contributes to difficulty encountered by the contractor, considerations of fairness may make appropriate some equitable adjustment of the price or terms.

(ii) Even when the action is not taken by the Government primarily in its capacity as the other contracting party, fairness may sometimes require an equitable adjustment in the contract price or other terms, depending on the nature of the action, the circumstances and the effect on the contractor.

(iii) An increase granted by the Office of Price Administration in the maximum prices established by that Office for materials or component parts required for the manufacture of the articles called for by the contract will not be considered in and of itself sufficient justification for granting an adjustment in price.

(3) Where special circumstances of the war or enemy action have materially affected the conditions of performance of a contract, and the contractor in fixing his prices has not provided contingency reserves adequate to meet them, appropriate amendment or equitable adjustment of the contract may be justified.

(4) Where an actual or threatened loss on a war contract, however caused, will impair the productive capacity or efficiency of a contractor whose continued operation as an efficient source of supply is, in the judgment of the War Department, important to the war effort, the contract will generally be equitably adjusted to the extent necessary to avoid such impairment of his operations insofar as they are important to the war effort.

(5) Where substitution of new contract procedures or provisions will eliminate administrative difficulties, reduce Government costs, expedite production or auditing, aid accounting, save time and expense or simplify procurement, the contract may be so modified even though the Government in a particular instance may receive no other substantial advantage from the modification (see for example § 803.324).

The foregoing types of situations are enumerated as a guide to contracting officers in submitting cases for amendment without consideration. The grounds described are not mutually exclusive. In some instances several of them will exist, and action on one may be justified although the conditions on the other are not met, or the combined effect of all the grounds of relief may be such as to lead to action under the statute. Whether relief will be granted in a particular case depends, of course, on its special facts and on whether the granting of relief in that case or in that class of cases will facilitate the prosecution of the war. This enumeration is not exhaustive and other types of circumstances may meet the conditions necessary for such relief.

(e) *Time of amendments.* All applications for contract adjustments under the First War Powers Act should be handled as promptly as possible after the occasion for relief arises. If action is delayed until the contractor has completed performance the relief may be ineffective, if granted, or may be denied as a matter of administrative judgment. As a general rule relief will be granted less readily in the later stages of contracts. Accordingly, whenever a request for such action is made or it appears likely that it will be made, the technical service should immediately make an investigation to obtain the necessary facts and submit the case without delay. Speedy action will often greatly increase the value of the adjustment to the contractor, and the knowledge of contractors that such relief will be granted expeditiously will aid the Government in obtaining closer pricing and achieving the other desired objectives of this policy.

(f) *Preparation of cases.* In view of the special nature of the power to be exercised, the technical service will develop the facts in each case adequately and prepare a report to be submitted with any request for approval by higher authority and preserved in the records of the technical service. In general, the report should contain information of the following types, so far as relevant to the particular case, and any other pertinent

facts likely to assist in considering the proposed relief:

(1) Brief description of the contract involved:

(i) Date and length of contract; items, delivery schedules, and prices.

(ii) Special clauses for price adjustments; for partial or advance payments; or other special clauses.

(iii) Government-owned, Emergency Plant, or Defense Plant facilities involved, and methods employed to protect any Government interest in facilities of contractor.

(2) Factors creating need for relief:

(i) Nature of item (standard, new or experimental).

(ii) Previous experience of contractor with similar production.

(iii) Changes in conditions or Government action affecting contractor's costs.

(iv) Cost experience of the contractor under the contract, and relation to original estimates.

(v) Reserves or allowances against such contingencies included in original price.

(3) Extent of relief needed:

(i) Financial position of contractor, with supporting balance sheets and profit and loss statements.

(ii) Estimates of future costs under contract.

(iii) Extent of completion, and amounts paid.

(iv) Other war contracts and business of contractor.

(v) Views of contractor on relief appropriate.

(vi) Effect of granting relief on profits of the contractor, and comparison with prices and contracts of other contractors.

(vii) Effect of refusing relief.

(4) Importance of contract or contractor to the prosecution of the war:

(i) Size of contract and need for item.

(ii) Other available sources of supply in comparison with contractor.

(iii) Quality of performance by contractor (rate of production, delays, rejections).

(iv) Probable future orders to contractor; or other war work.

(5) A statement showing whether or not any claim relating to the case is pending before the General Accounting Office.

(6) Statement by the chief of technical service himself, or by an officer specially designated by him to review requests for relief of this type and to make recommendations thereon in his behalf, stating:

(i) The exact relief recommended.

(ii) That in his opinion the granting of the relief recommended will facilitate the prosecution of the war (see paragraph (c)).

(iii) The scope of the investigation of the circumstances made by the technical service.

(iv) The extent of his own review of the facts.

(v) The name, address, and telephone number of the person in the War Department with detailed knowledge of the facts of the case.

(g) *Approvals by Purchases Division, Headquarters.* All necessary approval by higher authority will be obtained in each instance in accordance with §§ 803.306 (a), 803.308a, 803.308b and other sections of these regulations.

SUBPART H—AUDITS AND INSPECTIONS UNDER TITLE XIII OF THE SECOND WAR POWERS ACT

§ 812.1260 *Basic statute.* Title XIII of the Second War Powers Act (Public 507, 77th Congress) provides as follows:

Sec. 1301. The provisions of section 10(1) of an Act approved July 2, 1926 (44 Stat. 787; 10 U. S. C. 310(1)) (giving the Government the right to inspect the plant and audit the books of certain Contractors), shall apply to the plant, books, and records of any contractor with whom a defense contract has been placed at any time after the declaration of emergency on September 8, 1939, and before the termination of the present war: *Provided,* That, for the purpose of this title, the term "defense contract" shall mean any contract, subcontract, or order placed in furtherance of the defense or war effort: *And provided further,* That the inspection and audit authorized herein, and the determination whether a given contract is a "defense contract" as defined above, shall be made by a governmental agency or officer designated by the President, or by the Chairman of the War Production Board.

Sec. 1302. For the purpose of obtaining any information or making any inspection or audit pursuant to section 1301, any agency acting hereunder, or the Chairman of the War Production Board, as the case may be, may administer oaths and affirmations and may require by subpena or otherwise the attendance and testimony of witnesses and the production of any books or records or any other documentary or physical evidence which may be deemed relevant to the inquiry. Such attendance and testimony of witnesses and the production of such books, records, or other documentary or physical evidence may be required at any designated place from any State, Territory, or other place subject to the jurisdiction of the United States: *Provided,* That the production of a person's books, records, or other documentary evidence shall not be required at any place other than the place where such person resides or transacts business, if, prior to the return date specified in the subpena issued with respect thereto, such person furnishes such agency or the Chairman of the War Production Board, as the case may be, with a true copy of such books, records, or other documentary evidence (certified by such person under oath to be a true and correct copy) or enters into a stipulation with such agency or the Chairman of the War Production Board, as the case may be, as to the information contained in such books, records, or other documentary evidence. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. No person shall be excused from attending and testifying or from producing any books, records, or other documentary evidence or certified copies thereof or physical evidence in obedience to any such subpena, or in any action or proceeding which may be instituted under this section, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be subject to prosecution and punishment or to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify or produce evidence, documentary or otherwise, after having claimed his privilege against self-incrimination, except that any such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. Such agency or the Chairman of the War Production Board shall not publish or disclose any information obtained under this title which such agency or the Chairman of the War Production Board deems confidential or with reference to which a request for confidential treatment is made by the person furnishing such information, unless such agency or the Chairman of the War Production Board determines that the withholding thereof is contrary to the interest of the national defense and security; and anyone violating this provision shall be guilty of a felony and upon conviction thereof shall be fined not exceeding $1,000, or be imprisoned not exceeding two years, or both.

Sec. 1303. In case of contempt by, or refusal to obey a subpena issued to, any person, any agency acting hereunder, or the Chairman of the War Production Board, as the case may be, may invoke the aid of any court of the United States within the jurisdiction of which any investigation or proceeding under this title is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, records, or other documentary or physical evidence. And such court may issue an order requiring such person to give testimony or produce any books, records, or other documentary or physical evidence touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found. Any person who shall, without just cause, fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, records, or other documentary or physical evidence, if in his power to do so, in obedience to the subpena of any agency acting hereunder, or the Chairman of the War Production Board, as the case may be, shall be guilty of a misdemeanor, and, upon conviction, shall be subject to a fine of not more than $5,000, or to imprisonment for a term of not more than one year, or both.

Sec. 1304. For purposes of this title the term "person" shall include any individual, partnership, association, business trust, corporation, or any organized group of persons, whether incorporated or not.

§ 812.1261 *Executive order.* Under date of April 10, 1942, Executive Order 9127 was issued under the basic statute. This Executive order reads as follows:

EXECUTIVE ORDER 9127

Designating the departments and agencies to inspect the plants and audit the books and records of defense contractors under Title XIII of the Second War Powers Act, 1942.

By virtue of the authority vested in me by the Constitution and laws of the United States, and particularly by Title I of the First War Powers Act, 1941, and Title XIII of the Second War Powers Act, 1942, as President of the United States and Commander in Chief of the Army and Navy of the United States, and in order to prevent the accumulation of unreasonable profits, to avoid waste of Government funds, and to implement other measures which have been undertaken to forestall price rises and inflation, it is hereby ordered as follows:

1. I hereby designate the War Production Board, the War Department, the Navy Department, the Treasury Department, the United States Maritime Commission, and the Reconstruction Finance Corporation as the governmental agencies authorized to inspect the plant and to audit the books and records, as provided by Title XIII of the said Second War Powers Act, 1942. Such inspection and audit and the determination whether a given contract is a defense contract, as defined in Title XIII of the Second War Powers Act, 1942, may

be made in the case of (a) any contractor with whom a defense contract has been placed by such agency, or, in the case of the Reconstruction Finance Corporation by any corporation created or organized by it, at any time after the declaration of emergency on September 8, 1939, and before the termination of the present war, and in the case of (b) any subcontractor performing work required by any such defense contract. The Chairman of the War Production Board is authorized to issue rules and regulations and to establish policies to coordinate and govern the War Department, the Navy Department, the Treasury Department, the United States Maritime Commission, and the Reconstruction Finance Corporation in exercising the functions vested in them by this order.

2. The authority herein conferred may be exercised by the Chairman of the War Production Board, the Secretary of War, the Secretary of the Navy, the Secretary of the Treasury, the United States Maritime Commission, and the Board of Directors of the Reconstruction Finance Corporation, respectively, or in their discretion and by their direction, respectively, may be exercised also by and through any officer or officers or civilian officials of their respective departments and agencies designated by them for those purposes. The Chairman of the War Production Board, the Secretary of War, the Secretary of the Navy, the Secretary of the Treasury, the United States Maritime Commission, or the Board of Directors of the Reconstruction Finance Corporation may authorize such officer or officers or civilian officials of their respective departments or agencies to make further delegations of such powers and authority within their respective departments and agencies.

3. In inspecting any plant engaged in producing, manufacturing, processing, constructing, altering, or repairing any defense article of a secret, confidential, or restricted nature, or which is produced, manufactured, processed, constructed, altered or repaired in accordance with or under any secret process, formula, patent, or invention, and in auditing the books and records in connection with any such defense contract, such inspection shall be regarded as secret, confidential, or restricted, as the case may be, and all reports, records, papers, documents, and writings relating to such inspection or audit shall be marked or stamped as secret, confidential, or restricted, as the case may be, and shall be handled in accordance with regulations prescribed and in force in the department or agency concerned relating to the handling of secret, confidential, or restricted matters, reports, records, papers, documents, and writings.

4. The power to administer oaths or affirmations and to issue subpoenas for the attendance of witnesses or the production of books, records, or other documentary or physical evidence deemed relevant to the inquiry, conferred by section 1302, and, through the Department of Justice, the power to invoke the aid of any court of the United States, conferred by section 1303, Title XIII, of said Second War Powers Act, may be exercised, performed, or carried out by the Chairman of the War Production Board, the Secretary of War, the Secretary of the Navy, the Secretary of the Treasury, any member of the United States Maritime Commission or the Chairman of the Board of Directors of the Reconstruction Finance Corporation, as the case may be, or by such other officer or officers or civilian officials as may be authorized, empowered or directed by any of them so to do for his respective department or agency.

5. Nothing herein shall affect or limit the authority and power conferred upon or granted to the Chairman of the War Production Board by Title XIII of said Second War Powers Act, 1942.

FRANKLIN D ROOSEVELT

APRIL 10, 1942.

§ 812.1262 *Delegations of authority under Title XIII of the Second War Powers Act, 1942.* Under date of 2 May 1944 the Secretary of War executed the following delegation of authority:

DELEGATION OF AUTHORITY UNDER TITLE XIII OF THE SECOND WAR POWERS ACT AND EXECUTIVE ORDER NO. 9127

By virtue of the authorty vested in me by Title XIII of the Second War Powers Act, 1942 (Public Law No. 507, 77th Congress, approved March 27, 1942) and by Executive Order No. 9127 issued April 10, 1942, I hereby authorize and empower each of the officials designated in the attached list entitled "Group I" and authorize and empower each of the persons named in the attached list entitled "Group II" to exercise for the War Department the authority conferred upon me by Title XIII of said Act and by said Executive Order and either of them. In Group II, designation of rank is that now or formerly held and designation of service or location is that now or formerly applicable to the named individual. Such designations of rank, service or location are merely descriptive and are not in limitation of the authority hereby given to each named individual.

The memorandum for the Under Secretary of War dated 12 August 1943, on the subject "Delegation of Authority Under Title XIII of the Second War Powers Act" and all subdelegations thereunder are hereby superseded, but no action heretofore taken thereunder shall be affected.

[S] HENRY L. STIMSON,
Henry L. Stimson,
Secretary of War.

GROUP I

List of Officials Designated in Connection with Delegation of Authority by the Secretary of War Under Title XIII of the Second War Powers Act and Executive Order No. 9127.

The Commanding General, Army Air Forces.

The Commanding General, Matériel Command, Army Air Forces.

The Commanding General, Army Service Forces.

The Director, Purchases Division, Hqs. Army Service Forces.

The Chief, Chemical Warfare Service.
The Chief of Engineers.
The Chief of Ordnance.
The Quartermaster General.
The Chief Signal Officer.
The Surgeon General.
The Chief of Transportation.

Such designation of officials designates each individual now or hereafter holding any such official position.

GROUP II

Various persons are named in the list entitled "Group II" attached to the foregoing delegation of authority. In case information is desired as to the name of any person or persons contained in such Group II, this information is available from the chiefs of the technical services or the Renegotiation Division, Headquarters, Army Service Forces.

§ 812.1263 *Preliminary steps before audit or subpena.* (a) No audit is to be made or subpena issued without first advising the War Production Board. Communications on this subject should be addressed to Chief, Contract Review Branch, Procurement Policy Division, War Production Board, 4th and Independence Avenue, S. W., Washington 25, D. C. It is the intent of this notification to prevent conflict and duplication. Approval from the War Production Board should therefore be obtained before proceeding.

(b) Before proceeding to investigate contracts under the authority of Title XIII of the Second War Powers Act, 1942, and Executive Order No. 9127, the authorized official should sign a statement as to the existence of "Defense Contracts" under such act and order.

(c) These preliminary steps are directed in the interest of orderly administration, but no failure to take such steps will invalidate action under such act and order.

SUBPART I—MANDATORY PRICING AND REPRICING OF ARTICLES AND SERVICES

§ 812.1270 *Statutory basis for mandatory pricing and repricing.* Section 801 of Title VIII of the Revenue Act of 1943 ("Repricing of War Contracts") provides as follows:

(a) As used in this section the terms "Department," "Secretary," and "article" shall have the same meanings as in subsection (a) of the Renegotiation Act. [See Revenue Act of 1943, sec. 701; see § 812.1201.]

(b) When the Secretary of a Department deems that the price of any article or service of any kind, which is required by his Department or directly or indirectly required, furnished, or offered in connection with, or as a part of, the performance or procurement of any contract with his Department or of any subcontract thereunder, is unreasonable or unfair, the Secretary may require the person furnishing or offering to furnish such article or service to negotiate to fix a fair and reasonable price therefor. If such person refuses to agree to a price for such article or service which the Secretary considers fair and reasonable, the Secretary by order may fix the price payable to such person for furnishing such article or service after the effective date of the order, whether under existing agreements or otherwise. The order may prescribe the period during which the price so fixed shall be effective and such other terms and conditions as the Secretary deems appropriate.

(c) Any person aggrieved by an order fixing a price under this section may sue the United States in any appropriate court. In such suit, such person shall be entitled to recover from the United States the amount of any difference between (1) fair and just compensation for the articles and services furnished under the terms of the order and (2) the price fixed for such articles and services by the order; but if the prices so fixed by the order are found to exceed fair and just compensation for such articles and services, such person shall be liable to the United States in such suit for the amount of this excess. Any such suit shall be brought within six months after the order by the Secretary on which it is based, or after the expiration of the period or periods specified in such order, whichever last occurs. Such a suit shall not stay the order involved.

(d) Whenever any person wilfully refuses or wilfully fails to furnish any such articles or services at the price fixed by an order of the Secretary in accordance with this section, the President shall have power to take immediate possession of the plant or plants of such person and to operate them in accordance with Section 9 of the Selective Training and Service Act of 1940 as amended.

(e) The authority and discretion herein conferred upon the Secretary of each Department may be delegated in whole or in part by him to such individuals or agencies as he may designate in his Department, or in any other Department with the consent of the Secretary of that Department, and he may authorize such individuals or agencies

to make further delegations of such authority and discretion.

(f) Every purchase order or agreement, or contract to make or furnish any article or service of any kind, which is required by a Department or directly or indirectly required, furnished, or offered in connection with, or as a part of, the performance or procurement of any contract with such Department or of any subcontract thereunder, shall, if made thirty days or more after the date of the enactment of this Act, be deemed to contain a provision under which the person making or furnishing such article or service agrees that notwithstanding other provisions of the purchase order, agreement, or contract, he shall be entitled to receive for such article or service only the fair and just compensation provided for in subsection (c).

§ 812.1271 *Delegations of authority.* The Secretary of War has assigned and delegated all of the powers, functions, duties and discretion conferred upon him by section 801 to the Under Secretary of War.

(a) Under date of 17 May 1944, the Under Secretary of War issued the following memoranda:

(1) Memorandum for The Commanding General, Army Service Forces.

Subject: Delegation of authority under Section 801 of the Revenue Act of 1943.

1. The Secretary of War has assigned and delegated to me all of the powers, functions, duties and discretion conferred upon him by Section 801 of the Revenue Act of 1943.

2. I hereby delegate to you with respect to the Army Service Forces and to procurement dealt with by the Army Service Forces the powers, functions, duties and discretion conferred upon the Secretary of War by Section 801 of the Revenue Act of 1943, and by him delegated to me.

3. The Commanding General, Army Service Forces, may prescribe, by Procurement Regulations, manuals, or otherwise, rules and regulations, which have been cleared with the Army Air Forces in the manner provided in paragraph 107.4 of War Department Procurement Regulations, governing the exercise throughout the War Department of the authority granted to the Secretary of War under Title VIII of the Revenue Act of 1943, and, without any limitation of the generality of the foregoing, such rules and regulations may require that (a) matters arising under said Title VIII of the Revenue Act of 1943 be submitted for approval or instructions to, and (b) that any proposed redelegations of such authority be subject to the approval of, the Director, Purchases Division, Headquarters, Army Service Forces, or whomsoever the Director, Purchases Division, may designate.

4. Any of the powers, functions, duties and discretion hereby delegated to you may be exercised by you through such officers, civilian employees or agencies of the War Department as may be designated in writing by you or by any person whom you have authorized to make such designation with such powers or delegation and successive redelegation as you may deem appropriate.

ROBERT P. PATTERSON,
Under Secretary of War.

(2) Memorandum for Brigadier General Albert J. Browning, Special Representative of the Under Secretary of War and to any person acting for the time being as such Special Representative.

Subject: Delegation of authority under Section 801 of the Revenue Act of 1943.

1. The Secretary of War has assigned and delegated to me all of the powers, functions, duties and discretion conferred upon him by Section 801 of the Revenue Act of 1943.

2. I hereby delegate to you with respect to the Army Air Forces and to procurement dealt with by the Army Air Forces the powers, functions, duties and discretion conferred upon the Secretary of War by Section 801 of the Revenue Act of 1943 and by him delegated to me, provided, however, that any regulations, directives, or instructions of general application issued by you shall be subject to and in conformity with such rules and regulations as may be issued pursuant to paragraph 3 of a memorandum for the Commanding General, Army Service Forces, subject as above, dated 17 May 1944.

3. Any of the powers, functions, duties and discretion hereby delegated to you may be exercised by you through such officers, civilian employees or agencies of the War Department as may be designated in writing by you or by any person whom you have authorized to make such designation with such powers of delegation and successive redelegation as you may deem appropriate.

4. Any person acting at any time as Director, Purchases Division, Headquarters, Army Service Forces, may exercise all the powers, functions, duties and discretion hereby delegated, and act as my Special Representative.

ROBERT P. PATTERSON,
Under Secretary of War.

(b) *Authority delegated by these procurement regulations.* Subject to any restrictions provided by these procurement regulations (see paragraph (c)) or by manuals, rules or regulations issued pursuant to paragraph 3 of the memorandum for the Commanding General, Army Service Forces, dated 17 May 1944 (see paragraph (a) (1) of this section) upon the exercise of the authority delegated in this paragraph, there are hereby delegated to each of the chiefs of the technical services the powers, functions, duties, and discretion heretofore delegated by paragraph 2 of the memoranda set forth in paragraph (a) from the Under Secretary of War to the Commanding General, Army Service Forces and to his Special Representative. The powers, functions, duties and discretion herein delegated may be exercised by the chiefs of the technical services through such officers, civilian employees or agencies under their supervision as may be designated in writing by them, or by any person authorized by them to make such designation, with such powers of delegation or redelegation as they deem appropriate.

(c) *Limitation upon redelegation of authority.* All redelegations of the authority delegated by paragraph (b) made by the chiefs of the technical services will be subject to the prior written approval of the Director, Purchases Division, or whomsoever he may designate, except:

(1) Redelegations to persons in the headquarters offices of the Army Air Forces,

(2) Redelegations to persons in the headquarters offices of the major commands within the Army Air Forces, and

(3) Redelegations to persons in the headquarters offices of the chiefs of the technical services of the Army Service Forces.

§ 812.1272 *Definitions.* When used in this Subpart I of this part:

(a) The term "section 801" means Title VIII, section 801 of the Revenue Act of 1943.

(b) The term "article" means article and service or "article or service" as may be appropriate.

(c) The term "deems that a price is unfair or unreasonable" means is of the opinion or tentative judgment, in the light of available and pertinent information, that the price is unfair or unreasonable.

(d) The term "subcontract" means any contract, purchase order or other agreement to make or furnish any article or to perform any service required for the performance, directly or indirectly, for, or in connection with, the performance of any contract with the War Department.

(e) The term "Director, Purchases Division" means the Director, Purchases Division, Headquarters, Army Service Forces, acting as such or, in respect of Army Air Force matters, as the Special Representative of the Under Secretary of War, or any person whom he may have authorized to act for him.

(f) The term "chief of a technical service" has the meaning set out in §§ 801.107 (i), 801.108 (d) and (e), except that delegations of the authority conferred by section 801 shall be subject to the limitations and restrictions stated in § 812.1271 (b) and (c) and shall include any person to whom he has delegated, with the approval provided for in §812.1271 (c), the authority delegated to him under section 801; and the term "technical service" shall be deemed to include the plural as well as the singular when consistent with the context.

§ 812.1273 *Scope of statute.* (a) Section 801 authorizes the Secretary of War, in any case in which he deems the price of any article or service which is directly or indirectly required by the War Department to be unreasonable or unfair (1) to require the person furnishing or offering to furnish such article or service to negotiate to fix a fair and reasonable price therefor and (2), in the event such person refuses to agree to a price which the Secretary of War considers fair and reasonable, to fix by order the price payable to such person for furnishing such article or service after the effective date of the order.

(b) Section 801 authorizes such action with respect to prices of specific articles (which are defined by the statute as "any material, part, assembly, machinery, equipment, or other personal property") and services (which include among others, engineering and other services furnished by a licensor in connection with a patent license)—rather than with respect to total contract values or profits which may be realized under the contract. The authority conferred is exercisable with respect to the prices of such articles or services (1) generally; or (2) under the terms or circumstances of a particular contract, subcontract or procurement; or (3) of a particular type or quality or in a particular quantity; or (4) under other particular circumstances.

(c) The authority conferred by the section may be exercised to obtain fair and reasonable prices for any article or service required by the War Department, either directly from a prime contractor

or indirectly from a subcontractor of any tier; and whether being furnished under a prime contract or subcontract entered into either before or after the enactment of the section (25 February 1944) or being offered in connection with or as a part of the performance or procurement of any such prime contract or subcontract. There is no need to include in contracts or subcontracts heretofore or hereafter executed any special contract article making reference to section 801. Exercise of the authority conferred by the section is not dependent upon the presence of any such contract article. As an additional support to action under the section, however, subsection (f) thereof provides that contracts and subcontracts made after 25 March 1944 shall "be deemed to contain a provision under which the person making or furnishing such article or service agrees that, notwithstanding other provisions of the purchase order, agreement, or contract, he shall be entitled to receive for such article or service only the fair and just compensation provided for in subsection (c)."

(d) The authority conferred by the section may be exercised with respect to articles or services being furnished under or in connection with fixed price prime contracts or subcontracts or cost-plus-a-fixed-fee prime contracts or subcontracts.

(e) An exercise of any authority conferred by the section with respect to any article or service does not preclude a later and further exercise of such authority in respect of the same article or service.

(f) The statutory requirement that a person so furnishing or offering to furnish such article or service negotiate to fix a fair and reasonable price therefor upon notice from the Secretary of War so to do also requires, by necessary implication, that such person furnish such data and information within his possession as may be pertinent to the determination of such fair and reasonable price. The obligation of the contractor in this respect also may be enforced in appropriate situations by action under Title XIII of the Second War Powers Act (see § 812.1260 et seq.).

(g) Any order of the Secretary of War fixing a fair and reasonable price for any article or service may prescribe the period during which the price so fixed shall be effective and, in addition, may prescribe such other terms and conditions in connection therewith as the Secertary of War deems appropriate. The price fixed by any such order is effective only with respect to such articles or services (1) as are furnished after the effective date of the order and (2) as to which the order is stated to be applicable.

(h) The authority and discretion conferred by the section upon the Secretary of War may be delegated in whole or in part to such individuals or agencies in the War Department or, with the consent of the Secretary of that Department, in any other Department, and he may authorize such individuals or agencies to make further delegation of such authority and discretion. The Secretary of War has delegated such authority and discretion as provided in § 812.1271.

§ 812.1274 *General application of the statute.* (a) Section 801 gives support to the War Department's established policy of obtaining fair and reasonable prices from its contractors and permits the extension of that policy to subcontractors of any tier. The enactment of section 801 will in no way modify the War Department's policy of endeavoring to obtain fair and reasonable prices through voluntary negotiation based upon all available and pertinent information and conducted in accordnce with any applicable principles set forth in these Procurement Regulations and Army Service Forces Manual M-601. The authority conferred by the section will be invoked only after every reasonable effort to obtain fair and reasonable prices by voluntary negotiation has been exhausted. In cases where voluntary negotiation is unavailing, however, the authority conferred by the section will be exercised without delay.

(b) The authority of the section when invoked will be exercised in such manner as to promote, rather than impair, existing and prospective cooperative and mutually beneficial relations between the War Department and its contractors and subcontractors. To this end, contract prices which were fair and reasonable at the time they were negotiated will not be made the subject of renegotiation or repricing pursuant to section 801 so long as the conditions which indicated such price then to be fair and reasonable remain substantially unchanged. Further, all reasonable efforts consistent with accomplishment of the objectives of the section will be made to minimize the occasions upon which any contractor or subcontractor will be required, pursuant to the provisions of the section, to negotiate with respect to the price of any article or service being directly or indirectly furnished by him to any of the technical services of the War Department and the other Departments of the Government. In order to establish reasonable control in this respect all proposed Requirements to Negotiate under the section for the time being will be required to be cleared with the Director, Purchases Division, before service.

(c) Accomplishment of the objectives of the section do not require a review of all existing contracts and subcontracts to ascertain the fairness and reasonableness of the prices included therein. Such a review would not be feasible with the available manpower nor is it necessary in many instances. However, such prices will be reviewed whenever it is believed that they may no longer be fair and reasonable on the basis of indications from:

(1) Further information as to comparative or individual prices or costs, or price or cost trends;

(2) The results of statutory renegotiation of the contractor or subcontractor;

(3) A review of prices as result of voluntary repricing of a contract;

(4) Information received as to subcontractors' prices upon negotiation of prime contracts; and

(5) Other appropriate occasions.

It is the responsibility of the individual technical services to maintain and improve general procedures for reviewing and analyzing prices to the extent necessary to carry out the War Department's pricing policy.

(d) Since the price which the section authorizes the Secretary of War to fix by order is one which he considers to be fair and reasonable under the circumstances of the procurement, or the terms and conditions of the order, no such order will be issued in any case in which there is insufficient information available or obtainable to permit of the fixing of a price which reasonably can be justified as being a fair and reasonable price at the time fixed.

(e) The fair and reasonable price which will be incorporated in any section 801 order which may be issued will be one arrived at through proper application of appropriate pricing principles (see e. g. Army Service Forces Manual M-601) and one deemed to be fair, both to the contractor and the Government, under all the terms and circumstances of the particular procurement. In general it should be a price which a buyer, ready and willing to buy, but under no compulsion to buy, would pay by voluntary agreement to a seller ready and willing to sell, but under no compulsion to sell. It should give appropriate consideration to any risks to be assumed by the Government and the contractor, respectively, in the particular case. It should be high enough to constitute reasonable compensation under all the circumstances for the benefits to be received by the Government, provided the contractor performs the contract with prudence and in accordance with good production practice. It should be low enough to give the contractor reasonable incentive to efficient and economical performance.

§ 812.1275 *Voluntary negotiation with respect to prices deemed to be unfair or unreasonable.* Whenever a technical service deems that the price of any article or service under an existing prime contract with the technical service is unfair or unreasonable to the Government, the contractor will be asked voluntarily to negotiate for a fair and reasonable price therefor; and whenever a technical service deems that the price of any article or service being furnished by a subcontractor for use in the performance of a prime contract with such technical service, or a subcontract thereunder, is unfair or unreasonable, the technical service will urge and assist the prime contractor or subcontractor voluntarily to negotiate with such subcontractor an appropriate reduction in such price.

§ 812.1276 *Mandatorily requiring negotiation*—(a) *By prime contractors.* (1) Whenever a technical service deems that the price of any article or service under an existing prime contract with the technical service is unfair or unreasonable to the Government and the contractor refuses to enter into, or promptly to continue to conclusion, voluntary negotiation of a fair and reasonable price therefor, the technical service will prepare a Requirement to Negotiate Fair and Reasonable Prices substantially

in the form set forth in § 812.1282, and will transmit to the Director, Purchases Division, a copy thereof together with a memorandum of the chief of the technical service setting forth in reasonable detail (i) the reasons why the existing price is deemed to be unfair or unreasonable for future deliveries; (ii) the extent of the efforts made voluntarily to negotiate a fair and reasonable price therefor; (iii) so far as the technical service has information in this respect, a statement as to the extent to which the contractor is furnishing the article or service or other articles or services to other technical services and other Departments of the Government; (iv) why it is believed, if such is the case, that negotiation should be conducted solely with respect to the article and service sought to be repriced by the technical service rather than with respect to all the articles or services being furnished by the contractor to the War Department. No such Requirement to Negotiate will be served upon the contractor until the Director, Purchases Division, shall have approved such service.

(2) In the event it is determined, after consultation with other technical services and, in appropriate cases, other Departments, that the negotiation should be conducted also with respect to articles or services being furnished by the contractor to other technical services or Departments, the Director, Purchases Division, will so advise the technical service transmitting the Requirement to Negotiate. He also will advise whether representatives of such other technical services or Departments will participate in the negotiation or whether the technical service alone will conduct the negotiation. In such latter event, the Director, Purchases Division, will obtain and transmit to the technical service such delegation of authority as may be necessary or appropriate to permit it to act for such other Departments.

(3) Service of the Requirement to Negotiate, when approved by the Director, Purchases Division, will be made in the manner provided in § 812.1281.

(4) Negotiations with the contractor pursuant to any such Requirement to Negotiate will be conducted in accordance with any applicable principles set forth in these Procurement Regulations, in Army Service Forces Manual M 601 and any instructions of the Director, Purchases Division, as to the particular case. The contractor will be given reasonable opportunity to furnish such data and information in his possession as may be pertinent to the fixing of a fair and reasonable price as defined in § 812.1274 (e).

(b) *By subcontractors.* (1) Whenever a technical service deems that the price of any article or service being furnished by a subcontractor for use in the performance of a prime contract with such technical service, or a subcontract thereunder, is unfair or unreasonable and the subcontractor refuses to enter into, or promptly to continue to conclusion, voluntary negotiation of a fair and reasonable price, the technical service will prepare a Requirement to Negotiate Fair and Reasonable Prices, substantially in the form set forth in § 812.1282, and will transmit to the Director, Purchases Division, a copy thereof. This will be accompanied by a memorandum of the chief of the technical service setting forth the information mentioned in paragraph (a), unless the technical service, before entering into, or during the course of, voluntary negotiation with the subcontractor concludes that other articles and services which the subcontractor is furnishing directly or indirectly to the War Department should also be repriced, in which event the chief of the technical service will also state the reasons for such belief and will list the other technical services or Departments of the Government which he believes may be interested in such repricing. No such Requirement to Negotiate will be served upon the subcontractor until the Director, Purchases Division, shall have approved such service.

(2) Service of the Requirement to Negotiate, when approved by the Director, Purchases Division, will be made as provided in § 812.1281 and negotiation for a fair and reasonable price will be conducted in accordance with paragraph (d) of this section.

(3) In the event it is determined, after consultation with other technical services and, in appropriate cases, other Departments, that the negotiation should be conducted with respect to articles or services being furnished to other technical services or Departments, the Director, Purchases Division, will advise the technical service to this effect and to the extent other technical services and Departments will participate in such negotiation. In the event it is determined that the repricing should be on an overall basis, the Director, Purchases Division, may assign the subcontractor to any of the technical services for such overall repricing and will advise such technical service of the scope and conduct of the negotiation.

(c) *In connection with placement of prime contracts and subcontracts.* Persons with whom a technical service seeks to place a prime contract for any article or service who refuse to negotiate or agree to a price therefor which the technical service deems to be fair and reasonable normally will not be served with Requirement to Negotiate a fair and reasonable price, nor will the price of the article or service normally be fixed by a section 801 order. In such cases resort usually will be had to a mandatory order under section 9 of the Selective Training and Service Act of 1940 (see paragraph § 814.1450 et seq.), even where the contractor refuses to accept a contract solely because of disagreement as to price. However, if a prime contractor or subcontractor (1) should desire and be willing to agree to all the other desired terms of the procurement, and (2) be further willing to agree in writing that the price shall be fixed by a section 801 order and (3) that the price so fixed shall be applicable to all deliveries under the contract, the chief of the technical service may execute or approve the execution of such an agreement. In that even the technical service promptly will prepare an appropriate Order Fixing Fair and Reasonable Prices, substantially in the form set forth in § 812.1283 and will transmit a copy thereof together with a memorandum of the chief of the technical service setting forth the information provided for in § 812.1278 (a) and, in addition, a statement as to why such procedure was believed desirable. Service of such order, when authorized by the Director, Purchases Division, will be made as provided in § 812.1281.

§ 812.1277 *Agreements resulting from voluntary or mandatory negotiation.* If negotiation conducted voluntarily or pursuant to any such Requirement to Negotiate with any prime contractor or subcontractor results in agreement as to a reduced price which the technical service participating in the negotiation (and, in the case of negotiations with a subcontractor, the prime contractor or subcontractor to whom the article or service is being furnished) considers to be fair and reasonable, such agreement as to reduced price will be incorporated in such supplemental agreement or agreements with the prime contractor and, in the case of a reduction in a subcontractor's price, such agreement or agreements with the subcontractor, the prime contractor or subcontractor to whom the article or service is being furnished and the technical service, as shall be appropriate to effect such reduction. Such agreement or agreements shall provide such direct or indirect benefit to the United States of the reduction as the technical service shall deem appropriate under the circumstances of the particular case. It is recognized that in some cases it will be neither practicable nor to the interest of the Government to attempt to carry the reduction through to a reduction in price under the affected prime contract or contracts with the War Department and in such cases other appropriate arrangements should be made to secure to the United States, so far as reasonably feasible, the benefits of such price reduction. The technical service may consult with the Director, Purchases Division, as to the nature and terms of any such proposed agreement and will so consult with him before making an agreement with a subcontractor which provides for rebates or preferential discounts on articles or services furnished indirectly by him for war use. In any case in which the technical service ascertains or is advised that the article or service repriced also is being furnished by the prime contractor or subcontractor directly or indirectly to any other technical service not participating in the negotiation and the reduction is effective with respect to the articles or services being furnished to such other technical service, such other technical service will be advised of the reductions effected and, to the extent practicable in the particular case, the nature and terms of any proposed agreement between the technical service and a subcontractor will be discussed with such other technical service before the agreement is executed. Direct communication with other technical services is authorized for this purpose. Copies of all such

agreements between the technical service and a subcontractor will be transmitted to the Director, Purchases Division, for purposes of record.

§ 812.1278 *Issuance of order fixing fair and reasonable price.* (a) If (1) voluntary negotiation conducted in accordance with § 812.1275 clearly indicates a reduced price for the article or service being repriced to be fair and reasonable and the prime contractor or subcontractor refuses to enter into, or unreasonably delays the execution of, an appropriate agreement or agreements effecting such reduction in price, or (2) a prime contractor or any subcontractor refuses to enter into, or to continue to conclusion, negotiation under section 801 for a fair and reasonable price, or unreasonably or unnecessarily delays the beginning or conclusion of such negotiations, or refuses to enter into or unreasonably delays the execution of an appropriate agreement effecting the reduction in prices which the technical service considers to be fair and reasonable, then an appropriate Order or appropriate Orders Fixing Fair and Reasonable Prices, substantially in the form set forth in § 812.1283 will be prepared and transmitted to the Director, Purchases Division, together with a memorandum of the chief of the technical service setting forth in reasonable detail (i) the nature and extent of the negotiation had with the contractor or subcontractor, (ii) a summary statement and analysis of the data considered in arriving at the price so proposed to be fixed by order; (iii) the price which the contractor or subcontractor demands and the basis of his objections to the price which the technical service deems to be fair and reasonable and (iv) such considerations as he believes justify the price desired to be fixed by order, with such discussion of the terms and conditions of the contract or of the proposed order as may be pertinent thereto. No such order will be served until such service is approved by the Director, Purchases Division.

(b) The price to be fixed by any such order will be one which is fair and reasonable in view of all the terms and conditions of the existing contract or contracts under which it is being furnished (if the price is being fixed with relation to such contract or contracts) and the terms and conditions to be included in the order. The order will fix the price for the longest period for which a fair and reasonable price reasonably can be projected under the applicable terms and conditions and circumstances and, where feasible, for the remaining period of any contract or contracts under which the article or service is being furnished and with relation to which the price is being fixed. Articles and services customarily furnished under short term contracts or purchase orders normally will not be repriced with respect to any particular contract or order but will be repriced generally in view of the terms and conditions upon which they are usually procured, which terms and conditions will be incorporated as terms and conditions of the order.

(c) All section 801 orders will reserve to the Secretary of War the right at any time to refix the price under section 801 as to future deliveries, either upon his own initiative or upon request of the contractor or subcontractor supported by data indicating that, because of changed circumstances since the effective date of the order, the price fixed is no longer fair and reasonable.

(d) Service of each such order, when approved by the Director, Purchases Division, will be made as provided in § 812.1281.

(e) In any case in which a price was fixed by a section 801 order with respect to a particular contract and the terms and conditions of such contract are subsequently so changed as equitably to require an adjustment in the fixed price, the chief of the technical service may make an equitable adjustment of the price fixed by the order either (1) by a change order in accordance with the "Changes" article of the contract if any (see e. g., §§ 803.329a, 813.1301 (Art. 2)), (2) by the service of an amended section 801 order on the contractor refixing the price to effect such equitable adjustment, or (3) by supplemental agreement, as shall be appropriate in the particular case. Such amended section 801 orders need not be submitted to the Director, Purchases Division, before service so long as they merely make adjustments in the price necessitated by changes in the specifications, quantities, delivery schedules and similar terms of the contract and so long as the adjustment in the price is clearly related only to such changes. In any other case in which a technical service believes that the price fixed by a section 801 order is too high or too low and is therefore no longer fair and reasonable and in any case in which a contractor or subcontractor upon whom such an order has been served requests a refixing of the price in view of changed circumstances, the chief of the technical service will so advise the Director, Purchases Division, with recommendation as to the action to be taken. The Director, Purchases Division, may authorize such upward or downward revision of the price fixed by the order as may be appropriate.

§ 812.1279 *Notification of technical services of service of order.* The Director, Purchases Division, promptly will notify the technical services of the fact that he has approved service of a section 801 order which may affect procurements being made or which may be made by them. Such technical services promptly will effect such modifications in their outstanding prime contracts as may be appropriate by reason of such orders.

§ 812.1280 *Preservation of data upon which orders are based.* In each case in which a fair and reasonable price is fixed by order the technical service will maintain a complete file of the data and information and the various factors considered in arriving at such fair and reasonable price in order that all such matters will be readily available in the event that the contractor institutes court action to contest the fairness of the price fixed.

§ 812.1281 *Method of service.* (a) Where practicable, each Requirement to Negotiate an order will be served by hand by a commissioned officer or a United States Marshal or Deputy Marshal upon the contractor or subcontractor. If the contractor or subcontractor is a partnership, such service will be made upon a partner thereof; if a corporation, upon any officer or agent authorized to act for, or bind, or accept service for, such corporation. If personal service is impracticable or will involve unreasonable delay, service may be made by mailing by registered mail, return receipt requested, the Requirement to Negotiate or order, addressed to the company at its usual place of business.

(b) Promptly after service of a Requirement to Negotiate or order, the officer making service thereof will execute an affidavit as to the time and method of service, the original of which, together with the registered mail receipt, if any, will be attached to the true copy of the Requirement to Negotiate or order, as served, to be retained in the files of the technical service.

(c) Where a Requirement to Negotiate or order affects particular contracts which have been assigned or with respect to which bonds have been furnished, it will be desirable to make service of a copy of the Requirement to Negotiate or order upon the assignee or surety, as the case may be.

§ 812.1282 *Form of requirement to negotiate fair and reasonable prices.* The following form will be used, with any necessary variations, to notify a contractor or subcontractor that he must negotiate for fair and reasonable prices under section 801:

REQUIREMENT TO NEGOTIATE FAIR AND REASONABLE PRICES

Date:_____

Contractor's Name_____

Address_____

GENTLEMEN: The price being charged or quoted by you for the following articles and services:

[Fill in description of articles or services] which are required directly or indirectly by the War Department and being [furnished by you under the following contracts] [offered by you]:

[Fill in description of contract, subcontract or purchase order.] [1]

is deemed to be unreasonable or unfair.

You are advised that you are hereby required, under the authority conferred by Section 801 of the Revenue Act of 1943, to negotiate to fix a fair and reasonable price for such article and service. A duly authorized representative of the Secretary of War will meet with you or your representatives

at_____ on_____
(place) (date)

at_____ to engage in such negotiation.
(time)

You are directed to bring to such meeting, and all further meetings for this purpose, or to make available, all data and

[1] In any case in which the price is to be negotiated with respect to the terms and conditions of a particular contract, subcontract or purchase order, reference should appropriately be made to such contract, subcontract or purchase order.

information in your possession which are or may be pertinent to the determination of such fair and reasonable price.

Said Section 801 provides that if you refuse to agree to a price for such article or service which the Secretary of War, or his representative, considers fair and reasonable, the price thereof may be fixed by order. You are advised that your refusal to negotiate, or any unreasonable delay on your part in concluding the negotiation or in consummating appropriate agreements incorporating an agreed price will be construed as a refusal to agree to a fair and reasonable price.

By authority of the Secretary of War:

(Signature of authorized representative)

(Grade, service, office and address)

§ 812.1283 *Form of order fixing fair and reasonable price.* The following is a suggested form to be used, with any necessary variations, to fix fair and reasonable prices under the authority of section 801:

ORDER FIXING FAIR AND REASONABLE PRICES

Date _____

Contractor's Name_____

Address_____

GENTLEMEN: Pursuant to the authority conferred upon the Secretary of War by Section 801 of the Revenue Act of 1943, and duly delegated to me, I hereby fix the following prices for the following articles and services which are required directly or indirectly by the War Department and being furnished or offered by you in connection with War Department procurement:

Articles and Services	*Prices*

which respective prices I consider to be fair and reasonable under the terms and conditions hereafter stated.

Such fixed prices will be effective in respect of all deliveries of such articles and all performance of such services during the period beginning _____ 194____ (hereafter referred to as the effective date of this Order) and ending _____

Such prices will be effective as to all such deliveries or performance made under the following conditions, upon which the price was based, and you shall neither charge nor receive higher price than those so fixed for, or in respect of, any such deliveries or performance.

(Here list the terms and conditions in the light of which the prices were fixed. If they were fixed with relation to and in the light of the provisions of a particular contract or subcontract and are to be effective as to deliveries thereunder, this will be stated. If they were fixed generally, without relation to any particular contract or subcontract, but in the light of the terms and conditions stated in the order this will be stated. The terms and conditions of the order in this respect should be as specific as practicable under the circumstances of the case).

The Secretary of War expressly reserves the right to re-fix any price fixed hereby at any time during the period for which such price is stated above to be effective. In the event you believe at any time that conditions affecting any price hereby fixed have so substantially changed since the effective date of this Order as to make such price no longer fair and reasonable, you may submit to the undersigned any information and data which in your opinion indicates both the appropriateness of re-fixing such price for future deliveries and the price which you believe to be fair and reasonable for such deliveries, together with the request that such price be so re-fixed.

You are notified that the price fixed herein, and the terms and conditions stated, are based solely upon Section 801 of the Revenue Act of 1943, and will not to any degree preclude other and further action under other Federal statutes, including the Renegotiation Act, Executive Orders, or regulations issued pursuant thereto, nor does it alter in any way, except as herein expressly provided, the provisions of any contract or subcontract to which you are a party.

By authority of the Secretary of War:

(Signature of authorized representative)

(Grade, service, office and address)

APPENDIX

§ 812.1289 *Reference to Renegotiation Regulations.* Renegotiation Regulations adopted by the War Contracts Price Adjustment Board cover, among other things, rulings, interpretations, and applications concerning exemptions from statutory renegotiation. Such Renegotiation Regulations are sometimes referred to as "RR" in this Appendix.

§ 812.1290 *Rulings of War Contracts Price Adjustment Board relating to exclusions or mandatory exemptions from statutory renegotiation*—(a) *Interpretation and application of the mandatory exemption relating to contracts with Governmental agencies.* RR 343.2 provides as follows:

343.2 *Interpretation and Application of Exemption.* The War Contracts Board has adopted the following interpretation:

(1) Under this provision of the Act [Subjection (1) (1) (A) of the 1943 Act] no contract between one of the Departments and any other federal, local or foreign government agency is subject to renegotiation. A municipal corporation, whether acting in a proprietary or governmental capacity, is considered to be an agency of a State for the purposes af this exemption.

(2) Contracts between such other agencies or governmental corporations and private contractors, and subcontracts thereunder, are likewise not subject to renegotiation, except in those instances where the agency or governmental corporation is acting as a direct agent for a Department. In these instances, the contract is deemed to be with the Department for which the agency or governmental corporation is acting as direct agent, and not with the agency or governmental corporation, and accordingly, if otherwise subject to renegotiation, is not exempted.

(3) Certain of the agencies and governmental corporations referred to sometimes place orders called "pool" orders. Under this type of order the agency or corporation orders large quantities of a particular item from a manufacturer. Before delivery under this order the manufacturer may sell all or a portion of the items to a Department or to a Departmental contractor or subcontractor and the order of the governmental corporation or agency is reduced to the extent of these purchases by others. In such cases the sales by the manufacturer to a Department or to a Departmental contractor or subcontractor are not exempt from renegotiation.

(b) *Interpretation and application of the mandatory exemption relating to contracts for certain raw materials and agricultural commodities.* RR 344.1 and 344.2 provides as follows:

344.1 *Raw materials*—(1) *Statutory Exemption.* Subsection (1) (1) (B) of the Act provides that it shall not apply to—

"(B) any contract or subcontract for the product of a mine, oil or gas well, or other mineral or natural deposit, or timber, which has not been processed, refined, or treated beyond the first form or state suitable for industrial use;"

(2) *Interpretation and Application of Exemption.* In determining whether or not a particular product is an "exempted product" under the exemption in subsection (1) (1) (B) of the Act, the following principles shall govern—

(a) *Exempted Products.* The phrase "other mineral or natural deposit" shall be interpreted to include only mineral or natural deposits of a wasting or depletable character similar to products "of a mine, oil or gas well". Accordingly, water, sea water and air, and products derived therefrom, are not considered to be other mineral or natural deposits within the meaning of the Act, and contracts or subcontracts therefor, or for products derived therefrom, shall be subject to renegotiation.

(b) *State at Which Exemption Terminates.* In general a product will be considered to be an exempted product until it has arrived at its dispersal point, i.e., the point at which a substantial proportion of the product is used by the ultimate consumer, or by industries other than the industry of origin. The industry of origin includes not only the primary industry of extraction or severance, but also any processing, refining or treatment directly supplementing its extraction or severance or to produce one or more of the chemical elements or compounds present in it in the state in which it may be found in abundance in nature; but excludes other processing, refining or treatement to produce various end products for the ultimate consumer, or a substantial variety of products which vary materially in size, shape or content from the original product.

(c) *Combination of Several Materials.* Where substantial quantities of two or more materials or ingredients are combined to produce a product for industrial use, the product resulting from such combination is considered to be non-exempt, unless the other material or materials are used as a catalyst, carrying agent or in some other subordinate capacity in connection with processing, refining or treatment of the principal product which is in the course of preparation for its first industrial use.

(d) *Different Processes.* Where a product is made in substantial quantities by two or more different processes, one of which would result in the exemption of the product under the above tests and the other would result in its inclusion, such a product will be considered to be renegotiable only where made by a process which would result in its inclusion.

(e) *By-Products.* Where a process for making a product or material subject to renegotiation under the above tests also produces by-products, such by-products shall be treated as subject to renegotiation since any benefits resulting from use or sale of such by-products operate in substance to reduce the cost of the principal product. The principle of the preceding sentence is in applicable to by-products which would otherwise be exempt under this paragraph (2). In the case of by-products resulting from processes principally designed to produce an "exempted product" under the above tests, such by-products shall be treated as "exempted products" if they are not further processed, refined or treated. If further processing, refining or treatment of such by-products takes place, the status of the ultimate product resulting

will be determined in accordance with the general principles set forth above.

(3) A list of products which, subject to the foregoing interpretation are considered exempt, is set forth [below] in [RR] paragraph 841.

344.2 *Agricultural commodities* — (1) *Statutory Exemption.* Subsection (1) (1) (C) of the 1943 Act provides that it shall not apply to—

"(C) any contract or subcontract for an agricultural commodity in its raw or natural state, or if the commodity is not customarily sold or has not an established market in its raw or natural state, in the first form or state, beyond the raw or natural state, in which it is customarily sold or in which it has an established market. The term 'agricultural commodity' as used herein shall include but shall not be limited to—

"(i) Commodities resulting from the cultivation of the soil such as grains of all kinds, fruits, nuts, vegetables, hay, straw, cotton, tobacco, sugar cane, and sugar beets;

"(ii) Natural resins, saps and gums of trees;

"(iii) Animals such as cattle, hogs, poultry, and sheep, fish and other marine life, and the produce of live animals, such as wool, eggs, milk and cream;"

(2) *Interpretation and Application of Exemption.*

(a) *Applicability.* The provision exempting agricultural commodities under subsection (1) (3) of the 1943 Act is retroactive as if it were a part of the Renegotiation Act on the date of its enactment, April 28, 1942.

(b) *Interpretation.* Reserved.

RR 841 provides as follows:

841 *Raw material exemption.* Pursuant to subsection (1) (2) of the 1943 Act the War Contracts Board has issued the following regulation concerning the exemption of contracts and subcontracts for certain products of the kind described in subsection (1) (1) (B) of the 1943 Act.

(1) The term "exempted products", as used in this regulation, shall mean any of the following products:

Aggregates including such items as washed or screened sand, gravel or crushed stone.
Alumina; aluminum sulfate; aluminum ingots and pigs.
Asphalt, natural.
Antimony ore, crude; antimony ore, concentrated; antimony metal; antimony oxide, antimony sulfide.
Arsenic, crude; arsenic powder; arsenious oxide (white arsenic).
Asbestos rock; asbestos fibre.
Bauxite, crude; calcined or dried bauxite; bauxite abrasive grains.
Beryl ore and concentrates; beryllium oxide; beryllium metal; beryllium master alloys.
Bismuth metal.
Borax.
Cadmium flue dust; cadmium oxide; cadmium balls and slabs.
China clay; kaolin; fire clay; brick and tile made from clays and other than kaolin, china and fire clay.
Chromium ore and ferrochrome; chromite not processed beyond the form or state suitable for use as a refractory; bichromates.
Coal, prepared; run-of-mine coal.
Cobalt oxide; cobalt anodes, shot and rondelles.
Columbium ore and concentrates; columbium oxide; ferrocolumbium.
Copper ore, crude; copper ore, concentrated; copper matte; blister copper, copper billets, cathodes, cakes, ingots, ingot bars, powder, slabs and wirebars.
Corundum ore and concentrates; corundum grain.
Cryolite ore and concentrates.
Diaspore; diaspore brick.
Diatomaceous silica, lump, block, brick and powder.
Feldspar, crude and ground.
Ferrosilicon.
Fluorspar ore; fluorspar fluxing gravel; lump ceramic ground fluorspar; acid grades of fluorspar.
Gas, natural, not processed or treated further than the processing or treating customarily occurring at or near the well.
Graphite ore and concentrates; flake graphite; graphite fines, lump and chip; graphite powder.
Gypsum, crude; calcined gypsum.
Indium metal.
Industrial diamonds.
Iridium metal, including ingot and powder.
Iron ore, crude; pig iron.
Kyanite ore and concentrates; kyanite brick.
Lead ore; defined lead bars, ingots and pigs; antimonial lead bars, ingots and pigs.
Limestone; crushed limestone.
Magnesite; dead burned magnesite.
Magnesium-bearing minerals, including brucite; magnesium oxide; magnesium chloride; metallic magnesium, pigs and ingots.
Mercury ore; mercury metal.
Manganese ore; ferromanganese, including spiegeleisen; silicomanganese.
Mica, crude, hand-cobbed; block mica; sheet mica, including splittings; wet or dry ground mica.
Molybdenum ore and concentrates; molybdenum oxide; calcium molybdate; ferromolybdenum.
Nickel ore and concentrates; nickel matte; nickel oxide; nickel ingots, cathodes and shot.
Oil, crude, not processed or treated further than the processing or treating customarily occurring at or near the well.
Osmium metal, including ingot and powder.
Palladium metal, including ingot and powder.
Phosphate rock; elemental phosphorus; ferrophosphorus; phosphorus pentoxide and phosphoric acid derived directly by treatment of phosphate rock; superphosphate.
Platinum ore and concentrates; platinum metal, including ingot and powder.
Pumice, lump.
Radium bromide; radium sulfate; radium gas.
Rhodium metal, including ingot and powder.
Ruthenium metal, including ingot and powder.
Salt, rock; evaporated salt; soda ash, ammonia and electrolytic caustic soda and bicarbonate of soda when derived directly by treatment of brine.
Sea shells; oysterchells; clam and reef shells.
Selenium metal.
Silver, refined, including bars, shot, powder and grains.
Stone, rough dimension.
Sulfur, crude.
Sulfuric acid; oleum (other than sulfuric acid or oleum produced from crude sulfur or any other product having an industrial use).
Standing timber, logs, logs sawed into length, and logs with or without bark.
Talc, crude, ground and sawed.
Tantalum ore and concentrates; tantalum double fluoride.
Tellurium metal.
Tin ore and concentrates; refined pig tin.
Titanium-bearing ores and concentrates, including ilmenite and rutile; titanium oxide, ferrotitanium.
Tungsten ore and concentrates; sodium tungstate; ferrotungsten; tungsten metal, including powder; tungstic oxide.
Uranium ores and concentrates; uranium oxide.
Vanadium ores and concentrates; sodium vanadate; vanadium pentoxide; ferrovanadium.
Whiting; chalk lump.
Zinc ores and concentrates; zinc anodes, bars, oxide, powder and slabs.
Zirconium ores and concentrates.

(2) Subject to the provisions of paragraph 3 hereof, it is determined that each of the exempted products is "the product of a mine, oil or gas well, or other mineral or natural deposit, or timber, which has not been processed, refined, or treated beyond the first form or state suitable for industrial use" within subsection (1) (1) (B) of the Renegotiation Act. The provisions of such Act shall not apply to contracts and subcontracts for any of the exempted products.

(3) This determination is made under the principles set forth in paragraph 344.1 of the Renegotiation Regulations, including subdivision (2) (d) thereof. The products listed under paragraph 1 of this regulation are exempt only when they represent products of a mine, oil or gas well, or other mineral or natural deposit, which have not been processed, refined or treated beyond the first form or state suitable for industrial use and are not exempt if manufactured from raw materials which do not fall within the above description or which have at some prior stage been processed, refined or treated beyond such first form or state suitable for industrial use. For example, magnesium products derived from sea water, products manufactured from the atmosphere, secondary aluminum pigs and ingots, and other similar products are not considered exempted products.

(4) This determination applies to fiscal years ending after June 30, 1943.

(5) This regulation may be amended from time to time, revising, amending or supplementing the list of exempted products contained in paragraph 1 hereof.

(c) *Interpretation and application of the mandatory exemption relating to construction contracts.* This paragraph deals with the mandatory exemption relating to construction contracts. For the discretionary exemption relating to construction contracts, see § 812.1291 (d).

RR 346.2 provides as follows:

346.2 *Interpretation and application of exemption.* (1) The exclusion from renegotiation of construction contracts with a Department awarded as a result of competitive bidding applies only to contracts for the construction of buildings, structures, improvements and other similar facilities let to the lowest qualified bidder and which were entered into after advertisement and for which bids have been received from two or more independent, responsible and qualified contractors in actual competition with each other.

(a) As used herein "advertisement" shall be interpreted as meaning published advertising or such other solicitation for bids as will open the bidding to all probable bidders under the circumstances of the particular case.

(b) In any case in which it is claimed that a contract is excluded from renegotiation by reason of the application of this subsection (1) and such contract was not entered into after published advertising, the Department conducting the renegotiation may deny such claim but shall not approve the same without submitting the matter, together with all relevant information in the possession of such Department, to the War Contracts Board for final determination.

(2) This section of the Act is applicable only to amounts received or accrued under such contracts for fiscal years ending after June 30, 1943, and applies regardless of the date when the contracts were made.

(3) Contracts for the furnishing of materials or supplies or for the lease, sale or manufacture of machinery or equipment are not within the scope of this exemption. In determining whether a particular contract or subcontract constitutes a contract for the construction of a building, structure, improvement or other similar facility or consti-

tutes a contract for the lease, sale or manufacture of machinery or equipment, the essential character of the performance under the contract will control. In those cases where the items to be furnished under the contract have a predominantly prefabricated character at the time of installation or assembly, the contract will ordinarily be regarded as one of sale or manufacture rather than of "construction". This question arises most frequently in connection with contracts for the sale and installation of machinery or equipment where both the furnishing of the machinery or equipment and its installation are embraced within a single contract. In cases of this character an undertaking to furnish the article may be severed from an agreement to install and an appropriate finding made as to that portion of the contract undertaking which might properly be exempted. On the other hand, where an item to be furnished under a contract has no substantial existence as such until its construction from materials at the site and time of installation so that the contract in its essence is one of construction as distinguished from manufacture or sale, the exemption will be applicable. The essential distinction does not depend upon whether the item involved does or does not become part of the real estate, but depends rather on whether the contract is essentially one for "construction" as distinguished from a contract for manufacture or sale.

(d) *Interpretation and application of the mandatory exemption relating to subcontracts under exempt contracts or subcontracts.* RR 347.2 provides as follows:

347.2 *Interpretation and application of exemption.* It should be noted that the exemption applies only where the subcontract is under a contract or subcontract exempted by paragraph (1) of subsection (i) of the 1943 Act. Thus, subcontracts under prime contracts or subcontracts exempted under the discretionary exemptions authorized by subsection (i) (4) of the 1943 Act, the exemption measured by renegotiable volume under subsection (c) (6), or any other exemption or exclusion contained in the 1943 Act, are not exempted by this provision.

(e) *Interpretation of office supplies.* RR 333.4 (3) provides in part as follows:

Office supplies are interpreted to include paper, ink, typewriter ribbons, binders, covers, blotters, paper clips, staples and other items of consumable character, as well as related items of relatively short life and minor cost, such as pens, pen holders, pencils, blotter pads and calendars; they do not include office furniture, machinery and equipment, such as desks, chairs, lamps, rugs, waste baskets, filing cases, typewriters and calculating recording, reproducing and dictating machines.

§ 812.1291 *Rulings of War Contracts Price Adjustment Board relating to discretionary exemptions from statutory renegotiation*—(a) *Discretionary exemption relating to contracts and subcontracts to be performed outside of the United States.* RR 351.2 provides as follows:

351.2 *Exemption.* (1) Each contract or subcontract to be performed outside the territorial limits of the continental United States, outside the territories of Alaska and Hawaii, outside the Panama Canal Zone, and outside the other territories and island possessions of the United States shall be exempt from the provisions of the Renegotiation Act of 1943 unless it shall be determined by the War Contracts Board or by any authority to whom power to exempt individual contracts under subsection (1) (4) (A) of the 1943 Act has been or may be delegated or redelegated;

(a) That administrative difficulties do not make impracticable the renegotiation of such contract or subcontract,

(b) That the procurement program of the United States in foreign countries will not be adversely affected by such renegotiation, and

(c) That such renegotiation will not otherwise be contrary to the interests of the United States.

(2) In determining whether the procurement program of the United States in foreign countries or the interests of the United States generally will be adversely affected by such renegotiation, it is considered desirable that representatives of the Department of State of the United States be consulted, if practicable; such consultation shall not, however, be essential to the valid renegotiation of any contractor or subcontractor.

(3) Such determination may be made at any time whether before or after the execution of the contract or subcontract and whether or not it contains a renegotiation clause.

(b) *Discretionary exemption relating to contracts and subcontracts for profits determinable when price established; real estate, public utilities, perishable goods.* (1) RR 352.2 provides as follows:

352.2 *Exemption.* In the opinion of the War Contracts Board the profits from contracts and subcontracts for the purchase or lease of any interest in real estate can be determined with reasonable certainty when the contract price is established, and such contracts and subcontracts are accordingly exempted from the provisions of the Renegotiation Act of 1943. For an exemption relating to certain contracts and subcontracts involving electric power, gas, transportation by railroad, motor vehicle, or air, and communications and subcontracts thereunder, see [RR] paragraph 842 [reprinted in paragraph (b) (2) of this section].

(2) RR 842 provides as follows:

842. *Public utility exemptions.*

842.1 *Public utilities—electric power.* (1) Pursuant to subsection (i) (4) of the Renegotiation Act of 1943 (including subsection (i) (4) (B) and (i) (4) (F)) the following classes and types of contracts and subcontracts are exempt to the extent provided in this paragraph from all of the provisions of the Renegotiation Act of 1943:

(a) Any contract or subcontract with a public utility for the delivery of electric power of less than 1,000 kilowatts of contractual demand, except that if the actual demand was 1,000 kilowatts or more at any time during any particular fiscal year, amounts received or accrued under such contract or subcontract for such fiscal year shall not be exempt from renegotiation by reason of this subparagraph (a)

(b) Any subcontract with a public utility for the delivery of electric power without regard to the contractual or actual demand, except that

(i) If such subcontract for electric power is with a contractor having a contract with a Department providing for the reimbursement by a Department of costs of the contractor incurred under such subcontract for electric power, or

(ii) If a Department has contracted to pay or guarantee the payment of amounts payable under such subcontracts for electric power,

then in either such case such subcontract for electric power shall not be exempt from renegotiation by reason of this subparagraph (b).

(2) Amounts received or accrued under any contract or subcontract with a public utility with respect to the construction or installation of facilities for the generation, transmission, or distribution of electric power shall not be exempt from renegotiation by reason of this paragraph 842.1 even though such contract or subcontract also calls for the delivery of electric power.

842.2 *Public utilities—gas.* (1) Pursuant to subsection (i) (4) of the Renegotiation Act of 1943 (including subsection (i) (4) (B) and (i) (4) (F)) the following classes and types of contracts and subcontracts are exempt to the extent provided in this paragraph from all of the provisions of the Renegotiation Act of 1943:

(a) Any contract or subcontract with a public utility for the delivery of gas, except that if the amounts received or accrued under any such contract or subcontract during any particular fiscal year were $50,000 or more, amounts received or accrued under such contract or subcontract for such fiscal year shall not be exempt from renegotiation by reason of this subparagraph (a). (If such fiscal year is a fractional part of twelve months, the $50,000 amount shall be reduced to the same fractional part thereof for the purposes of this subparagraph (a).)

(b) Any subcontract with a public utility for the delivery of gas without regard to the amounts received or accrued thereunder during any fiscal year, except that

(i) If such subcontract for gas is with a contractor having a contract with a Department providing for the reimbursement by a Department of costs of the contractor incurred under such subcontract for gas, or

(ii) If a Department has contracted to pay or guarantee the payment of amounts payable under such subcontract for gas,

then in either such case such subcontract for gas shall not be exempt from renegotiation by reason of this subparagraph (b).

(2) Amounts received or accrued under any contract or subcontract with a public utility with respect to the construction or installation of facilities for the generation, transmission or distribution of gas shall not be exempt from renegotiation by reason of this paragraph 842.2 even though such contract or subcontract also calls for the delivery of gas.

842.3 *Public utilities—transportation.* Pursuant to subsection (i) (4) of the Renegotiation Act of 1943 (including subsection (i) (4) (B) and (i) (4) (F)) the following classes and types of contracts and subcontracts are exempt from all of the provisions of the Renegotiation Act of 1943:

(1) Contracts and subcontracts with common carriers to furnish transportation by railroad, motor vehicle or air, when made at published rates or charges, fixed, approved or subject to regulation as to the reasonableness thereof by a public regulatory body, or when made at rates or charges which the Department conducting the renegotiation in its discretion shall determine to be no higher than such published rates or charges for transportation of a comparable character.

842.4 *Public utilities—communications.* Pursuant to subsection (i) (4) of the Renegotiation Act of 1943 (including subsection (i) (4) (B) and (i) (4) (F)) the following classes and types of contracts and subcontracts are exempt from all of the provisions of the Renegotiation Act of 1943.

(1) Contracts and subcontracts with telephone, telegraph, cable and radio companies to furnish the service of transmitting messages, when made at published rates or charges, fixed, approved or subject to regulation as to the reasonableness thereof by a public regulatory body, or when made at rates or charges which the Department conducting the renegotiation in its discretion shall determine to be no higher than such

published rates or charges for service of a comparable character.

842.5 *Subcontracts.* Pursuant to subsection (i) (4) of the Renegotiation Act of 1943 (including subsection (i) (4) (B) and (i) (4) (F)) the following classes and types of contracts and subcontracts are exempt from all of the provisions of the Renegotiation Act of 1943.

(1) Subcontracts under any contracts or subcontracts exempted pursuant to paragraphs 842.1 through 842.4 inclusive.

842.6 *Scope of exemptions.* All of the exemptions made under paragraphs 842.1 through 842.5 inclusive, apply to contracts and subcontracts of the specified classes and types, whether heretofore or hereafter made or performed, and whether or not they contain renegotiation provisions.

(3) RR 843 provides as follows:

843. *List of exempted foods.* Determination of the War Contracts Price Adjustment Board of the exemption from renegotiation of contracts and subcontracts for perishable foods under Section 403 (i) (4) (B) of the Renegotiation Act of 1943.

Pursuant to the authority conferred upon the War Contracts Price Adjustment Board by Section 403 (i) (4) (B) of the Renegotiation Act of 1943, concerning the exemption of contracts and subcontracts for certain perishable goods from renegotiation under the Renegotiation Act of 1943, the War Contracts Price Adjustment Board hereby determines that the foods set forth in the list attached hereto and designated as Exhibit "1" are perishable; and that, in the opinion of the Board, the profits under contracts and subcontracts for the purchase of such foods can be determined with reasonable certainty when the contract price is established; and that contracts and subcontracts, heretofore or hereafter made, for the purchase of such foods are hereby declared to be exempt from all of the provisions of the Renegotiation Act of 1943.

EXHIBIT 1

Fresh Fruits:
- Apples
- Apricots
- Bananas
- Berries (blue and black)
- Cantaloupes
- Cherries
- Cranberries
- Grapes
- Grapefruit
- Honeydew Melons
- Lemons
- Limes
- Oranges
- Pears
- Peaches
- Plums
- Strawberries
- Tangerines
- Watermelons
- Other Miscellaneous Fresh Fruits

Fresh Vegetables:
- Asparagus
- Beans, Lima
- Beans, String
- Beets
- Broccoli
- Cauliflower
- Corn
- Cucumbers
- Egg Plant
- Endive (chicory)
- Greens (collards, etc.)
- Kale
- Lettuce
- Onions, Green
- Onions, Dry
- Parsley
- Parsnips
- Peas
- Peppers, Green
- Potatoes, Irish

Fresh Vegetables—Continued.
- Potatoes, Sweet
- Radishes
- Spinach
- Squash
- Tomatoes
- Turnips and Rutabagas
- Mushrooms
- Rhubarb
- Other Miscellaneous Fresh Vegetables

Dairy Products:
- Butter (except canned)
- Cheese (except processed canned)
- Ice Cream; ice cream mix in uncealed containers
- Fresh Fluid Milk
- Fresh Fluid Cream

Poultry:
- Chicken (except canned)
- Turkey (except canned)
- Other Poultry (except canned)

Meats:
- Beef (except canned and dehydrated)
- Pork (except canned and dehydrated)
- Lamb and Mutton (except canned and dehydrated)
- Veal (except canned and dehydrated)
- Smoked or Processed Meats (except canned and dehydrated)
- Other Meats (except canned and dehydrated)
- Lard and Lard Substitutes
- Offals (except canned and dehydrated)

Fish and Sea Foods:
- Fresh or Frozen
- Salted or Smoked (except canned)

Frozen Vegetables
Frozen Fruits
Bread and other Bakery Products (except biscuits, crackers, cracker meal, breakfast cereals, hard bread and zwieback)
Potato Chips.
Compressed Yeast.
Shell Eggs.
Margarine.

Any other perishable food of a similar nature which may be determined from time to time by any of the Departments to be of the same general character as the items specifically set forth on the above list, provided, however, that any items so added shall be reported to the Secretary of the War Contracts Price Adjustment Board.

(c) *Discretionary exemption relating to contracts and subcontracts for standard commercial articles.* [Reserved.]

(d) *Discretionary exemption relating to contracts and subcontracts when effective competition is likely to exist; construction contracts.* This paragraph deals with the discretionary exemption. For the mandatory exemption relating to construction contracts, see paragraph (c).

RR 355 provides as follows:

355. *Contracts and Subcontracts When Effective Competition Is Likely to Exist.*

355.1 *Statutory authority.* Subsection (i) (4) of the 1943 Act authorizes the War Contracts Price Adjustment Board, in its discretion, to exempt from some or all of the provisions of the Act.

"(E) any contract or subcontract, if, in the opinion of the Board, competitive conditions affecting the making of such contract or subcontract are such as are likely to result in effective competition with respect to the contract or subcontract price."

355.2 *General interpretation of exemption.* The War Contracts Board will make exemptions under this provision only as to classes or types of contracts on the basis of the subject matter with which the contract or subcontract is concerned. Exemptions by the Board will be based upon broad national conditions and considerations and will be limited to those fields where, in the opinion of the Board, not only do competitive conditions exist, but the competition is such that it may be presumed to be effective in the sense of producing fair and reasonable prices for the Government and in generally eliminating excessive profits.

355.3 *Application of Exemption to construction contracts.* The Board has found that competitive conditions affecting the making of construction contracts and subcontracts entered into subsequent to June 30, 1943, were such as to result in effective competition with respect to the contract or subcontract price where all of the following conditions exist:

(1) The contract or subcontract is one for the construction of building, structures, improvements or other similar facilities. Contracts or subcontracts for the furnishing of materials or supplies or for the lease or sale of machinery or equipment are not within the scope of this exemption. * * *

(2) The contract was entered into subsequent to June 30, 1943, and did not constitute a substitute for or a revision or extension of an existing contract entered into on or before June 30, 1943.

(3) The work covered by the contract was substantially the same as the work for which the bids were requested.

(4) Bids were received from two or more responsible and qualified contractors, who were independent of each other and were in actual competition with each other for the work for which bids were requested.

(5) The contract price was not in excess of the low bid received.

(e) *Discretionary exemption relating to subcontracts where not administratively feasible to determine and segregate profits.* Reference is made to RR 842 set forth in paragraph (b) (2).

§ 812.1292 *Determination by the Quartermaster General of perishable commodities.* Under date of 13 April 1944, The Quartermaster General issued a list of foods determined to be perishable pursuant to the authority conferred upon him by § 812.1205 (h). This list is not reproduced here for the reason that all items on such list are included in the list of perishable foods set out in § 812.1291 (c).

[Procurement Reg. 13]

PART 813—FORMS OF CONTRACT

Sec.

813.1301 W.D. Contract Form No. 1.
813.1302 W.D. Contract Form No. 2.
813.1303 W.D. Contract Form No. 3.
813.1304 W.D. Contract Form No. 4.
813.1305 W.D. Contract Form No. 5.
813.1306 W.D. Contract Form No. 6.
813.1307 W.D. Contract Form No. 7.
813.1308 W.D. Contract Form No. 8.
813.1309 W. D. Contract Form No. 9.
813.1310 W.D. Contract Form No. 10.
813.1311 War Department Contract Form No. 13A.
813.1312 W.D. Contract Form No. 12.
813.1313 War Department Contract Form No. 13.
813.1314 W.D. Contract Form No. 14.
813.1315a W.D. Contract Form No. 15.
813.1315b W.D. Contract Form No. 27.
813.1316 W.D. Contract Form No. 16.
813.1317a W.D. Contract Form No. 383 (W.D. Forms Nos. 383a, 383b and 383c). Short Form.
813.1317b W.D. Contract Form No. 18. Short Form.
813.1317c W.D. Contract Form No. 47 (W.D. Forms Nos. 47 and 47-a). Short Form, Revised 1 April 1944.
813.1317d W.D. Contract Form No. 5. Short Form.

Sec.
813.1317e W.D. Contract Form No. 19.
813.1317f W.D. Contract Form No. 6. Short Form.
813.1320 W.D. Contract Form No. 20.
813.1321 W.D. Contract Form No. 21.
813.1322 W.D. Contract Form No. 22.
813.1323 W.D. Contract Form No. 23.
813.1324 W.D. Contract Form No. 24.
813.1325 W.D. Contract Form No. 25.
813.1326 W.D. Contract Form No. 26.
813.1327 Standard procurement forms.
813.1328 W.D. Contract Form No. 28.

NOTE: See Part 803, Subparts B and C, defining the scope of authority to use the forms of contracts set forth below.

It should be noted that many of the clauses in the forms are not included in full text, but by reference to sections of Part 803, Subpart H. These clauses will be included in contracts written on the forms only in compliance with the sections referred to. There will also be included in contracts written on the forms such of the other Subpart H clauses, not expressly mentioned in the forms, as are required in the particular case.

In certain cases it may be necessary to make certain editorial changes in Subpart H clauses so that certain words or phrases used throughout the contract will be in conformity.

In certain instances, especially in the case of the short forms of contracts (see § 813.1317 and following), the forms contain shorter or modified versions of some of the clauses set forth in Subpart H of Part 803. In such cases the use of the shorter or modified forms of clauses is to be deemed authorized, notwithstanding the provisions of said Subpart H.

§ 813.1301 *W. D. Contract Form No. 1.*

Contract No. _____

SUPPLY CONTRACT WAR DEPARTMENT

Contractor and address:_____
Contract for:_____
Amount: $_____
Location: _____
Payment:_____
To be made by _____ United States Army, at _____.
The supplies and services to be obtained by this instrument are authorized by, are for the purposes set forth in, and are chargeable to the following allotments, the available balances of which are sufficient to cover the cost of the same:

_____

This contract is authorized by the following laws:

CONTRACT FOR SUPPLIES

This contract, entered into this _____ day of _____, 194____, by the United States of America (hereinafter called the Government) represented by the Contracting Officer executing this contract, and _____

_____

_____

[1] a corporation organized and existing under the laws of the State of _____
[1] a partnership consisting of _____

_____

_____

[1] an individual trading as _____

_____

_____

of the city of _____ in the State of _____ (hereinafter called the Contractor), witnesseth that the parties hereto do mutually agree as follows:

ARTICLE 1. *Scope of this contract.* The contractor shall furnish and deliver _____

_____

_____

for the consideration stated _____

_____

in strict accordance with the specifications, schedules and drawings, all of which are made a part hereof and designated as follows:

_____

_____

[1] Delete all lines which do not apply.

Deliveries shall be made as follows:

ART 2. *Changes.* Where the supplies to be furnished are to be specially manufactured in accordance with drawings and specifications, the Contracting Officer may at any time, by a written order, and without notice to the sureties, make changes in the drawings or specifications. Changes as to shipment and packing of all supplies may also be made as above provided. If such changes cause an increase or decrease in the amount due under this contract, or in the time required for its performance, an equitable adjustment shall be made and the contract shall be modified in writing accordingly. Any claim for adjustment under this article must be asserted within 10 days from the date the change is ordered, provided, however, that the Contracting Officer, if he determines that the facts justify such action, may receive and consider, and with the approval of the Secretary of War or his duly authorized representative, adjust any such claim asserted at any time prior to the date of final settlement of the contract. If the parties fail to agree upon the adjustment to be made the dispute shall be determined as provided in Article 11 hereof. But nothing provided in this article shall excuse the Contractor from proceeding with the contract as changed.

[NOTE: (1) For alternative form of this Article, see § 803.329a.

(2) For the purposes of the fourth sentence of this Article, and for the purpose of any like provision contained in any contract clause which has been inserted in a contract in lieu of the above article, the chief of the technical service or such person as he may designate shall be deemed to be the "duly authorized representative of the Secretary of War".]

ART. 3. *Extras* Except as otherwise herein provided, no charge for extras will be allowed unless the same have been ordered in writing by the Contracting Officer and the price stated in such order.

ART. 4. *Inspection.* (a) All material and workmanship shall be subject to inspection and test at all times and places and, when practicable, during manufacture. In case any articles are found to be defective in material or workmanship, or otherwise not in conformity with the specification requirements, the Government shall have the right to reject such articles, or require their correction. Rejected articles, and/or articles requiring correction, shall be removed by and at the expense of the Contractor promptly after notice so to do. If the Contractor fails to promptly remove such articles and to proceed promptly with the replacement and/or correction thereof, the Government may, by contract or otherwise replace and/or correct such articles and charge to the Contractor the excess cost occasioned the Government thereby, or the Government may terminate the right of the Contractor to proceed as provided in Article 5 of this contract, the Contractor and surety being liable for any damage to the same extent as provided in said Article 5 for terminations thereunder.

(b) If inspection and test, whether preliminary or final, are made on the premises of the Contractor or subcontractor, the Contractor shall furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient inspections and tests required by the inspectors in the performance of their duty. All inspections and tests by the Government shall be performed in such a manner as not to unduly delay the work. Special and performance tests shall be as described in the specifications. The Government reserves the right to charge to the Contractor any additional cost of inspection and test when articles are not ready at the time inspection is requested by the Contractor.

(c) Final inspection and acceptance of materials and finished articles will be made after delivery, unless otherwise stated. If final inspection is made at a point other than the premises of the Contractor or subcontractor, it shall be at the expense of the Government except for the value of samples used in case of rejection. Final inspection shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud. Final inspection and acceptance or rejection of the materials or supplies shall be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the Government for such materials or supplies as are not in accordance with the specifications. In the event public necessity requires the use of materials or supplies not conforming to the specifications, payment therefor shall be made at a proper reduction in price.

ART. 5. *Delays—damages.* (Insert § 803.352).

ART. 6. *Responsibility for supplies tendered.* The Contractor shall be responsible for the articles or materials covered by this contract until they are delivered at the designated point, but the Contractor shall bear all risk on rejected articles or materials after notice of rejection. Where final inspection is at point of origin but delivery by Contractor is at some other point, the Contractor's responsibility shall continue until delivery is accomplished.

ART. 7. *Increase or decrease.* Unless otherwise provided herein, no increase or decrease in the total number of articles contracted for under Article I hereof, will be accepted, without the prior written approval of the Contracting Officer. (Or insert § 803.329)

ART. 8. *Payments.* The Contractor shall be paid, upon the submission of properly certified invoices or vouchers, the prices stipulated herein for articles delivered and accepted or services rendered, less deductions, if any, as herein provided. Unless otherwise specified, payments will be made on partial deliveries accepted by the Government when the amount due on such deliveries so warrants; or, when requested by the Contractor, payments for accepted partial deliveries shall be made whenever such payments would equal or exceed either $1,000 or 50 percent of the total amount of the contract.

ART. 9. *Officials not to benefit.* (Insert § 803.322)

ART. 10. *Covenant against contingent fees.* (Insert § 803.323)

ART. 11. *Disputes.* (Insert § 803.326)

ART. 12. *Termination for convenience of the Government.* (Insert § 803.324)

ART. 13. *Renegotiation.* (See § 803.342 and Part 812)

ART. 14. *Walsh-Healey Act.* (Insert § 805.353 or 803.353 (d))

ART. 15. *Notice to Government of labor disputes.* (Insert § 803.354)

ART. 16. *Prison-made materials.* (Insert § 803.345)

ART. 17. *Anti-discrimination.* (Insert § 803.325)

ART. 18. *Assignment of claims.* (Insert § 803.355 or 803.356)

ART. 19. *Notice of shipments.* (Insert § 803.328)

ART. 20. *Federal, State, and local taxes.* (Insert § 803.357)

ART. 21. *Domestic articles.* (Insert § 803.327)

ART. 22. *Subcontracting.* (Insert § 803.367)

ART. 23. *Definitions.* (a) The term "Secretary of War" as used herein shall include the Under Secretary of War, and the term "his duly authorized representative" shall mean any person or board authorized by the Secretary of War to act for him other than the Contracting Officer.

(b) Except for the original signing of this contract, and except as otherwise stated herein, the term "Contracting Officer" as used herein shall include his duly appointed successor or his authorized representative.

ART. 24. *Alterations.* The following changes were made in this contract before it was signed by the parties hereto:

In witness whereof, the parties hereto have executed this contract as of the day and year first above written.

THE UNITED STATES OF AMERICA,

By _____

_____

(Official title)

_____

(Contractor)

By _____

_____

(Business Address)

Two Witnesses:

_____

_____

(Address)

_____

_____

(Address)

I _____, certify that I am the Secretary of the corporation named as Contractor herein; that _____, who signed this contract on behalf of the Contractor was then _____ of said corporation; that said contract was duly signed for and on behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

In witness whereof, I have hereunto affixed my hand and the seal of said corporation this _____ day of _____, 194__.

[CORPORATE SEAL]

_____

(Secretary)

I hereby certify that, to the best of my knowledge and belief, based upon observation and inquiry, _____ who signed this contract for the _____; had authority to execute the same, and is the individual who signs similar contracts on behalf of this corporation with the public generally.

_____

Contracting Officer.

(a) *Additional articles.* The following additional articles may be inserted in supply contracts in appropriate cases:

ARTICLE _____. *Final inspection with performance tests.* (a) No acceptance of the articles contracted for herein shall be regarded as final until such article shall have passed such final inspection as may be prescribed by _____,[1] or his duly authorized representative, and which shall include the following, but without limitation:

1. Inspection of each article upon arrival at the site of final inspection, for damage in transit, which damage shall be at the risk of the Contractor.

2. Such special and performance tests as are described in the specifications.

3. Inspection of components for failure due to such performance tests.

(b) When, during said performance tests, failure occurs due to faulty material or workmanship for which the Contractor is responsible, and such failure is of such magnitude that additional performance tests are required after the necessary repairs or replacements have been made, the cost of such additional performance tests will be borne by the Contractor. The _____,[1] or his duly authorized representative, will decide in each case whether additional performance tests are required, and his decision in this regard shall be final and conclusive.

(c) The Contractor is authorized to have a representative present during the performance tests of any of the articles delivered under this contract.

(b) Where final acceptance cannot be made without some test after delivery, such as a proof test or a performance test, use the following in place of Article 8:

ARTICLE _____. *Payment.* The Contractor shall be paid as follows:

(a) _____ percent of the unit contract price of the supplies contracted for, upon submission of properly certified invoices therefor, and after delivery thereof; *Provided,* That any advance payments, or partial payments, made under this contract shall be liquidated by appropriate deductions from all payments made under this paragraph (a).

(b) _____ percent of the unit contract price on each unit delivered, after final tests and final acceptance thereof; but in any event payment will be made within six (6) months after such delivery, if not rejected within such time and if the units delivered comply with the specifications in all respects other than such as are determinable only by final tests; *Provided further,* If any advance payments or partial payments proportionately chargeable against such units remain unliquidated, appropriate deductions shall be made from payments made under this paragraph (b).

(c) In cases where it clearly appears from previous favorable experience with the particular contractor that the withholding until final test of a percentage of the unit price of each article delivered is unnecessary for the protection of the Government, the following clause may be used in lieu of that set forth in Article 26, under such limitations or restrictions as may be prescribed by the chief of the technical service concerned:

ARTICLE _____ *Payment.* The Contractor shall be paid as follows:

(a) Upon the submission of properly certified invoices or vouchers, the unit prices stipulated herein, less deductions, if any, as herein provided, for articles delivered which comply with specifications in all respects other than such as are determinable only by final test.

(b) The last _____ percent (____%) of the total contract price for the articles contracted for hereunder shall be withheld by the Government until final test and final acceptance of all such articles; but, in any event, payment of the amount withheld by the Government will be made within six (6) months after delivery of all such articles, if not rejected within such time and if all the articles delivered comply with specifications in all respects other than such as are determinable only by final tests.

(c) Any unliquidated advance or partial payments made under this contract (if this contract provides for such payments) shall be liquidated by proportionate deductions from payments otherwise due hereunder. Any payments (whether by way of direct payment or by liquidation of advance or partial payments) made against the delivery of articles which are rejected upon final test shall be credited or refunded to the Government as directed by the Contracting Officer.

(d) At any time before the completion of this contract the Contracting Officer, by written change order, may (but shall in no event be obliged to) reduce the percentage specified in paragraph (b) above.

ARTICLE_____. *Material to be furnished by the Government.* (a) The Government shall deliver to the Contractor at_____, for use in the manufacture of the supplies to be furnished under the terms of this contract, the following material:

(b) Upon the completion or termination of this contract, the Contractor shall deliver to the Government, f. o. b. _____ any of said material, exclusive of scrap or wastage, not used in connection with this contract.

(c) In consideration of a reduction of 8_____ per unit in the price of the supplies hereunder, which reduction has been taken account of in the unit contract price stated in Article _____ above, title to all scrap or wastage resulting from the processing of the materials referred to in paragraph (a) hereof shall be and remain in the Contractor.

[1](c) The Contractor shall provide and maintain adequate facilities in which he shall store and keep all scrap or wastage resulting from the use of said materials furnished by the Government. Title to all such scrap or wastage shall remain in the Government.

ARTICLE _____. *Neutrality Act.* (a) Subsection 12 (g) of the Joint Resolution approved by the President, November 4, 1939, provides:

"No purchase of arms, ammunition, or implements of war shall be made on behalf of the United States by any officer, executive department, or independent establishment of the Government from any person who shall have failed to register under the provisions of this joint resolution."

(b) Prior to the execution of this contract, the Contractor shall furnish a certified or photostatic copy of its Certificate of Registration with the Department of State, which copy shall be attached to the copy of this contract on file in the office of the chief of the technical service concerned.

§ 813.1502 *W. D. Contract Form No. 2.*

Contract No._____

CONSTRUCTION CONTRACT
WAR DEPARTMENT

Contractor and Address_____
Contract for_____
Amount: $_____
Location _____
Payment_____
To be made by_____
United States Army, at_____

The supplies and services to be obtained by this instrument are authorized by, are for the purposes set forth in, and are chargeable to the following allotments, the available balances of which are sufficient to cover the cost of the same:

_____

This contract is authorized by the following laws:

CONTRACT FOR CONSTRUCTION

This contract, entered into this_____ day of _____, 194___, by the United States of America (hereinafter called the Government) represented by the Contracting Officer executing this contract, and

_____

_____

_____

[2]a corporation organized and existing under the laws of the State of_____

[2]a partnership consisting of_____

_____

_____

[2]an individual trading as_____

_____

_____

of the city of_____in the State of _____ (hereinafter called the Contractor), witnesseth that the parties hereto do mutually agree as follows:

---

[1]The chief of the technical service concerned.

[1]This paragraph will be used as a substitute for the above paragraph (c), in appropriate cases, where the Government desires the return of the scrap or wastage.

[2]Delete all lines which do not apply.

ARTICLE 1. *Statement of work.* The contractor shall furnish the materials, and perform the work for_____
_____
_____
for the consideration of_____
_____
_____
in strict accordance with the specifications, schedules, and drawings, all of which are made a part hereof and designated as follows:
_____
_____
The work shall be commenced_____
and shall be completed_____

ART. 2. *Specifications and drawings.* The contractor shall keep on the work a copy of the drawings and specifications and shall at all times give the contracting officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In any case of discrepancy in the figures, drawings, or specifications, the matter shall be immediately submitted to the contracting officer, without whose decision said discrepancy shall not be adjusted by the contractor, save only at his own risk and expense. The contracting officer shall furnish from time to time such detail drawings and other information as he may consider necessary, unless otherwise provided.

ART. 3. *Changes.* The contracting officer may at any time, by a written order, and without notice to the sureties, make changes in the drawings and/or specifications of this contract within the general scope thereof. If such changes cause an increase or decrease in the amount due under this contract, or in the time required for its performance, an equitable adjustment shall be made and the contract shall be modified in writing accordingly. Any claim for adjustment under this article must be asserted within 10 days from the date the change is ordered: Provided, however, that the contracting officer, if he determines that the facts justify such action, may receive and consider, and with the approval of the Secretary of War or his duly authorized representative, adjust any such claim asserted at any time prior to the date of final settlement of the contract. If the parties fail to agree upon the adjustment to be made the dispute shall be determined as provided in Article 15 hereof. But nothing provided in this article shall excuse the contractor from proceeding with the prosecution of the work so changed.

ART. 4. *Changed conditions.* Should the contractor encounter, or the Government discover, during the progress of the work subsurface and/or latent conditions at the site materially differing from those shown on the drawings or indicated in the specifications, or unknown conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the plans and specifications, the attention of the contracting officer shall be called immediately to such conditions before they are disturbed. The Contracting Officer shall thereupon promptly investigate the conditions, and if he finds that they do so materially differ the contract shall with the written approval of the Secretary of War or his duly authorized representative, be modified to provide for any increase or decrease of cost and/or difference in time resulting from such conditions.

ART. 5. *Extras.* Except as otherwise herein provided, no charge for any extra work or material will be allowed unless the same has been ordered in writing by the contracting officer and the price stated in such order.

ART. 6. *Inspection.* (a) All material and workmanship (if not otherwise designated by the specifications) shall be subject to inspection, examination, and test by Government inspectors at any and all times during manufacture and/or construction and at any and all places where such manufacture and/or construction are carried on. The Government shall have the right to reject defective material and workmanship or require its correction. Rejected workmanship shall be satisfactorily corrected and rejected material shall be satisfactorily replaced with proper material without charge therefor, and the contractor shall promptly segregate and remove the rejected material from the premises. If the Contractor fails to proceed at once with the replacement of rejected material and/or the correction of defective workmanship the Government may, by contract or otherwise, replace such material and/or correct such workmanship and charge the cost thereof to the contractor, or may terminate the right of the contractor to proceed as provided in Article 9 of this contract, the contractor and surety being liable for any damage to the same extent as provided in said Article 9 for terminations thereunder.

(b) The Contractor shall furnish promptly without additional charge, all reasonable facilities, labor, and materials necessary for the safe and convenient inspection and test that may be required by the inspectors. All inspection and tests by the Government shall be performed in such manner as not unnecessarily to delay the work. Special, full size, and performance tests shall be as described in the specifications. The Contractor shall be charged with any additional cost of inspection when material and workmanship are not ready at the time inspection is requested by the contractor.

(c) Should it be considered necessary or advisable by the Government at any time before final acceptance of the entire work to make an examination of work already completed, by removing or tearing out same, the contractor shall on request promptly furnish all necessary facilities, labor, and material. If such work is found to be defective in any material respect, due to fault of the contractor or his subcontractors, he shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, the actual cost of labor and material necessarily involved in the examination and replacement, plus 15 percent, shall be allowed the contractor and he shall, in addition, if completion of the work has been delayed thereby, be granted a suitable extension of time on account of the additional work involved.

(d) Inspection of material and finished articles to be incorporated in the work at the site shall be made at the place of production, manufacture, or shipment, whenever the quantity justifies it, unless otherwise stated in the specifications; and such inspection and acceptance, unless otherwise stated in the specifications, shall be final, except as regards latent defects, departures from specific requirements of the contract and the specifications and drawings made a part thereof, damage or loss in transit, fraud, or such gross mistakes as amount to fraud. Subject to the requirements contained in the preceding sentence, the inspection of material and workmanship for final acceptance as a whole or in part shall be made at the site.

ART. 7. *Materials and workmanship.* Unless otherwise specifically provided for in the specifications, all workmanship, equipment, materials, and articles incorporated in the work covered by this contract are to be of the best grade of their respective kinds for the purpose. Where equipment, materials, or articles are referred to in the specifications as "equal to" any particular standard, the contracting officer shall decide the question of equality. The Contractor shall furnish to the contracting officer for his approval the name of the manufacturer of machinery, mechanical and other equipment which he contemplates incorporating in the work, together with their performance capacities and other pertinent information. When required by the specifications, or when called for by the Contracting Officer, the Contractor shall furnish the Contracting Officer for approval full information concerning the materials or articles which he contemplates incorporating in the work. Samples of materials shall be submitted for approval when so directed. Machinery, equipment, materials, and articles installed or used without such approval shall be at the risk of subsequent rejection. The contracting officer may require the contractor to remove from the work such employee as the Contracting Officer deems incompetent, careless, insubordinate, or otherwise objectionable, or whose continued employment on the work is deemed by the Contracting Officer to be contrary to the public interest.

ART. 8. *Superintendence by Contractor.* The Contractor shall give his personal superintendence to the work or have a competent foreman or superintendent, satisfactory to the Contracting Officer, on the work at all times during progress, with authority to act for him.

ART. 9. *Delays—damages.* If the contractor refuses or fails to prosecute the work or any separable part thereof, with such diligence as will insure its completion within the time specified in article 1, or any extension thereof, or fails to complete said work within such time, the Government may, by written notice to the contractor, terminate his right to proceed with the work or such part of the work as to which there has been delay. In such event the Government may take over the work and prosecute the same to completion, by contract or otherwise, and the contractor and his sureties shall be liable to the Government for any excess cost occasioned the Government thereby. If the contractor's right to proceed is so terminated, the Government may take possession of and utilize in completing the work such materials, appliances, and plant as may be on the site of the work and necessary therefor; *Provided,* That the right of the contractor to proceed shall not be terminated under this article because of any delays in the completion of the work due to unforeseeable causes beyond the control and without the fault or negligence of the contractor, including, but not restricted to acts of God, or of the public enemy, acts of the Government (including, but not restricted to any preference, priority or allocation order), acts of another contractor in the performance of a contract with the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays of subcontractors due to such causes, if the contractor shall within 10 days from the beginning of any such delay (unless the contracting officer, with the approval of the Secretary of War or his duly authorized representative, shall grant a further period of time prior to the date of final settlement of the contract) notify the contracting officer in writing of the causes of delay, who shall ascertain the facts and the extent of the delay and extend the time for completing the work when in his judgment the findings of fact justify such an extension, and his findings of fact thereon shall be final and conclusive on the parties hereto, subject only to appeal within 30 days, by the contractor to the Secretary of War or his duly authorized representative, whose decision on such appeal as to the facts of delay and the extension of time for completing the work shall be final and conclusive on the parties hereto.

ART. 10. *Permits and responsibility for work.* The Contractor shall, without additional expense to the Government, obtain all

required licenses and permits and be responsible for all damages to persons or property that occur as a result of his fault or negligence in connection with the prosecution of the work, and shall be responsible for all materials delivered and work performed until completion and final acceptance. Upon completion of the contract the work shall be delivered complete and undamaged.

ART. 11. *Labor.* (a) (Insert § 803.346.)

(b) *Overtime rates and shifts.* Where a single shift is worked, eight hours of continuous employment, except for lunch periods, shall constitute a day's work beginning on Monday and through Friday of each week. When work is required in excess of eight hours in any one day or during the interval from 5:00 p. m. Friday to 7:00 a. m. Monday, such work shall be paid for at 1½ times the basic rate wages. No premium wage or extra compensation shall be paid for work on customary holidays except that time and one-half wage compensation shall be paid for work performed on any of the following days only: New Year's Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day, and Memorial Day. Where two or more shifts are worked, five consecutive days of 7½ consecutive hour shifts, from Sunday midnight to Friday midnight shall constitute a regular week's work. The pay for a full shift period shall be a sum equivalent to eight times the basic hourly rate, and for a period less than the full shift shall be the corresponding proportional amount which the time worked bears to the time allocated to the full shift period. Any time worked from Friday midnight to Sunday midnight or in excess of regular shift hours shall be paid for at 1½ times the basic rate of wages. Wherever found to be practicable, shifts should be rotated.[1]

(c) (Insert clause in § 803.345.)

ART. 12. *Covenant against contingent fees.* (Insert clause in § 803.323.)

ART. 13. *Other contracts.* The Government may award other contracts for additional work, and the Contractor shall fully cooperate with such other Contractors and carefully fit his own work to that provided under other contracts as may be directed by the Contracting Officer. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor.

ART. 14. *Officials not to benefit.* (Insert clause in § 803.322.)

ART. 15. *Disputes.* (Insert article in § 803.326.)

ART. 16. *Payments to contractor.* (a) Unless otherwise provided in the specifications, partial payments will be made as the work progresses at the end of each calendar month, or as soon thereafter as practicable, on estimates made and approved by the Contracting Officer. In preparing estimates the material delivered on the site and preparatory work done may be taken into consideration.

(b) In making such partial payment there shall be retained 10 percent on the estimated amount until final completion and acceptance of all work covered by the contract; *provided, however,* That the contracting officer, at any time after 50 percent of the work has been completed, if he finds that satisfactory progress is being made, may make any of the remaining partial payments in full; *and provided further,* That on completion and acceptance of each separate building, vessel, public work, or other division of the contract, on which the price is stated separately in the contract, payment may be made in full, including retained percentages thereon, less authorized deductions.

(c) All material and work covered by partial payments made shall thereupon become the sole property of the Government, but this provision shall not be construed as relieving the contractor from the sole responsibility for all materials and work upon which payments have been made or the restoration of any damaged work, or as a waiver of the right of the Government to require the fulfillment of all of the terms of the contract.

(d) Upon completion and acceptance of all work required hereunder, the amount due the Contractor under this contract will be paid upon the presentation of a properly executed and duly certified voucher therefor, after the Contractor shall have furnished the Government with a release, if required, of all claims against the Government arising under and by virtue of this contract, other than such claims, if any, as may be specifically excepted by the contractor from the operation of the release in stated amounts to be set forth therein.

ART. 17. *Rate of wages.* (Insert clauses in §§ 803.343 and 803.343 (a))

ART. 18. *Termination for convenience of the Government.* (Insert clause in § 803.324 (a))

ART. 19. *Nonrebate of wages.* (Insert clause in § 803.344).

ART. 20. *Taxes.* (Insert article in § 803.357)

ART. 21. *Additional security.* Should any surety upon any bond furnished in connection with this contract become unacceptable to the Government, or if any such surety shall fail to furnish reports as to his financial condition from time to time as requested by the Government, the Contractor must promptly furnish such additional security as may be required from time to time to protect the interests of the Government or of persons supplying labor or materials in the prosecution of the work contemplated by the contract.

ART. 22. *Loading and unloading cars.* The Contractor shall load promptly all railroad cars furnished for loading upon his order and shall unload from railroad cars promptly upon arrival all shipments consigned to him, and shall provide storage facilities and other facilities necessary for these purposes; and the contractor shall not order railway cars for loading unless they can be loaded promptly and shall not cause or permit shipments to be consigned to him unless they can be unloaded from railroad cars promptly upon arrival.

ART. 23. *Assignment of claims.* (Insert § 803.355)

ART. 24. *Renegotiation.* (See § 803.342 and Part 812)

ART. 25. *Anti-discrimination.* (Insert clause in § 803.325)

ART. 26. *Notice to the Government of labor disputes.* (Insert clause in § 803.354.)

ART. 27. *Accident prevention.* (Insert clause in § 803.362)

ART. 28. *Definitions.* (a) The term "Secretary of War" as used herein shall include the Under Secretary of War, and the term "his duly authorized representative" shall mean any person or board authorized by the Secretary of War to act for him other than the Contracting Officer.

(b) Except for the original signing of this contract, and except as otherwise stated herein, the term "Contracting Officer" as used herein shall include his duly appointed successor or his authorized representative.

ART. 29. *Alterations.* The following changes were made in this contract before it was signed by the parties hereto:

In witness whereof, the parties hereto have executed this contract as of the day and year first above written.

THE UNITED STATES OF AMERICA,

By _____

_____

(Official Title)

_____

(Contractor)

By _____

_____

(Business Address)

Two Witnesses:

_____

_____

(Address)

_____

_____

(Address)

I _____, certify that I am the Secretary of the corporation named as Contractor herein; that _____ who signed this contract on behalf of the Contractor was then _____ of said corporation; that said contract was duly signed for and on behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

In witness whereof, I have hereunto affixed my hand and the seal of said corporation this _____ day of _____, 194__.

[CORPORATE SEAL]

_____

(Secretary)

I hereby certify that, to the best of my knowledge and belief, based upon observation and inquiry, _____ who signed this contract for the _____ had authority to execute the same, and is the individual who signed similar contracts on behalf of this corporation with the public generally.

_____

Contracting Officer.

§ 813.1303 *W. D. Contract Form No. 3.*

Contract No. _____

FIXED FEE CONSTRUCTION CONTRACT
WAR DEPARTMENT

Contractor and address _____
Contract for construction of _____
Location _____
Fixed fee _____
Estimated construction cost exclusive of fixed fee _____
Payment _____
To be made by _____ U. S. Army at _____

The supplies and services to be obtained by this instrument are authorized by, are for the purposes set forth in, and are chargeable to the following procurement authorities, the available balances of which are sufficient to cover the cost of the same _____

_____

This contract is authorized by the following laws:

FIXED FEE CONSTRUCTION CONTRACT

This contract, entered into this _____ day of _____, 194__, by The United States of America (hereinafter called the Government) represented by the Contracting Officer executing this contract, and

_____

_____

[1] a corporation organized and existing under the laws of the State _____

_____

[1] a partnership consisting of _____

_____

_____

_____

[1] an individual trading as _____ of the City of _____ in the State of _____ (hereinafter called the Contractor), witnesseth that:

Whereas, the Government desires to engage the services of a Contractor to perform the work and services hereinafter set forth; and

Whereas, the accomplishment of the said work under a fixed-fee contract entered into after negotiations approved by the Secretary of War, and without advertising for proposals, is authorized by law and will facilitate the prosecution of the war; and

Whereas, as a result of such negotiations, the Secretary of War has directed that the

[1] Clause (b) will be omitted in all contracts for the construction, alteration, or repair of vessels and floating equipment.

[1] Delete all lines which do not apply.

Government enter into a fixed-fee contract with the Contractor for the accomplishment of the said work:

Now, therefore, the parties hereto do mutually agree as follows:

ARTICLE I. *Statement of work.* 1. The Contractor shall, in the shortest possible time, furnish the labor, materials, tools, machinery and equipment, facilities, supplies not furnished by the Government, and services, and do all things necessary for the completion of the following work: _____

_____

_____

all in accordance with the drawings and specifications or instructions contained in Appendix "A" hereto attached and made a part hereof, or to be furnished hereafter by the Contracting Officer and subject in every detail to his supervision, direction and instructions.

2. The Contractor shall also perform management services which shall include, among other functions, the scheduling and/or purchasing of items of materials and equipment to avoid any delays in the prosecution of the work hereunder. The Contractor shall advise and consult with the subcontractors on this project and shall direct and supervise their work, subject to the provisions of Article VII; and shall, subject to the direction of the Contracting Officer, store materials and equipment for use in connection with the project.

3. It is estimated that the construction cost of the work listed in Section 1 of this Article will be_____

_____

dollars, ($_____), exclusive of the Contractor's fee, and that the work herein contracted for will be ready for utilization by the Government on or before _____ It is expressly understood, however that neither the Government nor the Contractor guarantee the correctness of either of these estimates. In consideration of his undertaking under this contract the Contractor shall receive the following:

a. Reimbursement for expenditures as provided in Article II.

b. Rental for Contractor's equipment as provided in Article II.

c. A fixed fee in the amount of_____

_____

dollars ($_____) which shall constitute complete compensation for the Contractor's services including profit and all general overhead expenses.

4. When in the opinion of the Contracting Officer it is to the best interest of the Government, the Contractor shall when so ordered or authorized, subcontract any or all items or classifications of work required under this contract or subsequently added thereto. Such subcontracting of work, or the performance thereof with the Contractor's own forces, regardless of the amount and/or extent of work performed or subcontracted, all with the prior written approval or order of the Contracting Officer, shall entail no adjustment in the fixed fee stipulated in Section 3c of this Article. The fixed fee stipulated in Section 3c of this Article has been determined in the light of the fact that all of the work may be subcontracted pursuant to the foregoing provision. Such fee includes compensation for the services which may be rendered by the Contractor in the negotiation, supervision, and coordination of any work subcontracted and the responsibilities assumed by the Contractor in connection therewith, and is deemed to be reasonable, regardless of the amount or extent of work performed or subcontracted.

5. The Contracting Officer may at any time by written order issue additional instructions, require additional work or services or direct the omission of work or services covered by this contract. If such changes cause a material increase or decrease in the amount or character of the work to be done under this contract an equitable adjustment of the amount of the fixed fee to be paid the Contractor shall be made and the contract shall be modified in writing accordingly. Any claim for adjustment under this Article must be asserted within 10 days from the date the change is ordered (unless the Contracting Officer, with the approval of the Secretary of War or his duly authorized representative, shall grant a further period of time prior to the date of final settlement of the contract). Nothing provided in this Article shall excuse the Contractor from proceeding with the prosecution of the work so changed. There shall be no adjustment in the amount of the fixed fee as provided herein, nor any claim therefor because of any errors and/or omissions made in computing the estimated cost of the construction of the work under this contract or where the actual cost varies from the estimated cost.

ART. II. *Cost of the work.*—1. *Reimbursement for contractor's expenditures.* The Contractor shall be reimbursed in the manner hereinafter described for such of his actual expenditures in the performance of the work as may be approved or ratified by the Contracting Officer and as are included in the following items:

a. All labor, materials, tools, machinery, equipment, supplies, services, utilities, power, and fuel necessary for either temporary or permanent use for the benefit of the work.

b. All subcontracts made in accordance with the provisions of this contract.

c. Rental actually paid by the Contractor, at rates not to exceed those approved by the Contracting Officer, for construction plant in sound and workable condition exceeding $300 in value as may be necessary for the proper and economical prosecution of the work. Each contract for the rental of construction plant or parts thereof by the Contractor from third parties shall be in a form prescribed by the Contracting Officer and shall be subject to his approval and shall include provisions 1. that title to such construction plant or parts thereof free of all liens and encumbrances shall vest in the Government when and if the total rental paid and/or accrued to the lessor for any item of construction plant or parts thereof shall equal the approved value thereof plus one percent (1%) of the approved value per month for each contract month or fraction thereof such piece of equipment shall have been in use, and that on demand the lessor will deliver to the Contracting Officer such evidences of title as he shall demand; and 2. that at any time prior to termination of such rental agreement, the Government may at its option purchase any piece of equipment by paying the lessor the difference between the valuation of such piece of equipment plus one percent (1%) of the approved value per month for each contract month or part thereof such piece of equipment shall have been in use, and the total rental theretofore paid for such piece of equipment provided, however, that either of such provisions may be omitted from such rental agreements if the omission is approved by the Chief of the Technical Service.

d. Unloading and assembling at the site of the work of construction plant owned or rented by the Contractor; transportation thereof to the place or places where it is to be used in connection with said work, dismantling, unloading and return transportation to the point of original shipment or equivalent mileage, but in no event will the payment made for return transportation exceed the payment made for transportation to the job site unless such excess cost results solely from an increase of freight rates, or is required by Government transfer of such equipment to another site more distant from the point of origin than the site of the work set out in Article I hereof. Charges for transportation over distances in excess of 500 miles must have the written authorization of the Contracting Officer in advance. Loading at the site of origin and unloading when returned to the original shipping point or other return shipping point will not be paid by the Government and is not a reimbursable item.

e. Repairs and repair parts as are not included in the rental or are not made necessary by the fault or negligence of the Contractor or his employees.

f. Transportation charges on materials and supplies.

g. Transportation and traveling expenses to the work of the necessary field forces for the economical and successful prosecution of the work, and return when such services are no longer required; expenses of procuring labor and expediting the production and transportation of material and equipment. Expenditures under these items shall be either authorized or approved in writing by the Contracting Officer.

h. Salaries of resident engineers, superintendents, timekeepers, foremen, and other field employees of the Contractor in connection with the work. In case the full time of any field employee of the Contractor is not applied to the work, his salary shall be included in this item only in proportion to the actual time applied thereto. No person shall be assigned to service by the Contractor as superintendent of construction, chief engineer, chief purchasing agent, chief accountant, of similar position in the Contractor's field organization, or as principal assistant to any such person, until there has been submitted to and approved by the Contracting Officer a statement of the qualifications, experience, and salary of the person proposed for such assignment. The payment of any excess salary over such scheduled amounts shown in the approved salary schedule, Appendix C, attached hereto and made a part hereof shall not be reimbursable, unless and until the Chief of the Technical Service has so approved in writing.

1. Buildings, trade fixtures and equipment required for necessary field offices, commissaries, hospitals, and other facilities, and the cost of maintaining and operating such field offices, commissaries, hospitals and other facilities; provided that the Contractor may enter into a contract with any third party or parties for the operation of the commissaries, hospitals, or other facilities provided for herein, in which event such contract shall be reduced to writing and the terms thereof subject to the prior written approval of the Contracting Officer.

j. Temporary rights in land required in connection with the work.

k.-n. (Insert clauses *a* to *d*, § 803.365 (b)).

o. Payments from his own funds made by the Contractor under the Social Security Act, and any disbursements required by law, which the Contractor may be required on account of this contract to pay on or for any plant, equipment, process, organization, materials, supplies, or personnel; and, if approved in writing by the Contracting Officer in advance, permit and license fees and royalties on patents used, including those owned by the Contractor.

p. If the Contractor and/or his representative shall be required to travel, the Government will reimburse the Contractor for the transportation, including Pullman where necessary, and will allow for such travel Six Dollars ($6.00) per day in lieu of all other expenses. Transportation by automobile on such required travel shall be reimbursed at the rate of Five Cents ($.05) per mile as representing the actual cost of such transportation.

All travel shall be either authorized or approved in writing by the Contracting Officer. Should the Contractor, or any representative thereof, remain in a travel status in excess of six (6) days at any one time, not including the time consumed in travel the cost for such

excess travel status shall be at the expense of the Contractor, unless otherwise ordered in writing by the Contracting Officer.

q. When specifically approved in advance by the Contracting Officer, a reasonable allowance for work done in the Contractor's general offices exclusively for and directly chargeable to the work.

r. Disbursements incident to payment of payrolls, including but not limited to the cost of disbursing cash, necessary guards, cashiers, and paymasters. If payments to employees are made by check, facilities for cashing checks must be provided without expense to employees, and the Contractor shall be reimbursed therefor.

s. In the event the Contracting Officer shall determine that the best interests of the Government require that the Contractor initiate or defend litigation in connection with claims of third parties arising out of the performance of this contract, the Contractor will proceed with such litigation in good faith and the costs and expenses of such litigation, including judgments and court costs, allowances rendered or awarded in connection with suits for wages, overtime or salaries, and reasonable attorneys' fees for private counsel when the Government does not furnish Government counsel, shall be reimbursable under this contract.

t. Such other items not expressly excluded by other provisions of this contract as should, in the opinion of the Contracting Officer, be included in the cost of the work. When such an item is allowed by the Contracting Officer, it shall be specifically certified as being allowed under this Subsection.

u. All expenditures for which reimbursement has not been made pursuant to Letter Contract dated _____, a copy of which is attached hereto. Such Letter Contract is hereby merged and superseded by this contract.[1] This Subsection u shall be deemed to be included herein if and only if this contract is preceded by a Letter Contract.

2. *Rental for construction plant owned by Contractor:*

a. Rental shall be paid to the Contractor for construction plant in sound and workable condition, owned and furnished by him for the proper and economical prosecution of the work, as shown in the attached "Appendix B" hereby made a part hereof, at rental rates prescribed by the Under Secretary of War in "Uniform Rental Rates for Contractor-Owned Construction Plant", August 27, 1941.

b. In the event the Contractor, with the approval of the Contracting Officer, furnishes additional equipment that is not included in "Appendix B", rental for such equipment will be paid in accordance with the said "Uniform Rental Rates for Contractor-Owned Construction Plant."

c. Except as otherwise specified herein, rental shall begin on the date of delivery of the construction plant to a common carrier for shipment to the site of the work, as evidenced by bill of lading or other satisfactory evidence covering such shipment. In the event the construction plant is conveyed by the Contractor, the rental shall start at the time transportation to the site begins; however, the rental paid shall not exceed that for the equivalent time of shipment by common carrier.

d. If such construction plant is not in sound and workable condition, to the satisfaction of the Contracting Officer, when delivered at the site of the work, the rental period therefor shall not begin until the construction plant shall have been placed in sound and workable condition at the expense of the Contractor, and rental therefor shall not be paid for any prior period.

e. If such construction plant cannot be placed in sound and workable condition within reasonable time to the satisfaction of the Contracting Officer, no transportation charges for the shipment thereof, to or from the site of the work, shall be paid.

f. The approved value of the construction plant as shown in "Appendix B" shall be deemed binding unless the Contracting Officer shall, within twenty days after such plant has been set up and working modify or change such valuation. In the event a change is made in the valuation of the construction plant, a corresponding change shall be made in the rental rate in accordance with said "Uniform Rental Rates for Contractor-Owned Construction Plant." Thereafter the valuation and the related rental rate shall be binding unless the rental is modified as specified below.

g. Furnish within 15 days of the date of the receipt of written notice from the Contracting Officer, construction plant listed in "Appendix B" provided that the date upon which the Contractor is required to furnish such plant shall not precede the date on which such construction plant is listed as available in said "Appendix B". In the event the Contractor fails to furnish construction plant as required by such notice, the additional cost of acquiring replacement construction plant from any source other than the Contractor shall be paid by the Contractor and shall not be a reimbursable expenditure.

h. Rental for time consumed for repairs, in excess of the time normally required for such repairs as determined by the Contracting Officer, shall be deducted from the rental in the amount of one-thirtieth of the monthly rental rate for each day determined to be in excess. When in the opinion of the Contracting Office the amount of repairs or maintenance is excessive, a deduction shall be made from the rental.

i. The payment of rental shall cease on a date to be established in a written notice by the Contracting Officer to the Contractor, that the Construction plant is no longer required. The date of release thus established shall include an allowance for the time necessary for final repairs, dismantling and loading for shipment.

GENERAL

3. Title to all materials, tools, machinery, equipment and supplies for which the Contractor shall be entitled to reimbursement under Article II shall vest in the Government at such point or points as the Contracting Officer may designate in writing; provided that the right of final inspection and acceptance or rejection of such materials, tools, machinery, equipment and supplies at such place or places as he may designate in writing is reserved to the Contracting Officer; provided further that, upon such final inspection, the Contractor shall be given written notice of acceptance or rejection as the case may be. In the event of rejection, the Contractor shall be responsible for the removal of the rejected property within a reasonable time.

4. The work shall be executed in the best and most workmanlike manner by qualified, careful, and efficient workers, in strict conformity with the best standard practices.

5. Except as otherwise authorized by the Contracting Officer, all materials shall be of the best quality of their respective kinds. If the Contracting Officer requires that the Contractor submit for prior approval samples of materials proposed for use in the work covered by this contract, the Contractor shall make no commitments for such materials until the submitted sample has been approved by the Contracting Officer.

6. During the performance of this contract, the work shall be under the full-time resident direction of the Contractor, if an individual; of one or more principal partners if the Contractor is a partnership; or in case the Contractor is a corporation, association, or similar legal entity, one or more senior officers thereof; provided however that the Contractor, whether an individual, a partnership, a corporation, or other legal entity, may be represented in the direction of the work by some person of a class other than those specified above, if the Contracting Officer gives his approval. In any event the Contractor shall not be entitled to be reimbursed for any salary, wages or like compensation paid for such direction of the work, whether performed by an individual, a partner, a corporate officer or other representative.

7. a. The Government reserves the right to furnish any materials, construction equipment, machinery, tools, or services, including communication services necessary for the completion of the work. The Contractor shall cause all equipment, machinery, and tools to which title is vested in the Government to be suitably marked with an identifying mark or symbol indicating that such items are the property of the United States. The Contractor shall maintain at all times, in a manner satisfactory to the Contracting Officer, records showing the disposition and/or use of all equipment, machinery, tools and materials purchased for the work and for which he has been reimbursed by the Government or which have been furnished by the Government. Upon the completion of this contract or upon demand, the Contractor shall return such equipment, machinery, tools and unused materials to the place designated by the Contracting Officer.

b. (Insert article in § 803.365 (a))

8. The Government reserves the right to pay directly to common carriers any or all freight charges on construction plant, materials, and supplies.

9. The Government reserves the right to pay directly to the persons concerned all sums due from the Contractor for labor, materials, or other charges.

10. No salary of the Contractor, partners or corporate officers of the Contractor's organization shall be included in the cost of the work. No part of the expense incurred in conducting the Contractor's main office or regularly established branch offices, and no overhead expense of any kind, except as specifically authorized in Section I of this Article, shall be included in the cost of the work; nor shall any interest on capital employed or on borrowed money be included in the cost of the work.

11. The Contractor shall, to the extent of his ability, take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and bonifications, and when unable to take advantage of such benefits he shall promptly notify the Contracting Officer with the reason therefor. In determining the actual net cost of articles and materials of every kind required for the purpose of this contract, there shall be deducted from the gross cost thereof all cash and trade discounts, rebates, allowances, credits, commissions, and bonifications which have accrued to the benefit of the Contractor or would have so accrued but for the fault or neglect of the Contractor. Such benefits lost through no fault or neglect on the part of the Contractor, or lost through fault of the Government, shall not be deducted from gross costs.

12. All revenue received by the Contractor from the operations of the hospital, commissaries, or other facilities, or from rebates, discounts, refunds, etc., shall be accounted for by the Contractor and, except for any reasonable compensation accruing to a third party or parties for the operation of commissaries, hospitals, or other facilities, applied in reduction of the cost of the work.

13. (Insert clause in § 803.365 (c)).

[1] This contract will bear same date as letter contract.

ART. III. *Payments*—1. *Reimbursement for cost.* The Government will currently reimburse the Contractor for expenditures made in accordance with Article II upon certification to and verification by the Contracting Officer of the original signed pay-rolls for labor, the receipted invoices for materials, and such other documents as the Contracting Officer may require. Generally, reimbursement will be made weekly but may be made at more frequent intervals if the conditions so warrant.

2. *Rental for Contractor's equipment.* Rental as provided in Article II for such construction plant or parts thereof as the Contractor may own and furnish shall be paid monthly upon presentation of proper vouchers.

3. *Payment of the fixed-fee.* Ninety percent (90%) of the fixed-fee set out in Article I shall be paid as it accrues, in monthly installments based upon the percentage of the completion of the work as determined from estimates submitted to and approved by the Contracting Officer. Final payment upon completion of the work and its final acceptance shall be made in accordance with Section 5. If the contract is terminated by the Government, payment shall be made in accordance with Article VI.

4. *Payments by Contractor.* If bills for purchase of material, machinery or equipment, or pay rolls covering employment of laborers or mechanics incurred by the Contractor or by any subcontractor hereunder are not paid promptly by the Contractor or subcontractor as the case may be, the Contracting Officer may, in his discretion, withhold from payments otherwise due the Contractor an amount equivalent to the amount of any such bill or payroll. Should the Contractor neglect or refuse to pay such bills or pay-rolls or to direct any subcontractor to pay such bills or pay-rolls within five (5) days after notice from the Contracting Officer so to do, the Government shall have the right to pay such bills or pay-rolls directly, and in such event a deduction equal to five percent (5%) of the amount so paid directly shall be made from the Contractor's fee.

5. *Final payment.* a. Upon completion of the work and its final acceptance in writing by the Contracting Officer, the Government shall pay to the Contractor the unpaid balance of the cost of the work determined under Article II, and of the fee, less any sum that may be necessary to settle any unsettled claims in connection with this contract, or any claim the Government may have against the Contractor. The Contracting Officer shall accept the completed work with reasonable promptness.

b. Prior to final payment and as a condition thereof the Contractor shall furnish the Government with a release of all claims against the Government arising under and by virtue of this contract, other than (1) such claims, if any, as may be specifically excepted by the Contractor from the operation of the release in stated amounts to be set forth therein, or in estimated amounts where the amounts are not susceptible of exact statement, and (2) any claim based upon responsibility of the Contractor to third parties arising out of the performance of this contract not known to the Contractor at the time of furnishing the release.

c. Even though the existence or amount thereof shall not be determined until after the furnishing of such release as is described next above, reimbursement to be made for payments made by the Contractor shall include, along with wages and salaries otherwise reimbursable, all additional amounts determined (either by approval of the Contracting Officer or by litigation as provided in Subsection s, Section 1, Article II,) to be due and payable for overtime compensation and allowances under local, state or Federal laws in connection with such wages and salaries.

d. The Contractor shall promptly notify the Contracting Officer of any claims of the type described in clause (2) of Subsection b of this Section which are asserted subsequent to the execution of the release.

ART. IV. *Records and accounts inspection and audit.* 1. The Contractor agrees to keep records and books of account, showing the actual cost to him of all items of labor, materials, equipment, supplies, services, and other expenditures of whatever nature for which reimbursement is authorized under the provisions of this contract. The system of accounting to be employed by the Contractor shall be such as is satisfactory to the Contracting Officer.

2. The Contracting Officer shall at all times be afforded proper facilities for inspection of the work and shall at all times have access to the premises, work and materials, to all books, records, correspondence, instructions, plans, drawings, receipts, vouchers, and memoranda of every description of the Contractor pertaining to said work except such documents as have been submitted in support of reimbursement vouchers; and the Contractor shall preserve such papers without additional compensation therefor, for a period of three (3) years after completion or termination of this contract.

3. Any duly authorized representative of the Contractor shall be accorded the privilege of examining the books, records, and papers of the Contracting Officer relating to the cost of the work for the purpose of checking and verifying such cost.

4. In order to avoid so far as possible duplication in accounting and auditing functions performed by the Contractor and the Governmentment, it is agreed that the following accounting and auditing functions shall be performed by the Government exclusively:

a. Time checking (not time keeping) in the field, or in the Contractor's plant.

b. Audit of original pay-rolls of the Contractor (or such portions thereof as are applicable), where such pay-rolls are prepared by the Contractor.[1]

c. Checking of equipment rentals and the preparation and delivery of properly approved rental rolls to the Contractor for payment.[2]

d. Such other accounting and auditing functions as may be effectively performed by Government employees and to which the Contracting Officer and the Contractor may mutually agree in writing.

5. It is further agreed that if any of the accounting and auditing functions performed exclusively by the Government do not adequately discharge such accounting and auditing functions to the satisfaction of the Contractor, the Contractor, with the approval in writing of the Contracting Officer, may perform such additional checking and auditing as may be so approved. The Contractor shall be reimbursed for the cost of such additional accounting and auditing functions as are so approved.

ART. V. *Special requirements.*

1. The Contractor hereby agrees that he will:

a. Procure and maintain such bonds and insurance in such forms and in such amounts and for such periods of time as the Contracting Officer may require.

b. Procure all necessary permits and licenses; obey and abide by all applicable laws, regulations, ordinances, and other rules of the United States of America, of the State, Territory, or political subdivision thereof wherein the work is done, or of any other duly constituted public authority.

c. Reduce to writing, unless this provision is waived in writing by the Contracting Officer, every contract in excess of Two Thousand Dollars ($2,000) made by him for the purpose of the work hereunder for services, materials, supplies, machinery, equipment, or for the use thereof; insert therein a provision that such contract is assignable to the Government; make all such contracts in his own name, and not bind or purport to bind the Government or the Contracting Officer thereunder. No purchase in excess of $2,000 shall be made or placed without the prior approval of the Contracting Officer.

d. Enter into no subcontract for any portion of the work, except in the form prescribed by the Chief of Technical Service with the written approval of the Contracting Officer. Subcontracts are defined as contracts entered into by the Contractor with others which involve the performance, wholly or in part at the site of the work, of some part of the work described in Article I hereof.

e. At all times during the progress of the work, keep at the site thereof a duly appointed and qualified representative who shall receive and execute on the part of the Contractor such notices, directions, and instructions as the Contracting Officer may give.

f. The Contracting Officer may require the Contractor to dismiss from work such employee or employees as the Contracting Officer deems incompetent, careless, or insubordinate or whose continued employment is deemed inimical by the Contracting Officer to the public interest. The Contractor shall make every reasonable effort in the selection of his employees and in the prosecution of the work under this contract, to safeguard plot drawings and schematic drawings furnished him and drawings and specifications, and to prevent the theft or unauthorized use of the same.

g. Furnish sufficient technical, supervisory and administrative personnel to insure the prosecution of the work in accordance with a progress schedule approved by the Contracting Officer. If, in the opinion of the Contracting Officer, the Contractor falls behind a progress schedule approved by the Contracting Officer, the Contractor shall take such steps as may be necessary to improve his progress and the Contracting Officer may direct him to increase working days, or hours of labor per day. Failure to promptly comply with such directions shall be deemed sufficient cause to terminate the contract for the fault of the Contractor.

h. Immediately upon termination of third-party rental agreement, make all repairs to equipment rented thereunder which are required to be made by the terms of such rental agreements and remove such equipment from the site of the work. In cases where such repairs and removal cannot promptly be made, the Contractor shall notify the Contracting Officer of the reasons for such delay.

ART. VI. *Termination of contract by Government.* (Insert clause in § 803.350).

ART. VII. *Contracting officer's decisions.* The extent and character of the work to be done by the Contractor shall be subject to the general supervision, direction, control and approval of the Contracting Officer to whom the Contractor shall report and be responsible.

ART. VIII. *Disputes.* (Insert article in § 803.326).

ART. IX. *Convict labor.* (Insert clause in § 803.345).

ART. X. *Labor.*

1. (Insert clause in § 803.343).

2. (Insert clause in § 803.346).

3. All wage rates, including compensation for overtime under Section 2 of this Article, for laborers and mechanics engaged in work under this contract shall be approved in writing by the Chief of the Supply Service or a representative expressly designated by him for that purpose, and any amount paid by

[1] Where pay-rolls are prepared by the Government the audit thereof by the Government will be concurrent with such preparation.

[2] If not applicable, this section will be omitted.

the Contractor to any laborer or mechanic in excess of the wage rate approved for such laborer or mechanic by the Chief of the Supply Service or a representative expressly designated by him for that purpose shall be at the expense of the Contractor and shall not be reimbursed by the Government. When, in connection with the audit and check by the Contracting Officer or his authorized representative, of the Contractor's pay rolls prior to reimbursement as contemplated in Section 1 of Article II hereof, it is found that one or more laborers and/or mechanics have been paid wages at rates in excess of the wage rates approved as herein provided, the reimbursement made to the Contractor on account of such pay rolls will not include any such excess payments.

4. (Insert clause in § 803.325).

5. (Insert clause in § 803.344).

ART. XI. *Accident prevention.* (Insert clause in § 803.362).

ART. XII. *Notice to Government of labor disputes.* (Insert clause in § 803.354).

ART. XIII. *Officials not to benefit.* (Insert clause in § 803.322).

ART. XIV. *Covenant against contingent fees.* (Insert clause in § 803.323).

ART. XV. *Contractor's organization and methods.*

Upon the execution of this contract, the Contractor shall submit to the Contracting Officer a chart showing in general the executive and administrative organization, duties and personnel to be employed in connection with the work under the contract; the data so furnished shall be supplemented as additional information becomes available.

ART. XVI. *Loading and unloading cars.*

The Contractor shall load promptly all railroad cars furnished for loading upon his order and shall unload from railroad cars promptly upon arrival all shipments consigned to him, and shall provide storage facilities and other facilities necessary for these purposes; and the Contractor shall not order railway cars for loading unless they can be loaded promptly and shall not cause or permit shipments to be consigned to him unless they can be unloaded from railroad cars promptly upon arrival.

ART. XVII. *Assignment of claims.* (Insert clause in § 803.355)

ART. XVIII. *Renegotiation.* (See § 803.342 and Part 812)

ART. XIX. *Definitions.*

1. The term "Secretary of War" as used herein shall include the Under Secretary of War; and the term "Chief of Supply Arm or Service" shall mean the Chief of_____.

2. The term "his duly authorized representative" shall mean any person or board authorized by the Secretary of War or the Chief of the Supply Service, as the case may be, to act for him, other than the Contracting Officer.

3. Except for the original signing of this contract, and except as otherwise stated herein, the term "Contracting Officer" as used herein shall include his duly appointed successor or his authorized representative.

4. The term "construction plant" shall include any part thereof.

ART. XX. *Approval required.* This contract shall be subject to the approval of _____ and shall not be binding unless so approved.

ART. XXI. *Alterations.* The following changes were made in this contract before it was signed by the parties hereto:

In witness whereof, the parties hereto have executed this contract as of the day and year first above written:

THE UNITED STATES OF AMERICA,

By _____

_____

(Official Title)

Witnesses as to signature of Contractor:

_____ _____

(Contractor)

_____

(Address)

By _____

_____ _____

(Business Address)

_____

(Address)

I _____, certify that I am the Secretary of the corporation named as Contractor herein; that _____ who signs this contract on behalf of the Contractor was then _____ of said corporation; that said contract was duly signed for and on behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

In witness whereof, I have hereunto affixed my hand and the seal of said corporation this _____ day of _____, 19____.

[CORPORATE SEAL] _____

(Secretary)

I hereby certify that, to the best of my knowledge and belief based upon observation any inquiry, _____, who signed this contract for _____ had authority to execute the same, and is the individual who signs similar contracts on behalf of this corporation with the public generally.

_____

Contracting Officer.

APPENDIX B TO CONTRACT NO.

[All equipment available_____except where otherwise specified]

Quantity	Item: Complete description, capacity, and identifying Nos.	Total purchase cost or fair value	Rental rate $___ month, week or day

APPENDIX C

There is set forth below the present key employees proposed to be furnished under this contract indicating their names, description of work to be performed, an expression as to whether the salaries are based on a weekly, monthly or annual basis, and the maximum salary agreed upon to be paid for services in the position indicated for personnel now employed.

Name	Position	Salary based on weekly (W), monthly (M) or annual basis	Maximum salary agreed to be paid under contract

For the purposes of this Appendix C it is understood that—

1. "Non-manual employees" are those employees who are not "laborers and mechanics" within the meaning of the Davis-Bacon Act. The term "non-manual employees" includes all occupations not involving manual labor directly in connection with construction work. Custodial employees are included within the term "non-manual employees". The following is a list (not all inclusive) of typical "non-manual" occupations:

Accountants.
Architects.
Auditors.
Axemen.
Bookkeepers.
Chainmen.
Checkers.
Chiefs of Party.
Clerks.
Cooks.
Draftsmen.
Engineers.
Executives of any kind.
Guards.
Levelmen.
Material Checkers.
Material Clerks.
Messengers.
Office Machine Operators.
Office Managers.
Project Managers.
Purchasing Agents.
Rodmen.
Stenographers.
Stewards.
Storekeepers.
Superintendents.
Telephone Operators.
Timecheckers.
Timekeepers.
Tool Checkers.
Transitmen.
Typists.
Waiters.
Watchmen.
Waterboys.

2. Non-manual employees will be classified in the following groups:

a. Group "A". Employees whose base salaries are $53.31 or less per week.

b. Group "B". Employees whose base salaries are over $53.31 and not over $90.00 per week.

c. Group "C". Employees whose base salaries are over $90.00 per week.

d. Group "D". Trade foremen employed by construction contractors.

3. The base salaries of all employees in Groups "A" and "B" are based on a work week of 40 hours. The base salaries of all employees in Group "C" are based on a minimum work week of 48 hours.

4. No offer of employment will be made to any prospective employee for work of the same general classification and responsibility as his present employment at a rate exceeding his present salary.

5. The base salary of a person not in the employ of the contractor prior to the execution of this contract will not be approved at a rate in excess of the maximum prescribed for the job classification in the approved salary schedule attached.

6. The base salary of a person in the employ of the contractor prior to the execution of the contract will not be approved at a base salary in excess of that paid immediately prior to execution plus such increases as the contractor customarily grants for work away from the home office, except that, in cases where the classifications of such a person is changed incident to or during his assignment to the project, the salary range in the approved salary schedule shall govern.

7. *With regard to overtime payments.* a. Group "A" employees will be paid at the rate of time and one-half for all work which they are required to perform in excess of 40 hours during the first six days of any regularly scheduled work week, and at the rate of two times straight time for work which they are required to perform on the seventh consecutive day of such work week.

b. Group "B" employees will be paid at the rate of straight time for all work which they are required to perform in excess of 40 hours per week.

c. Group "C" employees will work any necessary number of hours (including work on Sundays) without payment of additional compensation.

d. Group "D" employees normally employed on an hourly basis will be granted the same overtime pay as the laborers and mechanics under their supervision. Group "D" employees employed on a weekly or monthly basis will be governed by the overtime provisions applicable to employees in Groups "A", "B", or "C".

8. *With regard to holiday payments:*

a. No deductions from weekly or monthly base salaries of employees in Groups "A", "B", and "C" shall be made for approved absences on customary holidays, and no premium wage or extra compensation shall be paid for work on such holidays, except that employees in Group "A" who are required to work on the holidays specified below, shall be paid at the rate of one and one-half times the straight time rate:

New Year's Day.	Thanksgiving Day.
July Fourth.	Christmas Day.
Labor Day	Memorial Day.

b. Group "D" employees normally employed on an hourly basis will be granted the same overtime pay as the laborers and mechanics under their supervision. Group "D" employees employed on a weekly or monthly basis will be governed by the holiday provisions applicable to Groups "A", "B", or "C."

9. *Work on the seventh consecutive day:*

a. Since it is the policy to provide that each worker will have one day of rest in seven, operations shall be arranged so as to permit one scheduled day of rest in each seven for all employees not engaged in an executive or supervisory capacity.

b. Only in situations of emergency will approval be granted to work, on the seventh consecutive day or more than 48 hours in any scheduled work week, those employees who are not engaged in executive or supervisory capacities. The Contracting Officer will obtain the prior approval of the Division Engineer or his designated representative before approving work in such cases.

10. *Leave privileges:* All employees of Groups "A", "B", "C", and those employees of Group "D" who are employed on a weekly or monthly basis, shall accrue leave with pay at the rate of two days per month for each month of service in lieu of any sick or vacation allowance, subject to the following rules:

a. Leave granted for any reason in excess of two days per month will not be reimbursable.

b. Leave may be granted by the contractor, with the approval of the Contracting Officer, at such time or times as may be deemed in the best interests of the Government. Leave may be granted during the course of employment or at the completion of employment.

c. No leave will be accrued to any employee in excess of 48 days.

d. Unearned leave may not be advanced.

e. Employees separated because of their own misconduct (including such causes as insubordination, drunkenness on the job, theft, etc.) shall forfeit any leave which they may have accrued at the time of separation.

f. Employees who resign, or are involuntarily separated for causes not due to their misconduct, shall be entitled to all leave to and including date of separation.

g. Employees shall be charged with leave only for absence on days upon which they would normally be on duty.

h. The minimum charge for leave shall be one hour. Leave granted for less than one full day shall be proportionately charged.

i. Leave may not be granted for days of disability because of accidents which are covered by compensation insurance.

11. *Approved salary schedule:*

NON-MANUAL EMPLOYEES OF COST-PLUS-A-FIXED-FEE PRINCIPAL AND SUBCONTRACTORS

Job classification	Salary ranges			
	Weekly		Monthly	
	From	To	From	To
Executive and office engineers:				
Architect, Chief	$92.31	$150.00	$400.00	$650.00
Architect Supt., Chief	44.31	103.85	192.00	450.00
Architect Supt	35.54	67.38	154.00	292.00
Architect Supt., Asst	31.15	53.31	135.00	231.00
Computer	35.54	92.31	154.00	400.00
Designer, Chief	67.38	115.38	292.00	500.00
Designer, Architectural	44.31	103.85	192.00	450.00
Designer, Engineering	44.31	103.85	192.00	450.00
Draftsman, Chief	53.31	103.85	231.00	450.00
Draftsman	26.54	53.31	115.00	231.00
Engineer, Chief	92.31	150.00	400.00	650.00
Engineer, Asst. Chief	92.31	138.46	400.00	600.00
Engineer, Departmental	92.31	138.46	400.00	600.00
Engineer, Office	67.38	115.38	292.00	500.00
Engineer, Junior	26.54	44.31	115.00	192.00
Specification Writer, Chief	67.38	115.38	292.00	500.00
Specification Writer	44.31	92.31	192.00	400.00
Field engineers:				
Axeman	18.64	19.62	69.00	85.00
Chainman	17.77	26.54	77.00	115.00
Chief of Party	35.54	67.38	154.00	292.00
Engineer, Chf. Construction	92.31	138.46	400.00	600.00
Engineer, Construction	53.31	115.38	231.00	500.00
Inspector, Chief	35.54	67.38	154.00	292.00
Inspector	26.54	53.31	115.00	231.00
Instrument Man	31.15	53.31	135.00	231.00
Rodman	22.15	31.15	96.00	135.00
Surveyor, Chief	44.31	103.85	192.00	450.00
Construction personnel:				
Equipment Manager	92.31	138.46	400.00	600.00
Estimator, Chief	53.31	103.85	231.00	450.00
Estimator	35.54	53.31	154.00	231.00
Expediter, Chief	44.31	103.85	192.00	450.00
Expediter	26.54	53.31	115.00	231.00
Labor Relations Manager	53.31	115.38	231.00	500.00
Master Mechanic	53.31	115.38	231.00	500.00
Material Checker	22.15	35.54	96.00	154.00
Paymaster	35.54	92.31	154.00	400.00
Paymaster, Asst	26.54	53.31	115.00	231.00
Personnel Manager	35.54	103.85	154.00	450.00
Priorities Manager	35.54	103.85	154.00	450.00
Priorities Manager, Asst	35.54	53.31	154.00	231.00
Project Manager	115.38	173.08	500.00	750.00
Project Manager, Asst	53.31	115.38	231.00	500.00
Purchasing Agent	53.31	138.46	231.00	600.00
Purchasing Agent, Asst	35.54	53.31	154.00	231.00
Sanitary and Safety Manager	44.31	92.31	192.00	400.00
Storekeeper, Chief	53.31	92.31	231.00	400.00
Storekeeper, Asst	26.54	53.31	115.00	231.00
Superintendent, General	115.38	173.08	500.00	750.00
Superintendent, Asst. Gen	92.31	138.46	400.00	600.00
Superintendent	92.31	138.46	400.00	600.00
Superintendent, Asst	53.31	92.31	231.00	400.00
Timekeeper, Chief	35.54	92.31	154.00	400.00
Timekeeper, Asst. Chief	26.54	44.31	115.00	192.00
Timekeeper	17.77	35.54	77.00	154.00
Traffic Manager	53.31	92.31	231.00	400.00
Traffic Manager, Asst	35.54	53.31	154.00	231.00
Office and miscellaneous personnel:				
Accountant	35.54	92.31	154.00	400.00
Accountant, Asst	35.54	53.31	154.00	231.00
Attorney and Notary	44.31	67.38	192.00	292.00
Auditor	53.31	126.92	231.00	550.00
Auditor, Asst	53.31	92.31	231.00	400.00
Blue Print Operator	31.15	39.92	135.00	173.00
Bookkeeper	26.54	48.92	115.00	212.00
Cashier	35.54	53.31	154.00	231.00

NON-MANUAL EMPLOYEES OF COST-PLUS-A-FIXED-FEE PRINCIPAL and SUBCONTRACTORS—Con.

Job classification	Salary ranges			
	Weekly		Monthly	
	From	To	From	To
Office and miscellaneous personnel—Con.				
Chauffeur	$17.77	$26.54	$77.00	$115.00
Chief Clerk	26.54	53.31	115.00	231.00
Clerk	17.77	35.54	77.00	154.00
Doctor	44.31	92.31	192.00	400.00
Fire Chief	44.31	92.31	192.00	400.00
Fire Chief, Asst	35.54	53.31	154.00	231.00
Fireman	35.54	53.31	154.00	231.00
Guard	35.54	53.31	154.00	231.00
Janitor	17.77	22.15	77.00	96.00
Messenger	22.15	35.54	96.00	154.00
Nurse	17.77	35.54	77.00	154.00
Office Boy	17.77	26.54	77.00	115.00
Office Machine Operator	17.77	26.54	77.00	115.00
Office Manager	53.31	103.85	231.00	450.00
Office Manager, Asst	35.54	67.38	154.00	292.00
Receptionist	17.77	26.54	77.00	115.00
Safety (First Aid) Man	44.31	92.31	192.00	400.00
Secretary	17.77	31.15	77.00	135.00
Statistician	53.31	92.31	231.00	400.00
Statistician, Asst	44.31	53.31	192.00	231.00
Stenographer	17.77	26.54	77.00	115.00
Stenotypist	17.77	31.15	77.00	135.00
Telephone Operator	17.77	26.54	77.00	115.00
Typist	14.31	22.15	62.00	96.00
Watchman	17.77	31.15	77.00	135.00

§ 813.1304 *W. D. Contract Form No. 4.*

Contract No. W-----

FIXED FEE ARCHITECT-ENGINEER CONTRACT WITH OPTIONAL SUPERVISION, WAR DEPARTMENT

Architect-engineer and address: -----
Contract for architect-engineer services in connection with -----
Location -----
Fixed fee for title I $-----
for title II $-----
Estimated construction cost exclusive of fixed fee -----
Payment ----- To be made by-----

The supplies and services to be obtained by this instrument are authorized by, are for the purpose set forth in, and are chargeable to the following procurement authority or authorities, the available balances of which are sufficient to cover the cost of the same:

This contract is authorized by the following Laws:

FIXED FEE ARCHITECT-ENGINEER CONTRACT WITH OPTIONAL SUPERVISION

This contract, entered into this ----- day of -----, 19----, by The United States of America (hereinafter referred to as "the Government"), represented by the Contracting Officer executing this contract, and-----

---

---

[1] a corporation organized and existing under the laws of the State of -----

---

[1] a partnership consisting of -----

---

[1] an individual trading as -----
in the City of -----
State of -----
(hereinafter referred to as "the Architect-Engineer"), witnesseth that:

[1] Delete all lines which do not apply.

Whereas, the accomplishment of the hereinafter described work and services is authorized by law and will facilitate the prosecution of the war; and

Whereas, it is deemed by the Secretary of War to be advantageous to the war effort to employ the Architect-Engineer to render services as hereinafter set forth for the preparation of necessary reports, designs, drawings, specifications, and other documents; and, at the option of the Government, for technical supervision of the construction of the project described in Article I–A hereof; and

Whereas, the Secretary of War has authorized the Government to negotiate this Cost-Plus-A-Fixed-Fee Architect-Engineer contract:

Now, therefore, the parties hereto do mutually agree as follows:

TITLE I

ARTICLE I–A. *Description of Project.* 1. The project shall be located at or near and is generally described as follows:

ART. I–B—*Statement of Architect-Engineer services.* The Architect-Engineer shall, in the shortest reasonable time, establish and maintain an office at or near the site of the work under the full-time resident direction of the Architect-Engineer; of one or more principal partners if the Architect-Engineer is a partnership or in case the Architect-Engineer is a corporation, association, or similar legal entity, one or more corporate officers thereof; or a responsible representative approved by the Contracting Officer; and the Architect-Engineer shall perform the following services (in addition to such services which may be required to be performed under Title III of this Contract):

a. Make all necessary topographical and other surveys and maps; arrange for and supervise necessary test borings and other subsurface investigations: *Provided, however,* That this provision is not to be deemed to require the Architect-Engineer to make real estate or boundary surveys.

b. Prepare, subject to the approval of the Contracting Officer, preliminary studies, sketches, and layout plans and reports including estimates of cost of the proposed project and of all structures, utilities and appurtenances thereto.

c. Adapt Government designs, drawings, specifications and standards for buildings and other structures as necessary to meet the requirements of the approved layout of the proposed project, and prepare detailed designs, specifications and drawings in required form for which Government designs are incomplete or unavailable.

d. Obtain necessary permits and approvals from all local, State, and Federal authorities. Should it become necessary in the performance of the work and services for the Architect-Engineer to secure the right of ingress and egress to perform any of the work required by this contract on properties not owned or controlled by the Government, the Architect-Engineer shall secure the consent of the owner, his representative, or agent, prior to effecting entry on such property. In the event the owner requires the payment of any fee for a license to enter upon and/or use such property, the Architect-Engineer, when so directed by the Contracting Officer, shall pay such fee and obtain a receipt therefor.

e. Prepare estimates of material quantities required to construct the project.

f. When preliminary drawings are approved in writing by the Contracting Officer, prepare final designs, detailed working drawings and specifications in accordance with Government standards necessary for the effective coordination and efficient execution of the construction work and revise such drawings and specifications if necessary. Unless otherwise directed or authorized by the Contracting Officer, drawings will be prepared in pencil on tracing paper or pencil tracing cloth of approved quality by such methods and of such quality of workmanship as will permit the revision of such drawings for record purposes and the making of satisfactory reproductions thereof. Drawings shall be prepared in ink on linen only where satisfactory results cannot be obtained otherwise. Prepare copies of the specifications and sets of full size copies of working drawings in such manner and in such numbers as the Contracting Officer may require. There shall be included in the specifications all provisions which the Contracting Officer may direct to have incorporated therein relating to the negotiating or awarding of contract or contracts, conditions under which the work shall be done, and any special provisions required by statute or existing War Department regulations or instructions.

g. Prepare an estimate of the cost of the proposed project based on the approved designs, drawings and specifications therefor.

h. Establish a permanently monumented base line, with elevations, tied into North American Datum, unless specifically exempted by written instructions of the Contracting Officer.

i. Check and approve all shop and working drawings submitted in connection with the construction work to assure that they conform with approved drawings.

j. Assist the Contracting Officer in preparing invitations for offers, analyzing and evaluating proposals for a construction contract or contracts based upon the approved drawings and specifications.

ART. I–C. *Period of service.* The Architect-Engineer shall complete all work and services under Title I of this contract except work and services required under subsection 1 of Article I–B, within _____ months after the date of this contract, but such services will extend thereafter, without additional fee, until the services set forth in Article I–B are complete or otherwise terminated.

ART. I–D. *Fixed fee and reimbursement of expenditures.* 1. In consideration for his undertakings under this Title I, the Architect-Engineer shall be paid the following:

a. A fixed fee in the amount of_____ _____ Dollars ($_____) which shall constitute complete compensation under this Title I for the Architect-Engineer's services, including the services of the resident partners or corporate officers, or the representative referred to in Article I–B and also all general overhead expenses except as otherwise herein expressly provided. Payments on account of the fixed-fee shall be made as provided in Article III–G hereof.

b. Reimbursement for expenditures as specified in Article III–E hereof.

TITLE II

At any time prior to six months after satisfactory completion and acceptance of the work and services to be furnished under Title I except subsection 1 of Article I–B, the Government, at its option, may direct, by a written order, the Architect-Engineer to perform the work and services provided under this Title II. Upon receipt of such direction, the Architect-Engineer shall proceed with such work and services.

ART. II–A. *Services to be furnished by Architect-Engineer.* 1. The Architect-Engineer shall perform the following services:

a. Furnish all governing lines, bench marks and grades essential to the construction of the project.

b. Supervise the work included in this contract to assure the construction of every part of the work in accordance with the approved drawings and specifications within the areas and boundaries designated for the project.

c. Make such field and laboratory tests of concrete and concrete aggregates and other materials at the site or at any time or place as the Contracting Officer may require. Inspect and report to the Contracting Officer in writing as to the conformity or nonconformity of the workmanship and materials to specifications; and on the progress of the project.

(1) When so directed by the Contracting Officer, arrange for, by subcontract or otherwise, and supervise tests and inspections of materials and workmanship by commercial testing laboratories or other similar agencies, either at such laboratories or at the points of manufacture or fabrication of materials. The cost of such tests and inspection shall be reimbursable and subcontracting thereof shall entail no adjustment in the fixed fee.

d. Furnish for the approval of the Contracting Officer:

(1) Labor estimates, to be prepared with the assistance of the Contractor, showing the approximate numbers, trades and dates required to meet the approved construction schedule.

(2) In addition to the requirements of Article III–L, semimonthly progress reports in approved form showing the progress of the construction work and any deviation from the approved construction schedule.

e. Upon termination or completion of this contract, as determined by the Contracting Officer, and before final payment of the fixed-fee, the Architect-Engineer shall:

(1) Prepare record drawings to show construction as actually accomplished. These record drawings shall be prepared by correcting drawings as prepared for construction purposes or, where construction drawings cannot be satisfactorily revised for record purposes, by preparation of appropriate new drawings. All such drawings shall be prepared in pencil on tracing paper or pencil tracing cloth of approved quality unless otherwise directed or authorized by the Contracting Officer. Drawings shall be prepared in ink on linen only where satisfactory results cannot be obtained otherwise.

(2) Supervise the testing of operating units designed by the Architect-Engineer to assure their conformance with specifications and furnish all engineering services necessary to secure such conformance.

(3) Prepare instructions for the proper operation and maintenance of all utilities and operating equipment designed by him.

(4) Assist in preparation of the completion report for the project.

f. Prepare such partial and final estimates of quantities and values of construction work performed under lump sum and unit price contracts and/or subcontracts as may be necessary to provide the data required under the payment provisions of such contracts and/or subcontracts.

g. Perform such other services as may be required under the provisions of Title III hereof.

ART. II–B. *Period of service.* The period of service of the Architect-Engineer under this Title II is estimated as _____ months from receipt of order to proceed thereunder, but will extend thereafter until the services set forth herein are complete or otherwise terminated. If for any reason the time required of the Architect-Engineer under this Title II is extended for more than thirty (30) calendar days beyond that estimated in this Article, there shall be an equitable adjustment in the Architect-Engineer fixed fee, as may be agreed upon between the Architect-Engineer and the Contracting Officer.

ART. II–C. *Fixed-fee and reimbursement of expenditures.* 1. In consideration for his undertakings under this Title II, the Architect-Engineer shall be paid the following:

a. Fixed-Fee in the amount of_____ _____ dollars ($_____) which shall constitute complete compensation under this Title II for the Architect-Engineer's services, including the services

of the resident partners or corporate officers, or the representative referred to in Article I–B, and all general overhead expenses except as otherwise herein expressly provided. Payment on account of the fixed-fee shall be made as provided in Article III–G hereof.

b. Reimbursement for expenditures as specified in Title III.

TITLE III

The provision of this title shall apply to this entire contract, to-wit: To Title I and likewise to Title II, should Title II become operative as provided therein.

ART. III–A. *Additional services to be performed by Architect-Engineer.* 1. Without additional compensation the Architect-Engineer shall perform the following services:

a. The Architect-Engineer, or any member of the organization, when requested, shall consult and advise with the Contracting Officer on any questions which may arise in connection with the service furnished under this contract.

b. Prepare schedules and charts showing the sequence of operations in the construction of each of the several portions of the work.

c. Prepare estimates showing the quantities of critical and important materials and length of time after award of the construction contract when such materials will be required on the site.

d. Perform all other architectural and engineering services within the scope of this contract, required by the Contracting Officer.

ART. III–B. *Records and accounts, inspection and audit*—1. *Records and books of account.* The Architect-Engineer agrees to keep records and books of account, showing the actual cost to him of all items of labor, material, equipment, supplies, services, and other expenditures of whatever nature for which reimbursement is authorized under the provisions of this contract. The system of accounting to be employed by the Architect-Engineer shall be such as is satisfactory to the Contracting Officer.

2. *Access to records by Contracting Officer and Architect-Engineer.* The Contracting Officer shall at all times be afforded proper facilities for inspection of the work and shall at all times have access to the premises, work and materials, to all books, records, correspondence, instructions, plans, drawings, receipts, vouchers, and memoranda of every description of the Architect-Engineer pertaining to said work except such documents as are submitted in support of reimbursement vouchers; and the Architect-Engineer shall preserve such papers, without additional compensation therefor, for a period of three (3) years after completion or termination of this contract. Likewise, any duly authorized representative of the Architect-Engineer shall be accorded the privilege of examining the books, records, and papers of the Contracting Officer relating to the actual cost of the work for the purpose of checking and verifying such cost.

3. *Auditing functions.* In order to avoid so far as possible duplication in accounting and auditing functions performed by the Architect-Engineer and the Government, it is agreed that the following accounting and auditing function shall be performed by the Government exclusively.

a. Time Checking in the field or in the Architect-Engineer's plant (not time keeping).

b. Audit of original payrolls of the Architect-Engineer (or such portions thereof as are applicable), where such payrolls are prepared by the Architect-Engineer.[1]

[1] Where payrolls are prepared by the Government the audit thereof by the Government will be concurrent with such preparation.

c. Checking of equipment rentals and the preparation and delivery of properly approved rental rolls to the Architect-Engineer for payment.

d. Such other accounting and auditing functions as may be effectively performed by Government employees and to which the Contracting Officer and the Architect-Engineer may mutually agree in writing.

4. *Discharge of functions.* It is further agreed that if any of the accounting and auditing functions performed exclusively by the Government do not adequately discharge such accounting and auditing functions to the satisfaction of the Architect-Engineer, the Architect-Engineer with the approval in writing of the Contracting Officer, may perform such additional checking and auditing as may be so approved. The Architect-Engineer shall be reimbursed for the cost of such additional accounting and auditing functions as are so approved.

ART. III–C. *Equipment and services to be furnished by the Government.* 1. The Government shall provide for the use of the Architect-Engineer's field organization during the period covered by this contract, all office and drafting room space, supplies, equipment, facilities, and services necessary for the proper performance of work hereunder.

a. If any of the foregoing articles, equipment, services or other items required by the Architect-Engineer's field organization are not promptly made available by the Government, the Architect-Engineer, when such action is approved by the Contracting Officer, shall procure such items and the Architect-Engineer shall be reimbursed for expenses incurred in connection therewith, provided that direct payment by the Government shall be made as prescribed in Article III–E, Section 2 hereof for any communication services mentioned in that Article which the Architect-Engineer procures. Unless procurement on a rental basis is approved in advance by the Contracting Officer, all items of office equipment which the Architect-Engineer procures under this section shall be purchased and title thereto shall vest in the Government. Third party rental agreements made for items covered by this provision shall be terminable at the option of the Government and, except for third-party owned motor-propelled vehicles, shall not contain a recapture clause.

2. Except as to property the liability for which is fixed by any other instrument or agreement or by some other provision of this contract, the Architect-Engineer shall not be liable for loss or destruction of or damage to property of the Government in the possession or control of the Architect-Engineer in connection with this contract unless such loss, damage or destruction results from wilful misconduct or failure to exercise good faith on the part of the Architect-Engineer's corporate officers or other representatives having supervision or direction of the operation of the whole of the Architect-Engineer's business or of the whole of any plant operated by the Architect-Engineer in the performance of this contract.

3. In the event office space at or near the site of the work is not provided by the Government in sufficient time to permit the work and services described herein to be performed efficiently and expeditiously, the Architect-Engineer, if approved in advance in writing by the Contracting Officer, may rent or lease such space at a convenient location, or if such rented or leased space is not available, may arrange by subcontract or otherwise for the construction of a temporary structure or stuctures to meet his immediate needs, on Government owned or controlled property or on privately owned property leased for such purpose.

ART. III–D. *Estimated cost of construction.* 1. The present preliminary estimated construction cost of the project on which the services of this contract are based is approximately_____Dollars ($_____) exclusive of Architect-Engineer's fixed-fee. It is expressly understood, however, that neither the Government nor the Architect-Engineer guarantees the correctness of this estimate.

ART III–E. *Reimbursement for expenditures.* 1. In addition to the payment of the fixed-fee as specified herein, the Architect-Engineer will be reimbursed for such of his actual expenditures in the performance of the work as may be approved or ratified by the Contracting Officer and as are included in the following items:

a. Actual salaries or wages paid to principal assistant engineers, engineers, architects and other technical, administrative and field employees of the Architect-Engineer directly engaged in the work including those in both his home and field office. The payment of any excess over the scheduled amounts shown in the approved salary schedule, Appendix "C" attached hereto and made a part hereof, shall not be reimbursable, unless and until the Chief of the Technical Service has so approved in writing.

b. In case the full time of one or more employees of the Architect-Engineer is not applied to the work hereunder, the salaries or wages of such employees shall be included in this item only in proportion to the actual time applied thereto.

c. Travel: (1) If the Architect-Engineer and/or his representatives shall be required to travel, the Government will reimburse the Architect-Engineer for the transportation, including Pullman where necessary, and will allow the traveler Six Dollars ($6.00) per day in lieu of all other expenses.

(2) All travel shall be either authorized or approved in writing by the Contracting Officer. Should the Architect-Engineer, or any representative thereof, remain in a travel status in excess of six (6) days at any one time, not including the time consumed in travel the cost for such excess travel status shall be at the expense of the Architect-Engineer unless otherwise ordered in writing by the Contracting Officer.

(3) Authorized transportation by automobile shall be reimbursed at the rate of Five Cents ($.05) per mile as representing the actual cost of such transportation.

d. Payment from his own funds made by the Architect-Engineer under the Federal Social Security Act and any applicable state or local taxes, fees or charges which the Architect-Engineer may be required to pay from his own funds on account of this contract.

e.-h. (Insert clauses a to d set forth in § 803.365 (b)).

i. Subcontracts, when approved by the Contracting Officer. Unless otherwise expressly provided for in this contract, subcontracting of any services covered by this contract shall be subject to a decrease in the fixed fee by an equitable adjustment on the basis of the decrease in services due to such subcontracting.

j. Temporary rights in land required in connection with the work and services hereunder, when approved in writing by the Contracting Officer.

k. Expenditures made by the Architect-Engineer under the provisions of Article III-C and III-F of this contract.

l. Such other items as should in the opinion of the Contracting Officer, be included in the cost of the work, *provided* that when such items are allowed by the Contracting Officer, they shall be specifically certified as being allowed under this subsection.

m. All expenditures for which reimbursement has not been made pursuant to Letter Contract dated _____, a copy of which is attached hereto. Such Letter Contract is hereby merged and superseded by this contract.[1] This subparagraph *m* shall be deemed

[1] This contract will bear same date as letter contract.

to be included herein if and only if this contract is preceded by a Letter Contract.

n. Rental for equipment owned and furnished by the Architect-Engineer, subject to such rental rates, terms and conditions as may be approved by the Contracting Officer; provided that the necessity for the use of such equipment is approved in advance by the Contracting Officer; and provided, further, that such equipment shall not be subject to recapture.

o. Rental paid by the Architect-Engineer for third-party-owned motor propelled vehicles. Each agreement for the rental of such equipment shall be in a form prescribed by the Contracting Officer, shall be subject to his approval and shall include provisions (1) that title to such equipment free of all liens and encumbrances shall vest in the Government when and if the total rental paid and/or accrued to the lessor for any item of equipment shall equal the approved value thereof plus one per cent (1%) of the approved value per month for each contract month or fraction thereof such piece of equipment shall have been in use, and that on demand the lessor will deliver to the Contracting Officer such evidences of title as he shall demand; and (2) that at any time prior to termination of such rental agreement, the Government may at its option purchase any piece of equipment by paying the lessor the difference between the valuation of such piece of equipment plus one per cent (1%) of the approved value per month for each contract month or part thereof such piece of equipment shall have been in use, and the total rental theretofore paid for such piece of equipment, provided, however, that either of such provisions may be omitted from such rental agreements if the omission is approved by the Chief of the Technical Service.

p. Fees for necessary permits and licenses under subparagraph *d* of Article I-B hereof.

q. Expenses of procuring necessary field forces and the transportation and traveling expenses to the work of such personnel (including personnel already in the employ of the Architect-Engineer) for the economical and successful prosecution of the work, and return when such services are no longer required; expenditures under these items shall be either authorized or approved in writing by the Contracting Officer.

r. Reimbursement under this Article shall include all actual expenditures directly chargeable to the work and services provided herein performed at the Architect-Engineer's home office, its field office, or elsewhere.

s. In the event the Contracting Officer shall determine that the best interests of the Government require that the Architect-Engineer initiate or defend litigation in connection with claims of third parties arising out of the performance of this contract, the Architect-Engineer will proceed with such litigation in good faith and the costs and expenses of such litigation, including judgments and court costs, allowances rendered or awarded in connection with suits for wages, overtime or salaries, and reasonable attorneys' fees for private counsel when the Government does not furnish Government counsel, shall be reimbursable under this contract.

2. No salary, wages or like compensation of the Architect-Engineer, partners or corporate officers of the Architect-Engineer's organization and no salary, wages or like compensation of the resident manager referred to in Article I-B shall be included in the cost of the work; nor shall any interest on capital employed or on borrowed money be included in the cost of the work.

ART. III-F. *Expert technical assistance.* 1. When in the judgment of the Contracting Officer the complexity and nature of the project are such as to require expert technical assistants, or services, or advice in connection with special phases of the work such as site planning, aerial surveys, manufacturing processes, or other problems of a highly technical character, the Architect-Engineer may obtain by subcontract, or otherwise, when so ordered by the Contracting Officer, such supplemental professional services as are necessary for the proper performance of this contract. The obtaining of such supplemental professional services shall entail no adjustment of the fixed-fee.

2. The provisions of the above section shall not apply to the usual professional services normally furnished by Architect-Engineers, including but not limited to topographic surveys, design of water supply and sewerage systems, power plants and other utilities, structures and foundations. If, in the opinion of the Contracting Officer, it is essential for the proper prosecution of the work that the Architect-Engineer obtain expert technical advice or consulting services in connection with those classes of service not included in section 1 above, the cost of obtaining such advice or service shall not be reimbursable except for the salaries of employees of such consultants, when assigned to the work on a full-time basis.

ART. III-G. *Method of payment.* 1. Payments to the Architect-Engineer are to be made as follows:

a. At intervals of not less than two weeks, the Architect-Engineer shall prepare a statement of the actual salaries paid, as hereinbefore mentioned, during the preceding period of two weeks, together with a statement of all other reimbursable expenses and including an estimate of the portion of the Architect-Engineer's fixed-fee earned. These statements, with original certified payrolls, receipted bills for all expenses including materials, rentals, supplies and equipment, and all other supporting data as may be required, shall be delivered to the Contracting Officer. The approved amounts of such statements shall be the basis for the preparation of the public voucher.

b. Payments of reimbursable cost items and of 90% of the amount of the Architect-Engineer's fee earned shall be made on vouchers approved by the Contracting Officer on standard forms, as soon as practicable after the submission of statements, supported by original certified payrolls, receipted bills for all expenses including materials, supplies and equipment, rentals, and all other supporting data. Upon completion of the project and its final acceptance the Architect-Engineer shall be paid the unpaid balance of any money due the Architect-Engineer hereunder.

c. Prior to final payment and as a condition thereof the Architect-Engineer shall furnish the Government with a release of all claims against the Government arising under and by virtue of this contract, other than (1) such claims, if any, as may be specifically excepted by the Architect-Engineer from the operation of the release in stated amounts to be set forth therein, or in estimated amounts where the amounts are not susceptible of exact statement, and (2) any claim based upon responsibility of the Architect-Engineer to third parties arising out of the performance of this contract not known to the Architect-Engineer at the time of furnishing the release.

d. Even though the existence or amount thereof shall not be determined until after the furnishing of such release as is described next above, reimbursement to be made for payments made by the Architect-Engineer shall include, along with wages and salaries otherwise reimbursable, all additional amounts determined either by approval of the Contracting Officer or by litigation (as provided in Subsection r, Section 1, Article III-E) to be due and payable for overtime compensation and allowances under local, state or Federal laws in connection with such wages and salaries.

e. The Architect-Engineer shall promptly notify the Contracting Officer of any claims of the type described in clause (2) of Subsection c of this Section which are asserted subsequent to the execution of the release.

f. In the event that the Government does not exercise the option under Title II of this contract within 30 days after the satisfactory completion and acceptance by the Contracting Officer of the work done by the Architect-Engineer under Article I-B, subsections *a* through *h* inclusive, the Architect-Engineer shall be paid the unpaid balance of any money due for work done under said Article I-B, subsections *a* through *h* inclusive.

ART. III-H. *Drawings and other data to become property of Government.* 1. All drawings, designs and specifications are to become the property of the Government on completion as outlined in this contract, and the Government shall have full right to use said drawings, designs and specifications as instruments for the purpose of constructing under contract or otherwise any buildings or other structures for the sole use of the Government when and where the Government may designate, without any claim on the part of the Architect-Engineer for additional compensation.

2. All notes, designs, drawings and other data concerning the project shall be delivered to the Government whenever requested by the Contracting Officer and, furthermore, access to such data shall be restricted to trusted and duly authorized representatives of the Government and of the Architect-Engineer.

ART. III-I. *The Contracting Officer's decisions.* 1. The extent and character of the work to be done by the Architect-Engineer shall be subject to the general supervision, direction, control, and approval of the Contracting Officer, to whom the Architect-Engineer shall report and be responsible.

ART. III-J. *Disputes.* (Insert article in § 803.326)

ART. III-K. *Changes in work or services.* 1. The Contracting Officer may at any time by written order issue additional instructions, require additional work or services or direct the omission of work or services covered by this contract. If such changes cause a material increase or decrease in the amount or character of the work and services to be done under this contract an equitable adjustment of the amount of the fixed fee to be paid the Architect-Engineer shall be made and the contract shall be modified in writing accordingly. Any claim for adjustment under this Article must be asserted within 10 days from the date the change is ordered (unless the Contracting Officer, with the approval of the Secretary of War or his duly authorized representative, shall grant a further period of time prior to the date of final settlement of the contract). Nothing provided in this Article shall excuse the Architect-Engineer from proceeding with the prosecution of the work so changed. There shall be no adjustment in the amount of the fixed fee as provided herein, nor any claim therefore because of any errors and/or omissions made in computing the estimated cost of the work under this contract or where the actual cost varies from the estimated cost.

ART. III-L. *Termination for cause or for convenience of the Government.* 1. The Government may terminate this contract at any time and for any cause by a notice in writing from the Contracting Officer to the Architect-Engineer. Upon receipt of such notice the Architect-Engineer shall, unless the notice directs otherwise, immediately discontinue all work and the placing of all orders for materials, facilities and supplies in connection with performance of this contract and shall proceed to cancel promptly all existing orders and terminate work under subcontracts insofar as such orders and/or work are chargeable to this contract.

2. Upon the termination of this contract, full and complete settlement of all claims of

the Architect-Engineer arising out of this contract shall be made as follows:

a. The Government shall assume and become liable for all obligations, commitments, and claims that the Architect-Engineer may have theretofore in good faith undertaken or incurred in connection with said work and in accordance with the provisions of this contract; and the Architect-Engineer shall, as a condition of receiving the payments mentioned in this Article, execute and deliver all such papers and take all such steps as the Contracting Officer may require for the purpose of fully vesting in the Government the rights and benefits of the Architect-Engineer under such obligations or commitments.

b. The Government shall reimburse the Architect-Engineer for all expenditures made in accordance with Article III–E and not previously reimbursed.

c. The obligations of the Government to make any of the payments required by this Article, or by Article III–G of this contract, shall be subject to any unsettled claims for labor or material or any claim the Government may have against the Architect-Engineer.

3. If the contract is terminated for the convenience of the Government, the Architect-Engineer will be paid promptly that proportion of the prescribed fixed-fee which the work actually performed bears to the total work called for under this contract, less fixed-fee payments previously made, and the Government shall further reimburse the Architect-Engineer for such essential expenditures, made after the date of termination, for the protection of Government property and for accounting services in connection with the settlement of this contract, as the Contracting Officer may approve.

4. If the contract is terminated due to the fault of the Architect-Engineer, no further payments on account of the fixed-fee will be made.

ART. III–M. *Progress reports and changes in personnel.*

1. The Architect-Engineer shall promptly, after the execution of the contract, prepare and submit to the Contracting Officer, for approval, a schedule showing the order in which the Architect-Engineer proposes to carry on the work, with dates on which he will start the several salient features of the work and the contemplated dates for completing the same. The schedule shall be in the form of a progress chart at suitable scale as to indicate with symbols the percentage completed at any time. The Architect-Engineer shall correct the progress schedule at the end of each week and shall immediately deliver to the Contracting Officer three copies of the same.

2. The Architect-Engineer shall furnish sufficient technical, supervisory and Administrative personnel to insure the prosecution of the work in accordance with the approved progress schedule. If, in the opinion of the Contracting Officer, the Architect-Engineer falls behind the prograss schedule, the Architect-Engineer shall take such steps as may be necessary to improve his progress and the Contracting Officer may direct him to increase working days per week, or hours of labor per day and failure to promptly comply with such directions shall be deemed sufficient cause to terminate the contract.

3. When in the opinion of the Contracting Officer the Architect-Engineer's personnel and/or overhead is excessive for the proper performance of this contract, reductions thereof shall be made as required by the Contracting Officer.

ART. III–N. *Convenant against contingent fees.* (Insert clause in § 803.323)

ART. III–O. *Officials not to benefit.* (Insert clause in § 803.322)

ART. III–P. *Assignment of claims.* (Insert clause in § 803.355)

ART. III–Q. *Anti-discrimination.* (Insert clause in § 803.325)

ART. III–R. *Convict labor.* (Insert clause in § 803.345)

ART. III–S. *Dismissals.* 1. The Contracting Officer may require the Contractor to dismiss from work such employee or employees as the Contracting Officer deems incompetent, careless, or insubordinate or whose continued employment is deemed inimical by the Contracting Officer to the public interest. The Architect-Engineer shall make every reasonable effort in the selection of his employees and in the prosecution of the work under this contract to safeguard plot drawings and schematic drawings furnished him, and drawings and specifications, and to prevent the theft or unauthorized use of the same.

ART. III–T. *Accident prevention.* (Insert clause in § 803.362)

ART. III–U. *Insurance.* (Insert § 803.365 (c))

ART. III–V. *Renegotiation.* (See § 803.342 and Part 812)

ART. III–W. *Approval required.*

1. This contract shall be subject to the approval of _____ and shall not be binding unless so approved.

ART. III–X. *Definitions.*

1. The term "Chief of the Supply Service" refers to the head of a service of the War Department, viz., the Chief of Engineers, the Chief of Ordnance, or the Chief of Chemical Warfare Service.

2. The terms "Secretary of War" and "Chief of the Supply Service" shall include their duly authorized representatives as the case may be other than the Contracting Officer.

3. The terms "Secretary of War" and "Chief of Engineers" shall include any person or board authorized by the Secretary of War or the Chief of the Supply Service, as the case may be, to act for him, other than the Contracting Officer.

4. Except for the original signing of this contract, the term "Contracting Officer" as used herein shall include his duly appointed successor or his authorized representative.

ART. III–Y. *Alterations.*

The following changes were made in this contract before it was signed by the parties hereto:

In witness whereof, the parties hereto have executed this contract as of the day and year first above written.

THE UNITED STATES OF AMERICA,
By _____
_____
(Contracting Officer)

ARCHITECT-ENGINEER,
By _____
Title: _____
Business Address: _____

Witnesses as to signature of Architect-Engineer:
_____
_____
(Address)
_____
_____
(Address)

CERTIFICATION

I, _____ do hereby certify that I am the duly qualified _____ of the corporation named herein as Architect-Engineer; that _____ who signed this contract on behalf of the Architect-Engineer was then _____ of said corporation; that said contract was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

In witness whereof, I have hereunto affixed my hand and the seal of the _____
_____
this _____ day of _____, 194___
_____
[CORPORATE SEAL]

APPENDIX "C"

There is set forth below the present key employees proposed to be furnished under this contract indicating their names, description of work to be performed, an expression as to whether the salaries are based on a weekly, monthly or annual basis, and the maximum salary agreed upon to be paid for services in the position indicated for personnel now employed.

Name	Position	Salary based on weekly (W) monthly (M) or annual basis.	Maximum salary agreed to be paid under contract.

For the purposes of this Appendix "C" it is understood that

1. "Non-manual employees" are those employees who are not "Laborers and mechanics" within the meaning of the Davis-Bacon Act. The term "Non-manual employees" includes all occupations not involving manual labor directly in connection with construction work. Custodial employees are included within the term "non-manual employees." The following is a list (not all inclusive) of typical "non-manual" occupations:

Accountants.
Architects.
Auditors.
Axemen.
Bookkeepers.
Chainmen.
Checkers.
Chiefs of Party.
Clerks.
Cooks.
Draftsmen.
Engineers.
Executives of any kind.
Guards.
Levelmen.
Material Checkers.
Material Clerks.
Messengers.
Office Machine Operators.
Office Managers.
Project Managers.
Purchasing Agents.
Rodmen.
Stenographers.
Stewards.
Storekeepers.
Superintendents.
Telephone Operators.
Timecheckers.
Timekeepers.
Tool Checkers.
Transitmen.
Typists.
Waiters.
Watchmen.
Waterboys.

2. Non-manual employees will be classified in the following groups:

a. Group "A." Employees whose base salaries are $53.31 or less per week.

b. Group "B." Employees whose base salaries are over $53.31 and not over $90.00 per week.

c. Group "C." Employees whose base salaries are over $90.00 per week.

d. Group "D." Trade foremen employed by construction contractors.

3. The base salaries of all employees in Groups "A" and "B" are based on a work week of 40 hours. The base salaries of all employees in Group "C" are based on a minimum work week of 48 hours.

4. No offer of employment will be made to any prospective employee for work of the same general classification and responsibility as his present employment at a rate exceeding his present salary.

5. The base salary of a person not in the employ of the Architect-Engineer prior to the execution of this contract will not be approved at a rate in excess of the maximum prescribed for the job classification in the approved salary schedule attached.

6. The base salary of a person in the employ of the Architect-Engineer prior to the execution of the contract will not be approved at a base salary in excess of that paid immediately prior to execution plus such increases as the Architect-Engineer customarily grants for work away from the home office, except that, in cases where the classifications of such a person is changed incident to or during his assignment to the project, the salary range in the approved salary schedule shall govern.

7. *With regard to overtime payments:*

a. Group "A" employees will be paid at the rate of time and one-half for all work which they are required to perform in excess of 40 hours during the first six days of any regularly scheduled work week, and at the rate of two times straight time for work which they are required to perform on the seventh consecutive day of such work week.

b. Group "B" employees will be paid at the rate of straight time for all work which they are required to perform in excess of 40 hours per week.

c. Group "C" employees will work any necessary number of hours (including work on Sundays) without payment of additional compensation.

d. Group "D" employees normally employed on an hourly basis will be granted the same overtime pay as the laborers and mechanics under their supervision. Group "D" employees employed on a weekly or monthly basis will be governed by the overtime provisions applicable to employees in Group "A," "B" or "C."

8. *With regard to holiday payments:*

a. No deductions from weekly or monthly base salaries of employees in Groups "A," "B," and "C" shall be made for approved absences on customary holidays, and no premium wage or extra compensation shall be paid for work on such holidays, except that employees in Group "A" who are required to work on the holidays specified below, shall be paid at the rate of one and one-half times the straight time rate:

New Year's Day.	Thanksgiving Day.
July Fourth.	Christmas Day.
Labor Day.	Memorial Day.

b. Group "D" employees normally employed on an hourly basis will be granted the same overtime pay as the laborers and mechanics under their supervision. Group "D" employees employed on a weekly or monthly basis will be governed by the holiday provisions applicable to Group "A", "B", or "C".

9. *Work on the seventh consecutive day.*

a. Since it is the policy to provide that each worker will have one day of rest in seven, operations shall be arranged so as to permit one scheduled day of rest in each seven for all employees not engaged in an executive or supervisory capacity.

b. Only in situations of emergency will approval be granted to work, on the seventh consecutive day or more than 48 hours in any scheduled work week, those employees who are not engaged in executive or supervisory capacities. The Contracting Officer will obtain the prior approval of the Division Engineer or his designated representative before approving work in such cases.

10. *Leave privileges.* All employees of Groups "A", "B", "C", and those employees of Group "D" who are employed on a weekly or monthly basis, shall accrue leave with pay at the rate of two days per month for each month of service in lieu of any sick or vacation allowance, subject to the following rules:

a. Leave granted for any reason in excess of two days per month will not be reimbursable.

b. Leave may be granted by the Architect-Engineer, with the approval of the Contracting Officer, at such time or times as may be deemed in the best interests of the Government. Leave may be granted during the course of employment or at the completion of employment.

c. No leave will be accrued to any employee in excess of 48 days.

d. Unearned leave may not be advanced.

e. Employees separated because of their own misconduct (including such causes as insubordination, drunkenness on the job, theft, etc.) shall forfeit any leave which they may have accrued at the time of separation.

f. Employees who resign, or are involuntarily separated for causes not due to their misconduct, shall be entitled to all leave to and including date of separation.

g. Employees shall be charged with leave only for absence on days upon which they would normally be on dtuy.

h. The minimum charge for leave shall be one hour. Leave granted for less than one full day shall be proportionately charged.

i. Leave may not be granted for days of disability because of accidents which are covered by compensation insurance.

11. *Approved salary schedule:*

NON-MANUAL EMPLOYEES OF COST-PLUS-A-FIXED-FEE PRINCIPAL AND SUBCONTRACTORS

Job classification	Salary ranges			
	Weekly		Monthly	
	From	To	From	To
Executive and office engineers:				
Architect, Chief	$92.31	$150.00	$400.00	$650.00
Architect Supt., Chief	44.31	103.85	192.00	450.00
Architect Supt	35.54	67.33	154.00	292.00
Architect Supt., Asst	31.15	53.31	135.00	231.00
Computer	35.54	92.31	154.00	400.00
Designer, Chief	67.33	115.38	292.00	500.00
Designer, Architectural	44.31	103.85	192.00	450.00
Designer, Engineering	44.31	103.85	192.00	450.00
Draftsman, Chief	53.31	103.85	231.00	450.00
Draftsman	26.54	53.31	115.00	231.00
Engineer, Chief	92.31	150.00	400.00	650.00
Engineer, Asst. Chief	92.31	138.46	400.00	600.00
Engineer, Departmental	92.31	138.46	400.00	600.00
Engineer, Office	67.33	115.38	292.00	500.00
Engineer, Junior	26.54	44.31	115.00	192.00
Specification Writer, Chief	67.33	115.38	292.00	500.00
Specification Writer	44.31	92.31	192.00	400.00
Field Engineers:				
Axeman	18.01	19.62	80.00	85.00
Chainman	17.77	26.54	77.00	115.00
Chief of Party	35.54	67.33	154.00	292.00
Engineer, Chf. Construction	92.31	138.46	400.00	600.00
Engineer, Construction	53.31	115.38	231.00	500.00
Inspector, Chief	35.54	67.33	154.00	292.00
Inspector	26.54	53.31	115.00	231.00
Instrument Man	31.15	53.31	135.00	231.00
Rodman	22.15	31.15	96.00	135.00
Surveyor, Chief	44.31	103.85	192.00	450.00
Construction personnel:				
Equipment Manager	92.31	138.46	400.00	600.00
Estimator, Chief	53.31	103.85	231.00	450.00
Estimator	35.54	53.31	154.00	231.00
Expediter, Chief	44.31	103.85	192.00	450.00
Expediter	26.54	53.31	115.00	231.00
Labor Relations Manager	53.31	115.38	231.00	500.00
Master Mechanic	53.31	115.38	231.00	500.00
Material Checker	22.15	35.54	96.00	154.00
Paymaster	35.54	92.31	154.00	400.00
Paymaster, Asst	26.54	53.31	115.00	231.00
Personnel Manager	35.54	103.85	154.00	450.00
Priorities Manager	35.54	103.85	154.00	450.00
Priorities Manager, Asst	35.54	53.31	154.00	231.00
Project Manager	115.38	173.08	500.00	750.00
Project Manager, Asst.	53.31	115.38	231.00	500.00
Purchasing Agent	53.31	138.46	231.00	600.00
Purchasing Agent, Asst	35.54	53.31	154.00	231.00
Sanitary and Safety Manager	44.31	92.31	192.00	400.00
Storekeeper, Chief	53.31	92.31	231.00	400.00
Storekeeper, Asst.	26.54	53.31	115.00	231.00
Superintendent General	115.38	173.08	500.00	750.00
Superintendent, Asst. Gen	92.31	138.46	400.00	600.00
Superintendent	92.31	138.46	400.00	600.00

NON-MANUAL EMPLOYEES OF COST-PLUS-A-FIXED-FEE PRINCIPAL AND SUBCONTRACTORS—Con.

Job classification	Salary ranges			
	Weekly		Monthly	
	From	To	From	To
Construction personnel—Continued				
Superintendent, Asst	$53.31	$92.31	$231.00	$400.00
Timekeeper, Chief	35.54	92.31	154.00	400.00
Timekeeper, Asst. Chief	26.54	44.31	115.00	192.00
Timekeeper	17.77	35.54	77.00	154.00
Traffic Manager	53.31	92.31	231.00	400.00
Traffic Manager, Asst.	35.54	53.31	154.00	231.00
Office and Miscellaneous personnel:				
Accountant	35.54	92.31	154.00	400.00
Accountant, Asst	35.54	53.31	154.00	231.00
Attorney and Notary	44.31	67.33	192.00	292.00
Auditor	53.31	126.92	231.00	550.00
Auditor, Asst	53.31	92.31	231.00	400.00
Blue Print Operator	31.15	39.92	135.00	173.00
Bookkeeper	26.54	48.92	115.00	212.00
Cashier	35.54	53.31	154.00	231.00
Chauffer	17.77	26.54	77.00	115.00
Chief Clerk	26.54	53.31	115.00	231.00
Clerk	17.77	35.54	77.00	154.00
Doctor	44.31	92.31	192.00	400.00
Fire Chief	44.31	92.31	192.00	400.00
Fire Chief, Asst	35.54	53.31	154.00	231.00
Fireman	35.54	53.31	154.00	231.00
Guard	35.54	53.31	154.00	231.00
Janitor	17.77	22.15	77.00	96.00
Messenger	22.15	35.54	96.00	154.00
Nurse	17.77	35.54	77.00	154.00
Office Boy	17.77	26.54	77.00	115.00
Office Machine Operator	17.77	26.54	77.00	115.00
Office Manager	53.31	103.85	231.00	450.00
Office Manager, Asst	35.54	67.33	154.00	292.00
Receptionist	17.77	26.54	77.00	115.00
Safety (First Aid) Man	44.31	92.31	192.00	400.00
Secretary	17.77	31.15	77.00	135.00
Statistician	53.31	92.31	231.00	400.00
Statistician, Asst	44.31	53.31	192.00	231.00
Stenographer	17.77	26.54	77.00	115.00
Stenotypist	17.77	31.15	77.00	135.00
Telephone Operator	17.77	26.54	77.00	115.00
Typist	14.31	22.15	62.00	96.00
Watchman	17.77	31.15	77.00	135.00

§ 813.1305 *W. D. Contract Form No. 5.* See § 813.1317d.

§ 813.1306 *W. D. Contract Form No. 6.* See § 813.1317f.

§ 813.1307 *W. D. Contract Form No. 7.*

LETTER ORDER FOR SUPPLIES (NO PRICE STATED)

Contract No. _____
(Negotiated)

Date _____

Place _____

Contractor _____

Address _____

GENTLEMEN: 1. An order is hereby placed with you for the manufacture and delivery to the Government of the following supplies:

_____

_____

_____

2. You are directed, upon your acceptance of this order, to proceed immediately to furnish the necessary materials, jigs, dies, fixtures and gages, and other machinery and equipment,[1] and to commence the manufacture of the supplies called for in paragraph 1, and to pursue such work with all

[1] As to cases where it is anticipated that the contractor will have to purchase machinery or equipment (other than jigs, dies, fixtures and gages) in an estimated amount of more than $100,000, see § 810.1003.

diligence to the end that the supplies may be delivered to the Government at the earliest practicable date.

3. All applicable articles (other than the article "Termination for the Convenience of the Government") now required by Federal Law, Executive Order, or War Department Procurement Regulations to be included in contracts for supplies of the kind herein described are incorporated herein by reference.

4. By your acceptance hereof, you undertake without delay to enter into negotiations with the War Department looking to the execution of a definitive contract which will follow in the main War Department Contract Form No. 1[2] and will include all applicable articles then required by Federal Law, Executive Order and War Department Procurement Regulations to be included in contracts for supplies of the kind herein described. The definitive contract will also contain a detailed delivery schedule and prices, terms and conditions as agreed to by the parties, which may or may not be at variance with the provisions of this order.

5. Pending the execution of a definitive contract, each expenditure, order, subcontract or commitment made by you in furtherance of the performance of this order—

(a) for machinery or equipment other than jigs, dies, fixtures or gages, or

(b) for an amount in excess of _____ Dollars ($_____), will be subject to the written approval of the Contracting Officer, and you are not authorized to expend or obligate, in furtherance of your performance hereunder, more than _____ Dollars ($_____) in the aggregate.

6. (a) In case a definitive contract is not executed by _____, 19____ (or any subsequent date at any time mutually agreed upon) because of the inability of the parties to agree upon a definitive contract, this order will terminate on the stated date or such subsequent date, as the case may be.

(b) The Government may at any time terminate this order in whole or in part for its convenience by giving you written notice of such termination.

(c) In the event of any termination pursuant to either paragraph 6 (a) or paragraph 6 (b) of this order, you and the Contracting Officer will attempt to agree by negotiation upon a settlement estimated by the parties to be the aggregate amount (less payments previously made to you) of the costs incurred by you in the performance of this order and the amounts paid or to be paid by you or for your account in settling with the approval of the Contracting Officer your obligations for commitments made in the performance of this order. *In case of termination pursuant to paragraph 6 (b), such negotiated settlement may include a reasonable allowance for profit.*[1] Any such negotiated settlement shall be embodied in a Supplemental Agreement.

(d) If you and the Contracting Officer are not able to agree upon such a negotiated settlement within 90 days after the effective date of the termination (or within such longer period as at any time may be mutually agreed upon), the Government binds itself (without duplication of any of the following payments or of payments previously made) to reimburse you for the costs incurred by you in the performance of this order and for any amounts paid by you or for your account in settling with the approval of the Contracting Officer your obligations for commitments made in the performance of this order. In lieu of reimbursing you for expenditures made by you in settling any of your obligations for commitments, the Government, in the discretion of the Contracting Officer, may assume such obligations or any of them. The total of such reimbursement (and of all payments previously made), together with the amount of any obligations assumed, shall not exceed the amount above specified.

If such termination shall take place pursuant to paragraph 6 (a) of this order no allowance of profit will be made to you. If termination shall take place for the convenience of the Government pursuant to paragraph 6 (b) of this order, such allowance of profit will be made to you with respect to the work done by you prior to the effective date of the termination as the Contracting Officer may find to be reasonable under all the circumstances.[1]

(e) The Government may permit you to sell or retain at prices or on terms agreed to by the Government any equipment, completed supplies, materials or work in process and the proceeds of any such sale, or such agreed prices, shall be paid or credited to the Government in such manner as the Contracting Officer may direct.

(f) Upon payment or reimbursement to you pursuant to paragraph 6 (c) or 6 (d) of this order, title to all equipment, completed supplies, work in process, materials, plans, information, and other things, for which you are so paid or reimbursed (except such property as may be sold or retained by you as above provided) will vest in the Government (if title thereto has not already become vested in the Government). The Government will also become entitled to any rights under any commitment which it may assume, or for the settlement of which it shall have reimbursed you.

(g) Any dispute which arises under this paragraph 6 regarding a matter of fact (*including any dispute (1) as to whether termination has in fact taken place for the convenience of the Government or because of the inability of the parties to agree upon a definitive contract, or (2) as to the extent of any allowance of a profit in the event of a termination for the convenience of the Government*)[1] will be treated and resolved as a dispute under the "Disputes" article[2] incorporated in this order by reference.

(h) Partial payments on account of any amount admittedly due to you pursuant to this paragraph 6 may be made by the Government at any time in the discretion of the Contracting Officer.

7. After your acceptance hereof, partial and advance payments, in accordance with regulations from time to time applicable, may be made to you upon your application.

8. The sums to be expended by the Government hereunder are chargeable to the following allotments, the available balances of which are sufficient to cover the same:

_____

9. Your acceptance of this order will be indicated by affixing your signature to this letter and two copies thereof and mailing or delivering the executed original and one executed copy to the Contracting Officer not later than _____ 194____. Such acceptance will constitute this order a contract on the terms set forth herein.

10. This instrument is authorized by and has been negotiated under the First War Powers Act, 1941, and Executive Order No. 9001.

[SEAL] UNITED STATES OF AMERICA,
By _____
_____
(Official Title)
Accepted _____, 19____.
_____
(Contractor)
By _____
(Title)
_____
(Address)

[1] The italicized words will be omitted where existing letter orders and letters of intent, containing no provision for the allowance of a profit in the event of termination for the convenience of the Government, are amended to contain the standard termination provisions except as authorized by §§ 815.107 (b) (3) and 803.303a (a) (2).

[2] Where the letter order is for an amount less than $20,000, the "Disputes" article will not have been incorporated by reference by virtue of paragraph 3 or 6 (g) of the letter order, since contracts in such amount are not required to contain that article (see § 803.326). In that event the language of the letter order will be appropriately modified expressly to incorporate by reference either the "Disputes" article set forth in § 803.326 or that contained in General Provision 12 of W.D. Contract Form No. 18 (§ 813.1317b).

[2] With appropriate modifications, this letter order may also be used where the definitive contract is to be written on a fixed-price contract form for supplies other than W. D. Contract Form No. 1.

§ 813.1308 *W. D. Contract Form No. 8.*

LETTER ORDER FOR SUPPLIES (PRICE STATED)

Contract No. _____
(Negotiated)
Date _____
Place _____

Contractor _____
Address _____

GENTLEMEN: 1. An order is hereby placed with you for _____
(Quantity and Item)
at a unit price of _____ Dollars ($_____).

2. Deliveries on this order shall begin on or about _____, 19__, and shall be completed on or before _____, 19__. Pending execution of a definitive contract, payment will be made at the price above mentioned for each item of supplies delivered and accepted, upon the submission of properly certified invoices or vouchers.

3. All applicable articles (other than the article "Termination for the Convenience of the Government") now required by Federal law, Executive Order, or War Department Procurement Regulations to be included in contracts for supplies of the kind herein described are incorporated herein by reference.

4. By your acceptance hereof, you undertake without delay to enter into negotiations with the War Department looking to the execution of a definitive contract which will follow in the main War Department Contract Form No. 1[1] and will include all applicable articles then required by Federal law, Executive Order and War Department Procurement Regulations to be included in contracts for supplies of the kind herein described. The definitive contract will also contain a detailed delivery schedule and prices, terms and conditions as agreed to by the parties, which may or may not be at variance with the provisions of this order.

5. Pending the execution of a definitive contract, each expenditure, order, subcontract or commitment made by you in furtherance of the performance of this order for an amount in excess of _____ Dollars ($_____) will be subject to the written approval of the Contracting Officer, and you

[1] With appropriate modifications, this letter order may also be used where the definitive contract is to be written on a fixed-price contract form for supplies other than W.D. Contract Form No. 1.

are not authorized to expend or obligate, in furtherance of your performance hereunder, more than _____ Dollars ($_____) in the aggregate.

6. (a) In case a definitive contract is not executed by _____, 19____ (or any subsequent date at any time mutually agreed upon) because of the inability of the parties to agree upon a definitive contract, this order will terminate on the stated date or such subsequent date, as the case may be.

(b) The Government may at any time terminate this order in whole or in part for its convenience by giving you written notice of such termination.

(c) In the event of any termination pursuant to either paragraph 6 (a) or paragraph 6 (b) of this order, you and the Contracting Officer will attempt to agree by negotiation upon a settlement estimated by the parties to be the aggregate amount (less payments previously made to you) of the unit price above specified for all completed supplies, the costs incurred by you with respect to the uncompleted portion of this order, and the amounts paid or to be paid by you or for your account in settling with the approval of the Contracting Officer your obligations for commitments made with respect to such uncompleted portion of this order. *In case of termination pursuant to paragraph 6 (b), such negotiated settlement may include a reasonable allowance for profit.*[1] Any such negotiated settlement shall be embodied in a Supplemental Agreement.

(d) If you and the Contracting Officer are not able to agree upon such a negotiated settlement within 90 days after the effective date of the termination (or within such longer period as at any time may be mutually agreed upon), the Government binds itself (without duplication of any of the following payments or of payments previously made):

(1) to pay you the unit price above specified for all completed supplies;

(2) to reimburse you for the costs incurred by you with respect to the uncompleted portion of this order and for any amounts paid by you or for your account in settling with the approval of the Contracting Officer your obligations for commitments with respect to such uncompleted portion of this order. In lieu of reimbursing you for expenditures made by you in settling any of your obligations for commitments with respect to the uncompleted portion of this order, the Government, in the discretion of the Contracting Officer, may assume such obligations or any of them.

If such termination shall take place pursuant to paragraph 6 (a) of this order no allowance of profit will be made to you (except as the payment of the unit price for completed supplies may include a profit). If termination shall take place for the convenience of the Government pursuant to paragraph 6 (b) of this order, such allowance of profit (in addition to any profit included in paying the unit price for completed supplies) will be made to you with respect to the work done by you on uncompleted supplies prior to the effective date of the termination as the Contracting Officer may find to be reasonable under all the circumstances.[1]

[1] The italicized words will be omitted where existing letter orders and letters of intent, containing no provision for the allowance of a profit in the event of termination for the convenience of the Government, are amended to contain the standard termination provisions except as authorized by §§ 815.107 (b) (3) and 803.303a (a) (2).

(e) The Government may permit you to sell or retain at prices or on terms agreed to by the Government any equipment, completed supplies, materials or work in process and the proceeds of any such sale, or such agreed prices, shall be paid or credited to the Government in such manner as the Contracting Officer may direct.

(f) Upon payment or reimbursement to you pursuant to paragraph 6 (c) or 6 (d) of this order, title to all equipment, completed supplies, work in process, materials, plans, information, and other things, for which you are so paid or reimbursed (except such property as may be sold or retained by you as above provided) will vest in the Government (if title thereto has not already become vested in the Government). The Government will also become entitled to any rights under any commitment which it may assume, or for the settlement of which it shall have reimbursed you.

(g) Any dispute which arises under this paragraph 6 regarding a matter of fact (*including any dispute (1) as to whether termination has in fact taken place for the convenience of the Government or because of the inability of the parties to agree upon a definitive contract, or (2) as to the extent of any allowance of a profit in the event of a termination for the convenience of the Government*) [1] will be treated and resolved as a dispute under the "Disputes" article [2] incorporated in this order by reference.

(h) Partial payments on account of any amount admittedly due to you pursuant to this paragraph 6 may be made by the Government at any time in the discretion of the Contracting Officer.

7. After your acceptance hereof, partial and advance payments, in accordance with regulations from time to time applicable, may be made to you upon your application.

8. The sums to be expended by the Government hereunder are chargeable to the following allotments, the available balances of which are sufficient to cover the same: ____

_____

9. Your acceptance of this order will be indicated by affixing your signature on this letter and two copies thereof and mailing or delivering the executed original and one executed copy to the Contracting Officer not later than _____, 19___. Such acceptance will constitute this order a contract on the terms set forth herein.

10. This instrument is authorized by and has been negotiated under the First War Powers Act, 1941, and Executive Order No. 9001.

[2] Where the letter order is for an amount less than $20,000, the "Disputes" article will not have been incorporated by reference by virtue of paragraph 3 or 6 (g) of the letter order, since contracts in such amount are not required to contain that article (see § 803.326). In that event the language of the letter order will be appropriately modified expressly to incorporate by reference either the "Disputes" article set forth in § 803.326 or that contained in General Provision 12 of W. D. Contract Form No. 16 (§ 813.1317).

[SEAL] UNITED STATES OF AMERICA,
By _____
_____
(Official Title)

Accepted _____, 19____
_____
(Contractor)
By _____
(Title)
_____
(Address)

§ 813.1309 *W. D. Contract Form No. 9.*

LETTER ORDER FOR COST PLUS A FIXED FEE CONSTRUCTION

Contract No._____
(Negotiated)
Date_____
Place_____

_____
(Contractor)
_____
(Address)

GENTLEMEN: 1. An order is hereby placed with you to furnish the equipment and materials (except such as are furnished by the Government) and perform the work necessary for the construction and completion of:

_____
_____

The cost of the project is now estimated to be _____ Dollars ($_____), exclusive of any fee to you.

2. The work shall be started immediately upon your acceptance hereof and shall be completed within _____ months thereafter. Your acceptance hereof shall operate as a notice to you to proceed.

3. All applicable articles (other than the article "Termination for the Convenience of the Government") now required by Federal law, Executive Order, or War Department Procurement Regulations to be included in contracts for work of the kind herein described are incorporated herein by reference.

4. By your acceptance hereof, you undertake without delay to enter into negotiations with the War Department looking to the execution of a definitive contract which will follow in the main War Department Contract Form No. 3 [1] and will include all applicable articles than required by Federal law, Executive Order and War Department Procurement Regulations to be included in contracts for work of the kind herein described. The definitive contract will also contain detailed terms and conditions as agreed to by the parties, which may or may not be at variance with the provisions of this order.

5. Pending the execution of a definitive contract, each expenditure, order, subcontract or commitment made by you in furtherance of the performance of this order for an amount in excess of _____ Dollars ($_____) will be subject to the written approval of the Contracting Officer, and you are not authorized to expend or obligate, in furtherance of your performance hereunder, more than _____ Dollars ($_____) in the aggregate. Subject to the foregoing limitations, reimbursements will be made to you in the manner described and for the items set forth in War Department Contract Form No. 3 as reimbursable items when approved or ratified by the Contracting Officer.

6. (a) In case a definitive contract is not executed by _____, 19___ (or any

[1] With appropriate modifications, this letter order may also be used where the definitive contract is to be written on W.D. Contract Form No. 4 or 12.

subsequent date at any time mutually agreed upon) because of the inability of the parties to agree upon a definitive contract, this order will terminate on the stated date or such subsequent date, as the case may be.

(b) The Government may at any time terminate this order in whole or in part for its convenience by giving you written notice of such termination.

(c) In the event of any termination pursuant to either paragraph 6 (a) or paragraph 6 (b) of this order, you and the Contracting Officer will attempt to agree by negotiation upon a settlement estimated by the parties to be the aggregate amount (less payments previously made to you) of the costs incurred by you in the performance of this order and the amounts paid or to be paid by you or for your account in settling with the approval of the Contracting Officer your obligations for commitments made in the performance of this order. *In case of termination pursuant to paragraph 6 (b), such negotiated settlement may include a reasonable allowance for profit.*[1] Any such negotiated settlement shall be embodied in a Supplemental Agreement.

(d) If you and the Contracting Officer are not able to agree upon such a negotiated settlement within 90 days after the effective date of the termination (or within such longer period as at any time may be mutually agreed upon), the Government binds itself (without duplication of any of the following payments or of payments previously made) to reimburse you for the costs incurred by you in the performance of this order and for any amounts paid by you or for your account in settling with the approval of the Contracting Officer your obligations for commitments made in the performance of this order. In lieu of reimbursing you for expenditures made by you in settling any of your obligations for commitments, the Government, in the discretion of the Contracting Officer, may assume such obligations or any of them. The total of such reimbursement (and of all payments previously made), together with the amount of any obligations assumed, shall not exceed the amount above specified.

If such termination shall take place pursuant to paragraph 6 (a) of this order no allowance of profit will be made to you. If termination shall take place for the convenience of the Government pursuant to paragraph 6 (b) of this order, such allowance of a fee will be made to you with respect to the work done by you prior to the effective date of the termination as the Contracting Officer may find to be reasonable under all the circumstances; but such fee shall in no event exceed _____ per cent (____%) of so much of the estimated cost set forth in paragraph 1 as is allocable to such work.[1]

(e) The Government may permit you to sell or retain at prices or on terms agreed to by the Government any equipment, materials or work in process and the proceeds of any such sale, or such agreed prices, shall be paid or credited to the Government in such manner as the Contracting Officer may direct.

(f) Upon payment or reimbursement to you pursuant to paragraph 6 (c) or 6 (d) of this order, title to all equipment, work in process, materials, plans, information, and other things, for which you are so paid or reimbursed (except such property as may be sold or retained by you as above provided) will vest in the Government (if title thereto has not already become vested in the Government). The Government will also become entitled to any rights under any commitment which it may assume, or for the settlement of which it shall have reimbursed you.

(g) Any dispute which arises under this paragraph 6 regarding a matter of fact (*including any dispute (1) as to whether termination has in fact taken place for the convenience of the Government or because of the inability of the parties to agree upon a definitive contract, or (2) as to the extent of any allowance of a fee in the event of a termination for the convenience of the Government*)[1] will be treated and resolved as a dispute under the "Disputes" article[2] incorporated in this order by reference.

(h) Partial payments on account of any amount admittedly due to you pursuant to this paragraph 6 may be made by the Government at any time in the discretion of the Contracting Officer.

7. After your acceptance hereof, partial and advance payments, in accordance with regulations from time to time applicable, may be made to you upon your application.

8. The sums to be expended by the Government hereunder are chargeable to the following allotments, the available balances of which are sufficient to cover the same____

---

9. Your acceptance of this order will be indicated by affixing your signature on this letter and two copies thereof and mailing or delivering the executed original and one executed copy to the Contracting Officer not later than_____

_____, 19__. Such acceptance will constitute this order a contract on the terms set forth herein.

10. This instrument is authorized by and has been negotiated under the First War Powers Act, 1941, and Executive Order No. 9001.

[SEAL] UNITED STATES OF AMERICA,

By _____

_____

(Official Title)

Accepted _____, 19____.

_____

(Contractor)

By _____

(Title)

_____

(Address)

§ 813.1310 *W. D. Contract Form No. 10.*

LETTER ORDER FOR LUMP SUM CONSTRUCTION

Contract No. _____

(Negotiated)

Date _____

Place _____

(Address)

Contractor _____

Address _____

GENTLEMEN I. An order is hereby placed with you to furnish the equipment and materials and perform the work necessary for the construction and completion of _____

_____

2. The work shall be started immediately upon your acceptance hereof and shall be completed within ____ months thereafter. Your acceptance hereof shall operate as a notice to you to proceed.

3. All applicable articles (other than the article "Termination for the Convenience of the Government") now required by Federal law, Executive Order, or War Department Procurement Regulations to be included in contracts for work of the kind herein described are incorporated herein by reference.

4. By your acceptance hereof, you undertake without delay to enter into negotiations with the War Department looking to the execution of a definitive contract which will follow in the main War Department Contract Form No. 2[3] and will include all applicable articles then required by Federal law, Executive Order and War Department Procurement Regulations to be included in contracts for work of the kind herein described. The definitive contract will also contain detailed terms and conditions as agreed to by the parties, which may or may not be at variance with the provisions of this order.

5. Pending the execution of a definitive contract, each expenditure, order, subcontract or commitment made by you in furtherance of the performance of this order for an amount in excess of _____ Dollars ($_____) will be subject to the written approval of the Contracting Officer, and you are not authorized to expend or obligate, in furtherance of your performance hereunder, more than _____Dollars ($_____) in the aggregate.

6. (a) In case a definitive contract is not executed by _____, 19___ (or any subsequent date mutually agreed upon) because of the inability of the parties to agree upon a definitive contract, this order will terminate on the stated date or such subsequent date, as the case may be.

(b) The Government may at any time terminate this order in whole or in part for its convenienance by giving you written notive of such termination.

(c) In the event of any termination pursuant to either paragraph 6 (a) or paragraph 6 (b) of this order, you and the Contracting Officer will attempt to agree by negotiation upon a settlement estimated by the parties to be the aggregate amount (less payments previously made to you) of the costs incurred by you in the performance of this order and the amounts paid or to be paid by you or for your account in settling with the approval of the Contracting Officer your obligations for commitments made in the performance of this order. *In case of termination pursuant to paragraph 6 (b), such negotiated settlement may include a reasonable allowance for profit.*[1] Any such negotiated settlement shall be embodied in a Supplemental Agreement.

(d) If you and the Contracting Officer are not able to agree upon such a negotiated settlement within 90 days after the effective date of the termination (or within such longer period as at any time may be mutually agreed upon), the Government binds itself (without duplication of any of the following payments or of any payments previously made) to reimburse you for the costs incurred by you in the performance of the order and for any amounts paid by you or for your account in settling with the approval of the Contracting Officer your obligations for commitments made in the performance of this order. In lieu of reimbursing you for the ex-

[1] The italicized words will be omitted where existing letter orders and letters of intent, containing no provision for the allowance of a profit in the event of termination for the convenience of the Government, are amended to contain the standard termination provisions except as authorized by §§ 815.107 (b) (3) and 803.303a (a) (2).

[2] Where the letter order is for an amount less than $20,000, the "Disputes" article will not have been incorporated by reference by virtue of paragraph 3 or 6 (g) of the letter order, since contracts in such amount are not required to contain that article (see § 803.326). In that event the language of the letter order will be appropriately modified expressly to incorporate by reference either the "Disputes" article set forth in § 803.326 or that contained in General Provision 12 of W. D. Contract Form No. 18 (§813.1317b).

[3] With appropriate modifications, this Letter Order may also be used where the definitive contract is to be written on W. D. Contract Form No. 16.

penditures made by you in settling any of your obligations for commitments, the Government, in the discretion of the Contracting Officer, may assume such obligations or any of them. The total of such reimbursement (and of all payments previously made), together with the amount of any obligations assumed, shall not exceed the amount above specified.

If such termination shall take place pursuant to paragraph 6 (a) of this order no allowance of profit will be made to you. If termination shall take place for the convenience of the Government pursuant to paragraph 6 (b) of this order, such allowance of profit will be made to you with respect to the work done by you prior to the effective date of the termination as the Contracting Officer may find to be reasonable under all the circumstances.[1]

(e) The Government may permit you to sell or retain at prices or on terms agreed to by the Government any equipment, materials or work in process and the proceeds of any such sale, or such agreed prices, shall be paid or credited to the Government in such manner as the Contracting Officer may direct.

(f) Upon payment or reimbursement to you pursuant to paragraph 6 (c) or 6 (d) of this order, title to all equipment, work in process, materials, plans, information, and other things, for which you are so paid or reimbursed (except such property as may be sold or retained by you as above provided) will vest in the Government (if title thereto has not already become vested in the Government). The Government will also become entitled to any rights under any commitment which it may assume, or for the settlement of which it shall have reimbursed you.

(g) Any dispute which arises under this paragraph 6 regarding a matter of fact (*including any dispute (1) as to whether termination has in fact taken place for the convenience of the Government or because of the inability of the parties to agree upon a definitive contract, or (2) as to the extent of any allowance of a profit in the event of a termination for the convenience of the Government*)[1] will be treated and resolved as a dispute under the "Disputes" article[2] incorporated in this order by reference.

(h) Partial payments on account of any amount admittedly due to you pursuant to this paragraph 6 may be made by the Government at any time in the discretion of the Contracting Officer.

7. After your acceptance hereof, partial and advance payments, in accordance with regulations from time to time applicable, may be made to you upon your application.

8. The sums to be expended by the Government hereunder are chargeable to the following allotments, the available balances of which are sufficient to cover the same:

---

9. Your acceptance of this order will be indicated by affixing your signature on this letter and two copies thereof and mailing or delivering the executed original and one executed copy to the Contracting Officer not later than _____, 19____. Such acceptance will constitute this order a contract on the terms set forth herein.

[1] See footnote 1, p. 8640.

[2] Where the letter order is for an amount less than $20,000, the "Disputes" article will not have been incorporated by reference by virtue of paragraph 3 or 6 (g) of the letter order, since contacts in such amount are not required to contain that article (see § 803.326). In that event the language of the letter order will be appropriately modified expressly to incorporate by reference either the "Disputes" article set forth in § 803.326 or that contained in General Provision 12 of W. D. Contract Form No. 18 (§ 813.1317b).

10. This instrument is authorized by and has been negotiated under the First War Powers Act, 1941, and Executive Order No. 9001.

[SEAL] UNITED STATES OF AMERICA,
By _____
_____
(Official Title)

Accepted _____, 19____.
_____
(Contractor)
_____
(Title)
_____
(Address)

§ 813.1311 *War Department Contract Form No. 13A.*

Contract No. _____

CONTRACT (SUPPLIES) WAR DEPARTMENT AND DEFENSE SUPPLIES CORPORATION
(A Subsidiary of Reconstruction Finance Corporation)

Contract for _____
Amount _____
Location _____
Payment: To be made by _____,
U. S. Army, at _____.

The supplies and services to be obtained by the instrument are authorized by, are for the purposes set forth in, and are chargeable to the following allotments, the available balances of which are sufficient to cover the cost of the same _____
_____

This contract is authorized by the following laws _____
_____

CONTRACT FOR SUPPLIES

This Contract, entered into this _____ day of _____, 19____, by the United States of America (hereinafter called the Government), represented by the Contracting Officer executing this contract, and Defense Supplies Corporation (hereinafter called the Contractor), a corporation organized pursuant to Section 5 (d) of the Reconstruction Finance Corporation Act, as amended, with its principal office in Washington, D. C., witnesseth that the parties agree as follows:

ARTICLE 1. *Scope of this Contract.* (Insert Article 1, § 813.1301).

ART. 2. *Changes.* (Insert Article 2, § 813.1301.)

ART. 3. *Extras.* (Insert Article 3, § 813.1301)

ART. 4. *Inspection.* (Insert Article 4, § 813.1301)

ART. 5. *Delays—damages.* (Insert § 803.352)

ART. 6. *Responsibility for supplies tendered.* (Insert Article 6, § 813.1301)

ART. 7. *Increase or decrease.* (Insert Article 7, § 803.1301)

ART. 8. *Payments.* (Insert Article 8, § 813.1301)

ART. 9. *Officials not to benefit.* (Insert clause in § 803.322)

ART. 10. *Covenant against contingent fees.* (Insert Article 10, § 813.1311)

ART. 11. *Disputes.* (Insert article in § 803.326)

ART. 12. *Termination for convenience of the Government.* (Insert article in § 803.324)

ART. 13. *Notice of shipments.* (Insert clause in § 803.328)

ART. 14. *Subcontractor.* (Insert Article 18, § 813.1311)

ART. 15. *Anti-discrimination.* (Insert clause in § 803.325)

ART. 16. *Convict labor.* (Insert clause in § 803.345)

ART. 17. *Definitions.* (Insert Article 13, § 813.1301)

ART. 18. *Alterations.* (Insert Article 23, § 813.1301)

In witness whereof, the parties hereto have executed this contract as of the day and year first above written.

UNITED STATES OF AMERICA,
By _____
_____
(Official Title)
_____
(Contractor)
By _____
_____
(Business Address)

Two Witnesses:
_____
_____
(Address)
_____
_____
(Address)

§ 813.1312 *W. D. Contract Form No. 12.*

Contract No. _____

FIXED FEE ARCHITECT-ENGINEER-CONSTRUCTION-MANAGEMENT SERVICES CONTRACT

WAR DEPARTMENT

Architect-Engineer-Construction-Manager and Address _____
Contract for Architect-Engineer-Construction-Management Services in connection with _____
Location _____
Fixed fee _____
Estimated construction cost exclusive of fixed fee:
Payment: To be made by _____
at _____

The supplies and services to be obtained by this instrument are authorized by, are for the purpose set forth in, and are chargeable to the following procurement authorities, the available balances of which are sufficient to cover the cost of the same:
_____

This contract is authorized by the following laws:

FIXED-FEE ARCHITECT-ENGINEER-CONSTRUCTION MANAGEMENT SERVICES CONTRACT

This contract, entered into this _____ day of _____, 194__, by the United States of America (hereinafter called the "Government"), represented by the Contracting Officer executing this contract, and _____
_____
_____
_____

[1] a corporation organized and existing under the laws of the State of _____
_____

[1] a partnership consisting of _____
_____
_____
_____

[1] an individual trading as _____ of the City of _____ in the State of _____ (hereinafter for brevity called the "A-E-M"), witnesseth that:

Whereas, the Government desires to engage the services of an architect-engineer-manager to perform such architect-engineering services as are hereinafter described, the construction of certain portions of the work, and management services for the entire project; and

Whereas, the accomplishment of the work by the A-E-M under a cost-plus-a-fixed-fee contract, entered into after negotiations approved by the Secretary of War, and without advertising for proposals, is authorized by law and will facilitate the prosecution of the war; and

Whereas, as a result of such negotiations, the Secretary of War has directed that the Government enter into such contract with

---

[1] Delete all lines which do not apply.

the A-E-M for the accomplishment of the work hereinafter described:

Now, therefore, the parties hereto do mutually agree as follows:

ARTICLE I. *Statement of work.* 1. The A-E-M shall, in the shortest reasonable time, furnish the labor, materials, tools, machinery and equipment, facilities, supplies not furnished by the Government, and services, and do all things necessary for the completion of the following described work:

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all in accordance with the drawings and specifications or instructions contained in Appendix "A" hereto attached and made a part hereof, or to be furnished hereafter by the Contracting Officer and subject in every detail to his supervision, direction and instructions.

ART. II. *General statement of work and services.* 1. The A-E-M shall render all architect-engineering and other services incident to design, inspection and supervision of the project, more specifically described in Article I hereof.

2. Insofar as is practicable, where such action will not, in the opinion of the A-E-M, result in delay in completion of the facilities, all construction work shall be accomplished by contracts, either on lump sum or unit price basis awarded and entered into by the Government after negotiations therefor with the assistance of the A-E-M.

3. The A-E-M shall, in the shortest reasonable time, prepare adequate plans, specifications, bills of material and estimates covering:

a. Items of materials and equipment.

b. Any and all items of construction work for which contracts may be awarded on lump sum or unit price basis.

c. All other items of construction work for which lump sum or unit price contracts are not awarded.

4. When drawings and specifications are sufficiently complete with respect to any portion of construction work, which in the judgment of the A-E-M and the Contracting Officer may be contracted for on lump sum or unit price basis, the A-E-M shall furnish complete bid documents, conforming to law and regulations, for the letting of such contracts by the Government, and shall assist the Contracting Officer in evaluating proposals, and shall render such other services in connection with the award of contracts, based upon such approved drawings and specifications, as the Contracting Officer may require.

5. The A-E-M shall furnish or assemble such necessary force of superintendents, foremen, skilled workmen and laborers, construction tools and equipment and shall construct all items of construction work required by this contract for which contracts are not awarded by the Government on lump sum or unit price basis, except that the A-E-M may with the prior approval of the Contracting Officer subcontract in his own name for the performance of construction work on a lump sum, unit price, or fixed-fee basis when this method will in his opinion result in decreasing the time of completion of the project and/or the cost to the Government. Cost-plus-a-fixed-fee subcontracts will be entered into only after a written determination with reasons therefor by the A-E-M, and the approval of the Contracting Officer.

6. The A-E-M shall provide the necessary office space, at the site of the work for the representatives of the Contracting Officer and himself.

ART. III. *Statement of Architect-Engineer services.* 1. The A-E-M shall, in the shortest reasonable time, establish and maintain an office at or near the site of the work under the full-time resident direction of the A-E-M, if an individual; of one or more principal partners if the A-E-M is a partnership; or in case the A-E-M is a corporation, association or similar legal entity, one or more senior officers thereof; provided, however, that the A-E-M, whether an individual, a partnership, a corporation, or other legal entity may be represented in the direction of the work by some person or persons of a class other than those specied above, if the Contracting Officer gives his approval. It is agreed that there shall be ____ representative(s) of the A-E-M for the purposes above mentioned. The A-E-M shall perform the following services:

a. Make all necessary topographical and other surveys and maps; arrange for and supervise necessary test borings and other subsurface investigations. Provided, however, that this provision is not to be deemed to require the A-E-M to make real estate surveys.

b. Prepare, subject to the approval of the Contracting Officer, preliminary studies, sketches, and layout plans and reports including estimates of cost of the proposed project and of all structures, utilities and appurtenances thereto.

c. Adapt and modify Government designs, drawings, specifications and standards for buildings and other structures as necessary to meet the requirements of the approved layout of the proposed project, and prepare detailed designs, specifications and drawings in required form for which Government designs are incomplete or unavailable.

d. Obtain necessary permits and approvals from all local, State and Federal authorities. Should it become necessary in the performance of the work and services for the A-E-M to secure the right of ingress or egress to perform any of the work required by this contract on properties not owned or controlled by the Government, the A-E-M shall secure the consent of the owner, his representative, or agent, prior to effecting entry on such property. In the event the owner requires the payment of any fee for a license to enter upon and/or use such property, the A-E-M, when so directed by the Contracting Officer, shall pay such fee and obtain a receipt therefor.

e. Prepare estimates of material quantities required to construct the project.

f. When preliminary drawings are approved in writing by the Contracting Officer, prepare final designs, detailed working drawings and specifications in accordance with Government standards necessary for the effective coordination and efficient execution of the construction work and revise such drawings and specifications if necessary. Unless otherwise directed or authorized by the Contracting Officer, drawings will be prepared in pencil on tracing paper or pencil tracing cloth of approved quality by such methods and of such quality of workmanship as will permit the revision of such drawings for record purposes and the making of satisfactory reproductions thereof. Drawings shall be prepared in ink on linen only where satisfactory results cannot be obtained otherwise. Prepare copies of the specifications and sets of full size copies of working drawings in such manner and in such numbers as the Contracting Officer may require. There shall be included in the specifications all provisions which the Contracting Officer may direct to have incorporated therein relating to the awarding of the construction contracts, contemplated by Section 2 of Article II, conditions under which the work shall be done, including a provision that the contractors (lump sum and unit price contractors and lump sum subcontractors) and all persons employed directly or indirectly under such construction contracts, will utilize the hospital and first-aid facilities furnished by the A-E-M, and any special provisions required by statute or existing War Department regulations or instructions.

g. Prepare an estimate of the cost of the proposed project based on the approved designs, drawings and specifications therefor, and furnish for the approval of the Contracting Officer:

(1) Schedules and charts showing the proposed sequence of operations in the construction of each of the several portions of the work.

(2) Estimates showing the amounts of critical and important materials and dates when such materials will be required on the site.

(3) Labor estimates, to be prepared with the assistance of other construction contractors, contemplated by Section 2 of Article II, showing the approximate numbers, trades and dates required to meet the schedule in (1) above.

(4) In addition to the requirements of Article XXVI, semi-monthly progress reports in approved form showing the progress of the construction work and any deviation from the approved construction schedule.

h. Establish a permanently monumented base line, with elevations, tied into the North American Datum, unless specifically exempted by written instructions of the Contracting Officer. Furnish all governing lines, bench marks and grades essential to the construction of the project.

i. Supervise the work included in this contract to assure the construction of every part of the work in accordance with the approved drawings and specifications within the areas and boundaries designated for the project.

j. Check and approve all shop and working drawings submitted in connection with the construction work to assure that they conform with approved drawings.

k. Make or cause to be made such field and laboratory tests of concrete and concrete aggregates and other materials at the site or at any time or place as the Contracting Officer may require. Inspect and report to the Contracting Officer in writing as to the conformity or nonconformity of the workmanship and materials to specifications; and on the progress of the project.

(1) When so directed by the Contracting Officer, arrange for, by subcontract or otherwise, and supervise tests and inspections of materials and workmanship by commercial testing laboratories or other similar agencies, either at such laboratories or at the points of manufacture or fabrication of materials. The cost of such tests and inspection shall be reimbursable and the subcontracting thereof shall entail no adjustment in the fixed fee. Subcontracting of any other architect-engineer services, unless otherwise expressly provided for in this contract, shall be subject to a decrease in the fixed fee by an equitable adjustment on the basis of the decrease in services due to such subcontracting.

l. Upon termination or prior to completion of this contract, as determined by the Contracting Officer, and before final payment of the fixed-fee, the A-E-M shall:

(1) Prepare record drawings to show construction as actually accomplished. These record drawings shall be prepared by correcting drawings as prepared for construction purposes or, where construction drawings cannot be satisfactorily revised for record purposes, by preparation of appropriate new drawings. All such drawings shall be prepared in pencil on tracing paper or pencil tracing cloth of approved quality unless otherwise directed or authorized by the Contracting Officer. Drawings shall be prepared in ink on linen only where satisfactory results cannot be obtained otherwise.

(2) Supervise the testing of operating units designed by the A-E-M to assure their conformance with specifications and furnish all engineering services necessary to secure such conformance.

(3) Prepare instructions for the proper operation and maintenance of all utilities and operating equipment designed by the A-E-M.

m. Without additional compensation the A-E-M, or any member of the organization, when requested, shall consult and advise with the Contracting Officer on any questions which may arise in connection with the work.

n. Prepare partial and final estimates of quantities and values of work done under lump sum and unit price contracts and subcontracts necessary to provide data required under the payment provisions of such contracts and subcontracts.

o. Perform all other architectural and engineering services within the scope of this contract required by the Contracting Officer.

ART. IV. *Statement of construction services.* 1. The A-E-M shall, in the shortest practicable time, furnish the services, labor, materials, tools, machinery, equipment, facilities and supplies not furnished by the Government and do all things necessary for the construction of that portion of the project not performed by the Government or performed under the contracts as contemplated by Sections 2 and 5 of Article II, all in accordance with the approved drawings and specifications.

ART. V. *Statement of management services.* 1. The A-E-M shall furnish management services to assure the satisfactory completion of the project. Such services shall include, among other functions, the preparation of contract documents, and scheduling such contracts as to units of work, time of completion, and other salient phases so as to assure the orderly prosecution of the work. Such services shall also extend to the scheduling and/or purchasing of items of materials and equipment to avoid any delays in the prosecution of the work hereunder. The A-E-M shall advise and consult with the construction contractors on this project and shall direct and supervise their work, subject to the provisions of Article XVII; and shall, when directed or authorized by the Contracting Officer, procure and store materials and equipment for use in connection with the project.

ART. VI. *Estimated cost, fee and performance period.* 1. It is estimated that the cost of the construction of the project will be _____ Dollars ($_____) exclusive of the A-E-M's fee, and that the work herein contracted for will be ready for utilization by the Government_____. It is expressly understood, however, that neither the Government nor the A-E-M guarantees the correctness of either of these estimates.

2. In consideration for his undertaking under this contract the A-E-M shall receive the following:

a. Reimbursement for expenditures as provided in Article XI.

b. Rental for A-E-M's equipment as provided in Article XI.

c. A fixed fee in the amount of _____ _____ Dollars ($ _____) which shall constitute complete compensation for the A-E-M's services, including profit and all general overhead expenses.

3. When in the opinion of the Contracting Officer it is to the best interests of the Government, the A-E-M shall when so ordered or authorized, subcontract any or all items or classifications of construction work required under this contract or subsequently added thereto, for which contracts are not awarded by the Government on a lump sum or unit price basis. Such subcontracting of construction work, or the performance thereof with the A-E-M's own forces, regardless of the amount and/or extent of work performed or subcontracted, all with the prior written approval or order of the Contracting Officer, and such awarding of contracts for construction work hereunder by the Government on a lump sum or unit price basis, irrespective of the amount and extent thereof, shall entail no adjustment in the fixed fee stipulated in Section 2 *c*, of this Article VI. The fixed fee stipulated in Section 2 *c*. of this Article VI has been determined in the light of the fact that all of the construction work may be subcontracted or contracts for such work may be awarded by the Government on a lump sum or unit price basis. Such fee includes compensation for the services which may be rendered by the A-E-M in the negotiation, supervision, and coordination of any construction work subcontracted or for which contracts have been awarded by the Government on a lump sum or unit price basis and the responsibilities assumed by the A-E-M in connection therewith, and is deemed to be reasonable, regardless of the amount or extent of construction work performed, subcontracted, or for which contracts are awarded by the Government on a lump sum or unit price basis.

ART. VII. *Changes.* 1. The Contracting Officer may at any time by written order issue additional instructions, require additional work or services or direct the omission of work or services covered by this contract. If such changes cause a material increase or decrease in the amount or character of the work and services to be done under this contract an equitable adjustment of the amount of the fixed fee to be paid the Architect-Engineer shall be made and the contract shall be modified in writing accordingly. Any claim for adjustment under this Article must be asserted within 10 days from the date the change is ordered (unless the Contracting Officer, with the approval of the Secretary of War or his duly authorized representative, shall grant a further period of time prior to the date of final settlement of the contract). Nothing provided in this Article shall excuse the Architect-Engineer from proceeding with the prosecution of the work so changed. There shall be no adjustment in the amount of the fixed fee as provided herein, nor any claim therefor because of any errors and/or omissions made in computing the estimated cost of the work under this contract or where the actual cost varies from the estimated cost.

ART. VIII. *Title to work.* 1. Title to all materials, tools, machinery, equipment and supplies for which the A-E-M shall be entitled to reimbursement under Article XI shall vest in the Government at such point or points as the Contracting Officer may designate in writing, provided that the right of final inspection and acceptance or rejection of such materials, tools, machinery, equipment and supplies at such place or places as he may designate in writing is reserved to the Contracting Officer; provided further that, upon such final inspection, the A-E-M shall be given written notice of acceptance or rejection as the case may be. In the event of rejection, the A-E-M shall be responsible for the removal of the rejected property within a reasonable time.

ART. IX. *Workmanship and materials.* 1. The work shall be executed in the best and most workmanlike manner by qualified, careful and efficient workers, in strict conformity with the best standard practices. Except as otherwise authorized by the Contracting Officer all materials shall be of the best quality of their respective kinds. If the Contracting Officer requires that the A-E-M submit for prior approval samples of materials proposed for use in the work covered by this contract, the A-E-M shall make no commitments for such materials until the submitted sample has been approved by the Contracting Officer.

ART. X. *Expert technical assistance.* 1. When in the judgment of the Contracting Officer the complexity and nature of the project are such as to require expert technical assistants, or services, or advice in connection with special phases of the work such as site planning, aerial surveys, manufacturing processes, or other problems of a highly technical character, the A-E-M may obtain by subcontract or otherwise, when so ordered by the Contracting Officer, such supplemental professional services as are necessary for the proper performance of this contract. The obtaining of such supplemental professional services shall entail no adjustment of the fixed-fee.

2. The provisions of the above section shall not apply to the usual professional services normally furnished by Architect-Engineers, including but not limited to topographic surveys, design of water supply and sewerage systems, power plants and other utilities, structures and foundations. If, in the opinion of the Contracting Officer, it is essential for the proper prosecution of the work that the A-E-M obtain expert technical advice or consulting service in connection with those classes of service not included in section 1 above, the cost of obtaining such advice or service shall not be reimbursable except for the salaries of employees of such consultants, when assigned to the work on a full-time basis.

ART. XI. *Cost of the work.* 1. *Reimbursement for A-E-M expenditures.* The A-E-M shall be reimbursed in the manner hereinafter described for such of his actual expenditures in the performance of the work as may be approved or ratified by the Contracting officer and as are included in the following items:

a. All labor, materials, tools, machinery, equipment, supplies, services, utilities, power and fuel necessary for either temporary or permanent use for the benefit of the work.

b. All subcontracts made in accordance with the provisions of this contract.

c. Rental actually paid by the A-E-M at rates not to exceed those approved by the Contracting Officer, for construction plant in sound and workable condition exceeding $300 in value as may be necessary for the proper and economical prosecution of the work. Each contract for the rental of construction plant or parts thereof by the A-E-M from third parties shall be in a form prescribed by the Contracting Officer and shall be subject to his approval and shall include provisions (1) that the lessor shall deliver to the Government title to such construction plant or parts thereof free of all liens and encumbrances when and if the total rental paid and/or accrued to the lessor for any item of construction plant or parts thereof shall equal the approved value thereof plus one percent (1%) of the approved value per month for each contract month or fraction thereof such piece of equipment shall have been in use, and (2) that any time prior to termination of such rental agreement, the Government may at its option purchase any piece of equipment by paying the lessor the difference between the valuation of such piece of equipment plus one percent (1%) of the approved value per month for each contract month or part thereof such piece of equipment shall have been in use, and the total rental theretofore paid for such piece of equipment, *Provided, however,* That either of such provisions may be omitted from such rental agreements if the omission is approved by the Chief of the Technical Service.

d. Unloading and assembling at the site of the work of construction plant owned or rented by the A-E-M; transportation thereof to the place or places where it is to be used in connection with said work, dismantling, loading and return transportation to the point of original shipment or equivalent mileage, but in no event will the payment made for return transportation exceed the payment made for transportation to the job site unless such excess cost results solely from an increase of freight rates, or is required by Government transfer of such equipment to another site more distant from the point of origin than the site of the work set out in Article I hereof. Charges for transportation over distances in excess of 500 miles must have the written authorization of the Contracting Officer in advance. Loading at the site of origin and unloading when returned to the original shipping point or other return shipping point will not be paid by the Government and is not a reimbursable item.

e. Repairs and repair parts for construction plant, except such as are included in the rental and those made necessary by defects in such plant, or parts thereof, or by the fault or negligence of the A-E-M or his employees.

f. Transportation charges on materials and supplies.

g. Transportation and traveling expenses to the work of the necessary field forces for the economical and successful prosecution of the work, and return when such services are no longer required; expenses of procuring labor and expediting the production and transportation of material and equipment. Expenditures under these items shall be either authorized or approved in writing by the Contracting Officer.

h. Salaries of engineers, resident engineers, principal assistant engineers, architects, superintendents, timekeepers, foremen, technical, administrative employees and other field employees of the A-E-M in connection with the work. In case the full time of any field employee of the A-E-M is not applied to the work, his salary shall be included in this item only in proportion to the actual time applied thereto. No person shall be assigned to service by the A-E-M as superintendent of construction, chief engineer, chief purchasing agent, chief accountant, or similar positions in the A-E-M's field organization, or as principal assistant to any such person, until there has been submitted to and approved by the Contracting Officer a statement of the qualifications, experience, and salary of the person proposed for such assignment. The payment of any excess salary over such scheduled amounts shown in the approved salary schedule, Appendix "C", attached hereto and made a part hereof, shall not be reimbursable, unless and until the Chief of the Technical Service has so approved in writing.

i. Buildings, trade fixtures and equipment required for necessary field offices, commissaries, hospitals, and other facilities, and the cost of maintaining and operating such field offices, commissaries, hospitals and other facilities; provided that the A-E-M may enter into a contract with any third party or parties for the operation of the commissaries, hospitals, or other facilities provided for herein, in which event such contract shall be reduced to writing and the terms thereof subject to the prior written approval of the Contracting Officer.

j. Temporary rights in land required in connection with the work.

k.–n. (Insert a. to d. of clause in § 803.365 (b)).

o. Payments from his own funds made by the A-E-M under the Social Security Act, and any disbursements required by law which the A-E-M may be required on account of this contract to pay on or for any plant, equipment, process, organization, materials, supplies, or personnel; and, if approved in writing by the Contracting Officer in advance, permit and license fees and royalties on patents used including those owned by the A-E-M.

p. (1) If the A-E-M or any representative thereof, shall be required to travel, the Government will reimburse the A-E-M for the transportation, including Pullman where necessary and will allow for such travel Six Dollars ($6.00) per day in lieu of all other expenses. Transportation by automobile on such required travel shall be reimbursed at the rate of Five Cents ($.05) per mile as representing the actual cost of such transportation.

(2) All travel shall be either authorized or approved in writing by the Contracting Officer. Should the A-E-M, or any representative thereof, remain in a travel status in excess of six (6) days at any one time, not including the time consumed in travel, the cost of such excess travel status shall be at the expense of the A-E-M, unless otherwise ordered in writing by the Contracting Officer.

q. When specifically approved in advance by the Contracting Officer, a reasonable allowance for work covered by Article IV performed in the A-E-M's general offices exclusively for and directly chargeable to the work.

r. Disbursements incident to payment of payrolls, including but not limited to, the cost of disbursing cash, necessary guards, cashiers, and paymasters. If payments to employees are made by check, facilities for cashing checks must be provided without expense to employees, and the A-E-M shall be reimbursed therefor.

s. Expenditures made by the A-E-M under the provisions of Subsection *d* of Section 1 of Article III and Article X.

t. In the event the Contracting Officer shall determine that the best interests of the Government require that the A-E-M initiate or defend litigation in connection with claims of third parties arising out of the performance of this contract, the A-E-M will proceed with such litigation in good faith and the costs and expenses of such litigation, including judgments and court costs, allowances rendered or awarded in connection with suits for wages, overtime or salaries, and reasonable attorneys' fees for private counsel when the Government does not furnish Government counsel, shall be reimbursable under this contract.

u. Such other items not expressly excluded by other provisions of this contract as should, in the opinion of the Contracting Officer, be included in the cost of the work. When such an item is allowed by the Contracting Officer, it shall be specifically certified as being allowed under this Subsection.

If this contract was preceded by a Letter Contract, the following provision shall be deemed to be included herein:

v. All expenditures for which reimbursement has not been made pursuant to Letter Contract dated _____, a copy of which is attached hereto. Such Letter Contract is hereby merged and superseded by this contract.[1]

2. *Rental for construction plant owned by A-E-M. a.* Rental shall be paid to the A-E-M for construction plant in sound and workable condition, owned and furnished by him for the proper and economical prosecution of the work, as shown in the attached "Appendix B" hereby made a part hereof, at rental rates prescribed by the Under Secretary of War in "Uniform Rental Rates for Contractor-Owned Construction Plant", August 27, 1941.

b. In the event the A-E-M, with the approval of the Contracting Officer furnishes additional equipment that is not included in "Appendix B", rental for such equipment will be paid in accordance with said "Uniform Rental Rates for Contractor-Owned Construction Plant."

c. Except as otherwise specified herein, rental shall begin on the date of delivery of the construction plant to a common carrier for shipment to the site of the work, as evidenced by bill of lading or other satisfactory evidence covering such shipment. In the event the construction plant is conveyed by the A-E-M, the rental shall start at the time transportation to the site begins; however, the rental paid shall not exceed that for the equivalent time of shipment by common carrier.

d. If such construction plant is not in sound and workable condition to the satisfaction of the Contracting Officer, when delivered at the site of the work, the rental period therefor shall not begin until the construction plant shall have been placed in sound and workable condition at the expense of the A-E-M, and rental therefor shall not be paid for any prior period.

e. If such construction plant cannot be placed in sound and workable condition within reasonable time to the satisfaction of the Contracting Officer, no transportation charges for the shipment thereof, to or from the site of the work, shall be paid.

f. The approved value of the construction plant as shown in "Appendix B" shall be deemed binding unless the Contracting Officer shall, within twenty days after such plant has been set up and working, modify or change such valuation. In the event a change is made in the valuation of the construction plant, a corresponding charge shall be made in the rental rate in accordance with said "Uniform Rental Rates for Contractor-Owned Construction Plant". Thereafter the valuation and the related rental rate shall be binding unless the rental is modified as specified below.

g. Furnish within 15 days of the date of the receipt of written notice from the Contracting Officer, construction plant listed in Appendix "B" provided that the date upon which the A-E-M is required to furnish such plant shall not precede the date on which such construction plant is listed as available in said Appendix "B". In the event the A-E-M fails to furnish construction plant as required by such notice, the additional cost of acquiring replacement construction plant from any source other than the A-E-M shall be paid by the A-E-M and shall not be a reimbursable expenditure.

h. Rental for time consumed for repairs, in excess of time normally required for such repairs as determined by the Contracting Officer, shall be deducted from the rental in the amount of one-thirtieth of the monthly rental rate for each day determined to be in excess. When in the opinion of the Contracting Officer the amount of repairs or maintenance is excessive, a deduction shall be made from the rental.

i. The payment of rental shall cease on a date to be established in a written notice by the Contracting Officer to the A-E-M that the construction plant is no longer required. The date of release thus established shall include an allowance for the time necessary for final repairs, dismantling and loading for shipment.

GENERAL

3. *Reservations by Government. a.* The Government reserves the right to furnish any materials, construction equipment, machinery, tools, or services, including communication services necessary for the completion of the work. The A-E-M shall cause all equipment, machinery, and tools to which title is vested in the Government to be suitably marked with an identifying mark or symbol

[1] This contract will bear same date as letter contract.

indicating that such items are the property of the United States. The A-E-M shall maintain at all times, in a manner satisfactory to the Contracting Officer records showing the disposition and/or use of all equipment, machinery, tools, and materials purchased for the work and for which he has been reimbursed by the Government or which have been furnished by the Government. Upon the completion of this contract or upon demand, the A-E-M shall return such equipment, machinery, tools, and unused materials to the place designated by the Contracting Officer.

b. (Insert article in § 803.365 (a))

c. The Government reserves the right to pay directly to common carriers any or all freight charges on construction plant, materials and supplies.

d. The Government reserves the right to pay directly to the person concerned all sums due from the A-E-M for labor, materials, or other charges.

4. *Salaries of corporate officers, etc.* No salary, wages, or like compensation of the A-E-M, partners or corporate officers of the A-E-M's organization and no salary, wages or like compensation of the resident managers referred to in Section 1 of Article III shall be included in the cost of the work. No part of the expense incurred in conducting the A-E-M's main office or regularly established branch offices, and no overhead expense of any kind, except as specifically authorized in Section 1 of this Article, shall be included in the cost of the work; nor shall any interest on capital employed or on borrowed money be included in the cost of the work.

5. *Discounts.* The A-E-M shall, to the extent of his ability, take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and bonifications, and when unable to take advantage of such benefits he shall promptly notify the Contracting Officer of the reason therefor. In determining the actual net cost of articles and materials of every kind required for the purpose of this contract, there shall be deducted from the gross cost thereof all cash and trade discounts, rebates, allowances, credits, commissions, and bonifications which have accrued to the benefit of the A-E-M or would have so accrued but for the fault or neglect of the A-E-M. Such benefits lost through no fault or neglect on the part of the A-E-M, or lost through fault of the Government, shall not be deducted from gross costs.

6. *Revenue.* All revenue received by the A-E-M from the operations of the hospital, commissaries, or other facilities, or from rebates, discounts, refunds, etc., shall be accounted for by the A-E-M and, except for any reasonable compensation accruing to a third party or parties for the operation of commissaries, hospitals, or other facilities, applied in reduction of the cost of the work.

ART. XII. *Payments*—1. *Reimbursement for cost.* The Government will current reimburse the A-E-M for expenditures made in accordance with Article XI upon certification to and verification by the Contracting Officer of the original signed payrolls for labor, the receipted invoices for materials, or such other documents as the Contracting Officer may require. Generally, reimbursement will be made weekly but may be made at more frequent intervals if the conditions so warrant.

2. *Rental for A-E-M's equipment.* Rental as provided in Section 2, Article XI for such construction plant or parts thereof as the A-E-M may own and furnish shall be paid monthly upon presentation of proper vouchers.

3. *Payment of the fixed-fee.* Ninety percent (90%) of the fixed-fee set out in Article VI shall be paid by the Government as it accrues, in monthly installments based upon the percentage of the Completion of the work as determined from estimates submitted to and approved by the Contracting Officer. Final payment upon completion of the work and its final acceptance shall be made in accordance with Section 5 of this Article. If the contract is terminated by the Government, payment shall be made in accordance with Article XVI.

4. *Payments by A-E-M.* If bills for purchase of material, machinery or equipment, or pay-rolls covering employment of laborers or mechanics incurred by the A-E-M or by any subcontractor hereunder are not paid promptly by the A-E-M or subcontractor as the case may be, the Contracting Officer may, in his discretion, withhold from payments otherwise due the A-E-M an amount equivalent to the amount of any such bill or payroll. Should the A-E-M neglect or refuse to pay such bills or payrolls or to direct any subcontractor to pay such bills or payrolls within five (5) days after notice from the Contracting Officer so to do, the Government shall have the right to pay such bills or payrolls directly, and in such event a deduction equal to five percent (5%) of the amount so paid directly shall be made from the A-E-M's fee.

5. *Final payment.* a. Upon completion of the work and its final acceptance in writing by the Contracting Officer, the Government shall pay to the A-E-M the unpaid balance of the cost of the work determined under Article II, and of the fee, less any sum that may be necessary to settle any unsettled claims in connection with this contract, or any claim the Government may have against the A-E-M. The Contracting Officer shall accept the completed work with reasonable promptness.

b. Prior to final payment and as a condition thereof the A-E-M shall furnish the Government with a release of all claims against the Government arising under and by virtue of this contract, other than (1) such claims, if any, as may be specifically excepted by the A-E-M from the operation of the release in stated amounts to be set forth therein, or in estimated amounts where the amounts are not susceptible of exact statement, and (2) any claim based upon responsibility of the A-E-M to third parties arising out of the performance of this contract not known to the A-E-M at the time of furnishing the release.

c. Even though the existence or amount thereof shall not be determined until after the furnishing of such release as is described next above, reimbursement to be made for payments made by the A-E-M shall include, along with wages and salaries otherwise reimbursable, all additional amounts determined (either by approval of the Contracting Officer or by litigation as provided in Subsection t, Section 1, Article XI) to be due and payable for overtime compensation and allowances under local, state or Federal laws in connection with such wages and salaries.

d. The A-E-M shall promptly notify the Contracting Officer of any claims of the type described in clause (2) of Subsection b of this Section which are asserted subsequent to the execution of the release.

ART. XIII. *Records and Accounts, Inspection and Audit.* 1. *Records and books of account.* The A-E-M agrees to keep records and books of account, showing the actual cost to him of all items of labor, materials, equipment, supplies, services, and other expenditures of whatever nature for which reimbursement is authorized under the provisions of this contract. The system of accounting to be employed by the A-E-M shall be such as is satisfactory to the Contracting Officer.

2. *Access to records by Contracting Officer and A-E-M.* The Contracting Officer shall at all times be afforded proper facilities for inspection of the work and shall at all times have access to the premises, work and materials, to all books, records, correspondence, instructions, plans, drawings, receipts, vouchers, and memoranda of every description of the A-E-M pertaining to said work except such documents as are submitted in support of reimbursement vouchers; and the A-E-M shall preserve such papers, without additional compensation therefor, for a period of three (3) years after completion or termination of this contract. Likewise, any duly authorized representative of the A-E-M shall be accorded the privilege of examining the books, records, and papers of the Contracting Officer relating to the actual cost of the work for the purpose of checking up and verifying such cost.

3. *Auditing functions.* In order to avoid so far as possible duplication in accounting and auditing functions performed by the A-E-M and the Government, it is agreed that the following accounting and auditing functions shall be performed by the Government exclusively:

a. Time checking (not time keeping) in the field or in the A-E-M's Plant.

b. Audit of original pay rolls of the A-E-M (or such portions thereof as are applicable), where such pay rolls are prepared by the A-E-M.[1]

c. Checking of equipment rentals and the preparation and delivery of properly approved rental rolls to the A-E-M for payment.[2]

d. Such other accounting and auditing functions as may be effectively performed by Government employees and to which the Contracting Officer and the A-E-M may mutually agree in writing.

4. *Discharge of functions.* It is further agreed that if any of the accounting and auditing functions performed exclusively by the Government do not adequately discharge such accounting and auditing functions to the satisfaction of the A-E-M, the A-E-M, with the approval in writing of the Contracting Officer, may perform such additional checking and auditing as may be so approved. The A-E-M shall be reimbursed for the cost of such additional accounting and auditing functions as are so approved.

ART. XIV. *Drawings and other data to become property of government.* 1. All drawings, designs and specifications are to become the property of the Government on completion thereof as outlined in this contract, and the Government shall have full right to use said drawings, designs and specifications as instruments for the purpose of constructing, under contract or otherwise, any buildings or other structures for the sole use of the Government when and where the Government may designate without any claim on the part of the A-E-M for additional compensation.

2. All notes, designs, drawings and other data concerning the project shall be delivered to the Government whenever requested by the Contracting Officer and, furthermore, access to such data shall be restricted to trusted and duly authorized representatives of the Government and of the A-E-M.

ART. XV. *Special requirements.* 1. (Insert clause b in § 803.365 (c).)

2. (Insert clause c in § 803.365 (c).)

3. The A-E-M hereby agrees that he will:

a. (Insert clause in § 803.365 (f).)

b. Procure all necessary permits and licenses; obey and abide by all applicable laws, regulations, ordinances, and other rules of the United States of America, of the State, Territory, or political subdivision thereof wherein the work is done, or of any other duly constituted public authority.

c. Reduce to writing, unless this provision is waived in writing by the Contracting Of-

[1] Where pay rolls are prepared by the Government the audit thereof by the Government will be concurrent with such preparation.

[2] If not applicable, this section will be omitted.

ficer, every contract in excess of two thousand dollars ($2,000) made by him for the purpose of the work hereunder for services, materials, supplies, machinery, equipment, or for the use thereof; insert therein a provision that such contract is assignable to the Government; make all such contracts in his own name, and not bind nor purport to bind the Government or the Contracting Officer thereunder. No purchase in excess of two thousand dollars ($2,000) shall be made or placed without the prior approval of the Contracting Officer.

d. Enter into no subcontract for any portion of the construction work except in the form prescribed by the Chief of the Technical Service, with the written approval of the Contracting Officer. Subcontracts are defined as contracts entered into by the A-E-M with others which involve the performance, wholly or in part at the site of the work, of some part of the work described in this contract.

e. The Contracting Officer may require the A-E-M to dismiss from work such employee or employees as the Contracting Officer deems incompetent, careless or insubordinate, or whose continued employment is deemed inimical by the Contracting Officer to the public interest. The A-E-M shall make every reasonable effort in the selection of his employees and in the prosecution of the work under this contract to safeguard plot drawings and schematic drawings furnished him and drawings and specifications, and to prevent the theft or unauthorized use of the same.

f. Immediately upon termination of third-party rental agreements, make all repairs to equipment rented thereunder which are required to be made by the terms of such rental agreements and shall remove such equipment from the site of the work. In cases where such repairs and removal cannot promptly be made, the A-E-M shall notify the Contracting Officer of the reasons for such delay.

ART. XVI. *Termination of contract by the Government.* (Insert the clause in § 803.350)

ART. XVII. *The Contracting Officer's decisions.* 1. The services rendered and the work done by the A-E-M shall be subject to the supervision and approval of the contracting officer to whom the A-E-M shall report and be responsible.

ART. XVIII. *Disputes.* (Insert article in § 803.326)

ART. XIX. *Convict Labor.* (Insert clause in § 803.345)

ART. XX. *Labor.* 1. (Insert clauses in § 803.343)

2. (Insert clause in § 803.346)

3. *Excess wage rates on overtime compensation.* All wage rates, including compensation for overtime under Section 2 of this article, for laborers and mechanics engaged in work under this contract shall be approved in writing by the Chief of the Technical Service or a representative expressly designated by him for that purpose, and any amount paid by the A-E-M to any laborer or mechanic in excess of the wage rate approved for such laborer or mechanic by the Chief of the Technical Service or a representative expressly designated by him for that purpose shall be at the expense of the A-E-M and shall not be reimbursed by the Government. When, in connection with the audit and check by the Contracting Officer or his authorized representative, of the A-E-M's pay rolls prior to reimbursement as contemplated in section 1 of Article XI hereof, it is found that one or more laborers and/or mechanics have been paid wages at rates in excess of the wage rates approved as herein provided, the reimbursement made to the A-E-M on account of such pay rolls shall not include any such excess payments.

4. (Insert clause in § 803.325)

5. (Insert clause in § 803.344)

ART. XXI. (Insert clause in § 803.362)

ART. XXII. *Notice to Government of labor disputes.* (Insert clause in § 803.354)

ART. XXIII. *Officials not to benefit.* (Insert clause in § 803.322)

ART. XXIV. *Covenant against contingent fees.* (Insert clause in § 803.323)

ART. XXV. *A-E-M's organization and methods.* 1. Upon the execution of this contract, the A-E-M shall submit to the Contracting Officer a chart showing in general the executive and administrative organization, duties and personnel to be employed in connection with the work under contract; the data so furnished shall be supplemented as additional information becomes available.

ART. XXVI. *Progress reports and changes in personnel.* 1. The A-E-M shall promptly, after the execution of this contract, prepare and submit to the Contracting Officer, for approval, a schedule showing the order in which the A-E-M proposes to carry on the work, with dates on which he will start the several salient features of the work and the contemplated dates for completing the same. The schedule shall be in the form of a progress chart at suitable scale so as to indicate with symbols the percentage completed at any time. The A-E-M shall correct the progress schedule at the end of each week and shall immediately deliver to the Contracting Officer three copies each of the same.

2. The A-E-M shall furnish sufficient technical, supervisory and administrative personnel to insure the prosecution of the work in accordance with the approved progress schedule. If in the opinion of the Contracting Officer, the A-E-M falls behind the progress schedule, the A-E-M shall take such steps as may be necessary to improve his progress, and the Contracting Officer may direct him to increase working days per week, or hours of labor per day. When in the opinion of the Contracting Officer, the A-E-M's personnel and/or overhead is excessive for the proper performance of this contract, reductions thereof shall be made as required by the Contracting Officer. Failure to promptly comply with such directions shall be deemed sufficient cause to terminate this contract for the fault of the A-E-M.

ART. XXVII. *Loading and unloading railway cars.* 1. The A-E-M shall load promptly all railroad cars furnished for loading upon his order and shall unload from railroad cars promptly upon arrival all shipments consigned to him and shall provide storage facilities and other facilities necessary for these purposes; and the A-E-M shall not order railway cars for loading unless they can be loaded promptly and shall not cause or permit shipments to be consigned to him unless they can be unloaded from railroad cars promptly upon arrival.

ART. XXVIII. *Assignment of claims.* (Insert clause in § 803.355)

5. No assignee shall divulge any information concerning the contract, or contained therein, except to those persons authorized by the Contracting Officer.

If this contract is classified as Secret, Confidential, or Restricted, the foregoing provisions of this Article shall not be applicable, and the following provision shall be deemed to be substituted therefor:

1. Neither this contract, nor any interest therein, or claim thereunder, shall be assigned or transferred by the A-E-M to any party or parties.

ART. XXIX. *Renegotiation.* (See § 803.342 and Part 812.)

ART. XXX. *Approval required.* 1. This contract shall be subject to the approval of the _____ and shall not be binding unless so approved.

ART. XXXI. *Definitions.* 1. The term "Chief of the Supply Service" refers to the head of a service of the War Department, e. g., the Chief of Engineers.

2. The terms "Secretary of War" and "Chief of the Supply Service" shall include their duly authorized representatives as the case may be other than the Contracting Officer.

3. The term "his duly authorized representative" shall mean any person or board authorized by the Secretary of War or the Chief of the Supply Service, as the case may be, to act for him, other than the Contracting Officer.

4. For the original signing of the contract and modification thereof, the term "Contracting Officer" as used herein shall be deemed to include the Contracting Officer in the Office of the Chief of Engineers appointed for that purpose by the Chief of Engineers. For all other purposes, the term "Contracting Officer" shall mean the District Engineer of the United States Engineer District in which the contract work is being performed, his successor or duly authorized representative.

5. The term "construction plant" shall include any part thereof.

ART. XXXII. *Alterations.* The following changes were made in this contract before it was signed by the parties hereto:

In witness whereof, the parties hereto have executed this contract as of the day and year first above written.

THE UNITED STATES OF AMERICA,
By _____
_____
(Contracting Officer)

A-E-M
By _____
_____

Witnesses as to signature of A-E-M:
_____
_____
(Address)
_____
_____
(Address)

CERTIFICATION

I, _____
do hereby certify that I am the duly qualified _____ of the corporation named herein as Architect-Engineer-Construction-Manager; that _____ who signed this contract on behalf of the Architect-Engineer-Construction-Manager was then _____ of said corporation; that said contract was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

In witness whereof, I have hereunto affixed my hand and the seal of the _____ this _____ day of _____, 194__.
_____

[CORPORATE SEAL]

APPENDIX "B"

Contract No. _____
(All equipment available _____ except where otherwise specified)

Quantity	Item: Complete description, capacity, and identifying Nos.	Total purchase cost or fair value	Rental Rate $ ... month, week or day

APPENDIX "C"

There are set forth below the present key employees proposed to be furnished under this contract indicating their names, description of work to be performed, an expression as to whether the salaries are based on a weekly, monthly or annual basis, and the maximum salary agreed upon to be paid for services in the position indicated for personnel now employed.

Name	Position	Salary based on weekly (W) monthly (M) or annual basis	Maximum salary agreed to be paid under contract

For the purposes of this appendix "C" it is understood that

1. "Non-manual employees" are those employees who are not "laborers and mechanics" within the meaning of the Davis-Bacon Act. The term "non-manual employees" includes all occupations not involving manual labor directly in connection with construction work. Custodian employees are included within the term "non-manual employees." The following is a list (not all inclusive) of typical "non-manual" occupations:

Accountants.	Office Managers.
Architects.	Project Managers.
Auditors.	Purchasing Agents.
Axemen.	Rodmen.
Bookkeepers.	Stenographers.
Chainmen.	Stewards.
Checkers.	Storekeepers.
Chiefs of Party.	Superintendents.
Clerks.	Telephone Operators.
Cooks.	Timecheckers.
Draftsmen.	Timekeepers.
Engineers.	Tool Checkers.
Executives of any kind.	Transitmen.
Guards.	Typists.
Levelmen.	Waiters.
Material Checkers.	Watchmen.
Material Clerks.	Waterboys.
Messengers.	
Office Machine Operators.	

2. Non-manual employees will be classified in the following groups:

a. Group "A". Employees whose base salaries are $53.31 or less per week.

b. Group "B". Employees whose base salaries are over $53.31 and not over $90.00 per week.

c. Group "C". Employees whose base salaries are over $90.00 per week.

d. Group "D". Trade foremen employed by construction contractors.

3. The base salaries of all employees in Groups "A" and "B" are based on a work week of 40 hours. The base salaries of all employees in Group "C" are based on a minimum work week of 48 hours.

4. No offer of employment will be made to any prospective employee for work of the same general classification and responsibility as his present employment at a rate exceeding present salary.

5. The base salary of a person not in the employ of the A-E-M prior to the execution of this contract will not be approved at a rate in excess of the maximum prescribed for the job classification in the approved salary schedule attached.

6. The base salary of a person in the employ of the A-E-M prior to the execution of the contract will not be approved at a base salary in excess of that paid immediately prior to execution plus such increases as the A-E-M customarily grants for work away from the home office, except that, in cases where the classifications of such a person is changed incident to or during his assignment to the project, the salary range in the approved salary schedule shall govern.

7. *With regard to overtime payments.* a. Group "A" employees will be paid at the rate of time and one-half for all work which they are required to perform in excess of 40 hours during the first six days of any regularly scheduled work week, and at the rate of two times straight time for work which they are required to perform on the seventh consecutive day of such work week.

b. Group "B" employees will be paid at the rate of straight time for all work which they are required to perform in excess of 40 hours per week.

c. Group "C" employees will work any necessary number of hours (including work on Sundays) without payment of additional compensation.

d. Group "D" employees normally employed on an hourly basis will be granted the same overtime pay as the laborers and mechanics under their supervision. Group "D" employees employed on a weekly or monthly basis will be governed by the overtime provisions applicable to employees in Group "A", "B", or "C".

8. *With regard to holiday payments.* a. No deductions from weekly or monthly base salaries of employees in Groups "A", "B", and "C" shall be made for approved absences on customary holidays, and no premium wage or extra compensation shall be paid for work on such holidays, except that employees in Group "A" who are required to work on the holidays specified below, shall be paid at the rate of one and one-half times the straight time rate:

New Year's Day.	Thanksgiving Day.
July Fourth.	Christmas Day.
Labor Day.	Memorial Day.

b. Group "D" employees normally employed on hourly basis will be granted the same overtime pay as the laborers and mechanics under their supervision. Group "D" employees employed on a weekly or monthly basis will be governed by the holiday provisions applicable to Group "A", "B", or "C".

9. *Work on the seventh consecutive day:*

a. Since it is the policy to provide that each worker will have one day of rest in seven, operations shall be arranged so as to permit one scheduled day of rest in each seven for all employees not engaged in an executive or supervisory capacity.

b. Only in situations of emergency will approval be granted to work, on the seventh consecutive day or more than 48 hours in any scheduled work week, those employees who are not engaged in executive or supervisory capacities. The Contracting Officer will obtain the prior approval of the Division Engineer or his designated representative before approving work in such cases.

10. *Leave privileges:* All employees of Groups "A", "B", "C", and those employees of Group "D" who are employed on a weekly or monthly basis, shall accrue leave with pay at the rate of two days per month for each month of service in lieu of any sick or vacation allowance, subject to the following rules:

a. Leave granted for any reason in excess of two days per month will not be reimbursable.

b. Leave may be granted by the A-E-M, with the approval of the Contracting Officer, at such time or times as may be deemed in the best interests of the Government. Leave may be granted during the course of employment or at the completion of employment.

c. No leave will be accrued to any employee in excess of 48 days.

d. Unearned leave may not be advanced.

e. Employees separated because of their own misconduct (including such causes as insubordination, drunkenness on the job, theft, etc.) shall forfeit any leave which they may have accrued at the time of separation.

f. Employees who resign, or are involuntarily separated for causes not due to their misconduct, shall be entitled to all leave to and including date of separation.

g. Employees shall be charged with leave only for absence on days upon which they would normally be on duty.

h. The minimum charge for leave shall be one hour. Leave granted for less than one full day shall be proportionately charged.

i. Leave may not be granted for days of disability because of accidents which are covered by compensation insurance.

11. *Approved salary schedule:*

NON-MANUAL EMPLOYEES OF COST-PLUS-A-FIXED-FEE PRINCIPAL AND SUBCONTRACTORS

Job classification	Salary ranges			
	Weekly		Monthly	
	From	To	From	To
Executive and office engineers:				
Architect, Chief	$92.31	$150.00	$400.00	$650.00
Architect Supt., Chief	44.31	103.85	192.00	450.00
Architect Supt	35.54	67.33	154.00	292.00
Architect Supt., Asst	31.15	53.31	135.00	231.00
Computer	35.54	92.31	154.00	400.00
Designer, Chief	67.33	115.33	292.00	500.00
Designer, Architectural	44.31	103.85	192.00	450.00
Designer, Engineering	44.31	103.85	192.00	450.00
Draftsman, Chief	53.31	103.85	231.00	450.00
Draftsman	26.54	53.31	115.00	231.00
Engineer, Chief	92.31	150.00	400.00	650.00
Engineer, Asst. Chief	92.31	138.46	400.00	600.00
Engineer, Departmental	92.31	138.46	400.00	600.00
Engineer, Office	67.33	115.33	292.00	500.00
Engineer, Junior	26.54	44.31	115.00	192.00
Specification Writer, Chief	67.33	115.33	292.00	500.00
Specification Writer	44.31	92.31	192.00	400.00
Field engineers:				
Axeman	18.64	19.62	69.00	85.00
Chainman	17.77	26.54	77.00	115.00
Chief of Party	35.54	67.33	154.00	292.00
Engineer, Chf. Construction	92.31	138.46	400.00	600.00
Engineer, Construction	53.31	115.23	231.00	500.00
Inspector, Chief	35.54	67.33	154.00	292.00
Inspector	26.54	53.31	115.00	231.00
Instrument Man	31.15	53.31	135.00	231.00
Rodman	22.15	31.15	96.00	135.00
Surveyor, Chief	44.31	103.85	192.00	450.00
Construction personnel:				
Equipment Manager	92.31	138.46	400.00	600.00
Estimator, Chief	53.31	103.85	231.00	450.00
Estimator	35.54	53.31	154.00	231.00
Expediter, Chief	44.31	103.85	192.00	450.00
Expediter	26.54	53.31	115.00	231.00
Labor Relations Manager	53.31	115.23	231.00	500.00
Master Mechanic	53.31	115.23	231.00	500.00
Material Checker	22.15	35.54	96.00	154.00
Paymaster	35.54	92.31	154.00	400.00
Paymaster, Asst	26.54	53.31	115.00	231.00
Personnel Manager	35.54	103.85	154.00	450.00
Priorities Manager	35.54	103.85	154.00	450.00
Priorities Manager, Asst	35.54	53.31	154.00	231.00
Project Manager	115.23	173.08	500.00	750.00
Project Manager, Asst	53.31	115.23	231.00	500.00
Purchasing Agent	53.31	138.46	231.00	600.00
Purchasing Agent, Asst	35.54	53.31	154.00	231.00
Sanitary and Safety Manager	44.31	92.31	192.00	400.00
Storekeeper, Chief	53.31	92.31	231.00	400.00
Storekeeper, Asst	26.54	53.31	115.00	231.00
Superintendent, General	115.23	173.08	500.00	750.00
Superintendent, Asst. Gen	92.31	138.46	400.00	600.00
Superintendent	92.31	138.46	400.00	600.00
Superintendent, Asst	53.31	92.31	231.00	400.00
Timekeeper, Chief	35.54	92.31	154.00	400.00

NON-MANUAL EMPLOYEES OF COST-PLUS-A-FIXED-FEE PRINCIPAL AND SUBCONTRACTORS—Continued

Job classification	Salary ranges			
	Weekly		Monthly	
	From	To	From	To
Construction personnel—Continued.				
Timekeeper, Asst. Chief	$26.54	$44.31	$115.00	$192.00
Timekeeper	17.77	35.54	77.00	154.00
Traffic Manager	53.31	92.31	231.00	400.00
Traffic Manager, Asst.	35.54	53.31	154.00	231.00
Office and miscellaneous personnel:				
Accountant	35.54	92.31	154.00	400.00
Accountant, Asst.	35.54	53.31	154.00	231.00
Attorney and Notary	44.31	67.38	192.00	292.00
Auditor	53.31	126.92	231.00	550.00
Auditor, Asst.	53.31	92.31	231.00	400.00
Blue Print Operator	31.15	39.92	135.00	173.00
Bookkeeper	26.54	49.82	115.00	212.00
Cashier	35.54	53.31	154.00	231.00
Chauffeur	17.77	26.54	77.00	115.00
Chief Clerk	26.54	53.31	115.00	231.00
Clerk	17.77	35.54	77.00	154.00
Doctor	44.31	92.31	192.00	400.00
Fire Chief	44.31	92.31	192.00	400.00
Fire Chief, Asst.	35.54	53.31	154.00	231.00
Fireman	35.54	53.31	154.00	231.00
Guard	35.54	53.31	154.00	231.00
Janitor	17.77	22.15	77.00	96.00
Messenger	22.15	35.54	96.00	154.00
Nurse	17.77	35.54	77.00	154.00
Office Boy	17.77	26.54	77.00	115.00
Office Machine Operator	17.77	26.54	77.00	115.00
Office Manager	53.31	103.85	231.00	450.00
Office Manager, Asst.	35.54	67.38	154.00	292.00
Receptionist	17.77	26.54	77.00	115.00
Safety (First Aid) Man.	44.31	92.31	192.00	400.00
Secretary	17.77	31.15	77.00	135.00
Statistician	53.31	92.31	231.00	400.00
Statistician, Asst.	44.31	53.31	192.00	231.00
Stenographer	17.77	26.54	77.00	115.00
Stenotypist	17.77	31.15	77.00	135.00
Telephone Operator	17.77	26.54	77.00	115.00
Typist	14.31	22.15	62.00	96.00
Watchman	17.77	31.15	77.00	135.00

§ 813.1313 *War Department Contract Form No. 13.*

Contract No. _____

CONTRACT (SUPPLIES) WAR DEPARTMENT WAR SUPPLIES LIMITED

Contract for _____ Amount $_____

Place _____

The Finance Officer, United States Army, _____, _____, _____ is designated as the officer to make payments in accordance with this contract.

The supplies and services to be obtained by this instrument are authorized by, are for the purpose set forth in, and are chargeable to Procurement Authority _____ _____ available balance of which is sufficient to cover cost of same. This contract is authorized by the following laws:

This contract, entered into this _____ day of _____, 19__, by the United States of America, hereinafter called the Government, represented by the Contracting Officer executing this contract, and War Supplies Limited, a corporation organized and existing under the laws of the Dominion of Canada, hereinafter called the Contractor, with its principal office of the city of Ottawa, Province of Ontario, witnesseth that the parties hereto do mutually agree as follows:

ARTICLE 1. *Standard of payment.* All prices, costs and amounts set out or referred to in this contract are in United States Dollars.

ART. 2. *Scope of this contract.* (Insert Article 1, § 813.1301)

ART. 3. *Changes.* (Insert Article 2, § 813.1301)

ART. 4. *Extras.* (Insert Article 3, § 813.1301)

ART. 5. *Inspection.* (a) All material and workmanship shall be subject to inspection and test at all times and places and, when practicable, during manufacture. In case any articles are found to be defective in material or workmanship, or otherwise not in conformity with the specification requirements, the Goverment shall have the right to reject such articles, or require their correction. Rejected articles, and/or articles requiring correction, shall be removed by and at the expense of the Contractor promptly after notice so to do. If the Contractor fails to promptly remove such articles and to proceed promptly with the replacement and/or correction thereof, the Government may, by contract or otherwise replace and/or correct such articles and charge to the Contractor the excess cost occasioned the Government thereby, or the Government may terminate the right of the Contractor to proceed as provided in Article 6 of this contract, the Contractor being liable for any damage to the same extent as provided in said Article 6 for terminations thereunder.

(b) If inspection and test, whether preliminary or final, are made on the premises of the Contractor or subcontractor, the Contractor shall furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient inspections and tests required by the inspectors in the performance of their duty. All inspections and tests by the Government shall be performed in such a manner as not to unduly delay the work. Special and performance tests shall be as described in the specifications. The Government reserves the right to charge to the Contractor any additional cost of inspection and test when articles are not ready at the time inspection is requested by the Contractor.

(c) Final inspection and acceptance of materials and finished articles will be made after delivery, unless otherwise stated. If final inspection is made at a point other than the premises of the Contractor or subcontractor, it shall be at the expense of the Government except for the value of samples used in case of rejection. Final inspection shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud. Final inspection and acceptance or rejection of the materials or supplies shall be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the Government for such materials or supplies as are not in accordance with the specifications. In the event public necessity requires the use of materials or supplies not conforming to the specifications, payment therefor shall be made at a proper reduction in price.

ART. 6. *Delays-damages.* (Insert clause in § 803.352)

ART. 7. *Responsibility for supplies tendered.* (Insert Article 6, § 813.1301)

ART. 8. *Increase or decrease.* Unless otherwise provided herein, no increase or decrease in the total number of articles contracted for under Article 2 hereof, will be accepted, without the prior written approval of the Contracting Officer. (or insert clause in §803.329)

ART. 9. *Payments.* (Insert Article 8, § 813.1301)

ART. 10. *Officials not to benefit.* (Insert clause in § 803.322)

ART. 11. *Covenant against contingent fees.* (Insert clause in § 803.323)

ART. 12. *Disputes.* (Insert clause in § 803.326)

ART. 13. *Termination for convenience of Government.* (Insert clause in § 803.324)

ART. 14. *Assignment of claims.* (Insert clause in § 803.355)

ART. 15. *Notice of shipments.* (Insert clause in § 803.328)

ART. 16. *Patents.* The Contractor shall hold and save the Government, its officers, agents, servants, and employees harmless from liability of any nature or kind, including costs and expenses, for or on account of any invention, article, or appliance patented under the laws of Canada, manufactured or used in the performance of this contract, including their use by or for the Government.

The Government shall hold and save the Contractor, its representatives, agents, and subcontractor harmless from all liability under judgments by courts of competent jurisdiction, that may be obtained against the Contractor, its representatives, agents, and subcontractors, because of the use of any invention patented under the laws of the United States, specifically prescribed and authorized in writing by the Government as necessary for the performance of this contract, or the use of any invention patented under the laws of the United States which necessarily flows from the nature of the thing being produced or procured under this contract, but not otherwise; Provided, That such United States Letters Patent so used are not owned or controlled by the Canadian Government, the Contractor, its representatives, subcontractors, or persons in privity with the Contractor; And Provided Further, That immediate notice of any demand, liability, or legal proceedings arising from such use is given in writing by the Contractor to the Contracting Officer, and reserving to the Government the right to intervene in any such demand or proceeding and in its discretion to defend same or make settlement thereof, and the Contractor shall furnish all information in its possession and all assistance of its employees, representatives, or agents requested by the Government.

ART. 17. *Patent licenses.* The Contractor agrees to, and does hereby, in consideration of the terms and in consideration of payments to be made by the Government under this contract, grant unto the Government a non-exclusive, irrevocable, non-transferable, royalty-free license to make, have made, and use for governmental purposes, and to sell or otherwise dispose of in accordance with law, machines, articles or compositions of matter, embodying any and all inventions made or developed in the course of carrying out the work contemplated by this contract whether patented or unpatented, and to practice or cause to be practiced any methods or processes, whether patented or unpatented, which are developed in carrying out the provisions of this contract: *Provided,* That nothing contained in this Article shall impose any obligation upon the Contractor to license or otherwise make available to the Government any invention, method or process, which is not owned or controlled by the Contractor or by the Canadian Government.

ART. 18. *Subcontractor.* It is understood and agreed that the supplies and materials to be furnished under this contract will be manufactured and/or supplied by the _____ at its factory
(Name of subcontractor)
located at _____. The
(City in which plant is located)
performance of any of the work by any other subcontractor is prohibited, except by the specific approval of the Contracting Officer in advance.

ART. 19. *Governing laws.* This contract will be construed according to the laws of the United States of America.

ART. 20. *Definitions.* (a) The term "Secretary of War" as used herein shall include the Under Secretary of War, and the term "his duly authorized representative" shall mean any person or board authorized by the Secretary of War to act for him other than the Contracting Officer.

(b) The term "Contracting Officer" as used herein shall include his duly appointed successor or his authorized representative.

ART. 21. *Alterations.* The following changes were made in this contract before it was signed by the parties hereto:

IN WITNESS HEREOF, the parties hereto have executed this contract as of the day and year first above written.

THE UNITED STATES OF AMERICA,
By ---

(Official Title)

Two witnesses:

--- ---
--- ---

(Contractor)

(Business Address)

§ 813.1314 *W. D. Contract Form No. 14.*

Rental Agreement No. ---
Contract No. ---

RENTAL AGREEMENT — GOVERNMENT - OWNED CONSTRUCTION OR ROAD MAINTENANCE EQUIPMENT

Lessee and address---
Equipment to be used in connection with project located at---
Payment ---

To be made to ---,
United States Army, at ---
This contract is authorized by the following laws ---

GOVERNMENT-OWNED EQUIPMENT RENTAL AGREEMENT

This agreement, entered into this ---- day of ---- 194---, by the United States of America (hereinafter called the Government), represented by the Contracting Officer executing this contract, and ---

---

[1] a corporation organized and existing under the laws of the State of ---
[1] a joint venture consisting of ---

---

[1] a partnership consisting of ---

---

[1] an individual trading as ---

---

of the City of ---- in the State of ---- (hereinafter called the Lessee), witnesseth that;

[2] Whereas, the Lessee has entered into Contract No. W ---- or may enter into a contract (hereinafter, in either event, called the principal contract) with the Government to construct for the Government

---

at or near---
(hereinafter referred to as the project); and

[2] Whereas, the Lessee has entered into Subcontract No. ---- to Contract No. W ----, such subcontract hereinafter, for the purposes of this Agreement, being referred to as the "principal contract", to construct ---

---

at or near ---- (hereinafter referred to as the project); and

Whereas, the Government owns certain equipment as set forth in Schedule A, attached hereto and made a part hereof, located at ---

---; and

Whereas, the equipment is not now required by the Government for use on other projects within ---
and the Lessee desires to lease the same; and

Whereas, the leasing of the equipment to expedite performance of the principal contract by the Lessee is deemed necessary by the War Department to facilitate the prosecution of the war; and

Whereas, the Secretary of War has authorized the execution of this lease on behalf of the United States;

Now, therefore, the parties hereto do mutually agree as follows:

SECTION 1. The Government hereby leases to the Lessee the equipment listed in Schedule A, attached hereto and made a part hereof, which equipment the Lessee shall use in the performance of the principal contract at the project. This equipment is the property of the Government and is now located at ---
Schedule A may be supplemented from time to time whenever equipment is added to or withdrawn from the scope of this lease. Each such supplement shall be signed on behalf of the Lessee and the Government.

SEC. 2. Upon notification by the Contracting Officer that the equipment is ready for delivery, the Lessee agrees to receive the same without delay at the present location thereof, in its present condition, as is, without any warranty, express or implied, on the part of the Government as to condition or serviceability.

SEC. 3. The term of this lease shall begin on ---- and shall end upon the return of the equipment to the Government at ---
or at such other place as the Contracting Officer may designate, but in no event to exceed the time necessary to complete the Lessee's principal contract.

SEC. 4. This lease may be terminated by the Government by giving ---- day's written notice at any time after ---- days from the date of this lease.

SEC. 5.[1] The Lessee agrees that he will pay rental at the rate and at the times prescribed in Schedule A, and that such rental may be deducted from the payments due or to become due to the Lessee under the terms of the principal contract. Such deductions will be made monthly on or about the 10th of the month for the previous calendar month if practicable. The rental period shall begin on the date of commencement of the term of this lease and shall cease on the termination of the lease, as defined in Section 3.

SEC. 5.[1] The rental period shall begin on the date of commencement of the term of this lease and shall cease on the termination of this lease, as defined in Section 3 hereof. The Lessee shall pay rental at the rate prescribed on Schedule A. The rental accrued at the end of any calendar month shall be paid to the Government on or before the 10th day of the following month.

SEC. 6. Title to the equipment leased hereunder is and shall remain in the Government.

SEC. 7. The Lessee at its own expence will maintain the equipment in good repair and make all necessary replacements during the term of this lease. Any replacement of parts shall be by parts recommended by the manufacturer of the equipment or approved by the Contracting Officer. All fuel and lubricants will be furnished by the Lessee. The obligations under this section shall continue until the equipment shall have been delivered to a common carrier for return to the Government.

SEC. 8. The Lessee shall not remove any of the equipment from the project without the prior written approval of the Contracting Officer or his duly authorized representative. The Lessee shall not pledge, assign, transfer, sublet or part with the possession of any of the equipment in any manner to any third party either directly or indirectly, except that this provision shall not preclude the Lessee from permitting the use of the equipment by a third party with the prior written approval of the Contracting Officer or his duly authorized representative; and the Lessee shall not do or suffer anything whereby any of the equipment shall or may be seized, taken in execution, attached, removed, destroyed or injured.

SEC. 9. The Lessee shall not, without the prior written approval of the Contracting Officer or his duly authorized representative, use any of the equipment for any purpose other than performance of the principal contract at the project, in furtherance of the national war effort. Upon failure of the Lessee to comply with this provision, the Contracting Officer may terminate this lease upon twenty-four hours' notice communicated to the Lessee or its agent at its address as set forth in Section 21, and upon such termination the Contracting Officer or his duly authorized representative may require the immediate return of the equipment.

SEC. 10. The equipment shall be returned to the Government upon the expiration or termination of this lease in as good condition as when delivered to Lessee, reasonable wear and tear excepted. If in the opinion of the Contracting Officer, or his duly authorized representative the Lessee shall have failed to comply with the requirements of the lease in this respect, the Lessee shall pay to the Government as damages the amount necessary to place the equipment in as good condition as when delivered to Lessee, reasonable wear and tear excepted, or if such equipment can not be placed in such condition, Lessee shall pay an amount equivalent to the value of such equipment as stipulated in Schedule A, less the sum of the amount determined by the Contracting Officer to represent reasonable wear and tear, and the scrap value of such equipment.

SEC. 11. Between the time of delivery of the equipment to the Lessee at ---- and the time of its return to the Government at ---- or at such other place as the Contracting Officer may designate pursuant to Sections 3 and 12, the Lessee shall be solely responsible for any loss or destruction of the equipment, irrespective of whether such loss or destruction results from the failure of the Lessee to exercise reasonable care. Such responsibility shall be measured by the value of the equipment as set forth in Schedule A, less the amount determined by the Contracting Officer to represent reasonable wear and tear for the period during which such equipment was used. The Lessee shall take all necessary steps to protect the interest of the Government in the equipment. Without limiting the generality of the foregoing, the Contracting Officer may require, and in that event the Lessee shall, at its own expense, take specific measures, including but not limited to the procurement of insurance, as directed by the Contracting Officer, to protect the interests of the Government.[1]

---

[1] Delete all lines which do not apply.

[2] Use whichever "Whereas" clause is appropriate, depending upon whether the Lessee is a lump sum or unit price prime contractor, or a lump sum or unit price subcontractor.

[1] The first form of section 5 will be used when the equipment rental agreement is between the Government and a lump sum or unit price prime contractor; the second form when the agreement is with a lump sum or unit price subcontractor.

[1] Note that the provisions of this standard form of contract deviate from the requirements of § 803.365 (a). Such deviation has been specifically authorized.

SEC. 12. The Lessee agrees to reimburse the Government immediately upon presentation of a statement thereof, for all packing and handling costs, and further agrees to pay all transportation charges on the equipment from _____ to the job site of the project at_____ _____ Upon expiration or termination of this lease, the Lessee agrees to pay all packing, handling and transportation charges necessary for the return of the equipment to the Government at_____ _____, or at such other place as the Contracting Officer may designate; but the Lessee's responsibility for return transportation charges shall not exceed the amount required to return the equipment to _____

SEC. 13. The equipment is rented without operators. Any operator deemed incompetent by the Contracting Officer shall be removed from the equipment.

SEC. 14. The Contracting Officer shall furnish to the Lessee without charge, upon request, copies of such drawings, specifications, instructions, or the like as the Lessee may require for the operation or repair of the equipment and as may be on file at_____ _____ This is for the sole purpose of enabling the Lessee to maintain the equipment in serviceable condition, and does not constitute a license or authority initially to manufacture, use or sell any articles covered by unexpired United States Letters Patent as shown or described in such copies.

SEC. 15. The Government shall not be responsible for damages to property of the Lessee or property of others, or for personal injuries to the Lessee's officers, agents, servants or employees, or to other persons, arising from or incident to the use of the equipment herein leased, and the Lessee shall save the Government harmless from any and all such claims; provided, that nothing contained in this Section 15 shall be deemed to affect any liability of the Government to its own employees.

SEC. 16. At all times the Contracting Officer or his duly authorized representative shall have access to the job site whereon any of the equipment is situated, for the purpose of inspecting or inventorying the same, or for the purpose of removing the same in the event of the termination of this lease.

SEC. 17. (Insert clause § 803.322)

SEC. 18. The Lessee warrants that he has not employed any person to solicit or secure this lease upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Government the right to annul the lease, or at its option, to recover from the Lessee the amount of such commission, percentage, brokerage, or contingent fee, in addition to the consideration herein set forth. This warranty shall not apply to commissions payable by the Lessee upon contracts or leases secured or made through bona fide established commercial agencies maintained by the Lessee for the purpose of doing business.

SEC. 19. (Insert article in § 803.326, omitting last sentence).

SEC. 20. This agreement shall be subject to the written approval of_____ and shall not be binding until so approved.

SEC. 21. All notices to either of the parties to this lease shall be sufficient if mailed in a sealed postpaid envelope addressed as follows:

To the Lessee—

_____
(Name)

_____
(Address)

To the Government—

_____
(Name)

_____
(Title)

_____
(Address)

SEC. 22. (Insert article 22, § 813.1301)

SEC. 23. *Alterations.* The following changes were made in this contract before it was signed by the parties hereto:

In witness whereof, the parties hereto have executed this contract as of the day and year first above written.

THE UNITED STATES OF AMERICA,
By _____
_____
(Official Title)

_____
(Contractor)
By _____
_____
(Business Address)

Two Witnesses:

_____
_____
(Address)

_____
_____
(Address)

I _____, certify that I am the Secretary of the corporation named as Contractor herein; that _____ who signed this contract on behalf of the Contractor was then _____ of said corporation; that said contract was duly signed for and on behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

In witness whereof, I have hereunto affixed my hand and the seal of said corporation this _____ day of _____, 194__.

[CORPORATE SEAL] _____
(Secretary)

I hereby certify that, to the best of my knowledge and belief, based upon observation and inquiry, _____, who signed this contract for the_____ _____, had authority to execute the same, and is the individual who signs similar contracts on behalf of this corporation with the public generally.

_____
(Contracting Officer)

CONSENT OF SURETIES

We, the bondsmen for the due performance of the contract for the performance of which equipment has been rented to the Lessee, hereby give our full consent to the foregoing Equipment Rental Agreement and agree that our bond or bonds shall apply to and cover the due performance of the contract as modified and extended thereby.

_____ [SEAL]
(Individual surety)

_____ [SEAL]
(Individual surety)

_____
(Corporate surety)
By _____
_____

In the presence of:

_____
_____

Attest:
[CORPORATE SEAL]

_____

SCHEDULE A—RATES OF RENTAL

[Amendments of Maximum Price Regulation 134 of the Office of Price Administration have necessitated certain changes in the model Schedule which previously appeared at this point. The Office of the Chief of Engineers will issue detailed instructions on this subject matter and will periodically revise such instructions to accord with any further regulations of the Office of Price Administration.]

§ 813.1315a *W. D. Contract Form No. 15.*

Contract No._____

WAR DEPARTMENT

NEGOTIATED ELECTRIC SERVICE CONTRACT
CONNECTION CHARGE

Contractor and Address_____
Place _____
Connection Charge_____
Estimated Annual Refund_____
Payment _____
To be made by_____, U. S. Army, at_____.

The equipment, supplies and services to be obtained by this instrument are authorized by, are for the purposes set forth in, and are chargeable to the following allotments, the available balances of which are sufficient to cover the cost of same:

_____

This contract was negotiated under and is authorized by the following laws:

NEGOTIATED ELECTRIC SERVICE CONTRACT

This contract, entered into this_____ day of_____, 19____, by and between The United States of America (hereinafter called the "Government"), represented by the Contracting Officer executing this contract, and_____

_____

_____

a Corporation organized and existing under the laws of the State of_____ with principal office at_____ _____ (hereinafter called the "Contractor"), Witnesseth that:

Whereas, the Contractor is a public utility engaged in the business of supplying electric service to private and public consumers in the State of_____; and

Whereas, the Government and the Contractor are entering into this contract for the supplying by the Contractor to the Government of electric service for the operation of _____ _____known as _____ (hereinafter called the "Project"); and

Whereas, in order that the Contractor may supply electric service in accordance with the terms of this contract and within the time specified, it is necessary for the Contractor to provide the facilities described and enumerated in Appendix "A" attached hereto, and generally referred to hereinafter as Contractor's New Facilities; and

Whereas, due to the present uncertainty as to the amount of electric service which Government will use, and as to the length of time the Project will be operated, the Government is willing to compensate Contractor in the form of a connection charge for the cost of the facilities required to furnish services;

Now, therefore, in consideration of the premises and of the mutual agreements herein contained, to be performed by the parties hereto respectively, it is agreed as follows:

ARTICLE I. *Facilities to be provided.* 1. The Contractor shall proceed to acquire or construct all necessary equipment, materials and rights of way needed for Contractor's New Facilities, which are described more fully in Appendix "A" attached hereto and made a part hereof. It is estimated that such facilities will be completed _____ from the date of approval of this contract. It is expressly understood however that neither the Contractor nor the Government guarantees the correctness of this estimate but will use its best effort to acquire or construct the facilities within the time specified.

2. The Government hereby grants to the Contractor a license to enter upon and use a site or sites to be agreed upon between the parties hereto upon which the Contractor shall install, operate and maintain the Contractor's New Facilities to be located on Government property; and such license shall continue in effect until such time as the Government shall order the removal of Contractor's New Facilities located thereon: *Provided,* That after Contractor's New Facilities are ordered removed Contractor shall have ninety (90) days within which to comply with the Government order and if such facilities are not removed within said ninety (90) day period, title thereto shall vest in the Government without further action brought, and no claim for damages against the Government or its officers or agents shall be created by or made on account thereof: *And provided further,* That if the Government orders removal to another location on the project, for the convenience of the Government, then the Government shall pay the cost of such removal and relocation and shall likewise license Contractor to use such land as may be necessary for the relocation. The license hereby granted by the Government to the Contractor shall be free of any rental or other charges.

3. The names of the employees of the Contractor whose services Contractor proposed to retain in the construction, operation and maintenance of that portion of Contractor's New Facilities located within the boundaries of the Project shall be submitted to the Commanding Officer, or his authorized representative, in advance of actual employment for such purposes, together with pertinent information within the knowledge of Contractor as to the character, background and international political sympathies or affiliations of such employees, and the Commanding Officer, or his representative, shall reject or approve of the employment of such persons within the confines of the Project as he may deem proper in the interests of the United States. Only those employees who have been approved as hereinbefore provided shall receive employment within the confines of the Project and those so approved shall be designated as such by a method to be agreed upon by the Contractor and the Commanding Officer of the Project.

ART. II. *Payment for cost of facilities.* 1. In consideration of the investment to be made by the Contractor and the uncertain duration of the operation of the Project the Government agrees to pay the Contractor, as a connection charge, the estimated cost, less estimated salvage value of the facilities to be provided by the Contractor under this contract within thirty (30) days after receipt of satisfactory evidence of completion of the facilities. It is estimated that the facilities to be constructed under this contract will cost $_____. The agreed net salvage valued to be deducted is $_____. The net connection charge to be paid by the Government shall be $_____. The Government is to receive a refund of the amount so paid as hereinafter provided.

ART. III. *Ownership, operation, maintenance, and removal of facilities to be provided hereunder.* 1. The facilities to be supplied by the Contractor as hereinbefore provided for, notwithstanding the reimbursement by the Government of the estimated cost thereof less net salvage value, shall be and remain the sole property of the Contractor and shall, at all times during the life of this contract or any renewals thereof, be operated and maintained by the Contractor at its expense, and all taxes and other charges in connection therewith, together with all liability arising out of the construction, operation, or maintenance of said facilities shall be assumed by the Contractor.

2. Upon termination of the service provisions of this contract, Contractor may, of its own volition, remove any of its new facilities constructed under and by virtue of this contract, provided, however, that at any time within fifteen (15) months from the date of termination such facilities so removed will be reinstalled by Contractor without cost to the Government, upon receipt of sixty (60) days written notice from the Government, and provided a new service contract is executed between the parties hereto. This provision shall not give the Government the right to have such facilities reinstalled without cost to the Government in the event the Government "orders" removal as provided under Article I, Section 2.

ART. IV. *Refund agreement.* 1. In consideration of the fact that the Contractor is to be reimbursed for the estimated cost of the facilities to be provided hereunder less the estimated net salvage value thereof, and the further consideration that title to said facilities is to be and remain in the Contractor, it agrees to allow the Government on each monthly bill for electric service supplied as hereinafter provided for, a credit of ten percent (10%) of the gross amount of such bills as rendered, said credits to be made monthly and continue until such time as the accumulated credits equal the amount of the connection charge, unless this contract shall have been previously terminated, except that if a new contract for the supply of electric service shall be entered into between the parties hereto within a period of fifteen months from the date of such termination, the deductions shall resume and continue as above provided.

2. Anything in this contract to the contrary notwithstanding, no refund shall be made the Government or credit allowed on Government bills, after fifteen (15) years from the date of this contract.

ART. V. *Option to reduce minimum charges.* 1. In the event of a partial or total shut-down or abandonment of the Project, and, as a result thereof, power consumption is curtailed to less than twenty five percent (25%) of the average consumption for the ninety (90) day period immediately preceding such curtailment then the Government shall have the option to give the Contractor ninety (90) days notice after which time the minimum charge indicated in the rate schedule shall not apply, and the minimum to be charged shall be in accordance with the rate for the class of service required.

ART. VI. *Term of contract.* 1. This contract shall take effect as of the date of execution thereof and continue until further notice. Notice of intention to terminate this contract shall be at the option of the Government and shall be given in writing by the Contracting Officer to the Contractor not less than ninety (90) days in advance of the effective date of termination.

ART. VII. *Service.* 1. Contractor shall supply the electric service required by the Government for use at the Project. The Government agrees that the electric service to be supplied under the terms of this contract shall be used only in connection with activities within the boundaries of the Project as presently located or as such boundaries may be extended in the future.

ART. VIII. *Description of electric current delivered.* Volts ____, Cycles ____, Phase ____

Number of wires 2 3 4 direct or alternating current.

ART. IX. *Metering and accounts.* 1. The Contractor shall furnish, install, maintain, calibrate, and read the meters used to measure the electrical energy supplied by the Contractor for which payment is to be made, and shall render monthly accounts to the Contracting Officer, the meter reading to be made in the presence of the Contracting Officer or his authorized representative. These accounts, which shall remain the property of the Government, shall contain the statements of the readings of the meters at the beginning of the month, meter constants, monthly consumption, with respective charges and allowances, if any, in detail.

ART. X. *Description of meters.* 1. All electrical energy supplied by the Contractor under the terms of this agreement shall be measured by means of the following metering equipment:

(1) When purchased on primary meter measurement—

Primary watt-hour meter, _____ amperes, _____ volts, _____ cycles, _____ phases, _____ wires.

Located at _____

Other meters _____

_____

(2) When purchased on secondary meter measurement—

Secondary watt-hour meter _____ amperes, _____ volts, _____ cycles, _____ phases, _____ wires.

Located at _____

(3) When purchased with demand meter measurement—

Maximum demand indicator arrangements to record or indicate the average maximum demand over a period of _____ minutes, and the average billing maximum demand shall be the average of _____ such readings per month. The instrument used for this purpose shall be of the following type and description: _____

_____

_____

ART. XI. *Billing.* 1. Bills shall be rendered on the basis of _____ meters installed, the readings of each separate meter to be—

[1] (1) Billed separately.

[1] (2) All added and billed as one quantity.

ART. XII. *Service regulations.* 1. The matter of meters, meter accuracy, reliability of service, voltage regulation, and frequency variations, and all other matters not stipulated in this contract, shall be governed by the rules applicable and on file with the State Commission having jurisdiction in said matters, or where not on file with the State Commission, then such matters shall be governed by applicable rules or codes of the United States Bureau of Standards.[2]

ART. XIII. *Change in load.* 1. Reasonable notice will be given by each party to the other as to any material changes proposed in the connected load in the Project or on the lines serving the Project.

ART. XIV. *Change of schedule.* 1. The Contractor hereby agrees that if, after furnishing electrical energy for any ninety (90) day period during the life of this contract, it would have been more advantageous to the Government to have taken service under any other of the Contractor's standard rate schedules in effect during any such period for like conditions of service to the class of service furnished hereunder, the rate shall be changed to conform to the schedule and an adjustment of the charges for the last of such periods shall be made, based on such schedule.

ART. XV. *Change of rates.* 1. If during the life of this contract the State Commission having jurisdiction receives for file in authorized manner rates that are higher or rates that are lower than those stipulated herein for like conditions of service, the Contractor hereby agrees to continue to furnish electric current as stipulated in this contract, and the Government hereby agrees to pay for such electric current at the higher or lower rates from and after the date when such rates are made effective.

ART. XVI. *Deductions.* 1. This contract contemplates that continuous service shall be

[1] Delete irrelevant statement.

[2] Delete irrelevant words in cases where State Commission has no jurisdiction.

furnished. Should the power company desire to interrupt service for maintenance or repair purposes, arrangement therefor shall be made with the proper officials in order that such interruptions will least interfere with service for the Government.

2. If such arrangement is not made, and if the interruption is due to conditions within the control of the Contractor, deductions shall be imposed which will partially compensate the Government. For a shut-down lasting from three minutes to thirty minutes, 10 percent of the cost of current for the preceding day of similar service shall be deducted. For a shut-down of over thirty minutes, 25 percent of the cost of current for the preceding day of similar service shall be deducted.

ART. XVII. *Payments.* 1. For and in consideration of the faithful performance of the stipulations of this contract, the Contractor shall be paid by the designated disbursing officer for electrical energy herein contracted for, at the rates and under the terms and conditions hereinafter set forth; and the Contractor hereby declares that said rates are not in excess of the lowest rates now available to any prospective customer under like conditions of service.

2. All bills for electric energy delivered shall be paid without penalty or interest within fifteen (15) days from the date the bill is rendered, but this provision shall not operate to preclude the Government from the benefits of any discounts that might be available through more prompt payment.

ART. XVIII. *Ownership of premises.*

1. The premises to be served under this contact are:

[1] A. Government owned.

[1] B. Government leased.

2. a. The symbol number of the Government lease is _____

_____

b. The name of the lessor is _____

_____

ART. XIX. *Rates.*

_____

_____

ART. XX. *General Provisions.* 1. *Convict labor* (Insert clause in § 803.345)

2. *Eight-hour law* (Insert clause in § 803.346)

3. *Officials not to benefit* (Insert clause in § 803.322)

4. *Disputes* (Insert article in § 803.326)

5. *Covenant against contigent fees* (Insert clause in § 803.323)

6. *Anti-discrimination* (Insert clause in § 803.325)

7. *Assignment of rights hereunder* (Insert clause in § 803.355)

8. *Renegotiation.* (a) Unless the provisions of subparagraph (b) or (c) of this paragraph 8 are applicable to this contract, (1) this contract shall be deemed to contain all the provisions required by subsection (b) of the Renegotiation Act, as amended by section 701 of the Revenue Act of 1943 (Public Law 235, 78th Congress, enacted February 25, 1944); and (2) in compliance with said subsection (b) of the Renegotiation Act, the Contractor shall insert in the subcontracts specified in said subsection (b) either the provisions of this article or the provisions required by said subsection (b).

(b) This contract, as to all amounts received under it, shall be exempt from statutory renegotiation if the Contractor hereunder is a department, bureau, agency, or governmental corporation of the United States, or any Territory, possession or State, or any agency thereof, or any foreign Government or agency thereof.

(c) This contract, but only as to amounts received under it for the delivery of electric power, shall be exempt from statutory renegotiation if it is made with a public utility for the delivery of electric power of less than 1000 kilowatts of contractual demand except that if the actual demand was 1000 kilowatts or more at any time during any particular fiscal year, amounts received or accrued under this contract for such fiscal year shall not be exempt from renegotiation by reason of anything contained in this subsection (c).

ART. XXI. *Definitions.* (Insert Article 23, § 813.1301)

ART. XXII. *Changes.* 1. The Contracting Officer may at any time, with the consent of the Contractor, by a written order, make changes in this contract within the general scope thereof. If such changes cause an increase or decrease in the amount due under this contract, an equitable adjustment shall be made, and the contract shall be modified in writing accordingly.

ART. XXIII. *Alterations.* 1. The following changes were made in this contract before it was signed by the parties hereto:

_____

_____

_____

In witness whereof, the parties hereto have executed this contract as of the day and year first above written:

THE UNITED STATES OF AMERICA,

By _____

_____

(Official Title)

_____

(Contractor)

By _____

_____

(Business Address)

Witnesses as to signature of Contractor

_____

_____

(Address)

_____

_____

(Address)

I _____, certify that I am the _____ Secretary of the corporation named as Contractor herein; that _____ who signed this contract on behalf of the Contractor was then _____ of said corporation; that said contract was duly signed for and on behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

In witness whereof, I have hereunto affixed my hand and the seal of said corporation this _____ day of _____, 19____.

[CORPORATE SEAL] _____

(_____ Secretary)

I hereby certify that, to the best of my knowledge and belief, based upon observation and inquiry, _____, who signed this contract for _____ had authority to execute the same, and is the individual who signs similar contracts on behalf of this corporation with the public generally.

_____

(Contracting Officer)

APPENDIX A

(NOTE: This Appendix should contain a description of the facilities to be provided, including a small map showing their location and route, and small drawings or sketches of the type of facilities involved.)

§ 813.1315b *W. D. Contract Form No. 27*—(a) *Explanatory notes.* The forms set out in § 813.1315b are available for use by the technical services (including the service commands) for procuring electric, gas, water or sewage service (without connection charge) as follows:

(1) Where the estimated annual expenditure under the contract is $1,000 or less, the form set out in § 813.1315b will be used without any of the Special Provisions contained in the succeeding paragraphs.

(2) Where the estimated annual expenditure under the contract exceeds $1,000, the form set out in § 813.1315b will be used together with Special Provisions, as follows:

(i) Contracts for Electric Service—Special Provision A.

(ii) Contracts for Gas Service—Special Provision B.

(iii) Contracts for Water Service—Special Provision C.

(iv) Contracts for Sewage Service—Special Provision D.

(b) *Contract form.*

Contract No. W _____

NEGOTIATED UTILITY SERVICE CONTRACT

(No Connection Charge—Electric Gas Water Sewage Service[1])

_____

(Station or premises to be served) (City) (County) (State)

Premises are: ( ) Government-owned
( ) Government-leased

Symbol Number of Lease _____

Name of Lessor _____

Bills will be rendered to _____ at _____

Payment will be made by Finance Officer, United States Army, at _____

Estimated annual cost hereunder: $_____

This contract is authorized by the following laws: First War Powers Act, 1941 (Public No. 354, 77th Cong.), and Executive Order No. 9001.

The supplies and services to be obtained by this instrument are authorized by, are for the purposes set forth in, and are chargeable to the appropriations indicated below:

_____

Applicable allotments, having available balances sufficient to cover the cost, will be stated on the procuring instruments or invoices (see General Provision 2).

CONTRACTOR'S PROPOSAL

Date_____

At the request of the United States the undersigned offers and agrees to furnish required _____service, beginning on _____, 194___, and thereafter until further notice (see Special Provisions, if any), for the use of the United States at the location shown above, in accordance with the rates and other terms set forth below or attached hereto; General Provisions on the reverse side hereof; and Special Provisions numbered 1 to _____inclusive (if attached and made part hereof in accordance with the footnote entitled "Special Provisions"[2].

_____

(Contractor)

_____

(Address)

By _____,

Title _____,

(Authorized to make this proposal)

[1] Delete irrelevant statement.

[1] Delete inapplicable words.

[2] *Special provisions.* When the estimated annual expenditure under this contract is more than $1000, Special Provisions A (Electric Service), B (Gas Service), C (Water Service), or D (Sewage Service) shall be attached and made part hereof.

GOVERNMENT'S ACCEPTANCE

The foregoing Proposal is accepted this _____day of_____, 194____.

UNITED STATES OF AMERICA,
By _____,
Title _____,
Contracting Officer

RATES

(Reverse Side of Form)

GENERAL PROVISIONS

1. *Service regulations.* The matter of meters, meter accuracy, reliability of service, and all other similar matters not stipulated in this contract, shall be governed by the rules applicable and on file with the public regulatory body having jurisdiction in said matters, or where such rules are not so on file, by standards approved by the United States Bureau of Standards.

2. *Payments.* For and in consideration of the faithful performance of the stipulations of this contract, the Contractor shall be paid by the designated disbursing officer for service herein contracted for, at the rates and under the terms and conditions herein set forth. The Contractor hereby declares that said rates are not in excess of the lowest rates now available to any prospective customer under like conditions of service and agrees that during the life of this contract the Government shall continue to be billed on the lowest available rate for similar conditions of service. Recognition is given to the fact that the Government fiscal year ends on 30 June. Payments hereunder shall be contingent upon the availability of appropriations therefor, and shall not be made in advance of service rendered. All bills for service shall be paid without penalty or interest and the Government shall be entitled to any discounts customarily applicable to payment of bills by all customers of the Contractor.

3. *Changes of rates.* If during the life of this contract the public regulatory body having jurisdiction receives for file from the Contractor in authorized manner rates that are higher or rates that are lower than those stipulated herein for like conditions of service, the Contractor hereby agrees to continue to furnish service as stipulated in this contract, and the Government hereby agrees to pay for such service at the higher or lower rates from and after the date when such rates are made effective.

4. *Contractor's equipment.* The Government shall provide, free of cost, suitable locations on the premises to be supplied for the installation of the meters and any other equipment of the Contractor necessary to furnish service hereunder, all of which facilities shall be and remain the sole property of the Contractor and shall, at all times during the life of this contract, be operated and maintained by the Contractor at its expense; and all taxes and other charges in connection therewith, together with all liability arising out of the negligence of the Contractor in the construction, operation or maintenance of said facilities shall be assumed by the Contractor. Authorized representatives of the Contractor will be allowed access to the facilities of the Contractor at suitable times to perform the obligations of the Contractor with respect to said facilities. The Contractor shall have the right to remove its property within a reasonable time after termination of this contract, provided termination is not due to fault of the Contractor.

5. *Officials not to benefit.* (Insert clause in § 803.322)

6. *Convict labor.* The Contractor shall not employ any person undergoing sentence of imprisonment at hard labor.

7. *Covenant against contingent fees.* (Insert clause in § 803.323)

8. *Anti-discrimination.* (Insert clause in § 803.325)

9. *Assignment of rights.* If this contract is for an amount of $1,000 or more, claims for monies due or to become due to the Contractor from the Government hereunder may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, in accordance with the Assignment of Claims Act of 1940 (Public No. 811, 76th Cong.). Payment to an assignee of any claim hereunder shall not be subject to reduction or set-off for any indebtedness of the assignor to the United States arising independently of this contract.

10. *Definitions.* Except for the original signing of this contract, and except as otherwise stated herein, the term "Contracting Officer" as used herein shall include his duly appointed successor or his authorized representative.

SPECIAL PROVISIONS A—ELECTRIC SERVICE

Attached to and made part of Contract No. W_____

1. *Estimated service requirements.*
Estimated maximum demand: _____kw
Estimated annual consumption: _____kwh
(The Government is in no way obligated to use nor is it restricted to the above estimated requirements.)

2. *Point of delivery.* The point of delivery of service shall be_____

3. *Description of electric service.*
Contractor will supply_____phase, _____wire, _____cycle, alternating current at_____volts.

4. *Metering and billing.* Service will be measured at_____volts by_____watthour meter(s) and_____demand meter(s), to be furnished, installed, maintained, calibrated and read by the Contractor. The readings of the meters will be

[1] billed separately.

[1] combined for billing purposes.

5. *Termination.* Notice of intention to terminate this contract shall be at the option of the Government and shall be given in writing by the Contracting Officer to the Contractor not less than thirty days in advance of the effective date of termination.

6. *Approval.* If the estimated maximum demand stated in paragraph 1 above is 1000 kw or more, this contract shall be subject to the approval of the War Department Power Procurement Officer and shall not be binding until so approved.

7. *Renegotiation.* (a) Unless the provisions of subparagraph (b) of this paragraph 7 are applicable to this contract, (1) this contract shall be deemed to contain all the provisions required by sub-section (b) of the Renegotiation Act as amended by Section 701 of the Revenue Act of 1943 (Public Law No. 235, 78th Congress, enacted February 25, 1944); and (2) in compliance with said subsection (b) of the Renegotiation Act, the Contractor shall insert in the subcontracts specified in said sub-section (b) either the provisions of this Article or the provisions required by said sub-section (b).

(b) This contract shall be exempt from statutory renegotiation if (1) the contractor hereunder is a department, bureau, agency or governmental corporation of the United States, or any Territory, possession or State or any agency thereof, or any foreign Government or agency thereof; or (2) made with a public utility for the delivery of electric power of less than 1000 kilowatts of contractual demand except that if the actual demand was 1000 kilowatts or more at any time during any particular fiscal year, amounts received or accrued under this contract for such fiscal year shall not be exempt from renegotiation by reason of anything contained in this sub-paragraph (b) (2).

8. *Disputes.* (Insert General Provision 12 of W. D. Contract Form No. 47, § 813.1317)

9. Alterations and additions.

SPECIAL PROVISION B—GAS SERVICE

Attached to and made part of Contract No. W_____.

1. *Estimated service requirements.* Estimated maximum demand _____ mcf per hour.
Estimated annual consumption _____ mcf. (The Government is in no way obligated to use nor it is restricted to the above estimated requirements.)

2. *Point or delivery.* The point of delivery of gas shall be _____

3. *Quality of gas.* The Contractor will supply commercially clean and dry gas with a heat content at 14.7 pounds per square inch absolute and 60 degrees Fahrenheit of not less than _____ British thermal units per cubic food. Deduction for failure to provide gas at the agreed heat value shall be made as follows: One percent net of the average price per 100 cubic feet of gas for each one percent below the agreed heat value.

4. *Unit of measure.* A "cubic foot of gas," for the purpose of this contract, is the amount of gas necessary to fill a cubic foot of space when the gas is at a base pressure of _____ ounces per square inch above atmospheric pressure and at a base temperature of 60 degrees Fahrenheit, and the gas volumes shall be computed into such units. It is agreed that the gas shall be assumed to obey Boyle's law and no correction shall be made for any variation from this law; that the atmospheric pressure is _____ pounds per square inch; and that the flowing temperature is 60 degrees Fahrenheit.

5. *Metering and billing.* Gas will be measured by _____ meters to be furnished, (number and type)
installed, maintained, calibrated and read by the Contractor, the readings of which will be combined for billing purposes.

When orifice meters are used to measure gas furnished hereunder, such meters shall be of standard manufacture and shall be installed and operated in accordance with the manufacturer's specifications and recommendations. Computations of gas deliveries shall be made in accordance with the manufacturer's recommendations and shall be corrected for the specific gravity of the gas, which shall be determined by spot specific gravity tests made monthly or at more frequent intervals if required, or by a recording gravitometer.

Upon request of the Contracting Officer or his representative, the Contractor will submit to the Government records and charts from its metering equipment, together with calculations therefrom, for the Government's inspection and verification, subject to return by the Government within ten days after receipt thereof, after which return the charts and records shall be kept on file by the Contractor for the mutual use of both parties for a period of one year.

6. *Pressure.* [1] Contractor will maintain at the point of delivery a regulated pressure within ten percent of the pressure requested by the Contracting Officer but shall not be required to maintain more than _____ pounds or less than _____ pounds per square inch gauge.

[1] Contractor will supply gas from its low pressure distribution system at a pressure between _____ and _____ ounces per square inch gauge.

7. *Termination.* Notice of intention to terminate shall be at the option of the Government and shall be given by the Contracting Officer not less than thirty days in advance of the effective date of termination.

8. *Renegotiation.* (a) Unless the provisions of subparagraph (b) of this paragraph 8 are applicable to this contract, (1) this contract shall be deemed to contain all the provisions required by subsection (b) of the Renegotiation Act as amended by section 701 of the Revenue Act of 1943 (Public Law No. 235, 78th Congress, enacted February 25,

[1] Delete inapplicable line.

[1] Delete inapplicable paragraph.

1944); and (2) in compliance with said subsection (b) of the Renegotiation Act, the Contractor shall insert in the subcontracts specified in said subsection (b) either the provisions of this article or the provisions required by said subsection (b).

(b) This contract shall be exempt from statutory renegotiation if:

(1) The Contractor hereunder is a department, bureau, agency or governmental corporation of the United States, or any Territory, possession or State, or any agency thereof, or any foreign Government or agency thereof; or

(2) The gas to be supplied hereunder is the product of a gas well which has not been processed, refined, or treated beyond the first form or state suitable for industrial use; or

(3) Made with a public utility for the delivery of gas, except that if the amounts received or accrued hereunder during any particular fiscal year were $50,000 or more, amounts received or accrued hereunder for such fiscal year shall not be exempt from renegotiation by reason of anything contained in this subparagraph (b) (3). (If such fiscal year is a fractional part of twelve months, the $50,000 amount shall be reduced to the same fractional part thereof for the purposes hereof.)

9. *Disputes.* (Insert General Provision 12 of W. D. Contract Form No. 47, § 813.1317)

10. *Alterations and additions.*

SPECIAL PROVISIONS—WATER SERVICE

Attached to and made part of Contract No. W_____

1. *Estimated service requirements.* Estimated daily maximum demand: _____ Estimated annual consumption: _____ (The Government is in no way obligated to use nor is it restricted to the above estimated requirements.)

2. *Point of delivery.* The point of delivery of water shall be _____

3. *Description of water service.* The Contractor shall have _____ gallons per minute of water continuously available at the point of delivery at a pressure of not less than _____ pounds per square inch gauge.

4. *Quality of water.* The Contractor will supply clear, potable water safe for human consumption in accordance with standards adopted by the United States Public Health Service for drinking and culinary water supplied by common carriers in interstate commerce and such revisions thereof as may be made from time to time.

5. *Metering and billing.* Water will be measured by _____ meters owned, (number and size) calibrated and maintained by _____. The reading of said meters will be combined for billing purposes.

6. *Termination.* Notice of intention to terminate this contract shall be at the option of the Government and shall be given in writing by the Contracting Officer to the Contractor not less than thirty days in advance of the effective date of termination.

7. *Renegotiation.* (a) Unless the provisions of subparagraph (b) of this paragraph 7 are applicable to this contract, (1) this contract shall be deemed to contain all the provisions required by subsection (b) of the Renegotiation Act as amended by Section 701 of the Revenue Act of 1943 (Public Law No. 235, 78th Congress, enacted February 25, 1944); and (2) in compliance with said subsection (b) of the Renegotiation Act, the Contractor shall insert in the subcontracts specified in said subsection (b) either the provisions of this Article or the provisions required by said subsection (b).

(b) This contract shall be exempt from statutory renegotiation if the contractor hereunder is a department, bureau, agency or governmental corporation of the United States, or any Territory, possession or State or any agency thereof, or any foreign Government or agency thereof.

8. *Disputes.* (Insert General Provision 12 of W. D. Contract Form No. 47, § 813.1317).

9. *Alterations and additions.*

SPECIAL PROVISIONS D—SEWAGE

Attached to and made part of Contract W _____

1. *Estimated service requirements.* Estimated annual volume: _____ (The Government is in no way obligated to deliver nor is it restricted to the above estimated requirements.)

2. *Service to be rendered.* Contractor shall furnish a sanitary sewer connection and sanitary sewerage service as required by the Government and shall receive, carry, treat and dispose of all sanitary sewage originating at the project in such amounts as the Government desires to release into Contractor's sewer system and in a manner and by such means as will constitute no hazard to the public health. Contractor shall operate its sewage disposal and treatment facilities in conformity with applicable laws, rules, and regulations promulgated by State and Federal governmental authorities.

3. *Point of delivery.* The sewage shall be delivered to Contractor by the Government at _____

4. *Termination.* Notice of intention to terminate this contract shall be at the option of the Government and shall be given in writing by the Contracting Officer to the Contractor not less than thirty days in advance of the effective date of termination.

5. *Renegotiation.* (a) Unless the provisions of subparagraph (b) of this paragraph 5 are applicable to this contract, (1) this contract shall be deemed to contain all the provisions required by subsection (b) of the Renegotiation Act as amended by Section 701 of the Revenue Act of 1943 (Public Law No. 235, 78th Congress, enacted February 25, 1944); and (2) in compliance with said subsection (b) of the Renegotiation Act, the Contractor shall insert in the subcontracts specified in said subsection (b) either the provisions of this Article or the provisions required by said subsection (b).

(b) This contract shall be exempt from statutory renegotiation if the contractor hereunder is a department, bureau, agency or governmental corporation of the United States, or any Territory, possession or State or any agency thereof, or any foreign Government or agency thereof.

6. *Disputes.* (Insert General Provision 12 of W. D. Contract Form No. 47, § 813.1317).

7. *Alterations and additions.*

§ 813.1316 *W. D. Contract Form No. 16.*

Contract No. _____

LUMP SUM CONTRACT FOR ARCHITECT-ENGINEER SERVICES

(With Optional Supervision)

WAR DEPARTMENT

Architect-engineer & address_____
Services in connection with_____
Location_____
Amount: For Title I $_____
For Title II $_____
Payment: To be made by_____, U. S. Army, at_____

The supplies and services to be obtained by this instrument are authorized by, are for the purposes set forth in, and are chargeable to, the following allotments, the available balances of which are sufficient to cover the cost of the same:

_____

This contract was negotiated under and is authorized by the following laws:

LUMP SUM CONTRACT FOR ARCHITECT-ENGINEER SERVICES

(With Optional Supervision)

This Contract, entered into this_____ day of_____, 19____, by the United States of America (hereinafter called the "Government"), represented by the Contracting Officer executing this contract and_____

_____

[1] a corporation organized and existing under the laws of the State of_____

_____

[1] a partnership consisting of_____

_____

[1] an individual trading as_____
in the City of_____
State of_____
(hereinafter called the "Architect-Engineer"), Witnesseth that:

Whereas, the accomplishment of the hereinafter described work and services is authorized by law and will facilitate the prosecution of the war; and

Whereas, the Government desires to engage the Architect-Engineer to render services as hereinafter set forth for the preparation of necessary reports, designs, drawings, specifications and other documents; and, at the option of the Government, for technical supervision of the construction of the project described in Article I-A hereof; and

Whereas, the Secretary of War has directed

_____

to negotiate this Architect-Engineer Contract:

Now, therefore, the parties hereto do mutually agree as follows:

TITLE I

ARTICLE I-A. *Description of project.* 1. The Architect-Engineer shall, upon receipt of notice to proceed, perform all the services required under this contract for the project generally described as follows:

_____

_____

(hereinafter referred to as "the project"), located at or in the vicinity of _____ and more specifically described in Appendix "A" which is attached hereto and made a part hereof.

ART. I-B. *Statement of architect-engineer services.* The Architect-Engineer shall perform the following services:

1. Make such topographical and other surveys and maps as are specified in Appendix "A"; supervise necessary test borings and other subsurface investigations required by the Contracting Officer, but the cost of such borings and investigations shall be borne by the Government. This provision is not to be deemed to require the Architect-Engineer to make real estate surveys.

2. Establish a permanently monumented base line, with elevations, tied into the North American Datum.

3. Prepare, subject to the approval of the Contracting Officer, preliminary studies, sketches, and layout plans and reports including estimates of cost of the proposed project and of all structures, utilities and appurtenances thereto. But if more than three sets of such studies, sketches, plans, or reports are

[1] Delete all lines which do not apply.

required because of changes initiated by the Contracting Officer, an adjustment in the contract price will be made as provided in Article III–E.

4. Adopt Government designs, drawings, specifications and standards for buildings and other structures as necessary to meet the requirements of the approved layout of the proposed project, and prepare detailed designs, specifications and drawings in required form for buildings and other structures for which Government designs are incomplete or unavailable.

5. When preliminary drawings are approved in writing by the Contracting Officer, prepare final designs, detailed working drawings and specifications in accordance with Government standards necessary for the effective coordination and efficient execution of the construction work and revise such drawings and specifications if necessary. All such drawings may be prepared in pencil on tracing paper or pencil tracing cloth of approved quality by such methods and of such quality of workmanship as will permit the making of satisfactory reproductions thereof and the revision of such drawings for record purposes. Prepare and furnish _____ copies of the specifications and _____ sets of full size copies of working drawings; in the event additional copies are required the Government shall pay the cost thereof. There shall be included in the specifications all provisions which the Contracting Officer may direct to have incorporated therein relating to the advertising, negotiating, or awarding of construction contract or contracts, conditions under which the work shall be done, and any special provisions required by statute or existing War Department regulations or instructions.

6. Obtain necessary permits and approvals from all local, State and Federal authorities. Should it become necessary in the performance of the work and services for the Architect-Engineer to secure the right of ingress and egress to perform any of the work required by Title I hereof on properties not owned or controlled by the Government, the Architect-Engineer shall, if practicable, secure the consent of the owner, his representative, or agent, prior to effecting entry on such property. In the event the owner requires the payment of any fee for a license to enter upon and/or use such property, the Architect-Engineer, when so directed by the Contracting Officer, shall pay such fee and obtain a receipt therefor. The expenditures covering such fees shall constitute a reimbursable item under this contract, and the Architect-Engineer, upon presentation of a voucher therefor, duly supported by proper receipts attached thereto, shall be reimbursed for the full amount thereof.

7. Prepare an estimate of the cost of the proposed project based upon the approved designs, drawings and specifications therefor.

8. Prepare schedules and charts showing the sequence of operations in the construction of each of the several portions of the work.

9. Prepare estimates showing the quantities of critical and important materials and length of time after award of the construction contract when such materials will be required on the site.

10. Assist the Contracting Officer in preparing invitations for bids or proposals analysing and evaluating bids or proposals for a construction contract or contracts based upon the approved drawings and specifications.

11. Check and approve all shop and working drawings submitted by the Constructor in connection with the construction work to assure that they conform with approved drawings.

12. During the construction period the Architect-Engineer shall furnish such advice as may be requested and an approved representative shall make _____ visits to the site of the work at periods required by the Contracting Officer; additional visits, if made, shall be paid for at _____ Dollars ($_____) per day in full satisfaction therefor. In the event that the option of Title II is exercised, the provisions of this paragraph shall not apply.

ART. I–C. *Progress schedule.* 1. The Architect-Engineer shall, promptly after the execution of this contract, prepare and submit to the Contracting Officer, for approval, a schedule showing the order in which the Architect-Engineer proposes to carry on the work, with dates on which he will start the several salient features of the work and the contemplated dates for completing the same. Such schedule shall provide for completion of all work hereunder within the contract time. The schedule shall be in the form of a progress chart at suitable scale so as to indicate with symbols the percentage completed at any time. The Architect-Engineer shall correct the progress schedule at the end of each week and shall immediately deliver three copies to the Contracting Officer.

2. The Architect-Engineer shall furnish sufficient technical, supervisory and administrative personnel to insure the prosecution of the work in accordance with the approved progress schedule.

ART. I–D. *Period of service.* 1. The Architect-Engineer shall complete all work and services under Title I of this contract except work and services required under Article I–B, sections 11 and 12, within _____ months after receipt of notice to proceed.

ART. I–E. *Payment.* 1. In consideration of the performance of his undertakings under this Title I, the Architect-Engineer shall be paid the sum of _____ Dollars ($_____), which shall constitute complete payment for all services required to be performed under this Title I and all expenditures which may be made and expenses incurred except as are otherwise expressly provided herein.

TITLE II

At any time prior to six months after satisfactory completion and acceptance of the work and services to be furnished under Title I except Article I–B, sections 11 and 12, the Government, at its option, may direct, by a written order, the Architect-Engineer to perform the work and services provided under this Title II. Upon receipt of such direction, the Architect-Engineer shall proceed with such work and services.

ART. II–A. *Services to be furnished by Architect-Engineer.* The Architect-Engineer shall perform the following services:

1. Furnish all governing lines, bench marks and grades essential to the construction of the project.

2. Furnish a Resident Engineer and staff of assistants and other personnel to supervise the construction to assure that every part of the work is done in accordance with the approved drawings and specifications and within the areas and boundaries designated for the project. The Architect-Engineer will furnish _____ man-months of inspection service as required by the Contracting Officer.

3. Make all field tests at the site of the work and report to the Contracting Officer in writing as to the conformity or nonconformity of the materials and equipment and workmanship to specifications. The Architect-Engineer shall evaluate reports on such other tests of materials and equipment as may be required by the Contracting Officer, but the cost of such tests shall be borne by the Government.

4. Prepare, with the assistance of the Constructor, labor estimates showing the approximate numbers, trades and dates required to meet the approved construction schedule.

5. Prepare weekly progress reports in approved form showing the progress of the construction work and any deviation from the approved construction schedule.

6. Prepare, when required by the Contracting Officer, the partial and final construction estimates for payment.

7. Without additional compensation the Architect-Engineer or any member of the organization, when requested, shall consult and advise with the Contracting Officer on any questions which may arise in connection with the work under this contract.

8. Upon termination or completion of this contract as determined by the Contracting Officer, and before final payment, the Architect-Engineer shall:

a. Prepare record drawings to show construction as actually accomplished. These record drawings shall be prepared by correcting drawings as prepared for construction purposes or, where construction drawings cannot be satisfactorily revised for record purposes, by preparation of appropriate new drawings. All such new drawings shall be prepared in pencil on tracing paper or pencil tracing cloth of approved quality.

b. Assist the Contracting Officer in the preparation of the completion report for the project.

c. Supervise the testing of operating units to assure their conformance with specifications and furnish all engineering services necessary to secure such conformance.

d. Prepare instructions for the proper operation and maintenance of all utilities and operating equipment designed by the Architect-Engineer.

ART. II–B. *Period of service.* 1. The period of service of the Architect-Engineer under Title II of this Contract shall be _____ months from receipt of the order to proceed, but the Government may extend such period as provided in Article III–E of this Contract.

ART. II–C. *Payment.* 1. In consideration of the performance of his undertakings under this Title II the Architect-Engineer shall be paid the sum of _____ Dollars ($_____), which shall constitute complete payment for all services required to be performed under this Title II and all expenditures which may be made and expenses incurred except as are otherwise provided herein.

TITLE III

The provisions of this Title shall apply to this entire contract, to wit: to Title I and likewise to Title II should Title II become operative as provided herein.

ART. III–A. *Method of payment.* 1. Estimates shall be made semi-monthly of the amount and value of the work and services performed by the Architect-Engineer under this contract, determined in accordance with Appendix "A" attached hereto and made a part hereof.

2. Upon approval of such estimate by the Contracting Officer payment upon vouchers approved by the Contracting Officer shall be made to the Architect-Engineer as soon as practicable of 80% of the amount as determined above, less all previous payments.

3. In the event that the Government does not exercise the option under Title II of this contract within 30 days after the satisfactory completion and acceptance by the Contracting Officer of the work done by the Architect-

Engineer under Article I–B, sections 1 through 10 inclusive, the Architect-Engineer shall be paid the unpaid balance of any money due for work done under said sections.

4. Upon satisfactory completion of the construction work and its final acceptance the Architect-Engineer shall be paid the unpaid balance of any money due hereunder. Prior to such final payment under the contract, or prior to settlement upon termination of the contract, and as a condition precedent thereto, the Architect-Engineer shall execute and deliver to the Contracting Officer a release of all claims against the Government arising under or by virtue of this contract, other than such claims, if any, as may be specifically excepted by the Architect-Engineer from the operation of the release in stated amounts to be set forth therein.

ART. III–B. *Drawings and other data to become property of Government.* 1. All notes, designs, drawings, specifications and other technical data are to become the property of the Government on completion as outlined in this contract, and the Government shall have full right to use those instruments for the purpose of constructing under contract or otherwise any buildings or other structures for the sole use of the Government when and where the Government may designate, without any claim on the part of the Architect-Engineer for additional compensation.

2. All notes, designs, drawings, specifications and other technical data concerning the project shall be delivered to the Government whenever requested by the Contracting Officer, and, furthermore, access to such data shall be restricted to trusted and duly authorized representatives of the Government and of the Architect-Engineer.

ART. III–C. *Contracting officer's decisions.* 1. The extent and character of the work to be done by the Architect-Engineer shall be subject to the general supervision, direction, control and approval of the Contracting Officer to whom the Architect-Engineer shall report and be responsible. In the event that there should be any dispute with regard to the extent and character of the work to be done, the decision of the Contracting Officer shall govern, but the Architect-Engineer shall have the right of appeal as provided in Article III–D.

ART. III–D. *Disputes.* (Insert article in § 803.326)

ART. III–E. *Changes.* 1. The Contracting Officer may at any time, by a written order, and without notice to the sureties, make any changes in this contract which may either increase or decrease the services hereunder. If such changes cause an increase or decrease in the services required under this contract, or in the time required for its performance, an equitable adjustment shall be made and the contract shall be modified in writing accordingly. Any claim for adjustment under this article must be asserted within 10 days from the date the change is ordered: provided, however, that the Contracting Officer, if he determines that the facts justify such action, may receive and consider, and with the approval of the Secretary of War or his duly authorized representative, adjust any such claim asserted at any time prior to the date of final settlement of the contract. If the parties fail to agree upon the adjustment to be made, the dispute shall be determined as provided in Article III–D, but nothing provided in this article shall excuse the Architect-Engineer from proceeding with the prosecution of the work so changed.

ART. III–F. *Termination.* 1. The Government may terminate this contract at any time and for any cause by a notice in writing from the Contracting Officer to the Architect-Engineer. Upon receipt of such notice the Architect-Engineer shall, unless the notice directs otherwise immediately discontinue all work.

2. If the contract is terminated for the convenience of the Government, payment to the Architect-Engineer will be made promptly for that proportion of the services required under the contract which the work actually performed bears to the total work required under the contract, less any payments previously made.

3. If this contract is terminated because of the failure on the part of the Architect-Engineer to fulfill his undertakings under this contract, the Government may take over the work and prosecute the same to completion by contract or otherwise, and the Architect-Engineer shall be liable to the Government for any excess cost occasioned to the Government thereby.

ART. III–G. *Covenant against contingent fee.* (Insert clause in § 803.323)

ART. III–H. *Officials not to benefit.* (Insert clause in § 803.322)

ART. III–I. *Assignment of claims.* (Insert clause in § 803.355)

ART. III–J. *Convict labor* (Insert clauses in § 803.345 or 803.346)

ART. III–K. *Dismissals.*

1. Should the continued employment, under this contract, of any person in the Architect-Engineer's organization be deemed by the Contracting Officer to be prejudicial to the interests of the Government, that person shall be immediately removed from the work. The Architect-Engineer shall make every reasonable effort in the selection of his employees and in the prosecution of the work under this contract to safeguard all drawings and specifications, and to prevent the theft or unauthorized use of the same.

ART. III–L. *Workmen's compensation laws.* 1. The Act of June 25, 1936 (49 Stat. 1938, 1939; 40 U. S. C. 290), provides that the several states have authority to make their Workmen's Compensation Laws applicable to contracts for the construction, alteration or repair of a public building or public work of the United States, and the several states are vested with the power and authority to enforce such state laws on lands of the United States.

ART. III–M. *Accident prevention.* 1. The Architect-Engineer will maintain an accurate record of, and will report to the Contracting Officer in the manner and on the forms prescribed by the Contracting Officer, all causes of death, occupational disease, and traumatic injury arising out of or in the course of employment on work under this contract.

ART. III–N. *Anti-discrimination.* (Insert clauses in § 803.325).

ART. III–O. *Renegotiation pursuant to section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended.* (Insert article in § 803.342a).

ART. III–P. *Definitions.* (Insert article 22, § 813.1301)

ART. III–Q. *Approval.* 1. This contract shall be subject to the written approval of the _____ and shall not be binding unless so approved.

ART. III–R. *Alterations.* 1. The following changes were made in this contract before it was signed by the parties hereto:

In witness whereof, the parties hereto have executed this contract as of the day and year first above written:

THE UNITED STATES OF AMERICA,
By _____
_____
(Official Title)
_____
(Architect-Engineer)
By _____
_____
(Business Address)

Witnesses as to signature of Architect-Engineer:

_____
_____
(Address)
_____
_____
(Address)

I _____, certify that I am the _____ Secretary of the corporation named as Architect-Engineer herein; that _____ who signed this contract on behalf of the Architect-Engineer was then _____ of said corporation; that said contract was duly signed for and on behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

In witness whereof, I have hereunto affixed my hand and the seal of said corporation this _____ day of _____, 19____.

[CORPORATE SEAL] _____
(_____ Secretary)

I hereby certify that, to the best of my knowledge and belief, based upon observation and inquiry, _____, who signed this contract for _____ had authority to execute the same, and is the individual who signs similar contracts on behalf of this corporation with the public generally.

_____
(Contracting Officer)

§ 813.1317 *Short forms.* In § 813.1317a there are set forth certain short forms of contracts for procuring supplies or services, to be used in accordance with the "Explanatory Notes" applicable to each.

§ 813.1317a *W. D. Contract Form No. 383 (W. D. Forms Nos. 383, 383a, 383b and 383c); Short Form—(a) Explanatory notes.* (1) W. D. Contract Form No. 383, comprising W. D. Forms Nos. 383, 383a, 383b and 383c, is *prescribed* for use by posts, camps and stations for procuring any supplies or services, regardless of the number or period of deliveries involved, where:

(i) The amount of the purchase does not exceed $5,000; and

(ii) Only one payment is expected to be made; and

(iii) No special contract form is provided (for example, the General and Medical Laundry Contracts); and

(iv) No special contractual provisions are necessary.

(2) The form is available for optional use by all procuring agencies other than posts, camps and stations, under the conditions mentioned in (1) above.

(3) The procedure for use and distribution of the form by posts, camps and stations is graphically shown in Army Service Forces Manual M403.

(b) *Contract form.*

W D. Form No. 333 [White Page
Form Approved by Comptroller General
U. S. August 26, 1943

PURCHASE ORDER AND VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL

UNITED STATES WAR DEPARTMENT

Location.....

To.....

Please furnish the following, subject to the conditions stated on both sides of this form:

Ship to.....

F. o. b..... Terms: .....

Vendor: Mail the original with Vendor's certificate completed or the original with original certified invoice and .....copies.

To: .....

D. O. Vou. No.....

Date

P. O. No.

Req. No.

Pur. Auth.

PAID BY

Negotiated under authority of the First War Powers Act, 1941, and Executive Order No. 9001, December 27, 1941.

(For use of paying office)

Payment Will Be Made By Finance Officer At

Funds chargeable.....
(available balance of which is sufficient)

Purchasing and Contracting Officer

Item No.	Articles or Service	Quantity	Unit	Unit Price	Amount		Quantity Received
					Dollars	Cents	
				Total			

Vendor's Certificate. I certify that the above bill is correct and just: that payment therefor has not been received; that all statutory requirements as to American production and labor standards, and all conditions of purchase applicable to the transactions have been complied with; and that State or local sales taxes are not included in the amounts billed.

*Payee (Sign original only)

Per ..... Title
(This certificate not required when a like certificate is made by payee on attached bill or bills)

(Vendor must NOT use this space)
Differences.....

Account verified; correct for.....

(Signature or initials)

Pursuant to authority vested in me, I certify that the above articles were received in good condition, after due inspection, acceptance, and delivery prior to payment as required by law, or the services were performed as stated; that they were procured without written contract, in open market, and were necessary for the public service; and that the prices charged are just and reasonable and in accordance with the agreement.

Signature..... Title.....

Accounting classification (for completion by Administrative Office)

Appropriation, limit'n or project symbol	Abbreviated appropriation title	Allotment, Project and Object Symbols	Station Code	Limit'n or Proj't Amount	Appropriation Amount

Paid by Check No.....dated....., 19.., for $.....on Treasurer of the United States in favor of Payee named above.

Cash, $....., on....., 19.., Payee.....
(Sign original only)
Per.....
Title.....

*When a voucher is signed or receipted in the name of a company or corporation, the name of the person writing the company or corporate name, as well as the capacity in which he signs, must appear. For example: "John Doe Company, per John Smith, Secretary", or "Treasurer", as the case may be.

[Reverse side of W. D. Form No. 333 (White Page)]

SPECIAL PROVISIONS AND CONDITIONS APPLYING TO THIS ORDER

1. *Payments.* (Article 8, § 813.1301)

2. *Inspection.* All material and workmanship shall be subject to inspection and test at all times and places and, when practicable, during manufacture. In case any articles are found to be defective in material or workmanship, or otherwise not in conformity with the specification requirements, the Government shall have the right to reject such articles, or require their correction. In the event public necessity requires the use of material or supplies not conforming to the specifications, payment therefore shall be made at a proper reduction in price.

3. *Variation in Quantities.* (§ 803.329)

4. *Acceptance.* In accepting this order the contractor agrees that the terms and conditions stated on both sides of this purchase order are a part of the agreement between the parties hereto.

5. *Notice of Shipment.* (§ 803.328)

6. *Shipping Instructions.*

(a) Mark each package with complete destination, Purchase Order number, name of Contractor, commodity, quantity, Purchase Order Item number, package number.

(b) Packing list must accompany each shipment, showing package number and contents.

(c) Prepay all carrier charges to destination (unless otherwise instructed) forwarding shipping notices, bills of lading, and paid tariff bills.

7. *Taxes.* (§ 803.357 (b))

8. *Eight-Hour Law.* (§ 803.346)

9. *Anti-Discrimination.* (§ 803.325)

10. *Convict Labor.* The contractor shall not employ any person undergoing sentence of imprisonment at hard labor.

11. *Delays—Damages.* If the Contractor refuses or fails to perform this contract within the time specified, or any extension thereof, the Government may, by written notice, terminate the right of the Contractor to proceed with deliveries or with such part or parts thereof as to which there has been delay, and may hold the Contractor liable for any damage caused the Government by reason of such termination. The right of the Contractor to proceed with the performance of this contract shall not be terminated under this General Provision 11 if the delay is due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including without being limited to, any preference, priority, or allocation order issued by the Government or any other act of the Government.

12. *Disputes.* Except as otherwise specifically provided in this contract, all disputes concerning questions of fact which may arise under this contract, and which are not disposed of by mutual agreement, shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail a copy thereof to the Contractor. Within 30 days from said mailing the Contractor may appeal to the Secretary of War, whose decision or that of his designated representative, representatives, or board shall be final and conclusive upon the parties hereto. Pending decision of a dispute hereunder the Contractor shall diligently proceed with the performance of this contract.

13. *Assignment of Rights Hereunder.* This General Provision 13 shall apply if this contract is for $1,000 or more. (§ 803.355).

14. *Officials Not to Benefit.* (§ 803.322)

15. *Covenant Against Contingent Fees.* (§ 803.323)

16. *Definitions.* (Article 22, § 813.130)

W. D. Form No. 383a [White Page]
Form Approved by Comptroller General
U. S. August 26, 1943

PURCHASE ORDER AND VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL
UNITED STATES WAR DEPARTMENT
Continuation Sheet

P. O. No._____
Sheet_____of_____

Item No.	Articles or service	Quantity	Unit	Unit price	Amount		Quantity received
					Dollars	Cents	
	Total						

W. D. Form No. 383b [Yellow Page]
Form Approved by Comptroller General U. S. August 26, 1943

PURCHASE ORDER AND VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL
UNITED STATES WAR DEPARTMENT

D. O. Vou. No._____

Location_____

To_____

Please furnish the following, subject to the conditions stated on both sides of this form:

Ship to_____

F.O.B._____ Terms_____

Vendor: Mail the original with Vendor's certificate completed or the original with original certified invoice and_____copies.

To:_____

Date

P. O. No.

Req. No.

Pur. Auth.

Negotiated under authority of the First War Powers Act, 1941, and Executive Order No. 9001, December 27, 1941.

PAID BY

(For use of Paying office)

Payment Will Be Made By Finance Officer At

Funds chargeable_____
(available balance of which is sufficient)

Purchasing and Contracting Officer

Item No.	Article or service	Quantity	Unit	UnitPrice	Amount		Quantity Received
					Dollars	Cents	
	Total						
		(Vendor must NOT use this space) Differences					
		Account verified; correct for					
		(Signature or initials)					

Receiving report: I certify that the items listed in Quantity Received column above were inspected and accepted by me, and they conform to requirements, and/or that the services specified were actually rendered.

Date Inspecting Officer

Property voucher No._____I certify that the items listed in Quantity Received column above were received by me in the quantities and conditions stated, and that the same have been taken up on the property accounts at this station.

Date Accountable Officer

Accounting classification (for completion by Administrative Office)

Appropriation, limit'n or project symbol	Abbreviated appropriation title	Allotment, Project and Object Symbols	Station Code	Limit'n or Proj't Amount	Appropriation Amount

Paid by { Check No._____dated_____, 19.., for $_____on Treasurer of the United States in favor of Payee named above
Cash, $_____, on_____, 19..,

Payee_____
(Sign original only)
Per_____
Title_____

(*Reverse side of W. D. Form No. 383b*) [*Yellow Page*]. This is the same as the reverse side of W. D. Form No. 383.

W. D. Form No. 383c, Form Approved by Comptroller General U. S., August 26, 1943 [*Yellow Page*]. This is the same as W. D. Form No. 383a.

§ 813.1317b *W. D. Contract Form No. 18—Short form—*(a) *Explanatory Notes.* (1) W. D. Contract Form No. 18 is available for optional use by the technical services (including the service commands) for procuring any supplies or services, regardless of the number or period of deliveries or of the number of payments involved, where:

(i) The amount of the purchase does not exceed $500,000; and

(ii) No special contract form is available and suitable for the particular type of procurement; and

(iii) No special contract provisions are required, the insertion of which in the particular case would unduly complicate the form; and

(iv) Signature by the contractor evidencing acceptance of the order is not required, and is not desired.

Signature by the contractor is not required where (i) the amount of the order is not in excess of $5,000, or (ii) the amount of the order is in excess of $5,000 but not in excess of $500,000 and the order is preceded by an oral or written quotation or is based upon a price list.

(2) Where the price is not in excess of $5,000 the line reading "In accordance with your price list /oral quotation/ written quotation of _____, 19____," appearing on the front side of the first sheet, will be deleted by the Contracting Officer. Otherwise the Contracting Officer will delete those words which do not apply, and insert the date.

(3) Each technical service will insert, under "Special Provisions" appearing on the reverse side of the first sheet, appropriate clauses covering "Methods of Presenting Invoices or Vouchers" and "Methods of Packing, Shipping and Marking," and such other clauses as may be necessary or advisable (for example, the clause on subcontracting, § 803.367, and patents clauses, § 803.335 et seq.).

(b) *Contract form.*

W. D. Contract Form No. 18.

WAR DEPARTMENT

PURCHASE ORDER

Date.....
W. D. establishment, office or station, and address:
.....

To:.....
Address:.....
Factory Address:.....

Ship to:.....
.....

Schedule of deliveries:.....
.....

Contract No. (if any) W-.....
Order No.....
These numbers must appear on all packages and papers relating to this order.

For methods of presenting invoices or vouchers, see Special Provision 1.
Payment will be made by Finance Officer, U. S. Army, at.....

The supplies and services to be obtained by this instrument are authorized by, are for the purposes set forth in, and are chargeable to the following allotments, the available balances of which are sufficient to cover the cost thereof:

In accordance with your price list / oral quotation / written quotation of ....., 19....
Please furnish the following on the terms specified on both sides of this page and on the continuation sheets numbered to inclusive, attached hereto, including delivery f. o. b.....

Methods of packing, marking and shipping shall be as provided herein except as otherwise directed by the Contracting officer.
Inspection points: .....

Item No.	Supplies or services	Quantity	Unit	Unit price	Amount
	Total.....				

This order is authorized by and negotiated under the First War Powers Act, 1941 (Public, 354, 77th Cong.), and Executive Order No. 9001 (Dec. 27, 1941).

UNITED STATES OF AMERICA,
By.....
Contracting Officer
Title.....

Reverse side of W. D. Contract Form No. 18.

GENERAL PROVISIONS

1. *Payments.* (Insert Article 8, § 813.1301)

2. *Inspection.* Whether or not an inspection point is specified herein, all material and workmanship shall be subject to inspection and test at all times and places (including inspection and test after arrival at destination) and, when practicable, during manufacture. In case any articles are found to be defective in material or workmanship, or otherwise not in conformity with the specification requirements, the Government shall have the right to reject such articles, or require their correction. Final inspection shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud. In the event public necessity requires the use of materials or supplies not conforming to the specifications, payment therefor shall be made at a proper reduction in price.

3. *Variation in Quantities.* (Insert clause in § 803.329)

4. *Notice of Shipments.* (Insert clause in § 803.328)

5. *Taxes.* (Interest clause in § 803.357)

6. *Walsh-Healey Act.* If this contract is for an amount in excess of $10,000, the representations and stipulations required by Section 1 of the Act of June 30, 1936 (Walsh-Healey Act, Public No. 846, 74th Cong.) to be included in all contracts therein specified, are hereby incorporated and made a part of this contract with the same force and effect as if fully set forth in the contract. Such representations and stipulations shall be subject to all applicable regulations, determinations, and exceptions of the Secretary of Labor now or hereafter in effect.

7. *Eight-Hour Law.* This General Provision 7 shall apply if General Provision 6 is not applicable. (Insert clause in § 803.346)

8. *Anti-Discrimination.* (Insert clause in § 803.325)

9. *Convict Labor.* The Contractor shall not employ any person undergoing sentence of imprisonment at hard labor.

10. *Changes.* Where the supplies to be furnished are to be specially manufactured in accordance with drawings and specifications, the Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes in the drawings or specifications. Changes as to shipment and packing of all supplies may also be made as above provided. If such changes cause an increase or decrease in the amount due under this contract, or in the time required for its performance, an equitable adjustment shall be made and the contract shall be modified in writing accordingly.

11. *Delays—Damages.* If the Contractor refuses or fails to perform this contract within the time specified, or any extension thereof, the Government may, by written notice, terminate the right of the Contractor to proceed with deliveries or with such part or parts thereof as to which there has been delay, and may hold the Contractor liable for any damage caused the Government by reason of such termination. The right of the Contractor to proceed with the performance of this contract shall not be terminated under this General Provision 11 if the delay is due to causes beyond the control and without the fault or negligence of the Contractor, including without being limited to, any preference, priority, or allocation order issued by the Government or any other act of the Government.

12. *Disputes.* Except as otherwise specifically provided in this contract, all disputes concerning questions of fact which may arise under this contract, and which are not disposed of by mutual agreement, shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail a copy thereof to the Contractor. Within 30 days from said mailing the Contractor may appeal to the Secretary of War whose decision of that of his designated representative, representatives, or board shall be final and conclusive upon the parties hereto. Pending decision of a dispute hereunder the Contractor shall diligently proceed with the performance of this contract.

13. *Assignment of Rights Hereunder.* This General Provision 13 shall apply if this contract is for $1,000 or more, unless this contract is marked secret, confidential, or restricted. (Insert clause in § 803.355)

14. *Officials Not to Benefit.* (Insert clause in § 803.322)

15. *Covenant Against Contingent Fees.* (Insert clause in § 803.323)

16. *Definitions.* Except for the original signing of this contract, and except as otherwise stated herein, the term "Contracting Office" as used herein shall include his duly appointed successor or his authorized representative.

SPECIAL PROVISIONS

1. *Methods of Presenting Invoices or Vouchers.* [Appropriate clauses to be inserted.]

2. *Methods of Packing, Shipping and Marking.* [Appropriate clauses to be inserted.]

[Add further appropriate clauses.]

CONTINUATION SHEET

Sheet No. .....

Item No.	Supplies or services	Quantity	Unit	Unit price	Amount
	Total.....				

Sheet to be added when applicable.
Sheet No. .....

Articles on this continuation sheet should be included or deleted in accordance with applicable regulations. If article "A" is included, fill in blanks appearing in paragraph (d) (2) thereof as prescribed in regulations.

A. Termination at the option of the Government.—(Insert clause in § 803.324 (g).

B. Renegotiation. (Insert article in § 803.342 (a).

§ 813.1317c *W. D. Contract Form No. 47 (W. D Forms Nos. 47 and 47-a); Short Form, Revised 1 April 1944—(a) Explanatory notes.* (1) This form was formerly known as W. D. Contract Form No. 17. It has been renumbered as W. D. Contract Form No. 47 to make the "W. D. Contract Form No." conform to the "W. D. Form No."

(2) W. D. Contract Form No. 47 comprising W. D. Forms Nos. 47 and 47-a,

is available for optional use by the technical services (including the service commands) for procuring any supplies or services, regardless of the number or period of deliveries or the number of payments involved, where:

(a) The amount of the purchase does not exceed $1,000,000; and

(b) No special contract form is available and suitable for the particular type of procurement; and

(c) No special contract provisions are required the inclusion of which in the particular case would unduly complicate the form.

(3) The form calls for execution both by the Contracting Officer and the contractor. When so executed, it should be complete in itself, without reference to other documents such as proposal or bid forms.

(4) When filled in, signed by the Contracting Officer, and delivered to the contractor, the form (W. D. Form No. 47 alone, or both W. D. Forms Nos. 47 and 47–a, with or without further continuation sheets) constitute an offer by the Government to contract on the terms set forth. So far as the information is available at the time the form is delivered to the Contractor, all applicable blanks should be filled in. Where a particular matter is not known at the time the form is delivered to the Contractor (for example, "Ship To" or "Schedule of Delivery"), the blanks should be filled in with appropriate language indicating how such information will be subsequently furnished.

(5) When signed by the contractor in the space marked "Contractor's Acceptance" and returned to the Government in the time allowed, the form becomes a binding contract provided the contractor has not made any changes by way of deletion, interlineation or addition, thus departing from the terms of the offer. Contractors should be instructed to inform the Contracting Officer of any changes which appear to be required, so that amendments may be made and initialled by both parties, or a corrected form issued.

(6) General Provision No. 2 (Inspection) provides that "whether or not an inspection point is specified herein," inspection may occur at all times and places, etc. A line is provided on the face of W. D. Form No. 47 for insertion of inspection point.

(7) General Provision 3 (Variation in Quantities) permits a variation of 10% "unless otherwise specified." Statement of a permitted variation other than 10% may be inserted in any space on the form or on a continuation sheet.

(8) Methods of presenting invoices or vouchers, and of packing, marking and shipping will be as specified in any space on the form or on a continuation sheet, except as otherwise directed by the Contracting Officer.

(9) Continuation sheets may be used as extensions of columns on the form (for example, the column marked "Supplies or Services"), or for inclusion of any further contract clauses which may be necessary or advisable (for example, the clause on subcontracting, § 803.367, or patents clauses, § 803.335 et seq.).

(10) W. D. Forms 47 and 47–a will be requisitioned as prescribed in AR 310–200. Requisitioning agencies should specify bond or tissue in requisitioning these forms.

(b) *Contract forms.*

W. D. Form No. 47
Revised 1 April 1944

WAR DEPARTMENT
GOVERNMENT'S ORDER AND CONTRACTOR'S ACCEPTANCE

Date.....

W. D. establishment, Office or station, and address:

.....

.....

.....

To:.....
(Contractor)

.....
(Address)

.....
(Factory Address)

SHIP TO:.....

.....

Contract No. (if any) W-.....

Order No.....

Above numbers must appear on all packages and papers relating to this order.

Payment will be made by Finance Officer, U. S. Army,

at.....

The supplies and service, to be obtained by this instrument are authorized by, are for the purposes set forth in, and are chargeable to the following allotments, the available balances of which are sufficient to cover the cost thereof:

This contract is authorized by and negotiated under the First War Powers Act, 1941 (Public 354, 77th Cong.), and Executive Order No. 9001 (Dec. 27, 1941).

GOVERNMENT'S ORDER

Please furnish the following on the terms specified on both sides of this page and on the continuation sheets, if any, attached hereto, including delivery f. o. b.....

Acceptance must be received by the Government within.....days after the date first above written.

Methods of presenting invoices or vouchers, and of packing, marking, and shipping, shall be as provided herein, except as otherwise directed by the Contracting Officer.

Inspection points.....

Schedule of delivery.....

Item No.	Supplies or Services	Quantity	Unit	Unit Price	Amount
	Total.....				

CONTRACTOR'S ACCEPTANCE

Accepted this.....day of....., 194..

By.....

Title.....
(Authorized to accept this order)

UNITED STATES OF AMERICA,

By.....

Title.....
Contracting Officer.

[Reverse side of W. D. Contract Form No. 47]

GENERAL PROVISIONS

1. *Payments.* (Insert Article 8, § 813.1301.)

2. *Inspection.* Whether or not an inspection point is specified herein, all material and workmanship shall be subject to inspection and test at all times and places (including inspection and test after arrival at destination) and, when practicable, during manufacture. In case any articles are found to be defective in material or workmanship, or otherwise not in conformity with the specification requirements, the Government shall have the right to reject such articles, or require their correction. Final inspection shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud. In the event public necessity requires the use of materials or supplies not conforming to the specifications, payment therefor shall be made at a proper reduction in price.

3. *Variation in quantities.* (Insert clause in § 803.329.)

4. *Notice of shipments.* (Insert clause in § 803.328.)

5. *Taxes.* (Insert clause in § 803.357 (c).)

6. *Walsh-Healey Act.* If this contract is for an amount in excess of $10,000, the representations and stipulations required by Section 1 of the Act of June 30, 1936 (Walsh-Healey Act, Public No. 846, 74th Cong.) to be included in all contracts therein specified are hereby incorporated and made a part of this contract with the same force and effect as if fully set forth in the contract. Such representations and stipulations shall be subject to all applicable regulations, determinations, and exceptions of the Secretary of Labor now or hereafter in effect.

7. *Eight-Hour Law.* This General Provision 7 shall apply if General Provision 6 is not applicable. (Insert § 803.346.)

8. *Anti-Discrimination.* (Insert clause in § 803.325.)

9. *Convict labor.* The Contractor shall not employ any person undergoing sentence of imprisonment at hard labor.

10. *Changes.* Where the supplies to be furnished are to be specially manufactured in accordance with drawings and specifications, the Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes in the drawings or specifications. Changes as to shipment and packing of all supplies may also be made as above provided. If such changes cause an increase or decrease in the amount due under this contract, or in the time required for its performance, an equitable adjustment shall be made and the contract shall be modified in writing accordingly.

11. *Delays—Damages.* If the Contractor refuses or fails to perform this contract within the time specified, or any extension thereof, the Government may, by written notice, terminate the right of the Contractor to proceed with deliveries or with such part or parts thereof as to which there has been delay, and may hold the Contractor liable for any dam-

age caused the Government by reason or such termination. The right of the Contractor to proceed with the performance of this contract shall not be terminated under this General Provision 11 if the delay is due to causes beyond the control and without the fault or negligence of the Contractor, including without being limited to, any preference, priority, or allocation order issued by the Government or any other act of the Government.

12. *Disputes.* Except as otherwise specifically provided in this contract, all disputes concerning questions of fact which may arise under this contract, and which are not disposed of by mutual agreement, shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail a copy thereof to the Contractor. Within 30 days from said mailing the Contractor may appeal to the Secretary of War, whose decision or that of his designated representative, representatives, or board shall be final and conclusive upon the parties hereto. Pending decision of a dispute hereunder the Contractor shall diligently proceed with the performance of this contract.

13. *Assignment of rights hereunder* This General Provision 13 shall apply if this contract is for $1,000 or more, unless this contract is marked secret, confidential or restricted. (Insert clause in § 803.355.)

14. *Officials not to benefit.* (Insert clause in § 803.322.)

15. *Covenant against contingent fees.* (Insert clause in § 803.323.)

16. *Definitions.* Except for the original signing of this contract, and except as otherwise stated herein, the term "Contracting Officer" as used herein shall include his duly appointed successor or his authorized representative.

W. D. Form No. 47–a

(Revised 1 April 1944)

Continuation Sheet No. ------ of Continuation Sheets

Articles on this continuation sheet should be included or deleted in accordance with applicable regulations. If Article "A" is included, fill in blanks appearing in paragraph (d) (2) thereof as prescribed in regulations.

A. *Termination at the option of the Government.* (Insert § 803.324 (7)).

B. *Renegotiation.* (Insert article in § 803.342 (a).)

§ 813.1317d *W. D. Contract Form No. 5; short form—*(a) *Explanatory notes.* (1) W. D. Contract Form No. 5 is available for optional use by the technical services (including the service commands) for procuring any supplies or services, regardless of the number or period of deliveries or of the number of payments involved, where:

(i) The amount of the purchase does not exceed $1,000,000; and

(ii) No special contract form is available and suitable for the particular type of procurement; and

(iii) No special contract provisions are required, the inclusion of which in the particular case would unduly complicate the form.

(2) Each technical service will insert, under "Special Provisions" appearing on the reverse side of the first sheet, appropriate clauses covering "Methods of Presenting Invoices or Vouchers" and "Methods of Packing, Shipping and Marking," and such other clauses as may be necessary or advisable (for example, the clause on subcontracting, § 803.367, and patents clauses, § 803.335 et seq.).

(b) *Contract forms.*

W. D. Contract Form No. 5.

WAR DEPARTMENT

INFORMAL INVITATION, INFORMAL BID, AND ACCEPTANCE

Date ----------
W. D. establishment, office or station, and address:

Contract No. (if any) W----------
Order No. ----------
These numbers must appear on all packages and papers relating to this order.
Invitation No.----------

The supplies and services to be obtained by this instrument are authorized by, are for the purposes set forth in, and are chargeable to the following allotments, the available balances of which are sufficient to cover the cost thereof:
This contract is authorized by and negotiated under the First War Powers Act, 1941 (Public 354, 77th Cong.), and Executive Order No. 9001 (Dec. 27, 1941).

For methods of presenting invoices or vouchers, see Special Provision 1.
Payment will be made by Finance Officer, U. S. Army at----------
---

INFORMAL INVITATION

Sealed informal bids, in ----------, subject to the terms specified on both sides of this page and on the continuation sheets numbered ------ to ------ inclusive, attached hereto, will be received at this office until ---------- o'clock, ---------- m., ----------, 194---, for furnishing the supplies or services listed, including delivery f. o. b.----------
Each sheet must show the name of the bidder.
(Insert the clause in § 803.360)
Methods of packing, marking and shipping shall be as provided herein except as otherwise directed by the Contracting Officer.
Inspection points:----------
Ship to:----------
Schedule of deliveries:----------

Item No.	Supplies or services	Quantity	Unit	Unit price	Amount
	Total				

UNITED STATES OF AMERICA,
By ----------,
Contracting Officer
Title ----------

INFORMAL BID

Date ----------
In compliance with the above informal invitation for bids, and subject to all the conditions thereof, the undersigned offers, and agrees, if this bid be accepted within ---------- calendar days from the date of the opening, to furnish any or all of the items upon which the undersigned has quoted prices, at the price set opposite each item. It is understood that the Government reserves the right to reject any and all bids regardless of whether the same constitute the lowest bids.
Bidder ---------- Address ----------
By ---------- ----------
Title ---------- ----------
authorized to make this bid.

ACCEPTANCE BY GOVERNMENT

Accepted as to items numbered:
Date ----------
UNITED STATES OF AMERICA,
By ----------
Contracting Officer
Title ----------

[Reverse side of W. D. Contract Form No. 5]

This is the same as reverse side of Purchase Order, W. D. Contract Form No. 18 (see § 813.1317b).

[Continuation Sheet for W. D. Contract Form No. 5]

This is the same as continuation sheet for Purchase Order, W. D. Contract Form No. 18 (see § 813.1317b).

[Sheet to be added when applicable]

This is the same as the added sheet for Purchase Order, W. D. Contract Form No. 18 (see § 813.1317b).

§ 813.131e *W. D. Contract Form No. 19.*

WAR DEPARTMENT
DELIVERY ORDER

Date_____ Delivery Order No._____

W.D. establishment, office or station, and address: This delivery order applies to the following basic purchase agreement:
Contract (or purchase order) No._____

To:_____
Address:_____
Factory Address:_____

For methods of presenting invoices or vouchers, see basic purchase agreement.
Payment will be made by Finance Officer, U. S. Army at_____

Ship to:_____

Schedule of deliveries:_____

The supplies and services to be obtained by this instrument are authorized by, are for the purposes set forth in, and are chargeable to the following allotments, the available balances of which are sufficient to cover the cost thereof:

Please furnish the following on the terms specified in the basic purchase agreement identified above, including delivery, f.o.b._____
Methods of packing, marking and shipping shall be as provided in the basic purchase agreement, except as otherwise directed by the Contracting Officer.
Inspection points:_____

Item No.	Supplies or services	Quantity	Unit	Unit price	Amount
	Total				

Contractor is requested to acknowledge receipt of this Delivery Order to the issuing office.

UNITED STATES OF AMERICA,
By_____
Contracting Officer
Title_____

§ 803.1317f *W. D. Contract Form No. 6; short form*—(a) *Explanatory notes.* (1) W. D. Contract Form No. 6 is available for optional use by the technical services (including the service commands) for procuring any supplies or services, regardless of the number or period of deliveries or of the number of payments involved, where:

(i) The amount of the purchase does not exceed $1,000,000; and

(ii) No special contract form is available and suitable for the particular type of procurement; and

(iii) No special contract provisions are required, the inclusion of which in the particular case would unduly complicate the form.

(2) Each technical service will insert, under "Special Provisions" appearing on the reverse side of the first sheet, appropriate clauses covering "Methods of Presenting Invoices or Vouchers" and "Methods of Packing, Shipping and Marking," and such other clauses as may be necessary or advisable (for example, the clause on subcontracting, § 803.367, and patents clauses, § 803.335 et seq.).

(b) *Contract form. W. D. Contract Form No. 6.*

WAR DEPARTMENT
CONTRACTOR'S OFFER AND GOVERNMENT'S ACCEPTANCE

W. D. establishment, office or station and address:

Contract No. (if any) W_____
Order No._____
These numbers must appear on all packages and papers relating to this order.

The supplies and services to be obtained by this instrument are authorized by, are for the purposes set forth in, and are chargeable to the following allotments, the available balances of which are sufficient to cover the cost thereof:
This contract is authorized by and negotiated under the First War Powers Act, 1941 (Public 354, 77th Cong.), and Executive Order No. 9001 (Dec. 27, 1941).

For methods of presenting invoices or vouchers see Special Provision 1.
Payment will be made by Finance Officer U. S. Army at_____

CONTRACTOR'S OFFER

Date_____

Confirming negotiations, the undersigned offers to furnish any or all of the following on the terms specified on both sides of this page and on the continuation sheets numbered _____ to _____ inclusive, attached hereto, including delivery f. o. b._____
Government's acceptance must be received within _____ days from the date shown above.
Methods of PACKING, MARKING and SHIPPING shall be as provided herein except as otherwise directed by the Contracting Officer.
Inspection points:_____
Ship to:_____
Schedule of deliveries:_____

Item No.	Supplies or services	Quantity	Unit	Unit price	Amount
	Total				

Contractor_____ Address_____
By_____
Title_____
(authorized to make this offer)

ACCEPTANCE BY GOVERNMENT

Accepted as to items numbered: Date_____

UNITED STATES OF AMERICA,
By_____
Title_____
Contracting Officer

[Reverse side of W. D. Contract Form No. 6]

This is the same as reverse side of Purchase Order, W. D. Contract Form No. 18 (see § 813.1317b).

[Continuation Sheet for W. D. Contract Form No. 6]

This is the same as continuation sheet for Purchase Order, W. D. Contract Form No. 18 (see § 813.1317b).

[Sheet to be added when applicable]

This is the same as the added sheet for Purchase Order, W. D. Contract Form No. 18 (see § 813.1317b).

§ 813.1320 *W. D. Contract Form No. 20.*

WAR DEPARTMENT

Supplemental Contract to Contract No. ____ and Contract No. ____, etc.

_____
(Name of technical service)

Whereas, under date of _____
(Insert date of original contract)
a contract numbered_____, was
(Insert number of original contract)
entered into between the United States of America by_____
(Insert name, rank, and branch of Contracting Officer)
U. S. Army, as Contracting Officer, acting by authority of the Secretary of War, hereinafter referred to as the Government, and _____,
(Insert name of contractor)
a corporation organized and existing under the laws of the State of _____ hereinafter referred to as the Contractor, providing for the construction of_____ _____ (the furnishing of _____)
(Insert number of units for amount of equipment purchased)
by the Contractor, and

Whereas, it is provided by Section 201, Title II of Public Act No. 354, 77th Congress, approved December 18, 1941, that the President may authorize any department or agency of the Government exercising functions in connection with the prosecution of the war effort to enter into contracts and to make advance, progress, and other payments thereon, whenever he deems such action would facilitate the prosecution of the war; and

Whereas, by Executive Order 9001 issued December 27, 1941, the President has au-

thorized the War Department to make such advance payments; and

Whereas, the making of advance payments to the Contractor is deemed necessary by the War Department to facilitate the prosecution of the war,

Now therefore, this supplemental contract is entered into this _____ day of _____, 194__, between the Government and the Contractor, said parties agreeing to and with each other as follows:

ARTICLE 1. At any time and from time to time, after the approval of this supplemental contract, at the request of the Contractor and subject to the approval of the _____ or his
(Chief of technical service)
duly authorized representative, or of the person to whom authority has been delegated to make advance payments, as to the present need therefor, the Government shall advance to the Contractor sums not to exceed _____ or
(Insert amount of advance payment)
_____ per cent (____%) of the principal contract price (or principal contract prices), as it (they) may be amended, whichever shall be the smaller. On the unliquidated balance of the advance payments outstanding, the Contractor agrees to pay interest at the rate of two and one-half percent (2½%) per annum to be computed in accordance with the provisions of Article 6 hereof.

ART. 2. As a condition precedent to the making of any advance payment or payments as hereinbefore provided, the Contractor shall furnish the Government with such adequate security as the Under Secretary of War or the person to whom authority has been delegated to make advance payments shall prescribe: *Provided,* That, if other security is not prescribed, the terms of this supplemental contract shall be considered adequate security for such advance payments; and *Provided further,* That if at any time the Under Secretary of War deems the security furnished by the Contractor inadequate, the Contractor shall furnish such additional security as shall be satisfactory to the Under Secretary of War.

ART. 3. Until all advance payments hereunder are liquidated, all funds received as advance payments under this supplemental contract together with_____
(Insert percent to be deposited which shall be not less than 85%)
percent (___%) of all other cash payments under the principal contract (or principal contracts), shall be deposited in a special bank account or accounts at a member bank or banks of the Federal Reserve System, or any "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation (Act of August 23, 1935; 49 Stat. 684, as amended; 12 U. S. C. 264), separate from the Contractor's general or other funds. Such special bank account or accounts shall be so designated as to indicate clearly to the bank their special character and purpose, and the balance in such account or accounts shall be used by the Contractor exclusively as a revolving fund for carrying out the purposes of the principal contract (or principal contracts), (including reimbursement to the Contractor for any reasonable amounts expended by him for such purposes), and any amendments thereto, and not for the other business of the Contractor; (*Provided:* That it is understood that all funds deposited in the said special account created hereunder may be used by the Contractor for the purposes of either or all of the principal contracts without regard to the origin of such payments; and) [1] *Provided:* That for the purpose of determining proper disposition of funds hereunder such of the Contractor's costs as may not be directly allocable to the principal contract (or principal contracts), as it (or they) may be amended, may be charged against funds deposited in the special account in that proportion which the amount of the work being done under the principal contract (or principal contracts), as it (they) may be amended, approximately bears to the total amount of work being performed by the Contractor, out of which such costs also arise, but within the period to which such costs relate. When required by the _____
(Chief of technical service)
his duly authorized representative, or by other person to whom authority to make advance payments has been delegated, withdrawals from special account or accounts shall be made subject to the prior written approval of the Contracting Officer or his duly authorized representative. Any balances from time to time in such special account or accounts shall secure the repayment of the advances in connection with which the special account or accounts are opened, and the Government shall have a lien upon such balances to secure the repayment of such advances, which lien shall be superior to any lien of the bank, or any other person, upon such account or accounts by virtue of assignment to it of the principal contract (or contracts) or otherwise, *Provided:* That the bank shall be under no liability to any party hereto for the withdrawal of any funds from said special account upon checks, properly endorsed and signed by the Contractor, except that after the receipt by the bank of written directions from the _____ or his duly
(Chief of technical service)
authorized representative, the bank shall act thereon and be under no liability to any party hereto for any action taken in accordance with the said written directions. Any instructions or written directions received by the bank through the Contracting Officer upon War Department stationery and purporting to be signed by, or by the direction of, the _____ or his duly
(Chief of technical service)
authorized representative, shall, insofar as the rights, duties, and liabilities of the bank are concerned, be conclusively deemed to have been properly issued and filed with the bank by the _____ or his duly
(Chief of technical service)
authorized representative.

ART. 4. If, upon completion of the principal contract (or of any of the principal contracts), or upon the termination thereof for other than the fault of the Contractor, the advance payments made to the contractor in respect of such contract have not been fully liquidated in the manner herein provided, the unliquidated balance of such advance payments shall be deducted from any payments otherwise due the Contractor in respect of such contract; and if the sum or sums due the Contractor be insufficient to cover such balance, the deficiency shall be paid by the Contractor in cash forthwith after demand and final audit by the Government of all accounts hereunder in respect of such contract: *Provided, however,* That in the event of such termination of the contract for other than the fault of the Contractor, such deduction shall not be made prior to final audit unless, and only to the extent that, the Contracting Officer or his duly authorized representative shall determine that such action is reasonably required in order to secure the eventual repayment in full to the Government of such unpaid advance payments. In the event of cancellation or termination of the principal contract (or of any of the principal contracts) because of the fault of the Contractor, the Contractor, notwithstanding any ultimate rights to be reimbursed, agrees to return to the Government, upon demand, without set-off of any sums alleged to be due the Contractor, the unliquidated balance of any advance payment. Furthermore, if, in the opinion of the _____ or his
(Chief of technical service)
duly authorized representative, the unobligated balance of the advance payments made by the Government under Article 1 hereof exceeds the amount necessary for the current needs of the Contractor, as determined by the _____ or his
(Chief of technical service)
duly authorized representative the amount of such excess shall, upon demand by the _____ or his
(Chief of technical service)
duly authorized representative, be promptly returned to the Government and will be credited against the balance due the Government on advances previously made. If the demand made in any event set forth in this Article is not met upon receipt of such demand by the Contractor, the amount demanded will bear interest at the rate of six percent (6%) rather than two and one-half percent (2½%) per annum from the date of the receipt of the demand until payment is made: *Provided, however,* That such additional interest over and above the regular two and one-half percent is hereby waived as to any sums paid by the Contractor within 15 days after the amount becomes due hereunder.

ART. 5. Except as otherwise provided herein, liquidation of the principal of any advance payment or advance payments made to the Contractor hereunder shall be made by deductions of _____ percent (____%) from any and all payments made by the Government under the terms of the principal contract (or principal contracts) or by means of direct repayments by the Contractor from his own free funds or from the special account or accounts: *Provided:* That if at any time, as a result of amendments to the principal contract (or principal contracts) or otherwise, the unliquidated balance of the principal of advance payments made exceeds _____ percent (____%) of the balance of the total contract price then unpaid, the amount of such excess which has not then been expended or obligated shall upon demand of the _____,
(Chief of technical service)
or his duly authorized representative be promptly returned to the Government by withdrawal from the special account or accounts or otherwise, and that portion of the excess which has been expended or obligated may, at the option of the Contractor, be so returned and if not so returned, shall, together with any unexpended or unobligated portion of the excess not otherwise returned to the Government, be deducted from any and all payments to be made by the Government under the principal contract (or principal contracts); *Provided further;* That if and when the Contractor has, by means of deductions or otherwise, reimbursed the Government in full for payments made, any money remaining in the special bank account or accounts shall be free and clear of any lien hereunder and the bank or banks concerned shall have authority to pay same to the Contractor and shall thereupon be relieved of any further obligation to the Government on account thereof.

ART. 6. On the unliquidated balance of the advance payments outstanding, the Contractor agrees to pay interest at the rate of two and one-half percent (2½%) per annum. Such interest shall be computed at the end of each calendar month on the average daily balance of the principal of the unliquidated advance payments outstanding. In determining such balance, charges on account of the advance payments to the Contractor hereunder shall be made as of the dates of the checks therefor; credits arising from deductions from payments to the Contractor under

[1] This proviso to be used where agreement is supplemental to two or more contracts.

the principal contract or principal contracts shall be made, upon the issue of the check for such payment, as of the dates of shipment as indicated on the Contractor's invoice and/or Government Receiving Report, and credits arising from cash repayments to the Government by the Contractor shall be made as of the dates the checks therefor are received by the disbursing officer. As soon as such monthly computations shall have been made, the interest so determined shall be deducted from the payments otherwise due the Contractor under this contract, *Provided, however,* That in no event shall deductions on account of interest exceed five percent (5%) of the gross payment due the Contractor prior to any deduction under this Article or Article 5 or any other provisions of this contract. In the event the accrued interest exceeds such five percent, the excess of such interest shall be carried forward and deducted from subsequent payments. The interest shall not be compounded, and shall, subject to the provisions of Article 4 hereof, cease to accrue upon the termination of the contract for other than the fault of the Contractor, or upon the date found by the Contracting Officer to be the date upon which the Contractor completed his performance under the contract.

ART. 7. The Contractor shall, at all times, afford to the Contracting Officer, or his duly authorized representative, proper facilities for the inspection and audit of the Contractor's accounts, and the Contractor hereby agrees that the Contracting Officer, or his duly authorized representative, shall have the right, so far as the Contractor's rights are concerned, during business hours, to inspect and make copies of any entries in the books and records of the bank or banks relating to the said special account or accounts.

ART. 8. Subject to the approval of the Contracting Officer or his duly authorized representative the Contractor may make payments to subcontractors and materialmen in advance out of the special account, for labor or services, or to pay for materials in advance of delivery at the site of the work or at an approved storage site. Such subadvances shall not exceed _____ percent (____%) of the subcontract price and the subcontractor or materialmen to whom such advances are made shall furnish adequate security therefor. Unless other security is furnished, covenants in subcontracts, expressly made for the benefit of the Government, providing for a subspecial account with Government lien thereon and for a Government lien on property, tangible or intangible, purchased from the special account, and imposing upon the subcontractor substantially the same duties and giving the Government substantially the same rights as are provided herein between the Government and the Contractor, have been prescribed by the Under Secretary of War as minimum adequate security for such subadvances.

ART. 9. If no surety bond is furnished as part of the security under Article 2 hereof, then, upon receipt of items or materials paid for from such special account or accounts, such items or materials shall be segregated and the Government shall have a lien on such items or materials until the advance payment or payments have been fully liquidated, or until the item or items and/or materials concerned have become the property of the Government as the result of partial payments, or otherwise; *Provided,* That, if segregation in any instance be impracticable and the items or materials concerned are consequently intermingled with other property of the Contractor then and in that event the lien above provided for in favor of the Government shall extend to the intermingled mass to the amount represented by the value of the items or materials involved; and, without limiting the generality of the foregoing, such lien shall continue as follows: (a) in case the contract covers construction, until such items or materials are incorporated into the building, and thereafter on the building in the construction of which the items or materials are incorporated; (b) in the case of items or materials comprising facilities, on such facilities, both before and after their installation in the plant; and (c) in the case of articles contracted for, until the items or materials so paid for are fabricated into such articles, and thereafter on the articles until accepted by the Government [; and the Government shall hereby likewise have an effective assignment of a security interest in all intangible property purchased, or otherwise acquired with funds from said special account][1] If at any time during the progress of the work under the principal contract (or principal contracts) it becomes necessary to deliver any item or items and/or materials upon which the Government has a lien as aforesaid to a third person, the Contractor shall notify such third person of the lien herein provided and shall obtain from such third person a receipt, in duplicate, acknowledging, inter alia, the existence of such lien. A copy of each receipt shall be delivered by the Contractor to the Contracting Officer.

ART. 10. Any assignment of moneys due or to become due under the principal contract (or principal contracts) shall be subordinate to the rights or claims of the Government arising under the principal contract (or principal contracts) or any amendment thereto by virtue of any advance payments authorized herein or otherwise: *Provided,* That, if at any time any claim arising under the principal contract (or principal contracts) is assigned or purportedly assigned in any manner inconsistent with the said rights of the Government, the _____ (Chief of supply service) _____ or his duly authorized representative shall have the right to suspend further advance payments without notice.

ART. 11. Except as hereby amended, all the terms and conditions of the contract (or contracts) affected shall remain unmodified and in full force and effect and shall also apply in carrying out the provisions of this agreement.

In witness whereof, the parties hereto have executed this supplemental contract on the day and year first above written.

THE UNITED STATES OF AMERICA,
By _____
_____
(Official Title)
_____
(Contractor)
By _____
_____
(Business Address)
Two Witnesses:
_____
_____
(Address)
_____
_____
(Address)

I _____, certify that I am the Secretary of the corporation named as Contractor herein; that _____ who signed this supplemental contract on behalf of the Contractor was then _____ _____ of said corporation; that said supplemental contract was duly signed for and on behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

In witness whereof, I have hereunto affixed my hand and the seal of said corporation this _____ day of _____, 19____.

[CORPORATE SEAL] _____
(Secretary)

[1] The bracketed provision may be inserted in the case of experimental contracts or other cases where deemed especially appropriate.

I hereby certify that, to the best of my knowledge and belief, based upon observation and inquiry, _____, who signed this supplemental contract for _____ had authority to execute the same, and is the individual who signs similar contracts on behalf of this corporation with the public generally.

_____
(Contracting Officer)

§ 813.1321 *W. D. Contract Form No. 21.*

WAR DEPARTMENT

Supplement Contract to Contract No. _____
_____
(Name of technical service)

Whereas, under date of _____ (Insert date of original contract), a contract numbered _____ (Insert number of original contract) was entered into between the United States of America by _____ (Insert name, rank, and branch of contracting officer) _____ U. S. Army, as Contracting Officer, acting by authority of the Secretary of War, hereinafter referred to as the Government, and _____, (Insert name of Contractor) a corporation organized and existing under the laws of the State of _____, hereinafter referred to as the Contractor, providing for the construction of _____ (the furnishing of _____ (Insert number of units or amount of equipment purchased)) by the Contractor, and

Whereas, it is provided by Section 201, Title II of Public Act No. 354, 77th Congress, approved December 18, 1941, that the President may authorize any department or agency of the Government exercising functions in connection with the prosecution of the war effort to enter into contracts and to make advance, progress, and other payments thereon whenever he deems such action would facilitate the prosecution of the war; and

Whereas, by Executive Order 9001, issued December 27, 1941, the President has authorized the War Department to make such advance payments; and

Whereas, the making of advance payments to the Contractor is deemed necessary by the War Department to facilitate the prosecution of the war,

Now, therefore, this supplemental contract is entered into this _____ day of _____, 194__, by the Government and the Contractor, said parties agreeing to and with each other as follows:

ART. 1. At any time and from time to time after the execution of this supplemental contract, the Government at the request of the Contractor and subject to the approval of the _____ (Chief of technical service) or his duly authorized representative, or the person to whom authority to make advance payments has been delegated, as to the present need therefor shall advance to the Contractor sums not to exceed _____ per centum (_____%) of the estimated cost of the principal contract (exclusive of the Contractor's fixed fee), as it may be amended from time to time. On the unliquidated balance of the advance payments outstanding, the Contractor agrees to pay interest at the rate of two and one-half percent (2½%) per annum to be computed in accordance with the provisions of Article 6 hereof.

ART. 2. As a condition precedent to the making of any advance payment or payments as hereinbefore provided, the Contractor shall furnish the Government with such adequate security as the Under Secretary of War or the

person to whom authority has been delegated to make advance payments shall prescribe: *Provided,* That, if other security is not prescribed, the terms of this supplemental contract shall be considered adequate security for such advance payments; and *Provided further:* That if at any time the Under Secretary of War deems the security furnished by the Contractor inadequate, the Contractor shall furnish such additional security as shall be satisfactory to the Under Secretary of War.

ART. 3. Until all advance payments hereunder are liquidated, all funds received as advance payments under this supplemental contract together with all funds received as reimbursements for the cost of the work under Article _____ of the principal contract, exclusive of the Contractor's fixed fee, shall be deposited in a special bank account or accounts as a member bank or banks of the Federal Reserve System or any "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation (Act of August 23, 1935; 49 Stat. 684, as amended; 12 U. S. C. 264) separate from the Contractor's general or other funds. Such special bank account or accounts shall be so designated as to indicate clearly to the bank their special character and purpose, and the balance in such account or accounts shall be used by the Contractor exclusively as a revolving fund for carrying out the purposes of the principal contract and any amendments thereto, and not for other business of the Contractor. Any balances from time to time in such special account or accounts shall at all times secure the repayment of the advances in connection with which the special account or accounts are opened, and the Government shall have a lien upon such balances to secure the repayment of such advances, which lien shall be superior to any lien of the bank or any other person upon such account or accounts by virtue of assignment to it of such contract or otherwise; *Provided,* That the bank shall be under no liability to any party hereto for the withdrawal of any funds from said special account upon checks properly endorsed and signed by the Contractor, except that after the receipt by the bank of written directions from the _____ or his
(Chief of technical service)
duly authorized representative, the bank shall act thereon and be under no liability to any party hereto for any action taken in accordance with the said written directions. Any instructions or written directions received by the bank through the Contracting Officer upon War Department stationery and purporting to be signed by, or by the direction of, the _____ or his
(Chief of technical service)
duly authorized representative, shall, insofar as the rights, duties, and liabilities of the bank are concerned, be conclusively deemed to have been properly issued and filed with the bank by the _____
(Chief of technical service)
or his duly authorized representative.

ART. 4. It is agreed that the aggregate of the advance payments outstanding under this supplemental contract, together with funds received as reimbursement for the cost of the work by the Contractor under Article _____ of the principal contract shall, at no time, exceed the total estimated cost of the work under the principal contract as it may be revised from time to time, and any such excess shall be immediately repaid by the Contractor to the Government or if any reimbursement is due from the Government to the Contractor, shall be deducted therefrom: *Provided, however,* That if the total cost of the work under the principal contract shall be in excess of the amount so paid to the Contractor, shall be deducted therefrom: the Government upon presentation of satisfactory evidence shall currently and promptly reimburse the Contractor to the extent of such excess cost (subject to any delay in the availability of appropriated funds).

ART. 5. If, upon completion of the principal contract, or upon the termination thereof for other than the fault of the Contractor, the advance payments made to the Contractor in respect of such contract have not been fully liquidated in the manner herein provided, the unliquidated balance of such advance payments shall be deducted from any payments otherwise due the Contractor in respect of such contract; and if the sum or sums due the Contractor be insufficient to cover such balance, the deficiency shall be paid by the Contractor in cash forthwith after demand and final audit by the Government of all accounts hereunder in respect of such contract: *Provided, however,* That in the event of such termination of the contract for other than the fault of the Contractor, such deduction shall not be made prior to final audit unless, and only to the extent that, the Contracting Officer or his duly authorized representative shall determine that such action is reasonably required in order to secure the eventual repayment in full to the Government of such unliquidated advance payments. In the event of cancellation or termination of the principal contract because of the fault of the Contractor, the Contractor, notwithstanding any ultimate rights to be reimbursed, agrees to return to the Government upon demand, without set-off of any sums alleged to be due the Contractor, the unliquidated balance of any advance payment. Furthermore, if, in the opinion of the _____ or his
(Chief of technical service)
duly authorized representative, the unobligated balance of the advance payments made by the Government under Article 1 hereof exceeds the amount necessary for the current needs of the Contractor, as determined by the _____ or his
(Chief of technical service)
duly authorized representative, the amount of such excess shall, upon demand by the _____ or his duly
(Chief of technical service)
authorized representative, be promptly returned to the Government and will be credited against the balance due the Government on advances previously made. If the demand made in any event set forth in this Article is not met upon receipt of such demand by the Contractor, the amount demanded will bear interest at the rate of six percent (6%) rather than two and one-half percent (2½%) per annum from the date of the receipt of the demand until payment is made: *Provided, however,* That such additional interest over and above the regular two and one-half percent is hereby waived as to any sums paid by the Contractor within 15 days after the amount becomes due hereunder. If and when the Contractor has, by means of deductions or otherwise, reimbursed the Government in full for payments made, any money remaining in the special bank account or accounts shall be free and clear of any lien hereunder, and the bank or banks concerned shall have authority to pay same to the Contractor and shall thereupon be relieved of any further obligation to the Government on account thereof.

ART. 6. On the unliquidated balance of the advance payments outstanding, the Contractor agrees to pay interest at the rate of two and one-half percent (2½%) per annum. Such interest shall be computed at the end of each calendar month on the average daily balance of the principal of the unliquidated advance payments outstanding. In determining such balance, charges on account of the advance payments to the Contractor hereunder shall be made as of the dates of the checks therefor; credits resulting from disbursements made by the Contractor which are applied against advance payments shall be made upon the approval of the vouchers therefor by the disbursing officer, as of the dates respectively upon which the contractor presents to the contracting officer or his duly authorized representative full and accurate data for the preparation of each such voucher which date shall, as to each such voucher, be certified by the contracting officer or his duly authorized representative on the face thereof; and credits arising from cash repayments to the Government by the Contractor shall be made as of the dates the checks therefor are received by the disbursing officer. As soon as such monthly computations shall have been made, the interest charge so determined shall be deducted from any payments on account of the fixed fee which may be made to the Contractor from time to time under this contract. In the event the accrued interest exceeds any such payment, the excess of such interest shall be carried forward and deducted from subsequent payments on account of the fixed fee. The interest shall not be compounded, and shall, subject to the provisions of Article 5 hereof, cease to accrue upon the termination of the contract for other than the fault of the Contractor, or upon the date found by the Contracting Officer to be the date upon which the Contractor completed his performance under the contract.

ART. 7. The Contractor shall, at all times, afford to the Contracting Officer, or his duly authorized representative, proper facilities for the inspection and audit of the Contractor's accounts, and the Contractor hereby agrees that the Contracting Officer, or his duly authorized representative, shall have the right so far as the Contractor's rights are concerned, during business hours, to inspect and make copies of any entries in the books and records of the bank or banks relating to the said special account of accounts.

ART. 8. Subject to the approval of the Contracting Officer or his duly authorized representative the Contractor may make payments to subcontractors and materialmen in advance out of the special account, for labor or services, or to pay for materials in advance of delivery at the site of the work or at an approved storage site. Such subadvances shall not exceed _____ percent (_____%) of the subcontract price or estimated cost, as the case may be, and the subcontractor or materialmen to whom such advances are made shall furnish adequate security therefor. Unless other security is furnished, covenants in subcontracts, expressly made for the benefit of the Government, providing for a subspecial account with Government lien thereon and for a Government lien on or title to property, tangible or intangible, purchased from the special account, and imposing upon the subcontractor substantially the same duties and giving the Government substantially the same rights as are provided herein between the Government and the Contractor, have been prescribed by the Under Secretary of War as minimum adequate security for such subadvances.

ART. 9. Any assignment of moneys due or to become due under this contract shall be subordinate to the rights or claims of the Government arising under this contract or any amendment thereto by virtue of any advance payments authorized herein or otherwise: *Provided,* That, if at any time any claim arising under this contract is assigned or purportedly assigned in any manner inconsistent with the said rights of the Government, the _____ or his duly authorized representative shall have the right to suspend further advance payments without notice.

ART. 10. Except as hereby amended, all the terms and conditions of the contract affected shall remain unmodified and in full force and effect and shall also apply in carrying out the provisions of this supplemental agreement.

In witness whereof, the parties hereto have executed this supplemental contract on the day and year first above written.

THE UNITED STATES OF AMERICA

By _____

_____

(Official Title)

_____

(Contractor)

By _____

_____

(Business Address)

Two Witnesses:

_____

_____

(Addresses)

_____

_____

(Addresses)

I _____, certify that I am the Secretary of the corporation named as Contractor herein; that _____ who signed this supplemental contract on behalf of the Contractor was then _____ of said corporation; that said supplemental contract was duly signed for and on behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

In witness whereof, I have hereunto affixed my hand and the seal of said corporation this _____ day of _____, 19____.

(Corporate Seal) _____

(Secretary)

I hereby certify that, to the best of my knowledge and belief, based upon observation and inquiry, _____, who signed this supplemental contract for _____ had authority to execute the same, and is the individual who signs similar contracts on behalf of this corporation with the public generally.

_____

(Contracting Officer)

§ 813.1322 *W. D. Contract Form No. 22.*

WAR DEPARTMENT

Supplemental Contract to Letter Purchase Order No. _____

(Name of service)

Whereas, under date of _____

(Insert date of purchase order)

_____, a letter purchase order, numbered _____, was

(Insert number of purchase order)

entered into between the United States of America by _____

(Insert name, rank and branch of Contracting Officer)

_____, U. S. Army, as Contracting Officer, acting by authority of the Secretary of War, hereinafter referred to as the Government and _____,

(Insert name of Contractor)

(hereinafter called the Contractor), a corporation organized and existing under the laws of the state of _____, providing for the construction of _____ (the furnishing of _____

(Insert number of units or amount of equipment purchased)

_____ by the Contractor, and

Whereas, it is provided by Section 201, Title II of Public Act No. 354, 77th Congress, approved December 18, 1941, that the President may authorize any department or agency of the Government exercising functions in connection with the prosecution of the war effort to enter into contracts and to make advance, progress and other payments thereon, whenever he deems such action would facilitate the prosecution of the war; and

Whereas, by Executive Order 9001, issued December 27, 1941, the President has authorized the War Department to make such advance payments; and

Whereas, the making of advance payments to the Contractor is deemed necessary by the War Department to facilitate the prosecution of the war,

Now, therefore, this supplemental contract is entered into this _____ day of _____, 194__, by the Government and the Contractor, said parties agreeing to and with each other as follows:

ARTICLE 1. At any time and from time to time after the approval of this supplemental contract, the Government at the request of the Contractor and subject to the approval of the _____,

(Chief of supply service)

or his duly authorized representative, or of the person to whom authority has been delegates to make advance payments, as to the present need therefor, shall advance to the Contractor sums not to exceed _____ percent (_____%) of that amount authorized for expenditure or obligation under Paragraph 2 of such Letter Purchase Order as such amount may be modified or changed from time to time. On the unliquidated balance of advance payments outstanding, the Contractor agrees to pay interest at the rate of two and one-half percent (2½%) per annum to be computed in accordance with the provisions of Article 6 hereof.

ART. 2. As a condition precedent to the making of any advance payment or payments as hereinbefore provided, the Contractor shall furnish the Government with such adequate security as the Under Secretary of War, or the person to whom authority has been delegated to make advance payments, shall prescribe; *Provided:* That, if other security is not prescribed, the terms of this supplemental contract shall be considered adequate security for such advance payments, and *Provided further:* That if at any time the Under Secretary of War deems the security furnished by the Contractor inadequate, the Contractor shall furnish such additional security as shall be satisfactory to the Under Secretary of War.

ART. 3. Until all advance payments hereunder are liquidated, all funds received as advance payments under this contract shall be deposited in a special bank account or accounts at a member bank or banks of the Federal Reserve System, or any "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation (Act of August 23, 1935; 49 Stat. 684 as amended; 12 U. S. C. 264), separate from the Contractor's general or other funds. It is not contemplated that any reimbursement shall be made under the Letter Purchase Order until the more formal contract contemplated by Paragraph 2 of the Letter Purchase Order is entered into, or such Letter Purchase Order is terminated by reason of default of the Contractor, or failure to enter into such more formal contract. Such special bank account or accounts shall be so designated as to indicate clearly to the bank their special character and purpose, and the balance in such account or accounts shall be used by the Contractor exclusively as a fund for carrying out the purposes of the Letter Purchase Order and any amendments, revisions or changes thereto and not for other business of the Contractor. Withdrawals from such special bank account or accounts shall be subject to the prior written approval of the Contracting Officer unless he shall otherwise direct. Any balances from time to time in such special account or accounts shall at all times secure the repayment of the advances and all interests which may accrue thereon, in connection with which the special account or accounts are opened, and the Government shall have a lien upon such balances to secure the repayment of such advances and the payment of all interest which may accrue thereon which lien shall be superior to any lien of the bank or any other person upon such account or accounts by virtue of assignment to it of such contract or otherwise: *Provided,* That the bank shall be under no liability to any party hereto for the withdrawal of any funds from said special account upon checks, properly endorsed and signed by the Contractor, except that after the receipt by the bank of written directions from the _____

(Chief of supply service)

or his duly authorized representative, or the Contracting Officer or his duly authorized representative, the bank shall act thereon and be under no liability to any party hereto for any action taken in accordance with the said written directions. Any instructions or written directions received by the bank through the Contracting Officer upon War Department stationery and purporting to be signed by, or by the direction of the _____

(Chief of supply service)

or his duly authorized representative, shall, insofar as the rights, duties, and liabilities of the bank are concerned, be conclusively deemed to have been properly issued and filed with the bank by the _____ or his duly authorized representative.

(Chief of supply service)

ART. 4. At such time as the more formal contract contemplated by Paragraph 2 of the Letter Purchase Order is entered into, a provision will be made for advance payments not to exceed that percentage of the contract price agreed upon under such more formal contract as shall be deemed necessary by the Contracting Officer in order to provide the Contractor with adequate working capital to carry on the work contemplated by the Letter Purchase Order, as it may be modified or changed; *Provided:* That it is agreed that the Contractor shall continue to pay interest under the provisions of such more formal contract at the rate of two and one-half percent (2½%) per annum on the unliquidated balance of advance payments outstanding, computed in accordance with existing regulations, and *Provided:* That if such percentage should exceed fifty percent (50%) of such contract price, or such contract price should exceed five million dollars ($5,000,000.00) the contract shall be subject to the approval of higher authority in accordance with existing regulations of the War Department, and *Provided:* That the terms of such advance payment agreement shall be strictly in accordance with standard provisions now authorized under existing regulations. Such provisions shall treat such advances as may be made hereunder as though they were made pursuant to such more formal contract and shall provide for the liquidation of advances made hereunder accordingly.

ART. 5. If upon termination of the Letter Purchase Order for other than the fault of the Contractor, the advance payments made to the Contractor and all interest which may have accrued thereon in respect of such contract have not been fully liquidated in the manner herein provided, the unliquidated balance of such payments and accrued interest shall be deducted from any payments otherwise due the Contractor in respect of such contract; and if the sum or sums due the Contractor be insufficient to cover such balance, the deficiency shall be paid by the Contractor in cash forthwith after demand and final audit by the Government of all accounts hereunder in respect of such contract; provided, however, that in the event of such termination of the contract for other than the fault of the contractor, such deduction shall not be made prior to final audit unless, and only to the extent that, the Contracting Officer or his duly authorized representative shall determine that such action is reasonably required in order to secure the eventual repayment in full to the Government of such unliquidated advance payments. In the event of cancellation or termination of the principal contract because of

the fault of the Contractor, or its termination due to failure to enter into the more formal contract contemplated by Paragraph 2 of the Letter Purchase Order, the Contractor notwithstanding any ultimate rights to be reimbursed, agrees to return to the Government, upon demand, without set-off of any sums alleged to be due the Contractor, the unliquidated balance of any advance payments and any interest which may have accrued thereon; *Provided:* That the Contractor may retain in the account an amount sufficient to meet the outstanding obligations incurred by it in good faith pursuant to authorization by the Contracting Officer under Paragraph 2 of the Letter Purchase Order until assumption and discharge of such obligations by the Government or final disallowance thereof. Furthermore, if, in the opinion of the _____ or his duly
(Chief of supply service)
authorized representative the unobligated balance of the advance payments made by the Government under Article 1 hereof exceeds the amount necessary for the current needs of the Contractor, as determined by the _____ or his duly authorized representative, the amount of such excess shall, upon demand by the _____
(Chief of supply service)
_____ or his duly authorized representative, be promptly returned to the Government and will be credited against the balance due the Government on advances previously made. If the demand made in any event set forth in this Article is not met upon receipt of such demand by the Contractor, the amount demanded will bear interest at the rate of six percent (6%) rather than at two and one-half percent (2½%) per annum from the date of the receipt of the demand until payment is made: *Provided, however,* That such additional interest over and above the regular two and one-half percent (2½%) is hereby waived as to any sum paid by the Contractor within 15 days after the amount becomes due hereunder. If and when the Contractor, has, by means of deductions or otherwise, reimbursed the Government in full for payments made and all interest which may have accrued thereon, any money remaining in the special bank account or accounts shall be free and clear of any lien hereunder and the bank or banks concerned shall have authority to pay same to the Contractor and shall thereupon be relieved of any further obligations to the Government on account thereof.

ART. 6. On the unliquidated balance of the advance payments outstanding, the Contractor agrees to pay interest at the rate of two and one-half per cent (2½%) per annum. Such interest shall be computed at the end of each calendar month on the average daily balance of the principal of the unliquidated advance payments outstanding. In determining such balance, charges on account of the advance payments to the Contractor hereunder shall be made as of the dates of the checks therefor. It is agreed that pending the execution of the more formal contract contemplated by Paragraph 2 of the Letter Purchase Order that the Contractor may, if he so elects, make direct repayment to the Government on account of advances made out of his own free funds, or may be required to make repayment out of the special account or otherwise as provided by Article 5. Credits arising out of such cash repayments shall be made as of the dates the checks therefor are received by the disbursing officer. As soon as such monthly computations shall have been made, the interest charge shall be allowed to accrue, and shall not be payable until such time as provision is made for such payment under the provisions of the more formal contract contemplated by Paragraph 2 of the Letter Purchase Order, except as provided by Article 5 hereof. The interest shall not be compounded, and shall, subject to the provisions of Article 5, cease to accrue upon the termination of the contract for other than the fault of the Contractor.

ART. 7. The Contractor shall, at all times, afford to the Contracting Officer, or his duly authorized representative, proper facilities for the inspection and audit of the Contractor's accounts, and the Contractor hereby agrees that the Contracting Officer, or his duly authorized representative, shall have the right so far as the Contractor's rights are concerned, during business hours, to inspect and make copies of any entries in the books and records of the bank or banks relating to the said special account or accounts.

ART. 8. Subject to the approval of the Contracting Officer, or his duly authorized representative, the Contractor may make payments to subcontractors, suppliers and/or materialmen in advance out of the special account, for labor or services, or to pay for materials in advance of delivery at the site of the work or at an approved storage site. Such subadvances shall not exceed _____ percent (_____%) of the subcontract price or estimated cost, as the case may be, and the subcontractor, supplier and/or materialman to whom such advances are made shall furnish adequate security therefor. Unless other security is furnished, covenants in subcontracts, expressly made for the benefit of the Government, providing for a subspecial account with Government lien thereon and for a Government lien on or title to property, tangible or intangible, purchased from the special account, and imposing upon the subcontractor substantially the same duties and giving the Government substantially the same rights as provided herein between the Government and the Contractor, have been prescribed by the Under Secretary of War as minimum adequate security for such subadvances.

ART. 9. The title to all work, completed or in the course of construction, preparation or manufacture under such Letter Purchase Order shall be in the Government. Likewise, upon delivery at the site of the work, at an approved storage site or other place approved by the Contracting Officer and upon inspection and acceptance in writing by the Contracting Officer, title to all materials, tools, machinery, equipment, and supplies for which the Contractor shall be entitled to reimbursement under the provisions of Paragraph 2 of the Letter Purchase Order shall vest in the Government. For the purposes of this supplemental contract, these provisions as to title being vested in the Government, are for security with respect to such advances as may be made hereunder, and shall cease and determine when the more formal contract contemplated by paragraph 2 of the Letter Purchase Order is executed, unless specifically continued in effect by such more formal contract. These provisions as to title being vested in the Government shall not operate to relieve the Contractor from any duties imposed under the terms of the Letter Purchase Order, the more formal supplemental contract, or any other supplements thereto.

ART. 10. Except as hereby amended, all the terms and conditions of the Letter Purchase Order affected shall remain unmodified and in full force and effect and shall also apply in carrying out the provisions of this supplemental agreement.

In witness whereof, the parties hereto have executed this Supplemental Contract on the day and year first above written.

THE UNITED STATES OF AMERICA,
By _____
_____
(Official Title)
_____
(Contractor)
By _____
_____
(Business Address)

Two Witnesses:
_____
_____
(Address)
_____
_____
(Address)

I _____, certify that I am the Secretary of the corporation named as Contractor herein; that _____ who signed this supplemental contract on behalf of the Contractor was then _____ _____ of said corporation; that said supplemental contract was duly signed for and on behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

In witness whereof, I have hereunto affixed my hand and the seal of said corporation this _____ day of _____ 19__.

[CORPORATE SEAL] _____
(Secretary)

I hereby certify that, to the best of my knowledge and belief, based upon observation and inquiry, _____ who signed this supplemental contract for _____ had authority execute the same, and is the individual who signs similar contracts on behalf of this corporation with the public generally.

_____
(Contracting Officer)

§ 813.1323 *W. D. Contract Form No. 23.*

WAR DEPARTMENT

Supplemental Contract to Contract No. ____ and Contract No. ____ etc.

_____
(Name of technical service)

Whereas, under date of _____
(Insert date of original contract)
a contract, numbered _____,
(Insert number of original contract)
was entered into between the United States of America by _____
(Insert name, rank, and Branch of _____, U. S. Army, as Contracting Officer)
Contracting Officer, acting by authority of the Secretary of War, hereinafter referred to as the Government, and _____
(Insert Name of Contractor)
a corporation organized and existing under the laws of the State of _____, hereinafter referred to as the Contractor, providing for the construction of _____ (the furnishing of _____
(Insert number of units or _____) by the Contractor, and[1] amount of equipment purchased)

Whereas, it is provided by Section 201, Title II of Public Act No. 354, 77th Congress, approved December 18, 1941, that the President may authorize any department or agency of the Government exercising functions in connection with the prosecution of the war effort to enter into contracts and to make advance, progress and other payments thereon, whenever he deems such action would facilitate the prosecution of the war; and

Whereas, by Executive Order 9001 issued December 27, 1941, the President has authorized the War Department to make such advance payments; and

Whereas, the making of advance payments to the Contractor is deemed necessary by the War Department to facilitate the prosecution of the war,

[1] Where it is desired to combine advance payments for several principal contracts under one supplemental agreement this clause must be repeated for each contract concerned.

Now, therefore, this supplemental contract is entered into this _____ day of _____, 194__, between the Government and the Contractor, said parties agreeing to and with each other as follows:

ART. 1. At any time and from time to time, after the approval of this supplemental contract, at the request of the Contractor and subject to the approval of the _____ _____ or his
(Chief of technical service)
duly authorized representative, or of the person to whom authority has been delegated to make advance payments, as to the present need therefor, the Government shall advance to the Contractor, without payment of interest therefor by the Contractor, sums not to exceed _____
(Insert amount of advance payment)
or _____ percentum (_____%) of the principal contract price (or principal contract prices), as it (they) may be amended, whichever shall be the smaller.

ART. 2. As a condition precedent to the making of any advance payment or payments as hereinbefore provided, the Contractor shall furnish the Government with such adequate security as the Under Secretary of War or the person to whom authority has been delegated to make advance payments shall prescribe: *Provided,* That, if other security is not prescribed, the terms of this supplemental contract shall be considered adequate security for such advance payments: *Provided further,* That if at any time the Under Secretary of War deems the security furnished by the Contractor inadequate, the Contractor shall furnish such additional security as shall be satisfactory to the Under Secretary of War.

ART. 3. Until all advance payments hereunder are liquidated, all funds received as advance payments under this supplemental contract together with _____ percent
(Insert % to be deposited
(_____%) of all cash payments under which shall be not less than 85%)
the principal contract (or principal contracts), shall be deposited in a special bank account or accounts at a member bank or banks of the Federal Reserve System or any "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation (Act of August 23, 1935; 49 Stat. 684, as amended; 12 U. S. C. 264), separate from the Contractor's general or other funds. Such special bank account or accounts shall be so designated as to indicate clearly to the bank their special character and purpose, and the balances in such account or accounts shall be used by the Contractor exclusively as a revolving fund for carrying out the purposes of this supplemental contract and the principal contract (or principal contracts), (including reimbursement to the Contractor for any reasonable amounts expended by him for such purposes), and any amendments thereto, and not for the other business of the Contractor; (*Provided:* That it is understood that all funds deposited in the said special account created hereunder may be used by the Contractor for the purposes of either or all of the principal contracts without regard to the origin of such payments)[1]; and *Provided,* That for the purpose of determining proper disposition of funds hereunder such of the Contractor's costs as may not be directly allocable to the principal contract, (or principal contracts), as it (or they) may be amended, may be charged against funds deposited in the special account in that proportion which the amount of the work being done under the principal contract (or principal contracts), as it (they) may be amended, approximately bears to the total amount of work being performed by the Contractor, out of which such costs also arise, but within the period to which such costs relate. When required by the _____
(Chief of technical service)
or his duly authorized representative, or any other person to whom authority to make advance payments has been delegated, withdrawals from special account or accounts shall be made subject to the prior written approval of the Contracting Officer or his duly authorized representative. Any balances from time to time in such special account or accounts shall secure the repayment of the advances in connection with which the special account or accounts are opened, and the Government shall have a lien upon such balances to secure the repayment of such advances which lien shall be superior to any lien of the bank, or any other person, upon such account or accounts by virtue of assignment to it of the principal contract (or contracts) or otherwise; *Provided:* That the bank shall be under no liability to any party hereto for the withdrawal of any funds from said special account upon checks, properly endorsed and signed by the Contractor, except that after the receipt by the bank of written directions from the _____
(Chief of technical
_____ or his duly authorized repre-
service)
sentative, the bank shall act thereon and be under no liability to any party hereto for any action taken in accordance with the said written directions. Any instructions or written directions received by the bank through the contracting officer upon War Department stationery and purporting to be signed by, or by the direction of, the _____
(Chief
_____ or his duly author-
of technical service)
ized representative, shall, in so far as the rights, duties, and liabilities of the bank are concerned, be conclusively deemed to have been properly issued and filed with the bank of the _____ or
(Chief of technical service)
his duly authorized representative.

ART. 4. If, upon completion of the principal contract (or of any of the principal contracts), or upon the termination thereof for other than the fault of the Contractor, the advance payments made to the Contractor in respect of such contract have not been fully liquidated in the manner herein provided, the unliquidated balance of such advance payments shall be deducted from any payments otherwise due the Contractor in respect of such contract; and if the sum or sums due the Contractor be insufficient to cover such balance, the deficiency shall be paid by the Contractor in cash forthwith after demand and final audit by the Government of all accounts hereunder in respect of such contract; provided, however, that in the event of such termination of the contract for other than the fault of the Contractor, such deduction shall not be made prior to final audit unless, and only to the extent that, the Contracting Officer or his duly authorized representative shall determine that such action is reasonably required in order to secure the eventual repayment in full to the Government of such unliquidated advance payments. In the event of cancellation or termination of the principal contract (or of any of the principal contracts) because of the fault of the Contractor, the Contractor agrees to return to the Government, upon demand, without setoff of any sums alleged to be due the Contractor, the unliquidated balance of any advance payment. Furthermore, if, in the opinion of the _____ or his
(Chief of technical service)
duly authorized representative, the unobligated balance of the advance payments made by the Government under Article 1 hereof exceeds the amount necessary for the current needs of the Contractor, as determined by the _____
(Chief of technical service)
or his duly authorized representative, the amount of such excess shall, upon demand made by the _____
(Chief of technical service)
or his duly authorized representative, be promptly returned to the Government and will be credited against the balance due the Government on advances previously made. If the demand made in any event set forth in this Article is not met upon receipt of such demand by the Contractor, the amount demanded will bear interest at the rate of six percent (6%) per annum from the date of the receipt of the demand until payment is made; *Provided,* however, that such payment of interest is hereby waived as to any sum paid by the Contractor within 15 days after the amount becomes due hereunder.

ART. 5. Except as otherwise provided herein, liquidation of any advance payment or advance payments made to the Contractor hereunder shall be made by deductions of _____ per cent (___%) from any and all payments made by the Government under the terms of the principal contract (or principal contracts) or by means of direct repayment by the Contractor from his own free funds or from the special account or accounts: *Provided:* That if at any time, as a result of amendments to the principal contract (or principal contracts) or otherwise, the unliquidated balance of the principal of advance payments made exceeds _____ per cent (___%) of the balance of the total contract price then unpaid, the amount of such excess which has not then been expended or obligated shall demand of the _____, or his duly au-
(Chief of technical service)
thorized representative be promptly returned to the Government by withdrawal from the special account or accounts or otherwise; and that portion of the excess which has been expended or obligated may, at the option of the Contractor, be so returned and, if not so returned, shall, together with any unexpended or unobligated portion of the excess not otherwise returned to the Government, be deducted from any and all payments to be made by the Government under the principal contract (or principal contracts); *Provided further;* That, if and when the Contractor has, by means of deductions or otherwise, reimbursed the Government in full for payments made, any money, remaining in the special bank account or accounts shall be free and clear of any lien hereunder and the bank or banks concerned shall have authority to pay same to the Contractor and shall thereupon be relieved of any further obligation to the Government on account thereof.

ART. 6. The Contractor shall, at all times, afford to the Contracting Officer, or his duly authorized representative, proper facilities for the inspection and audit of the Contractor's accounts, and the Contractor hereby agrees that the Contracting Officer, or his duly authorized representative shall have the right, so far as the Contractor's rights are concerned, during business hours, to inspect and make copies of any entries in the books and records of the bank or banks relating to the said special account or accounts.

ART. 7. Subject to the approval of the Contracting Officer or his duly authorized representative the Contractor may make payments to subcontractors and materialmen in advance out of the special account, for labor or services, or to pay for materials in advance of delivery at the site of the work or at an approved storage site. Such subadvances shall not exceed _____ percent (___%) of the subcontract price and the subcontractor or materialmen to whom such advances are made shall furnish adequate security therefor. Unless other security is

[1] This proviso to be used where agreement is supplemental to two or more contracts.

furnished, covenants in subcontracts, expressly made for the benefit of the Government, providing for a subspecial account with Government lien thereon and for a Government lien on property, tangible or intangible, purchased from the special account, and imposing upon the subcontractor substantially the same duties and giving the Government substantially the same rights as are provided herein between the Government and the Contractor, have been prescribed by the Under Secretary of War as minimum adequate security for such subadvances.

ART. 8. If no surety bond is furnished as part of the security under Article 2 hereof, then, upon receipt of items or materials paid for from such special account or accounts, such items or materials shall be segregated and the Government shall have a lien on such items or materials until the advance payment or payments have been fully liquidated, or until the item or items and/or materials concerned have become the property of the Government as the result of partial payments, or otherwise; *Provided:* That, if segregation in any instance be impracticable and the items or materials concerned are consequently intermingled with other property of the Contractor, then and in that event the lien above provided for in favor of the Government shall extend to the intermingled mass to the amount represented by the value of the items of materials involved; and, without limiting the generality of the foregoing, such lien shall continue as follows: (a) in case the contract covers construction, until such items or materials are incorporated into the building, and thereafter on the building in the construction of which the items or materials are incorporated; (b) in the case of items or materials comprising facilities, on such facilities both before and after their installation in the plant; and (c) in the case of articles contracted for, until the items or materials so paid for are fabricated into such articles, and thereafter on the articles until accepted by the Government; [and the Government shall hereby likewise have an effective assignment of a security interest in all intangible property purchased, or otherwise acquired with funds from said special account].[1] If at any time during the progress of the work under the principal contract (or principal contracts) it becomes necessary to deliver any item or items and/or materials upon which the Government has a lien as aforesaid to a third person, the Contractor shall notify such third person of the lien herein provided and shall obtain from such third person a receipt, in duplicate, acknowledging, among other things, the existence of such lien. A copy of each receipt shall be delivered by the Contractor to the Contracting Officer.

ART. 9. Any assignment of moneys due or to become due under the principal contract (or principal contracts) shall be subordinate to the rights or claims of the Government arising under the principal contract (or principal contracts) or any amendment thereto by virtue of any advance payments authorized herein or otherwise; *Provided:* that, if at any time any claim arising under the principal contract (or principal contracts) is assigned or purportedly assigned in any manner inconsistent with the said rights of the Government, the _____ or
(Chief of technical service)
his duly authorized representative shall have the right to suspend further advance payments without notice.

ART. 10. Except as hereby amended, all the terms and conditions of the contract (or contracts) affected shall remain unmodified and in full force and effect and shall also apply in carrying out the provisions of this supplemental contract.

In witness whereof, the parties hereto have executed this supplemental contract on the day and year first above written.

THE UNITED STATES OF AMERICA,
By _____
_____
(Official Title)
_____
(Contractor)
By _____
_____
(Business Address)
Two Witnesses:
_____
_____
(Address)
_____
_____
(Address)

I _____, certify that I am the Secretary of the corporation named as Contractor herein; that _____ who signed this supplemental contract on behalf of the Contractor was then _____ of said corporation; that said supplemental contract was duly signed for and on behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

In witness whereof, I have hereunto affixed my hand and the seal of said corporation this _____ day of _____, 19__.
[CORPORATE SEAL] _____
(Secretary)

I hereby certify that, to the best of my knowledge and belief, based upon observation and inquiry, _____ who signed this supplemental contract for _____ had authority to execute the same, and is the individual who signs similar contracts on behalf of this corporation with the public generally.

_____
(Contracting Officer)

§ 813.324 *W. D. Contract Form No. 24.*

WAR DEPARTMENT

Supplemental Contract to Contract No ____
_____
(Name of technical service)
Whereas, under date of _____
(Insert date of original contract)
_____, a contract numbered, _____, was entered into between the United States of America by _____
(Insert name, rank and Branch of Contracting Officer)
_____ as Contracting Officer, acting by authority of the Secretary of War, as party of the first part, and_____
_____
(Insert name of Contractor)
(hereinafter called the Contractor), a corporation organized and existing under the laws of the State of _____ providing for the construction of _____ (the furnishing of_____) by the Contractor, as party of the second part, and

Whereas, it is provided by Section 201, Title II of Public Act No. 354, 77th Congress, approved December 18, 1941, that the President may authorize any department or agency of the Government exercising functions in connection with the prosecution of the war effort to enter into contracts and to make advance, progress and other payments thereon whenever he deems such action would facilitate the prosecution of the war; and

Whereas, by Executive Order 9001, issued December 27, 1941, the President has authorized the War Department to make such advance payments; and

Whereas, the making of advance payments to the Contractor is deemed necessary by the War Department to facilitate the prosecution of the war,

Now, therefore, this Supplemental contract is entered into this _____ day of _____, 194__, by the Government and the Contractor, said parties agreeing to and with each other as follows:

ARTICLE 1. At any time and from time to time after the execution of this supplemental contract, the Government at the request of the Contractor and subject to the approval of the _____
(Chief of technical service)
or his duly authorized representative, or the person to whom authority to make advance payments has been delegated, as to the present need therefor shall advance to the Contractor, without payment of interest thereon by the Contractor, sums not to exceed _____ percent (_____ %) of the estimated cost of the principal contract (exclusive of the Contractor's fixed fee), as it may be amended from time to time.

ART. 2. As a condition precedent to the making of any advance payment or payments as hereinbefore provided, the Contractor shall furnish the Government with such adequate security as the Under Secretary of War or the person to whom authority has been delegated to make advance payments shall prescribe; *Provided:* That, if other security is not prescribed, the terms of this supplemental contract shall be considered adequate security for such advance payments; and *Provided further,* That if at any time the Under Secretary of War deems the security furnished by the Contractor inadequate, the Contractor shall furnish such additional security as shall be satisfactory to the Under Secretary of War.

ART. 3. Until all advance payments hereunder are liquidated, all funds received as advance payments under this supplemental contract together with all funds received as reimbursements for the cost of the work under Article _____ of the principal contract, exclusive of the Contractor's fixed fee, shall be deposited in a special bank account or accounts at a member bank or banks of the Federal Reserve System or any "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation (Act of August 23, 1935; 49 Stat. 684) as amended (12 U. S. C. 264) separate from the Contractor's general or other funds. Such special bank account or accounts shall be so designated as to indicate clearly to the bank their special character and purpose, and the balance in such account or accounts shall be used by the Contractor exclusively as a revolving fund for carrying out the purposes of the principal contract and any amendments thereto and not for other business of the Contractor. Any balances from time to time in such special account or accounts shall at all times secure the repayment of the advances in connection with which the special account or accounts are opened, and the Government shall have a lien upon such balances to secure the repayment of such advances, which lien shall be superior to any lien of the bank or any other person upon such account or accounts by virtue of assignment to it of such contract or otherwise; *Provided:* That the bank shall be under no liability to any party hereto for the withdrawal of any funds from said special account upon checks, properly endorsed and signed by the Contractor, except that after the receipt by the bank of written directions from the _____
(Chief of technical service)
or his duly authorized representative, the bank shall act thereon and be under no liability to any party hereto for any action taken in accordance with the said written directions. Any instructions or written directions received by the bank through the Contracting Officer upon War Department stationery and purporting to be signed by,

[1] The bracketed provision may be inserted in the case of experimental contracts or other cases where deemed especially appropriate.

or by the direction of, the_____
(Chief of technical service)
or his duly authorized representative, shall, in so far as the rights, duties, and liabilities of the bank are concerned, be conclusively deemed to have been properly issued and filed with the bank by the _____
(Chief of technical service)
_____ or his duly authorized representative.

ART. 4. It is agreed that the aggregate of the advance payments outstanding under the supplemental contract together with funds received as reimbursement for the cost of the work by the Contractor under Article _____ of the principal contract shall, at no time, exceed the total estimated cost of the work under the principal contract as it may be revised from time to time and any such excess shall be immediately repaid by the Contractor to the Government or if any reimbursement is due from the Government to the Contractor, shall be deducted therefrom: *Provided, however,* That if the total cost of the work under the principal contract shall be in excess of the amount so paid to the Contractor, including said advance payments, the Government upon presentation of satisfactory evidence shall currently and promptly reimburse the Contractor to the extent of such excess cost (subject to any delay in the availability of appropriated funds).

ART. 5. If, upon completion of the principal contract, or upon the termination thereof for other than the fault of the Contractor, the advance payments made to the Contractor in respect of such contract have not been fully liquidated in the manner herein provided, the unliquidated balance of such advance payments shall be deducted from any payments otherwise due the Contractor in respect of such contract; and if the sum or sums due the Contractor be insufficient to cover such balance, the deficiency shall be paid by the Contractor in cash forthwith after demand and final audit by the Government of all accounts hereunder in respect of such contract: *Provided, however,* that in the event of such termination of the contract for other than the fault of the Contractor, such deduction shall not be made prior to final audit unless, and only to the extent that, the Contracting Officer or his duly authorized representative shall determine that such action is reasonably required in order to secure the eventual repayment in full to the Government of such unliquidated advance payments. In the event of cancellation or termination of the principal contract because of the fault of the Contractor, the Contractor, notwithstanding any ultimate rights to be reimbursed, agrees to return to the Government, upon demand, without set-off of any sums alleged to be due the Contractor, the unliquidated balance of any advance payment. Furthermore, if, in the opinion of the _____
(Chief of technical service)
or his duly authorized representative, the unobligated balance of the advance payments made by the Government under Article 1 hereof exceeds the amount necessary for the current needs of the Contractor, as determined by the _____
(Chief of technical service)
or his duly authorized representative, the amount of such excess shall, upon demand by the _____
(Chief of technical service)
or his duly authorized representative, be promptly returned to the Government, and will be credited against the balance due the Government on advances previously made. If the demand made in any event set forth in this Article is not met upon receipt of such demand by the Contractor, the amount demanded will bear interest at the rate of six percent (6%) per annum from the date of the receipt of the demand until payment is made: *Provided, however,* that such payment of interest is hereby waived as to any sum paid by the Contractor within 15 days after the amount becomes due hereunder. If and when the Contractor has, by means of deductions or otherwise, reimbursed the Government in full for payments made, any money remaining in the special bank account or accounts shall be free and clear of any lien hereunder and the bank or banks concerned shall have authority to pay same to the Contractor and shall thereupon be relieved of any further obligation to the Government on account thereof.

ART. 6. The Contractor shall, at all times, afford to the Contracting Officer, or his duly authorized representative, proper facilities for the inspection and audit of the Contractor's accounts, and the Contractor hereby agrees that the Contracting Officer, or his duly authorized representative, shall have the right so far as the Contractor's rights are concerned, during business hours, to inspect and make copies of any entries in the books and records of the bank or banks relating to the said special account or accounts.

ART. 7. Subject to the approval of the Contracting Officer, or his duly authorized representative, the Contractor may make payments to subcontractors and materialmen in advance out of the special account, for labor or services, or to pay for materials in advance of delivery at the site of the work or at an approved storage site. Such subadvances shall not exceed _____ percent (____%) of the subcontract price or estimated cost, as the case may be, and the subcontractor or materialmen to whom such advances are made shall furnish adequate security therefor. Unless other security is furnished, covenants in subcontracts, expressly made for the benefit of the Government, providing for a subspecial account with Government lien thereon and for a Government lien on or title to property, tangible or intangible, purchased from the special account, and imposing upon the subcontractor substantially the same duties and giving the Government substantially the same rights as are provided herein between the Government and the contractor, have been prescribed by the Under Secretary of War as minimum adequate security for such sub-advances.

ART. 8. Any assignment of moneys due or to become due under this contract shall be subordinate to the rights or claims of the Government arising under this contract or any amendment thereto by virtue of any advance payments authorized herein or otherwise; Provided that, if at any time any claim arising under this contract is assigned or purportedly assigned in any manner inconsistent with the said rights of the Government, the _____ or his duly authorized representative shall have the right to suspend further advance payments without notice.

ART. 9. Except as hereby amended, all the terms and conditions of the Contract affected shall remain unmodified and in full force and effect and shall also apply in carrying out the provisions of this supplemental agreement.

In witness whereof, the parties hereto have executed this Supplementary Agreement on the day and year first above written.

THE UNITED STATES OF AMERICA,
By _____
_____
(Official Title)
_____
(Contractor)
By _____
_____
(Business Address)
Two Witnesses:
_____
_____
(Address)
_____
_____
(Address)

I _____, certify that I am the Secretary of the corporation named as Contractor herein; that _____ who signed this supplemental contract on behalf of the Contractor was then _____ of said corporation; that said supplemental contract was duly signed for and on behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

In witness whereof, I have hereunto affixed my hand and the seal of said corporation this _____ day of _____, 19__.

[CORPORATE SEAL] _____
(Secretary)

I hereby certify that, to the best of my knowledge and belief, based upon observation and inquiry, _____ who signed this supplemental contract for _____ had authority to execute the same, and is the individual who signs similar contracts on behalf of this corporation with the public generally.

_____
(Contracting Officer)

§ 813.1325 *W. D. Contract Form No. 25.*

WAR DEPARTMENT

Supplemental Contract to Letter Purchase Order No._____

Whereas, under date of _____
(Insert date of _____, a letter purchase order, original contract)
numbered _____, was entered into between the United States of America by _____
(Insert name, _____
rank and Branch of Contracting Officer)
U. S. Army, as Contracting Officer, acting by authority of the Secretary of War, hereinafter referred to as the Government, and _____,
(Insert name of Contractor)
a corporation organized and existing under the laws of the State of _____, hereinafter referred to as the Contractor, providing for construction of _____ (the furnishing of _____
(Insert number of units or _____) by the amount of equipment purchased)
Contractor, and

Whereas, it is provided by Section 201, Title II of Public Act No. 354, 77th Congress, approved December 18, 1941, that the President may authorize any department or agency of the Government exercising functions in connection with the prosecution of the war effort to enter into contracts and to make advance, progress and other payments thereon whenever he deems such action would facilitate the prosecution of the War; and

Whereas, by Executive Order 9001, issued December 27, 1941, the President has authorized the War Department to make such advance payments; and

Whereas, the making of advance payments to the Contractor is deemed necessary by the War Department to facilitate the prosecution of the war,

Now, therefore, this supplemental contract is entered into this _____ day of _____, 194__, between the Government and the Contractor, said parties agreeing to and with each other as follows:

ARTICLE 1. At any time and from time to time, after the approval of this supplemental contract, the Government at the request of the Contractor and subject to the approval of the _____ or his duly
(Chief of supply service)
authorized representative, or of the person to whom authority has been delegated to make advance payments, as to the present need therefor, shall advance to the Contractor, without payment of interest thereon by the Contractor, sum not to exceed _____ percent (____%) of the amount authorized

for expenditure or obligation under Paragraph 2 of such Letter Purchase Order as such amount may be modified or changed from time to time.

ART. 2. As a condition precedent to the making of any advance payment or payments as hereinbefore provided, the Contractor shall furnish the Government with such adequate security as the Contracting Officer shall prescribe; *Provided:* That, if other security is not prescribed, the terms of this supplemental contract shall be considered adequate security for such advance payments; and *Provided further:* That if at any time the Under Secretary of War deems the security furnished by the Contractor to be inadequate, the Contractor shall furnish such additional security as shall be satisfactory to the Under Secretary of War.

ART. 3. All sums received as advance payments under this supplemental contract shall be deposited in a special bank account or accounts at a member bank or banks of the Federal Reserve System or any "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation (Act of August 23, 1935; 49 Stat. 684, as amended; 12 U. S. C. 264) separate from the Contractor's general or other funds. It is not contemplated that any reimbursement shall be made under the Letter Purchase Order until the more formal contract contemplated by Paragraph 2 of the Letter Purchase Order is entered into, or such Letter Purchase Order is terminated by reason of default of the Contractor, or failure to enter into such more formal contract within the date of expiration set forth in Paragraph 6 of the Letter Purchase Order or any duly authorized extensions thereof. Such special bank account or accounts shall be so designated as to indicate clearly to the bank their special character and purpose, and the balance in such account or accounts shall be used by the Contractor exclusively as a fund for carrying out the purposes of the Letter Purchase Order and any amendments, revisions or changes thereto and not for other business of the Contractor. Withdrawals from such special bank account or accounts shall be subject to the prior written approval of the Contracting Officer unless he shall otherwise direct. Any balances from time to time in such special account or accounts shall at all times secure the repayment of the advances in connection with which the special account or accounts are opened, and the Government shall have a lien upon such balances to secure the repayment of such advances, which lien shall be superior to any lien of the bank or any person upon such account or accounts by virtue of assignment to it of such contract or otherwise; *Provided:* That the bank shall be under no liability to any party hereto for the withdrawal of any funds from said special account upon checks, properly endorsed and signed by the Contractor, except that after the receipt by the bank of written directions from the _____
(Chief of supply service)
or his duly authorized representative, or the Contracting Officer or his duly authorized representative, the bank shall act thereon and be under no liability to any party hereto for any action taken in accordance with the said written directions. Any instructions or written directions received by the bank through the Contracting Officer upon War Department stationery and purporting to be signed by, or by the direction of the _____ or his duly authorized representative, or the Contracting Officer or his duly authorized representative shall, insofar as the rights, duties, and liabilities of the bank are concerned, be conclusively deemed to have been properly issued and filed with the bank by the _____
(Chief of supply service)
or his duly authorized representative.

ART. 4. At such time as the more formal contract contemplated by Paragraph 2 of the Letter Purchase Order is entered into, provision will be made for advance payments not to exceed that percentage of the contract price agreed upon under such more formal contract as shall be deemed necessary by the Contracting Officer in order to provide the Contractor with adequate working capital to carry on the work contemplated by the Letter Purchase Order, as it may be modified or changed; *Provided:* That if such percentage should exceed fifty percent (50%) of such contract price, or such contract price should exceed five million dollars ($5,000,000.00) the contract shall be subject to the approval of higher authority in accordance with existing regulations of the War Department, and *Provided:* That the terms of such advance payment agreement shall be strictly in accordance with standard provisions now authorized under existing regulations. Such provisions shall treat such advances as may be made hereunder as though they were made pursuant to such more formal contract and shall provide for the liquidation of advances made hereunder accordingly.

ART. 5. If upon termination of the Letter Purchase Order for other than the fault of the Contractor, the advance payments made to the Contractor in respect of such contract have not been fully liquidated in the manner herein provided, the unliquidated balance of such advance payments shall be deducted from any payments otherwise due the Contractor in respect of such contract; and if the sum or sums due the Contractor be insufficient to cover such balance, the deficiency shall be paid by the Contractor in cash forthwith after demand and final audit by the Government of all accounts hereunder in respect of such contract; provided, however, that in the event of such termination of the contract for other than the fault of the Contractor, such deduction shall not be made prior to final audit unless, and only to the extent that, the Contracting Officer or his duty authorized representative shall determine that such action is reasonably required in order to secure the eventual repayment in full to the Government of such unliquidated advance payments. In the event of cancellation or termination of the principal contract because of the fault of the Contractor, or its termination due to failure to enter into the more formal contract contemplated by Paragraph 2 of the Letter Purchase Order on or before the date of expiration set forth in Paragraph 6 of the Letter Purchase Order, or any duly authorized extensions thereof, the Contractor, notwithstanding any ultimate rights to be reimbursed, agrees to return to the Government, upon demand, without set-off of any sums alleged to be due the Contractor, the unliquidated balance of any advance payment or advance payments made hereunder; *Provided:* That the Contractor may retain in the account an amount sufficient to meet the outstanding obligations incurred by it in good faith pursuant to authorization by the Contracting Officer under Paragraph 2 of the Letter Purchase Order until assumption and discharge of such obligations by the Government or final disallowance thereof. Furthermore, if, in the opinion of the _____
(Chief of _____ or his duly authorized representative, the unobligated balance of the advance payments made by the Government under Article 1 hereof exceeds the amount necessary for the current needs of the Contractor, as determined by the _____
(Chief of _____ or his duly authorized representative, the amount of such excess shall, upon demand made by the _____
(Chief of supply service)
_____ or his duly authorized representative, be promptly returned to the Government and will be credited against the balance due the Government on advances previously made. If the demand made in any event set forth in this article is not met upon receipt of such demand by the Contractor, the amount demanded will bear interest at the rate of six percent (6%) per annum from the date of the receipt of the demand until payment is made; *Provided, however:* That such payment of interest is hereby waived as to any sum paid by the Contractor within 15 days after the amount becomes due hereunder. If and when the Contractor has, by means of deductions or otherwise, reimbursed the Government in full for payments made, any money remaining in the special bank account or accounts shall be free and clear of any lien hereunder and the bank or banks concerned shall have authority to pay same to the Contractor and shall thereupon be relieved of any further obligations to the Government on account thereof.

ART. 6. The Contractor shall at all times, afford to the Contracting Officer, or his duly authorized representative, proper facilities for the inspection and audit of the Contractor's accounts, and the Contractor hereby agrees that the Contracting Officer, or his duly authorized representative shall have the right so far as the Contractor's rights are concerned, during business hours, to inspect and make copies of any entries in the books and records of the bank or banks relating to the said special account or accounts.

ART. 7. Subject to the approval of the Contracting Officer, or his duly authorized representative, the Contractor may make payments to subcontractors, suppliers, and/or materialmen in advance out of the special account, for labor or services, or to pay for materials in advance of delivery at the site of the work or at an approved storage site. Such subadvances shall not exceed _____ percent (_____%) of the subcontract price or estimated cost, as the case may be, and the subcontractor, supplier and/or materialman to whom such advances are made shall furnish adequate security therefor. Unless other security is furnished, covenants in subcontracts, expressly made for the benefit of the Government, providing for a subspecial account with Government lien thereon and for a Government lien on or title to property, tangible or intangible, purchased from the special account, and imposing upon the subcontractor substantially the same duties and giving the Government substantially the same rights as are provided herein between the Government and the Contractor, have been prescribed by the Under Secretary of War as minimum adequate security for such sub-advances.

ART. 8. The title to all work, completed or in the course of construction, preparation or manufacture under such Letter Purchase Order shall be in the Government. Likewise, upon delivery at the site of the work, at an approved storage site or other place approved by the Contracting Officer and upon inspection and acceptance in writing by the Contracting Officer, title to all materials, tools, machinery, equipment, and supplies for which the Contractor shall be entitled to reimbursement under the provisions of Paragraph 2 of the Letter Purchase Order shall vest in the Government. For the purposes of this supplemental contract, these provisions as to title being vested in the Government, are for security with respect to such advances as may be made hereunder, and shall cease and determine when the more formal contract contemplated by paragraph 2 of the Letter Purchase Order is executed, unless specifically continued in effect by such more formal contract. These provisions as to title being vested in the Government shall not operate to relieve the Contractor from any duties imposed under the terms of the Letter Purchase Order, the

more formal supplemental contract, or any other supplements thereto.

ART. 9. Except as hereby amended, all the terms and conditions of the Letter Purchase Order affected shall remain unmodified and in full force and effect and shall also apply in carrying out the provisions of this supplemental contract.

In witness whereof, the parties hereto have executed this supplemental contract on the day and year first above written.

THE UNITED STATES OF AMERICA

By _____

_____ (Official Title)

_____ (Contractor)

By _____

_____ (Business Address)

Two Witnesses:

_____

_____ (Address)

_____

_____ (Address)

I _____, certify that I am the Secretary of the corporation named as Contractor herein; that _____ who signed this supplemental contract on behalf of the Contractor was then _____ of said corporation; that said supplemental contract was duly signed for and on behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

In witness whereof, I have hereunto affixed my hand and the seal of said corporation this _____ day of _____, 19____.

[CORPORATE SEAL] _____ (Secretary)

I hereby certify that, to the best of my knowledge and belief, based upon observation and inquiry, _____ who signed this supplemental contract for _____ had authority to execute the same, and is the individual who signs similar contracts on behalf of this corporation with the public generally.

_____ (Contracting Officer)

§ 813.1326 *W. D. Contract Form No. 26*—(a) *Explanatory notes.* (1) W. D. Contract Form No. 26 is available for optional use by the technical services (including the service commands) for effecting the sale of Government-owned property in compliance with Subparts B, C, E, F and G of Part 807. The form is not designed to cover:

(i) Sales of scrap, or

(ii) Sales to the Defense Plant Corporation. Special forms have been approved for use in effecting sales of property by the War Department to the Defense Plant Corporation, and by the Defense Plant Corporation to the War Department. These are reproduced in Ordnance Procurement Instructions, paragraphs 13,006.3 and 13,006.4.

(2) Variations of W. D. Contract Form No. 26 may be required in particular cases. For example, paragraph 6 of "General Provisions", (W. D. Contract Form No. 26) entitled "Adjustment for Variation in Quantity" may require material change where it is expected that the variation will be large.

(3) Certain of the technical services have indicated a preference for the use of a "negotiated" contract form of the type of W. D. Contract Form No. 1, rather than an invitation, bid and acceptance form of the type of W. D. Contract Form No. 26. The technical services may authorize the use, in circumstances in which W. D. Contract Form No. 26 is available for use, of a "negotiated" contract form containing proper recitals and embodying substantially the same provisions as W. D. Contract Form No. 26. It is emphasized, however, that regardless of the type of contract form which is employed, the greatest practicable amount of competition will be secured (see § 807.110).

(b) *Contract form.*

WAR DEPARTMENT

INFORMAL INVITATION, INFORMAL BID, AND ACCEPTANCE (SALE OF PROPERTY)

Date _____

W. D. establishment, office or station, and address:

_____

_____

_____

Contract No. (if any) _____

Order No. _____

Invitation No. _____

Payment will be made to _____

_____

This contract is authorized by and negotiated under Public No. 703, 76th Congress, First War Powers Act, 1941, and Executive Order No. 9001.

It has been determined by a competent officer that the sale to be made hereunder will facilitate the prosecution of the war and is in compliance with applicable regulations.

INFORMAL INVITATION

Sealed bids, in _____, subject to the terms specified on both sides of this page and on the continuation sheets numbered _____ to _____ inclusive, attached hereto, will be received at this office until _____ o'clock, _____ m., _____, 194__, for the purchase of the materials listed. Each sheet must show the name of the bidder.

[1] Bids must be accompanied by cashier's check, certified check or postal money order made payable (unless otherwise directed) to the Treasurer of the United States, in the amount of at least ____% of the total price bid. Deposits on bids which are not accepted will be promptly refunded. (See also General Provision 5.)

UNITED STATES OF AMERICA,

By _____,

Title _____,

(Contracting Officer)

INFORMAL BID

Date _____

In compliance with the above informal Invitation for bids, and subject to all conditions thereof, the undersigned offers, and agrees, if this bid be accepted within _____ calendar days from the date of the opening, to purchase any or all of the items upon which the undersigned has quoted prices, at the price set opposite each item. It is understood that the Government reserves the right to reject any and all bids regardless of whether the same constitute the highest bids.

Certificate: The undersigned represents and certifies to the United States of America:

(1) that he is (the bidder) (the duly authorized representative of the bidder) named herein;

(2) that as defined by the applicable rules and regulations of the Office of Price Administration the bidder is (a dealer in) (a consumer of) the items covered by this bid;

(3) that the bidder (is) (is not) seeking to purchase the items for resale;

(4) that the bid prices for the items are not in excess of applicable maximum prices established by the Office of Price Administration;

(5) that the bidder will not resell any of the items at prices in excess of the maximum prices established by the Office of Price Administration and applicable to such resale;

(6) and that this certificate is executed for the purpose of inducing the United States of America to accept this bid and make an award hereon and with full knowledge that any wilful misrepresentations will subject the undersigned to criminal penalties provided by statute.

Bidder _____

Address _____

By _____

Title _____

authorized to make this bid.

GOVERNMENT'S ACCEPTANCE

Date _____

Accepted as to items numbered:

UNITED STATES OF AMERICA,

By _____

Title _____

(Contracting Officer)

GENERAL PROVISIONS

1. Materials covered; prices. The Government shall sell and deliver, and the Purchaser shall buy and accept, the items listed on the annexed continuation sheet(s) upon which prices have been quoted, and which are covered in Government's Acceptance. The prices to be paid by the Purchaser are those quoted; provided, however, that if at the time of delivery of any of the materials to the Purchaser a maximum price lower than that quoted shall have been established by the Office of Price Administration or similar authority and shall be in effect and expressly applicable to such delivery notwithstanding the existence of a prior contract calling for a higher price, the price for such materials shall be reduced to such maximum price.

2. Purchaser's warranties. The Purchaser warrants that this transaction is, and all of its future transactions with the materials covered hereby will be, in compliance with applicable regulations of the Office of Price Administration and the War Production Board or similar authority.

[1] *3. Delivery.* Delivery shall be at the present location of the property. Unless the Purchaser removes the materials from such location within . . . . days after notification of Government's Acceptance, the Government shall have the right to dispose of the materials and hold the Purchaser responsible for any loss incurred by the Government as a result of the failure to remove. The precise time of removal, and other details of removal, shall be arranged with the Contracting Officer.

[1] *3. Delivery.* Delivery shall be f. o. b. cars at point of origin. Unless shipping instructions are received within . . . . . days after notification of Government's Acceptance, the Government shall have the right to dispose of the materials and hold the Purchaser responsible for any loss incurred by the Government as a result of the failure to furnish shipping instructions.

4. Responsibility for materials sold. (a) The Purchaser has had ample opportunity for full inspection of the materials, and agrees to accept the same "as is." The Government makes no guaranty, warranty or representation, express or implied, as to the number, quantity, kind, size, weight, quality, character, description or condition of the materials, or their fitness for any use or purpose. This is not a sale by sample.

(b) Title to the materials shall vest in the Purchaser upon notification of Government's Acceptance. The Purchaser assumes all lia-

[1] Insert this paragraph if deposit guaranty is required.

[1] Delete inapplicable paragraph.

bility for materials after that time. The Government will exercise its usual care for protection of the materials

[2] up to the time limit of receipt of shipping instructions, or, where shipping instructions are received in time, until the materials are at cars,

[2] up to the time limit of removal,

but will not be responsible for any loss or damage for any cause whatsoever.

[3] *5. Payment.* Payment shall be made as follows: _____

_____

_____

Unless otherwise directed, payment shall be made by certified check, cashier's check or postal money order payable to the Treasurer of the United States.

[3] *5. Payment.* The deposit made by the Purchaser (see Informal Invitation) will be applied, immediately upon notification of Government's Acceptance, against the total payment due. Payment of the balance due shall be made (unless otherwise directed) by certified check, cashier's check or postal money order payable to the Treasurer of the United States within _____ days from the date of notification of Government's Acceptance.

[4] *6. Adjustment for variation in quantity.* The quantities of the various items covered by Government's Acceptance are approximate only. Any variation between the quantity stated for any item and the quantity of such item delivered to the Purchaser will be adjusted on the basis of the unit price quoted opposite such item.

7. Officials not to benefit. (Insert clause in § 803.322)

8. Covenant against contingent fees. The Purchaser warrants that he has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage or contingent fee. Breach of this warranty shall give the Government the right to annul the contract, or at its option, to recover from the Purchaser the amount of such commission, percentage, brokerage, or contingent fee, in addition to the consideration herein set forth. This warranty shall not apply to commissions payable by the Purchaser upon contracts or purchases secured or made through bona fide established commercial agencies maintained by the Purchaser for the purposes of doing business.

9. Disputes. (Insert article in § 803.326 or General Provision 12 of W. D. Contract Form No. 47 (§ 813.1317c).)

10. Definitions. (Insert Article 23, § 1813.1301.)

[Continuation Sheet]

Sheet No. _____

SCHEDULE OF MATERIALS TO BE SOLD

Present location: _____
For inspection of materials communicate with:

_____

_____

[Description, etc.]

§ 813.1327 *Standard procurement forms.*

CROSS REFERENCE: The forms set forth below are standard proposal forms which are to be used in accordance with instructions set forth in § 802.243 (b).

[2] Delete inapplicable provision.
[3] Delete inapplicable paragraph.
[4] Delete if inapplicable.

Budget Bureau Approval
No. 49-R-146

WAR DEPARTMENT
STANDARD PROCUREMENT FORM No. 1

REQUEST FOR PROPOSAL

From _____
_____
_____
To _____
_____

Proposal Request No. _____
Proposals to be received by _____, 194__
Preference rating to be assigned _____
Date _____, 194__

Under authority of the First War Powers Act, 1941, and Executive Order No. 6001, you are requested to submit a proposal for the furnishing of the item(s) hereinafter described (or such part thereof as you may be able to furnish), upon the delivery schedule hereinafter specified, and in accordance with Contract Form _____ as amended to date of the proposal, including (a) all applicable provisions required by Federal law, Executive Order, and War Department Procurement Regulations, and (b) the following optional clauses: _____

_____

_____

_____

A copy of that form of contract with such provisions and clauses, may be obtained from this office.
The Government reserves the right to reject any and all proposals made in response to this request.
Offers of prompt payment or cash discounts will not be considered in making the award, but if such an offer is made, the Government, in making payment, shall have the right to take advantage thereof according to its terms.

DESCRIPTION

Item No.	Item(s)	Quantity	Unit

In calculating your price(s) for such item(s), please take into consideration the issuance to you by the Government of the following described materials:

DELIVERY SCHEDULE

The item(s) described above are desired to be delivered f. o. b. _____
_____, in accordance with the following schedule

QUANTITY

Date or Period	Item No. ____	Item No. ____	Item No. ____	Item No. ____
TOTAL				

The inclosed Contractor's Proposal is to be completed and signed in _____
and returned to this office on or before _____, 194__. In any event all the drawings and specifications are to be returned to this office by that date. In preparing the Contractor's Proposal, the inclosed instructions relating thereto are to be carefully followed. Note carefully that only the following portions of the Contractor's Proposal are to be completed:

Inclosures:
____ copies Contractor's Proposal.
Instructions.

_____

_____

_____

Budget Bureau Approval
No. 49-R-147

WAR DEPARTMENT
STANDARD PROCUREMENT FORM No. 2

Contractor's proposal
To be filled out in _____

(A) From _____
_____
_____
To _____
_____
_____

NOTE.—This is the War Department's standard proposal form which has been prepared for the convenience of all contractors. For many contracts it will not be necessary to complete the entire form. Before filling out this form, read carefully the last paragraph of the Request for Proposal and the instructions for filling out this form.

Date _____, 194__

(B) Subject: (Item or items) _____

(C) The undersigned hereby offers to furnish to the Government the items, in the quantities, at the prices, and upon the delivery schedule set out below, and in strict accordance with the specifications inclosed with the Government's Request for Proposal dated _____, 194__

(D) The Government's notice of acceptance of this proposal must be given within 30 days after the closing date specified in the Request for Proposal, by sending to the undersigned, by mail or otherwise, a notice of award, purchase order, or contract responsive to this proposal.

(E) In the event the Government shall accept this proposal, the undersigned will sign and deliver to the Government Contract Form_____, as amended to the date hereof (if that form requires manual execution by the undersigned), embodying the terms and provisions of this proposal. In addition to the clauses required by Federal law, Executive Order, and War Department Procurement Regulations, the contract shall include the following optional clauses: _____

(F) Any acceptance of this proposal shall be based on the following representations (including the data furnished by the undersigned under Titles I to _____, both inclusive, and _____ supplementary sheets attached hereto), which are certified to be true to the best knowledge and belief of the undersigned (hereinafter called the "contractor").

(G) Name_____

By_____

Title_____

(Authorized to make this proposal)

Title I. (*a*) Contractor is:

( ) Corporation incorporated under laws of_____

( ) Partnership, consisting of_____

( ) Sole proprietorship of_____

(*b*) Business address_____

(*c*) Name and location of contractor's plant(s) where each item will be manufactured or from which furnished_____

(*d*) The individual authorized to conduct negotiations on behalf of the contractor is_____

Title_____

TITLE II.—*Scope of proposal.*

(A) Item No. (1)	Description of Item (2)	Quantity (3)	Unit (4)	Unit Price (5)	Total Price (6)

(B) 1. Total prices for all items_____ $_____

2. Cost of additional facilities to be manufactured or acquired by contractor for Government account_____

3. Total proposed value of contract_____ $_____

(C) The foregoing prices do *not* include the Federal, State, and local taxes which are excluded as directed by the instructions which accompany this proposal form.

(D) The foregoing prices are based on the understanding that the following material is to be furnished by the Government: _____

(E) The proposed unit prices are based on the premise that the contractor (will) (will not) take title to all scrap from Government-furnished material. If contractor is to take title, each price per unit listed above has been reduced _____

(F) The cost per unit of packaging and boxing which is included in the price for each of the items is as follows:

(G) Contractor agrees to comply with reasonable requests for cost information based on production experience under the proposed contract.

TITLE III—*Delivery schedule.*

The items described above will be delivered f. o. b. _____, upon the following schedule:

QUANTITY

Date or Period	Item No. _____	Item No. _____	Item No. _____	Item No. _____
Total				

TITLE IV.—*Supplementary Information.*

(Read instructions carefully before *completing* this and following titles. *See page 2 of Request for Proposal for such titles or portions thereof that are to be answered.*)

1. Contractor now has.....outstanding war contracts and subcontracts, aggregating....., of which approximately.....% is uncompleted.

2. Contractor now employs approximately.....employees. The average number employed in 1940 was approximately..... To perform contract resulting from this Proposal, contractor will have to employ.....additional employees and work.....shifts of.....hours each, ...days per week.

3. Check proposed method of financing contract resulting from this Proposal:

.....From contractor's working capital or through usual commercial channels.

.....By Government-guaranteed loan of $.....

.....By advance payment of.....%, which will be formally requested.

.....By financial assistance from Smaller War Plants Corporation.

4. (*a*) Contractor (has) (has not) been renegotiated pursuant to section 403, Sixth Supplemental National Defense Appropriation Act, 1942, as amended. Renegotiated by.....for the period.....

(*b*) Attach summary of price reduction covenants in any renegotiation agreement, and indicate effect of such covenants on proposed prices hereunder.

(*c*) Status of any pending statutory renegotiation proceeding is.....

(Submit answres to following on separate sheets.)

5. Indicate extent of proposed subcontracting in terms of percentage of proposed prices for the items covered by this proposal. To extent available, give names and addresses of proposed subcontractors for major component parts, identification and quantities of such parts, and the unit prices to be paid therefor. Indicate any affiliation between contractor and each of such proposed subcontractors.

6. Show by major classifications (as specified in the instructions) the cost of Government-owned facilities which the contractor intends to use for performance of the proposed contract.

7. State in detail contractor's need of (*a*) additional Government-owned facilities and (*b*) additional contractor-owned facilities for performance of prospoced contract.

8. (*a*) Give details of any agreement to pay commission, percentage, brokerage, or contingent fee in connection with proposed contract.

(*b*) To extent possible, give details of any such agreement or agreements in connection with any proposed subcontract or subcontracts.

9. If patent royalties are included in price, state: (*a*) Amount, (*b*) basis of calculation, (*c*) name and address of licensor, (*d*) feature on which paid, and (*e*) numbers and dates of patents or applications involved.

10. State concisely method of manufacture to be used in performance of proposed contract.

TITLE V.—*Unit cost breakdowns*

Name of item (if proposal covers more than one item)	Col. A Proposed Contract, Estimated Amount per Unit		Col. B Cost per Unit Under Previous Contract for Similar Items, No. ..... From.... to ..... Quantity..... (See Note 1)		Col. C Over-all Company Operating Statement for Last Fiscal Year Ended ..... (See Note 2)	
	$	*Percent*	$	*Percent*	$	*Percent*
1. Direct material						
2. Less scrap or salvage						
3. Net direct material						
4. Purchased parts						
5. Direct productive labor						
6. Mfg. direct factory charges						
7. Indirect factory expenses (burden)						
8. Engineering and dev. expenses						
9. General and admin. expenses						
10. Selling expense (see Note 3)						
11. Contingencies (see Note 3)						
12. Other expenses (see Note 3)						
13.						
14.						
15.						
16. Total cost		100%		100%		100%
17. Operating profit (before income and excess profit taxes)						
18. Total proposed unit price						

NOTE 1: This column should contain historical costs, *not* merely a copy of a former proposal.

NOTE 2: Column C should conform as closely to the line captions as the contractor's account classification will permit. Operating profit should be shown on line 17 and net sales on line 18.

NOTE 3: Depreciation on productive facilities included above:

(*a*) Normal depreciation	$.....	$.....	$.....
(*b*) Accelerated depreciation	.....	.....	.....
Total	$.....	$.....	$.....

NOTE 4: Unless proposed contract covers only spare parts, do not include spare parts in this breakdown.

NOTE 5: Specify and describe on separate sheets the nature of the expenses included in lines 10 to 15 and the basis of their calculation.

TITLE VI. *Indirect factory expenses.*

	Col. 1 Proposed Contract, Estimated Amount (if information is readily available)	Col. 2 Budgeted Forecast of Expenses for Plant, Department, or Company for Period	Col. 3 Operating Statement for Last Fiscal Year Ended..... .....
1. Labor	$.....	$.....	$.....
2. Superintendence			
3. Supplies			
4. Maintenance and repairs			
5. Depreciation			
6. Taxes and other expenses (specify and describe on separate sheets)			
7.			
8.			
9.			
10.			
Total	$.....	$.....	$.....

Title VII.—*General expenses.*

	Col. 1	Col. 2	Col. 3
1. Royalties and license fees	$.....	$.....	$.....
2. Administrative salaries			
3. Depreciation			
4. Other administrative expenses (specify and describe on separate sheets)			
5.			
6.			
7.			
8. Miscellaneous			
Total	$.....	$.....	$.....

TITLE VIII. *Accounting methods.*

State briefly the method used in estimating costs, including (see last paragraph of Request for Proposal): (*a*) Method of allocation of indirect factory expenses, selling and general expenses, and any other costs subject to allocation; (*b*) general depreciation rates and basis for charging accelerated depreciation; (*c*) a statement as to whether or not the methods and general rates used in (*a*) and (*b*) above are consistent with such used in the last 5 years, with explanation of changes, if any; (*d*) the extent burden applicable to idle or excessive facilities, if any, has been apportioned to this proposal; (*e*) a statement that no charge for depreciation on Government-owned facilities has been included in the estimated costs; (*f*) the amount of rental on Government-owned facilities included in estimated costs; and (*g*) a general description of engineering and development expenses included in this proposal and the method of amortization thereof.

TITLE IX. *Other costs.*

1. Submit unit cost breakdown, similar in content to columns A and B of title V, for sets of spare parts.
2. Submit cost breakdown per set for the packaging and boxing of spare parts.
3. Submit unit cost breakdown for packaging and boxing of each of the items covered by this proposal.

Budget Bureau Approval
No. 49-R-147

WAR DEPARTMENT

INSTRUCTIONS FOR FILLING OUT CONTRACTOR'S PROPOSAL, STANDARD PROCUREMENT FORM NUMBER 2

Read all instructions carefully before filling out form

Fill out the Contractor's Proposal in ..... When spaces on that form are insufficient for a complete answer, use separate sheets. Start each answer with the number or letter of the title or portion thereof which is being answered.

Heading: At (A) insert the contractor's name, and on right-hand side of page 1, fill in date in space provided therefor.

Paragraph (B): Insert short description of item(s). Examples: "Radio TGR508"; "Shell, H. E. 20mm., MK. 1."

Paragraph (C): Insert date of Request for Proposal.

Paragraph (E): Insert proper contract form number and list of optional clauses to be included in contract. See first paragraph of Request for Proposal. If contractor is not familiar with the contract form, he may obtain a copy from the contracting officer.

Paragraph (F): Insert number of last title required to be answered (see last paragraph

of Request for Proposal) and number of supplementary sheets attached to Contractor's Proposal.

Signature (G): Fill in contractor's name. Contractor or duly authorized representative is to sign on third line, and his title is to be shown on fourth line.

TITLE I

(*a*) Indicate by "X" whether contractor is corporation, partnership, or individual, and give the other pertinent information requested.

(*b*), (*c*), and (*d*) Self-explanatory.

TITLE II. *Scope of proposal*

(A) In filling out the table, refer to Request for Proposal and follow (1) the item numbers, (2) description of items, (3) quantities, and (4) units. As to each item show in the appropriate column (5) unit price and (6) total prices. If any entry in the first four columns does not follow the Request for Proposal, state on the first line of the table "Differs from request."

(B) On line 1 fill in the total of column (6) of the table. On line 2 fill in amount of additional facilities which contractor proposes to manufacture or acquire for the Government's account, to be used in connection with the production covered by the proposal. This figure should be the total of the cost of additional facilities referred to in paragraph 7 (*a*) of Title IV. If additional facilities are necessary, answer paragraph 7 (*a*) of Title IV. Do not include any part of these costs in the unit prices. Show the total of lines 1 and 2 on line 3.

(C) *Taxes:* Except as otherwise expressly directed in any instance:

1. Contractor shall *exclude* from his proposed prices:

(*a*) All Federal excise taxes enumerated in Chapters 25 and 29, Internal Revenue Code, applicable to the completed supplies or work covered hereby; and

(*b*) All Federal excise taxes enumerated in Chapters 25 and 29, Internal Revenue Code, applicable to the component parts, articles or units of the completed supplies or work of which the contractor himself is the manufacturer, importer, or producer; and

(*c*) All State and local taxes from which an exemption is available for purposes of this procurement.

2. Contractor shall *include* in his proposed prices:

(*a*) All Federal excise taxes enumerated in Chapters 25 and 29, Internal Revenue Code, applicable to the materials or component parts to be incorporated in the completed supplies or work (other than those mentioned in paragraph 1 (*b*) above); and

(*b*) All other Federal taxes, charges, or duties of any nature whatsoever, including without limiting the generality of the foregoing, the Federal excise tax on the transportation of property imposed by Chapter 30, Internal Revenue Code; and

(NOTE: If the completed supplies are taxable articles under Chapters 25 and 29, Internal Revenue Code, contractor's purchase of materials to be incorporated in the supplies is exempt from tax under Section 3442 (1), Internal Revenue Code, and credits or refunds may be obtained under Section 3443 (a) (1). No tax on such materials shall be included in the price.)

(*c*) All State or local taxes other than those mentioned in paragraph 1 (*c*) above.

3. Tax Exemption Certificates, where applicable, will be issued for the amount of any tax excluded from the price, as to which an exemption is available. In making application therefor, list all pertinent data in support of the application.

(D) Complete by inserting the description and amount of Government-furnished material which is specified in the Request for Proposal or which is essential for performance of proposed contract. If this list does not follow the Request for Proposal, write after the word "Government," "Differs From Request."

(E) Strike "will" or "will not" in order to show contractor's intention. If contractor will take title to scrap from Government-furnished material, enter the amount by which the unit prices listed in the table have been reduced.

(F) Insert unit costs of packaging and boxing each of the items, identifying those costs for each of the items.

TITLE III. *Delivery schedule*

Insert f. o. b. delivery point, writing in "Differs From Request" if the delivery point differs from that contained in the Request for Proposal.

The delivery schedule should be completed in the same manner as that appearing in the Request for Proposal. If the delivery dates specified in the Request for Proposal cannot be met, insert the earliest possible delivery dates, and state on first line of table "Differs From Request."

(*NOTE: Before giving information called for by Titles IV to IX, read the last paragraph of the Request for Bid, for a listing of portions of such Titles which are to be answered. For many contracts it will not be necessary to complete the entire proposal.*)

TITLE IV

1. If actual figures are not readily available, give approximate figures.

2. Give approximate average number of employees in 1940. This figure may be obtained by taking the average number per pay period, or the average of the quarterly figures reported to the Bureau of Internal Revenue and the Bureau of Old Age and Survivors Insurance on Form SS 1a. An estimate of need of additional employees may be used.

3. If proposed contract is not to be financed from contractor's working capital or through usual commercial channels, contractor should make inquiry as to the possibility, manner, and extent of any other method of financing before it is checked in the Proposal. This office will assist contractor with respect to such inquiry. Fill in amount if a Government-guaranteed loan is contemplated, and percent of total contract price if advance payment is to be formally requested.

4. (*a*) Strike "has" or "has not." Insert in first blank name of Board or Section which renegotiated contractor, and in second blank the fiscal period covered by the renegotiation. (*b*) Include summary in supplementary sheets, identifying the question answered. (*c*) Insert in the blank a brief statement showing state of progress of any pending renegotiation.

(NOTE. *Submit answers to the remaining paragraphs of this Title on numbered, plain white sheets of approximately the same size as the Proposal, except as to paragraphs where the answer is "None," in which cases that word may be inserted at the end of such paragraphs on the form itself. Give the number of the title or portion thereof at the beginning of each answer.*)

5. Subcontractors, as that term is used in the Proposal, are suppliers of parts and components, completely or partially fabricated, and of materials which are fabricated to meet individual specifications for use in performance of proposed contract. List proposed subcontractors for the larger components and parts *only*. When several subcontractors are being considered for the same part, list all of them as alternative suppliers, together with the quantities which may be purchased from each. Indicate which, if any, of the proposed suppliers is an affiliate, subsidiary, division of, or is otherwise legally related to the contractor, or is controlled by an officer or major owner of contractor. Indicate the nature of such relationship.

6. List each separately: (*a*) Land, (*b*) buildings, (*c*) machinery and equipment, (*d*) tools, jigs, and fixtures, and (*e*) rehabilitation expense.

7. List each item of equipment or other facilities separately under (*a*) Government-owned facilities and (*b*) contractor-owned facilities for performance of proposed contract. Supply information under the following headings: (1) Name of item, (2) Size and Type, (3) Operation for Which Required, (4) Use by Prime or Subcontractor, (5) New or Used, (6) Total Cost, including price, transportation and installation.

8. (*a*) Describe agreements to pay commissions, etc., giving names and addresses of other parties to agreement, amounts and bases of calculation of such fees, and conditions upon which they are proposed to be paid. (*b*) Where contractor has information concerning similar agreements in connection with one or more subcontracts, that information should be furnished in like detail to the extent possible.

9. State amount of patent royalties per unit and total, describe method for calculating these amounts, list licensors, the particular feature or features of the subject items which are covered by the royalty agreement, and numbers and dates of patents or applications involved.

10. Describe any manufacturing operations which in contractor's judgment have any special significance for an understanding of the costs under the proposal. At contractor's request such information may be used as basis for a special provision in the contract relating to the production process and the machine tools used in the production.

TITLE V

Before supplying information under Titles V to IX check the last paragraph of the Request for Proposal to ascertain whether and what part of those titles need be completed.

Carefully read and follow the notes appended to Title V.

Follow the classifications listed unless the contractor's regular accounting system requires another type of breakdown, in which case that breakdown should be substituted.

The cost breakdowns are required to give the contracting officer as complete an understanding of the contractor's operations as possible. The inclusion or exclusion of individual cost elements under this form does not indicate the propriety or impropriety thereof.

When the proposed contract covers more than one item (not including spares) supply a separate breakdown for each of such items. Specify in the space provided, the item covered by each breakdown. In such case column C need be filled out in only one of the cost breakdowns.

When entries are made on lines 10 to 15 for Selling Expenses, Contingencies, and Other Expenses, specify and describe on separate sheets the nature of the expenses and the basis of their calculation.

Column B. Fill out heading. Insert contract number, dates when production was started and completed under the contract, and the quantity of production.

Column C. Fill in date of end of fiscal year covered.

Fill in dollar amounts for each line required. For each item of cost, calculate percentage of *total costs* and enter on appropriate lines.

TITLE VI. *Indirect factory expenses*

Follow the classifications listed unless the contractor's regular accounting system requires another type of breakdown, in which case that breakdown should be substituted.

Where entry is made on line 6, Taxes and Other Expenses, or on the following lines, specify and describe on the separate sheets the nature of such taxes and other expenses and the reasons for their inclusion.

TITLE VII. *General expenses*

Follow the classifications listed unless the contractor's regular accounting system requires another type of breakdown, in which case that breakdown should be substituted. When Other Administrative Expenses are included specify and describe on separate sheets.

TITLE VIII. *Accounting methods*

The information called for under Title VIII should be given in sufficient detail to enable the contracting officer to understand the accounting methods employed by the contractor.

TITLE IX. *Other costs*

1. Costs of Spare Parts: See instructions under Title V. Show costs of preparation and boxing as one item of cost. Submit a list of the prices which the contractor paid or proposes to pay for important subcontracted items.

2. Cost of Packaging and Boxing of Spare Parts: Submit a cost breakdown that seems clearest to the contractor. When *special* packaging constitutes a substantial part of total costs, the explanation might start with the cost of regular packaging and then proceed with an explanation of the differences between the cost of regular packaging and that of special packaging.

3. Cost of Packaging and Boxing of Major Items: The cost of packaging and boxing of items other than spare parts is to be included in the costs shown under Title V (when an answer to that title is required) and is to be shown separately under this title. Submit a cost breakdown that seems clearest to the contractor. See suggestion in the next preceding paragraph.

§ 813.1328 *W. D. Contract Form No. 28.*

CROSS REFERENCE: See § 802.222 (g).

LETTER OF COMMITMENT (RAW MATERIAS UNDER CMP)

Contract No._____ Date _____
(Negotiated)
_____ Place _____
_____
(Contractor)
_____
(Address)

Gentlemen:

1. The operation of the Controlled Materials Plan makes it necessary that raw materials subject to that plan be ordered in advance in order to insure the availability of such materials in the event that the Government may decide to place supply contracts with you in the future for _____ (description of item). It is likely that in some instances your allotment authority under CMP will extend through _____, 19__, which date may be beyond the completion date of your present supply contract or contracts.

2. You are directed, upon your acceptance of this commitment, to place purchase orders for materials under CMP, required in the production of _____, immediately upon receipt of your allotment authority in furtherance of which you are authorized to expend or obligate not more than _____ Dollars ($_____).

3. All applicable articles (other than the article "Termination for the Convenience of the Government") now required by Federal law, Executive Order, or War Department Procurement Regulations to be included in contracts of the kind herein described are incorporated herein by reference.

4. (a) In the event that supply contracts are placed looking to the utilization of all or a part of the raw materials acquired hereunder, there will be executed simultaneously with the execution of such supply contract or contracts a supplemental agreement to this Letter of Commitment either extinguishing or reducing, as the case may be, the amount obligated under this Letter of Commitment to the extent that such materials are to be utilized in the performance of such supply contract or contracts.

It is understood that the issuance of this Letter of Commitment, and its acceptance by you, do not create any obligation on the part of the Government to place supply contracts with you looking to the utilization of all or part of the materials under CMP ordered by you under your allotment authority.

(b) The Government may at any time terminate this commitment in whole or in part for its convenience by giving you written notice of such termination. In the event of such termination the Government's liability shall extend only to costs incurred and commitments made for materials under CMP to be delivered through, but not beyond _____, but in no event shall the total amount paid or reimbursed the contractor exceed the amount above specified.

(c) In the event that you are not awarded a new supply contract or continuation contract enabling you to utilize all or a part of the materials under CMP ordered by you under your allotment authority, you will be so notified and this Letter of Commitment terminated in accordance with paragraph 4 (b) above. Thereupon, you and the Contracting Officer will attempt to agree by negotiation upon a settlement estimated by the parties to be the aggregate amount of the costs incurred by you in the performance of this commitment and the amounts paid or to be paid by you or for your account in settling with the approval of the Contracting Officer your obligations for commitments made in the performance of this agreement. Any such negotiated settlement shall be embodied in a Supplemental Agreement.

(d) If you and the Contracting Officer are not able to agree upon such a negotiated settlement within 90 days after the effective date of the termination (or within such longer period as at any time may be mutually agreed upon), the Government binds itself to reimburse you for the costs incurred by you in the performance of this commitment and for any amounts paid by you or for your account in settling with the approval of the Contracting Officer your obligations for commitments made in the performance of this agreement. In lieu of reimbursing you for expenditures made by you in settling any of your obligations for commitments, the Government, in the discretion of the Contracting Officer, may assume such obligations or any of them.

(e) The Government may permit you to sell or retain at prices or on terms agreed to by the Government any materials, and the proceeds of any such sale, or such agreed amounts, shall be paid or credited to the Government in such manner as the Contracting Officer may direct.

(f) Upon payment or reimbursement to you pursuant to paragraph 4 (c) or 4 (d) of this commitment, title to all materials for which you are so paid or reimbursed (except such property as may be sold or retained by you as above provided) will vest in the Government. The Government will also become entitled to any rights under any commitment which it may assume, or for the settlement of which it shall have reimbursed you.

(g) Any dispute which arises under this paragraph 4 regarding a matter of fact will be treated and resolved as a dispute under the "Disputes" article incorporated in this commitment by reference.

(h) Partial payments on account of any amount admittedly due to you pursuant to this paragraph 4 may be made by the Government at any time in the discretion of the Contracting Officer.

5. The sums to be expended by the Government hereunder are chargeable to the following allotments, the available balances of which are sufficient to cover the same:

_____

6. Your acceptance of this commitment will be indicated by affixing your signature on this letter and two copies thereof and mailing or delivering the executed original and one executed copy to the Contracting Officer not later than _____, 19____. Such acceptance will constitute this commitment a contract on the terms set forth herein.

7. This instrument is authorized by and has been negotiated under the First War Powers Act, 1941, and Executive Order No. 9001.

UNITED STATES OF AMERICA,
By _____
_____
(Official Title)

[CORPORATE SEAL]
Accepted _____, 19____
_____
(Contractor)
By _____
(Title)
_____
(Address)

[Procurement Reg. No. 14]

PART 814—REQUISITIONING OF PERSONAL PROPERTY

SUBPART A—GENERAL

Sec.
814.1401 Authority to requisition.
814.1402 All requisitioning by or on behalf of the Army to be in accordance with this part.
814.1403 Policy in respect of requisitioning property.
814.1404 Definitions.

SUBPART B—ACQUISITION OF PROPERTY BY REQUISITION

814.1405 Statutory authority to requisition property.
814.1406 Initiation of requisition proceedings.
814.1407 Clearance of the proposal and issue of the Requisition.
814.1408 Method of serving the Requisition and duties of the Serving Officer in connection therewith.
814.1409 Further service of Notices of Requisition.

SUBPART C—DETERMINATION AND PAYMENT OF FAIR AND JUST COMPENSATION

814.1410 Statutory obligation to pay fair and just compensation.
814.1411 Determination of person or persons entitled to receive fair and just compensation.
814.1412 Preliminary determination of fair and just compensation.
814.1413 Final determination of fair and just compensation.
814.1414 Payment of fair and just compensation.

SUBPART D—RETURN OF REQUISITIONED PROPERTY AND DISPOSITION OF PROCEEDS OF REQUISITIONED PROPERTY

Sec.
814.1415 Return of requisitioned property to former owner under certain conditions.
814.1416 Disposition of proceeds from property requisitioned and sold or disposed of under 1940 act.
814.1417 Form of proposal and statement under the 1940 act.
814.1418 Form of proposal and statement under the 1941 act.
814.1419 Form of Requisition under the 1940 act.
814.1420 Form of Requisition under the 1941 act.
814.1421 Form of the Receipt and the Return on Reverse of the Requisition.

Sec.
814.1422 Form of Notice of Requisition.
814.1423 Form of Report of Serving Officer.
814.1424 Form of Notice to Present Claims.
814.1425 Instructions for the preparation and submission of documents.
814.1426 Form of Proof of Claim.
814.1427 Forms of verification.
814.1428 Form of Disclaimer.
814.1429 Form of Notice of Preliminary Determination of Fair and Just Compensation.
814.1430 Form of Certificate of Ownership and Fair and Just Compensation.
814.1431 Form of Stipulation and Release.
814.1432 Form of Submission to War Department Board of Contract Appeals.

SUBPART H—MANDATORY ORDERS TO PRODUCE

Sec.
814.1450 Authority to place mandatory orders.
814.1451 Definitions.
814.1452 Policy.
814.1453 Placing of mandatory orders.
814.1454 Provisions of mandatory orders.
814.1455 Financing of the producer.
814.1456 Service of mandatory orders.
814.1457 Determination of reasonable price.
814.1458 Execution of voluntary agreements.
814.1459 Non-compliance with mandatory orders.
814.1460 Forms.

SUPPORT A—GENERAL.

§ 814.1401 *Authority to requisition.* Authority to requisition personal property is conferred under (1) the Act of October 10, 1940 (54 Stat. 1090), as amended by the Act of July 2, 1942 (56 Stat. 467), (2) the Act of October 16, 1941 (55 Stat. 742), as amended by the Act of March 27, 1942 (56 Stat. 181) and by the Act of June 30, 1943 (Pub. Law 104—78th Congress), and (3) Executive Orders Nos. 8942 (6 F. R. 5909), 9024 (7 F. R. 329), 9040 (7 F. R. 527), 9138 (7 F. R. 2919), 9280 (7 F. R. 10179), 9294 (8 F. R. 221), 9322 (8 F. R. 3807) and 9334 (8 F. R. 5423). By such Executive orders the President delegated to various persons, including the Secretary of War, the power to initiate requisitions under the act. The Secretary of War, by order dated December 11, 1941, assigned to the Under Secretary of War the functions, powers and duties so delegated to him. As a result of such delegation and assignment, the Under Secretary of War makes final determination as to the existence of statutory authority to requisition property desired to be requisitioned by the War Department and, if the proposal to requisition and the proposed disposal of the property is approved by the Army and Navy Munitions Board and in proper cases, by the Chairman of the War Production Board, the War Food Administrator of the Office of Defense Transportation, issues the Requisition. He also makes final administrative determination as to the amount of compensation to be paid for property requisitioned by the War Department.

§ 814.1402 *All requisitioning by or on behalf of the Army to be in accordance with this part.* All property to be requisitioned by or on behalf of the Army under the authorities referred to in § 814.1401 will be requisitioned as provided in this part, unless authority to requisition the property otherwise has been specifically granted. However, the procedure prescribed by this part relates only to requisitioning under such authorities and does not apply to, or prescribe procedure for, any other methods of requisitioning or commandeering which may be available to officers in theaters of operations.

§ 814.1403 *Policy in respect of requisitioning property.* Requisitioning will not be used as a substitute for purchasing. However, if purchasing is not feasible, because there is doubt as to the ownership of the property, or the owner refuses to sell or refuses to sell at a reasonable price, or for any other reason, requisitioning will be resorted to in those cases permitted by the authorities referred to in § 814.1401. Such authorities and this part provide an expeditious method of obtaining the property and, to promote such end, each step in the procedure outlined herein will be expedited.

§ 814.1404 *Definitions.* As used in this part:

(a) "Property" means personal property, and includes all items of property which have been, or may be, requisitioned under the authorities referred to in § 814.1401.

(b) "Chief Requisition Officer" means any person designated by the chief of a technical service to act on his behalf with respect to all requisitions initiated by such technical service. The chief of each technical service promptly will, if he has not already done so, designate one or more Chief Requisition Officers, and advise the Legal Branch, Director of Matériel, of such designation. Any change in such designation will also similarly be reported promptly.

(c) "Initiating Requisition Officer" means the contracting officer (as defined in Part 803) or other person who would have purchased the property had it been possible to obtain the property by purchase, or such other person as a Chief Requisition Officer may designate or approve as the person to perform the functions herein provided to be performed by the Initiating Requisition Officer.

(d) "Serving Officer" means any officer, agent or employee of the United States designated in the Statement accompanying a Proposal to requisition as the person or persons to make personal service of the Requisition.

(e) "Initial Compensation Officer" means the person designated by a Chief Requisition Officer preliminarily to determine fair and just compensation for property requisitioned, which person may be the Initiating Requisition Officer or any other person who, because of his familiarity with the value of the property or his being stationed at or near the residence or whereabouts of the persons entitled to receive such compensation, or otherwise, is deemed to be an appropriate person initially and preliminarily to determine fair and just compensation.

"Legal Branch, Director of Matériel" means the Legal Branch, Director of Matériel, Headquarters, Army Service Forces, Washington, D. C.

SUBPART B—ACQUISITION OF PROPERTY BY REQUISITION

§ 814.1405 *Statutory authority to requisition property.* (a) The act of October 10, 1940, as amended, authorizes the taking of property by requisition when it is determined that:

(1) The property is military or naval equipment or munitions, or component parts thereof, or machinery, tools, or materials, or supplies necessary for the manufacture, servicing, or operation thereof;

(2) The property was ordered, manufactured, procured, or possessed for export purposes, and that the exportation thereof has been prohibited or curtailed in accordance with the provisions of section 6 of the act of July 2, 1940 (54 Stat. 714) as amended (56 Stat. 463, 50 U. S. C. App. 701), or any other law; and

(3) It is necessary in the interest of national defense or prosecution of the war to requisition and take over the property for use or operation by the United States or in its interest.

(b) The act of October 16, 1941, as amended, authorizes the taking of property, other than fire arms possessed by an individual for his personal protection or sport, possession of which is not prohibited by existing law, by requisition, if the taking will not impair or infringe in any manner the right of any individual to keep and bear arms, when it is determined that:

(1) The property is military or naval equipment, supplies, or munitions, or component parts thereof, or machinery, tools, or materials necessary for the manufacture, servicing, or operation of such equipment, supplies, or munitions;

(2) The use of the property is needed for the defense of the United States;

(3) Such need is immediate and impending and such as will not admit of delay or resort to any other source of supply; and

(4) All other means of obtaining the use of the property for the defense of the United States upon fair and reasonable terms have been exhausted.

§ 814.1406 *Initiation of requisition proceedings*—(a) *Preparation of proposal and statement by Initiating Requisition Officer.* Having satisfied himself as to the existence of statutory authority to requisition the property, the Initiating Requisition Officer will prepare and execute a Proposal and Statement in the appropriate one of the forms set forth in §§ 814.1417 and 814.1418; the form set forth in § 814.1417 being used if the property is to be requisitioned under the 1940 act and the form set forth in § 814.1418 being used if the property is to be requisitioned under the 1941 act. Copies of such forms of Proposals and Statement may be obtained from the Chief Requisition Officer or from the Legal Branch, Director of Matériel but, to expedite the proceedings, the Initiating Requisition Officer may type or otherwise appropriately reproduce such forms. The following will be observed in the preparation of Proposals and Statements regardless of which form is used, to the extent practicable under the particular circumstances of each case:

(1) The property proposed to be requisitioned will be described accurately, and, in the fullest detail possible as to size, shape, quantity, quality, finish, etc., in order that a complete, correct and precise description of the property may be set forth in the Requisition.

(2) The names and addresses of the owner or owners of the property, of all persons who may claim an interest in the property or a right to share in the compensation to be paid (such as common carriers, warehousemen, forwarders and others having possessory liens, and collectors of customs, mortgagees, conditional sale vendors and the like), together with a statement of their respective interests or possible interests will be included appropriately in the Proposal, and the nature and extent of the inquiry made to ascertain such persons and their interests or possible interests, which will be as thorough as may be practicable consistent with the speed of action required, will be set forth in the Statement.

(3) The allotment, appropriation or fund specified in the Statement will be charged with an amount clearly sufficient to represent full, fair and just compensation for the property.

(4) The persons designated as available to serve the Requisition if it issues will be persons who will be available to, and will, personally serve the Requisition as provided in § 814.1408. Two or more persons should be designated in each case to assure that at least one of them will be available to serve the Requisition when it issues.

(5) Directions for disposition of the property will be as full and explicit as necessary to permit the Serving Officer to make the desired disposition of the property immediately upon service of the Requisition.

(6) The facts indicating statutory authority to requisition the property will be set forth in detail sufficient to permit an independent determination of the existence of statutory authority to be made by higher authority. The Proposal and Statement in this and other respects may incorporate by reference statements contained elsewhere in them or in written memoranda or correspondence annexed to the Statement as exhibits.

(b) *Transmittal of Proposal and Statement.* The original and one copy of the Proposal and Statement will be forwarded by the Initiating Requisition Officer to the chief of his technical service, addressed to the attention of the Chief Requisition Officer, and seven copies thereof will be forwarded to the Legal Branch, Director of Matériel.

(c) *Approval of Proposal and Statement by Chief Requisition Officer; Preparation of Requisition, Notices of Requisition and Instructions to Serving Officer.* The Chief Requisition Officer will, if the proposed requisitioning is approved by him on behalf of his technical service and if he concurs in the statements and certifications made by the Initiating Requisition Officer in the Proposal and Statement, designate the Initial Compensation Officer, endorse his approval on the original of the Proposal and forward it in the most prompt method available to the Legal Branch, Director of Matériel. He will also prepare (1) six copies of a proposed Requisition for signature, (2) Notices of Requisition in the form of that set forth in § 814.1422, in as many copies as will be required by the Serving Officer for service, plus four additional, and (3) such instructions to the Serving Officer, as to the person or persons upon whom the Requisition and such Notices of Requisition should be served, as to any investigation and inquiry to be made by the Serving Officer to ascertain other persons who may have, or assert, any interest in the property, or otherwise, as may be appropriate in the particular case and, unless the Chief Requisition Officer has been advised otherwise, will forward the same to the Legal Branch, Director of Matériel, in such manner as to be received by it within twenty-four hours after it shall have received the original of the Proposal and Statement. If negotiable documents of title relating to the property are outstanding and the whereabouts thereof is known such documents should be included in the Requisition as a part of the property to be requisitioned.

§ 814.1407 *Clearance of the Proposal and issue of the Requisition.* The Legal Branch, Director of Matériel, will endeavor to obtain all necessary clearances to, and approvals of, the Proposal. If the requisition issues, it and such notices of requisition will be forwarded to the Serving Officer named in the statement of service. A copy of the proposal and statement and of such instructions of the Chief Requisition Officer will also be forwarded to the Serving Officer for his information. If the Requisition is so forwarded by the Legal Branch, Director of Matériel, the Chief Requisition Officer will be advised promptly of the forwarding thereof and a copy of the Proposal and statement, conformed to show such approvals, will be transmitted to him.

§ 814.1408 *Method of serving the Requisition and duties of the Serving Officer in connection therewith*—(a) *Method of serving Requisition; transmittal of documents of title.* The Serving Officer will personally serve the Requisition upon the possessor or custodian of the property by exhibiting to (but not leaving with) such possessor or custodian the original manually signed Requisition and by leaving with such possessor or custodian (1) a copy of the Requisition, with the Receipt on the reverse thereof duly completed and executed, and (2) a notice of requisition, in the form of that set forth in § 814.1422, appropriately completed. Upon service of the Requisition the Serving Officer will complete and execute the Return of Service appearing on the reverse of the original manually signed copy and will take possession of the property on behalf of the United States and dispose of it as directed in the Statement. Negotiable documents of title requisitioned will be forwarded to the Initial Compensation Officer designated in the proposal.

(b) *Method of serving Notices of Requisition.* The Serving Officer will also promptly serve an appropriately completed Notice of Requisition upon each of the other persons designated in such instructions of the Chief Requisition Officer. Such Notices of Requisition similarly will be personally served if feasible; otherwise, service thereof will be made by registered letter mail, return receipt requested, addressed to the last known address of the person being served.

(c) *Ascertainment by Serving Officer of other possible claimants to compensation; transmittal of Return of Service and of Report of Serving Officer.* The Serving Officer will promptly make such further investigation and inquiry as to additional persons, who may have, or assert, an interest in the property or a right to be compensated by reason of its taking as shall have been directed by the Chief Requisition Officer in such instructions or as appears appropriate in the particular case and will forward to the Chief Requisition Officer who signed the Proposal (1) the original manually signed Requisition, with the receipt and return on the reverse thereof duly completed, and (2) a Report of Serving Officer in the form of that set forth in § 814.1423, with exhibits. Simultaneously the Serving Officer will forward conformed copies of such documents to (i) the Legal Branch, Director of Matériel, and (ii) the Initial Compensation Officer.

§ 814.1409 *Further service of Notices of Requisition.* The Chief Requisitioning Officer promptly will make, or cause to be made by the Serving Officer, the Iniating Requisition Officer, the Initial Compensation Officer or others such further investigation to determine the persons entitled to receive the fair and just compensation to be paid for the property as may be required in the particular case and promptly will serve, or cause to be served, Notices of Requisition upon all such persons not theretofore served. Service thereof will be made as provided in § 1408 (b) and record of the service thereof will be kept by the Chief Requisition Officer. The Initial Compensation Officer and the Legal Branch, Director of Matériel, will be advised by the Chief Requisition Officer of any additional Notices of Requisition so served by him or on his behalf.

SUBPART C—DETERMINATION AND PAYMENT OF FAIR AND JUST COMPENSATION

§ 814.1410 *Statutory obligation to pay fair and just compensation.* The act of October 10, 1940, as amended, provides that fair and just compensation shall be paid to the owner of the property; and the act of October 16, 1941, as amended, provides that fair and just compensation determined in accordance with the provisions for just compensation of the fifth amendment of the Constitution of the United States, shall be paid to the person entitled to receive such compensation. If either such "owner" or such "person entitled to receive" compensation is unwilling to accept the amount so determined, the acts direct that he shall be paid 50% of such amount and shall be entitled to sue the United States for such additional sum as, when added to the sum so paid to him, he considers to be fair and just compensation for the property; the 1940 act providing however that judicial recovery "shall be confined to the fair market value" of the property "without any allowance for prospective profits, punitive or other damages."

§ 814.1411 *Determination of person or persons entitled to receive fair and just compensation.* Determination of the person or persons entitled to receive the

fair and just compensation to be paid for the property will be made by the Chief Requisition Officer or, if there are conflicting claims of ownership which the Chief Requisition Officer is unable to resolve, by the War Department Board of Contract Appeals. Persons claiming the right to such compensation will be required to furnish such evidence of their right thereto as may be required to permit compensation safely to be paid to them and as may be appropriate in the particular case. The Chief Requisition Officer will consider persons owning, or having a lien or other property interest in, the property at the time of taking to be an "owner" or a "person entitled to receive" compensation as such terms are used in the acts. In cases where there were possessory or recorded liens against, or other ownership interest in, the property outstanding at the time of its taking, especially if the validity thereof depend upon the beneficial owner having acquiesced in their creation, the beneficial owner will be asked to agree to the validity of such liens or interest and to the portion, if any, of the fair and just compensation properly payable to the holders thereof.

§ 814.1412 *Preliminary determination of fair and just compensation*—(a) *Prelimindry determination of compensation by Initial Compensation Officer.* Promptly after the requisitioning of the property and after consultation, to the extent feasible, with all persons entitled to receive such compensation (the place or places of such consultation to be determined with due regard to the residence or whereabouts of such persons) the Initial Compensation Officer will preliminarily determine the fair and just compensation to be paid for the property.

(b) *Basis for such determination by Initial Compensation Officer.* Such preliminary determination will be in an amount determined to be the fair market value of the property (i. e., of the actual articles or materials taken) as of the time and place of taking but not in excess of the applicable ceiling or fixed price, if any, established by the Office of Price Administration, or value otherwise established by law, and in effect at the time of the taking.

(c) *Report of Initial Compensation Officer.* The Initial Compensation Officer promptly will transmit to the Chief Requisition Officer (1) his report stating the amount so preliminarily determined by him to be fair and just compensation for the property; that such amount represents the fair market value of the property at the time and place of the taking of the property; and that it is within such ceiling or fixed price and (2) the copy of the Requisition, and the copy of the Report of the Serving Officer transmitted to him by the Serving Officer. If such report is not so transmitted within thirty (30) days after the taking of the property, the Initial Compensation Officer will also state therein the reasons why he was unable to transmit it within such thirty-day period.

(d) *Procedure to be followed if amount so determined is acceptable to persons entitled to compensation.* If the amount of fair and just compensation so determined by the Initial Compensation Officer is acceptable to the person or persons entitled to receive compensation on account of the taking of the property, the Initial Compensation Officer will request each of such persons to execute and acknowledge, in triplicate, a Stipulation and Release, in the form of that set forth in § 814.1431, modified as may be appropriate, and will transmit such copies thereof with the report required by (c). If the Chief Requisition Officer approves, on behalf of his technical service, of the amount so preliminarily determined to be fair and just compensation for the property, is satisfied that such Stipulation and Releases are appropriate under the circumstances and duly executed, and that the persons executing them are the persons, and the only persons, entitled to receive fair and just compensation for the property, he will transmit to the Legal Branch, Director of Matériel, one original of each such Stipulation and Release and a duly executed Certificate of Ownership and Fair and Just Compensation, in the form of that set forth in § 814.1430, modified as may be appropriate.

(e) *Conditions under which Notice to Present Claims and other documents will be served and method of service.* If the amount of fair and just compensation so preliminarily determined by the Initial Compensation Officer is not acceptable to the person or persons entitled to receive compensation on account of the taking of the property, or if there is uncertainty as to the person or persons entitled to receive such compensation, the Chief Requisition Officer will, to the extent practicable, serve, or cause to be served, upon each of the persons upon whom a Notice of Requisition was served, a Notice to Present Claims, with instructions, a form of Proof of Claim, with an appropriate form of verification, and a form of Disclaimer, in the respective forms of those set forth in §§ 814.1424 to 814.1428, inclusive. Such documents will be served either personally or by registered mail, return receipt requested, addressed to the last known address of the person being served, and a record of the time and method of such service will be preserved in the files of the Chief Requisition Officer. The Chief Requisition Officer will transmit to the Legal Branch, Director of Matériel, an original of each such Proof of Claim and Disclaimer received by him.

(f) *Determination of compensation by Chief Requisition Officer and service of Notice of Preliminary Determination.* Promptly after the expiration of the thirty-day period, or such extension thereof as he may grant, for filing Proofs of Claims, the Chief Requisition Officer will make or cause to be made on behalf of his technical service determination of fair and just compensation for the property and will, to the extent practicable, give notice of such determination to all persons known or believed to be entitled to share in such compensation; such notice to be incorporated in a Notice of Preliminary Determination in the form of that set forth in § 814.1429 and to be given by personal service or by registered mail, return receipt requested, addressed to the last known addresses of such persons. Simultaneously therewith a copy of such Notice of Preliminary Determination will be forwarded to the Legal Branch, Director of Matériel. In making such determination the amount preliminarily determined by the Initial Compensation Officer, the objections made thereto by the claimants, evidence of fair and just compensation supplied by the claimants and all other pertinent factors will be given appropriate consideration.

(g) *Consideration of objections of claimants to amount of compensation so determined; reaffirmation or revision of determination; subsequent procedure if amount is acceptable to claimants.* Any person having an interest in the property may, within thirty (30) days after service of such Notice of Preliminary Determination, or such additional period of time as the Chief Requisition Officer shall permit, file written objections thereto with the Chief Requisition Officer specifying in reasonable detail the grounds of his objections. After full consideration of such objections, if any, and such consultation or communication with the objecting and other claimants and with members of his technical service in respect of them as may be appropriate, the Chief Requisition Officer will either affirm his previous determination or make a new determination of fair and just compensation for the property and will request the person or persons entitled to receive such compensation to execute and acknowledge, in triplicate, a Stipulation and Release in the form of that set forth in § 814.1431, modified as may be appropriate. If such Stipulation and Releases are so executed, the Chief Requisition Officer will transmit to the Legal Branch, Director of Materiel, one original of each thereof and a duly executed Certificate of Ownership and Fair and Just Compensation in the form of that set forth in § 814.1430, modified as may be appropriate.

(h) *Submission to Board of Contract Appeals.* If the amount of fair and just compensation so determined is not acceptable to the person or persons entitled to receive compensation on account of the taking of the property or if there are conflicting claims of ownership which the Chief Requisition Officer is unable to resolve, he will, if the Legal Branch, Director of Materiel, advises that the Under Secretary of War desires the recommendation of the War Department Board of Contract Appeals, submit the matter to the Board as provided in § 814.1432. Copy of the submission to the Board will be forwarded to the Legal Branch, Director of Materiel.

(i) *Proceedings before Board of Contract Appeals.* All claimants will be entitled to a hearing before the Board in accordance with the rules of procedure prescribed by the Board and a stenographic transcript of the hearings before the Board and copies of all written evidence will be preserved.

(j) *Determination by Board of Contract Appeals.* After hearing, the Board will make recommendation as to the amount of fair and just compensation to be paid for the property or, if requested so to do and such is possible, determination as to the person or persons entitled to receive such compensation and will simultaneously forward copies of its decision in the matter to the Chief Requisition Officer and to the Legal Branch, Director of Matériel. In the event the Board is unable to determine the person or persons entitled to receive the fair and just compensation to be paid for the property it will make its recommendation as to what further disposition should be made of the matter.

(k) *Procedure after hearing by Board of Contract Appeals.* If the person or persons entitled to receive fair and just compensation for the property has or have been determined, the Chief Requisition Officer will request such person or persons to accept the amount so determined as fair and just compensation for the proerty and to execute and acknowledge, in triplicate, a Stipulation and Release in the form of that set forth in § 814.1431, and if such Stipulation and Releases are executed, will transmit to the Legal Branch, Director of Matériel, one original of each thereof and a duly executed Certificate of Ownership and Fair and Just Compensation, in the form of that set forth in § 814.1430, modified as may be appropriate. If the person or persons entitled to receive the fair and just compensation for the property has or have not been determined or if such person or persons has or have been determined but refuse to execute such Stipulation and Releases, the Chief Requisition Officer will transmit to the Legal Branch, Director of Matériel, such a duly executed Certificate of Ownership and Fair and Just Compensation, modified as may be appropriate.

§ 814.1413 *Final determination of fair and just compensation.* Fair and just compensation for the property will be finally determined by the Under Secretary of War and, when so determined, the original and a duplicate original of the Award thereof will be transmitted to the Chief Requisition Officer for forwarding to the disbursing officer for payment in those cases in which the persons entitled to receive the compensation have been determined. Should it be impossible to determine the person or persons entitled to receive such compensation, the proper appropriation or fund will be charged with the amount of the Award and the Chief Requisition Officer will be advised as to the further disposition to be made of the matter.

§ 814.1414 *Payment of fair and just compensation.* The disbursing officer to whom an Award has been transmitted will make payment as provided in the Award except that if the person or persons entitled to receive the compensation shall refuse to accept the amount so awarded as full and complete compensation for the property taken, or for his interest therein, the disbursing officer shall pay to him but 50% of the amount so awarded to him. Coincident with any such payment the disbursing officer will have the payee execute, in triplicate, an Acknowledgment of Receipt of such payment or a Stipulation, Release and Receipt, as shall be appropriate, in the form of that forwarded to him with such Award. Two executed copies of such Acknowledgement of Receipt or of such Stipulation, Release and Receipt will be returned by the disbursing officer to the Chief Requisition Officer, who will forward one executed copy to the Legal Branch, Director of Matériel.

SUBPART D—RETURN OF REQUISITIONED PROPERTY AND DISPOSITION OF PROCEEDS OF REQUISITIONED PROPERTY

§ 814.1415 *Return of requisitioned property to former owner under certain conditions.* The act of October 16, 1941, as amended, provides that whenever it is determined that property requisitioned under that act and retained is no longer needed for the defense of the United States it shall, if the original owner desires the property and pays the fair value thereof, be returned to such owner and that, in any event, property so acquired and retained shall, if such owner desires the property and pays the fair value thereof, be returned to him not later than December 31, 1944. Should a technical service determine that property requisitioned by it and retained is no longer needed for the defense of the United States it shall advise the Legal Branch, Director of Matériel, which will prescribe the procedure to be followed in effecting its return.

§ 814.1416 *Disposition of proceeds from property requisitioned and sold or disposed of under 1940 act.* The act of October 10, 1940, as amended, provides that any moneys received by the United States as the proceeds of any sale or other disposition of property requisitioned thereunder or any portion thereof shall be deposited to the credit of the appropriation out of which was paid the cost to the Government of the property thus sold or disposed of, and the same shall immediately become available for the purpose named in the original appropriation.

§ 814.1417 *Form of Proposal and Statement Under the 1940 act.*

PROPOSAL

For Requisitioning and Disposal of Property under the

Act of October 10, 1940, As Amended

1. Description of the property: (In as great detail as possible, specifying quantity, quality, shapes, sizes, etc. The specifications may be set forth in an attached statement.)

2. Present location of the property:

Name of Holder	*Address*

3. Beneficial owner of the property (if known):

Name	*Address*

4. All other persons known to or who may have an interest in the property or who may claim a right to share in the award of compensation:

Name	*Address*	*Nature of Interest or Claim*

5. Use or intended use or disposition of the property by present owner:

6. Person or persons to whom it is proposed to sell or otherwise dispose of the property upon its being requisitioned:

7. Use to be made of the property by persons described in 6:

8. The property was ordered, manufactured, procured or possessed for export and intended for shipment to the country stated below (state the prohibition or curtailment of export):

9. The undersigned hereby declares and certifies that all of the facts set forth above and in the annexed Statement are true to the best of his knowledge and belief and that, upon the basis thereof, he believes that:

(a) such property is of the type which may be requisitioned under the Act of October 10, 1940, as amended;

(b) it is necessary in the interest of national defense to requisition and take over such property for the use or operation by the United States or in its interest; and

(c) it is in the public interest that such property be sold or disposed of as above provided.

This certificate is executed by a duly authorized officer of _____
(Technical Service)

this _____ day of _____, 194__.

_____

_____

_____
(Name, title and address of Initiating Requisition Officer)

This Proposal and the annexed Statement are in all respects approved on behalf of the

_____
(Chief of the Technical Service)

and _____ is hereby designated the Initial Compensation Officer.

_____

_____

_____
(Name, title and address of Chief Requisition Officer)

STATEMENT

1. It is necessary in the interest of national defense or prosecution of war to requisition the property described in the annexed Proposal for the use or operation by the United States or in its interest, for the following reasons:

2. It is in the public interest that such property be sold or disposed of as provided in the Proposal, for the following reasons:

3. The following negotiable documents of title, relating to the property are outstanding and held by the following persons (if known):

Name	*Address*

4. Such property was not purchased for the following reasons:

5. The nature and extent of inquiry made to ascertain possible owners of, and claimants of interest in, the property was:

6. The ceiling or fixed price, if any, established by the Office of Price Administration, or otherwise established by law, applicable to the property is $_____, the applicable price regulation or schedule being (if known):

7. The fair market value of the property, as indicated by the following recent sales of similar property at or near the situs of the property, is believed to be:

8. Payment for the property will be made by the United States from the appropriation (or funds) _____

_____

_____

the available balance of which is sufficient to cover the cost of the same. The appropriation (or funds) indicated has been obligated for such payment in the amount of $_____.

9. Name and address of finance officer who should be designated to make payment of the approved award of compensation:

Officer	Address

10. Cost and charges incurred subsequent to the execution of the Requisition, and relating to the requisitioned property, should be referred for payment to:

Office	*Address*

11. The following officers, agents, or employees of the United States are available to serve personally the Requisition at or near the situs of the property:

Name and Title	*Street Address*	*City and State*

12. When the property has been requisitioned, the Serving Officer is hereby directed to make the following disposition of the property:

13. The full name, title and address of the Initiating Requisition Officer signing the Proposal is:

_____
_____
_____
_____

§ 814.1418 *Form of Proposal and Statement Under the 1941 Act.*

PROPOSAL

For Requisitioning and Disposal of Property under the

Act of October 16, 1941, As Amended

1. Description of the property: (In as great detail as possible, specifying quantity, quality, shapes, sizes, etc. The specifications may be set forth in an attached statement.)

2. Present location of the property:

Name of holder	*Address*

3. Beneficial owner of the property (if known):

Name	*Address*

4. All other persons known to have, or who may have, an interest in the property or who may claim a right to share in the award of compensation:

Name	*Address*	*Nature of Interest or Claim*

5. Use or intended use or disposition of the property by the present owner:

6. Person or persons to whom it is proposed to sell or otherwise dispose of the property upon its being requisitioned:

Name	*Address*

7. Use to be made of the property by person or persons described in 6:

8. The undersigned hereby declares and certifies that all of the facts set forth above and in annexed STATEMENT are true to the best of his knowledge and belief and, that, upon the basis thereof, he believes that:

a. The property described is of the type which may be requisitioned under the Act of October 16, 1941, as amended;

b. Such property is needed for the defense of the United States;

c. The need for such property is immediate and impending and such as will not admit of delay or resort to any other source of supply;

d. All other means of obtaining the use of such property for the defense of the United States upon fair and reasonable terms have been exhausted;

e. Such property is not a firearm possessed by an individual for his personal protection or sport, the possession of which is not prohibited by existing law;

f. The taking of such property will not impair or infringe in any manner the right of any individual to keep or bear arms.

This certificate is executed by a duly authorized officer of _____
(Technical Service)
this _____ day of _____, 194__

_____
_____
_____
(Name, title and address of Initiating Requisition Officer)

This Proposal and the annexed Statement are in all respects approved on behalf of

_____
_____
(Chief of the Technical Service)
and _____ is hereby designated the Initial Compensation Officer.

_____
_____
_____
_____
(Name, title, and address of Initiating Requisition Officer)

STATEMENT

1. The use of the property described in the annexed Proposal is needed for the defense of the United States for the following reasons in addition to those stated in item 7 of the Proposal:

2. The need for such property is immediate and impending and such as will not admit of delay or resort to any other source of supply for the following reasons:

3. All other means of obtaining the use of such property for the defense of the United States upon fair and reasonable terms have been exhausted as indicated by the following:

4. The requisitioning of the property will have the following effect upon the business of the owner (if known):

5. The following negotiable documents of title relating to the property are outstanding and held by the following persons (if known):

Name	*Address*

6. The nature and extent of the inquiry made to ascertain possible owners of, and claimants of interest in, the property, was:

7. The ceiling or fixed price, if any, established by the Office of Price Administration, or otherwise established by law, applicable to such property is $_____, the applicable price regulation or schedule being (if known):

8. The fair market value of the property, as indicated by the following recent sales of similar property at or near the situs of the property, is:

9. Payment for the property will be made by the United States from the appropriation (or funds) _____
_____
the available balance of which is sufficient to cover the cost of the same. The appropriation (or funds) indicated has been obligated for such payment in the amount of $_____.

10. Name and address of finance officer who should be designated to make payment of the approved award of compensation.

Officer	*Address*

11. Cost and charges incurred subsequent to the execution of the Requisition, and relating to the requisitioned property, should be referred for payment to:

Office	*Address*

12. The following officers, agents, or employees of the United States are available to serve personally the Requisition at the location of such property:

Name and Title	*Street Address*
City and State	

13. When the property has been requisitioned, the Serving Officer is hereby directed to make the following disposition of the property:

14. The full name, title, and address of the Initiating Requisition Officer signing this Proposal is:

_____
_____
_____

§ 814.1419 *Form of Requisition Under the 1940 Act.*

REQUISITION BY THE UNITED STATES OF AMERICA UNDER ACT OF OCTOBER 10, 1940, AS AMENDED

War Department Requisition No. _____

TO:

It having been determined in the manner provided for in the Act of October 10, 1940 (54 Stat. 1090), as amended, and the Executive Orders thereunder, that it is necessary in the interest of national defense to requisition and take over for the use or operation by the United States or in its interest the following property:

_____
_____

And all approvals required by such Executive Orders having been given, you are therefore authorized and commanded to take said property and the possession thereof for the purposes above specified; to receipt for the same in the name of the United States; to dispose of the same as directed; and to the end that, among other things, fair and just compensation therefor may be ascertained, to make return of all things done and proceedings had in the execution of this requisition.

All persons having any claim to or interest in any of the above-described property are directed to give notice of their claims at once to_____ who will prescribe the form and manner of presenting such claims.

Washington, D. C., _____, 194__

_____
_____

§ 814.1420 *Form of Requisition Under the 1941 act.*

REQUISITION BY THE UNITED STATES OF AMERICA UNDER ACT OF OCTOBER 16, 1941, AS AMENDED

War Department Requisition No. _____

TO:

It having been determined in the manner provided for in the Act of October 16, 1941 (55 Stat. 742), as amended, and the Executive Orders thereunder that the use of the following property is needed for the defense of the United States that such need is immediate and impending and such as will not admit of delay or resort to any other source of supply; and that all other means of obtaining the use of such property for the defense of the United States upon fair and reasonable terms have been exhausted:

_____
_____

And all approvals required by such Executive Orders having been given, you are therefore authorized and commanded to take said property and the possession therefor for the purposes above specified; to receipt for the same in the name of the United States; to dispose of the same as directed; and, to the end that, among other things, fair and just compensation therefor may be ascertained, to make return of all things done and proceedings had in the execution of this requisition.

All persons having any claim to or interest in any of the above-described property are directed to give notice of their claims at once to _____ who will prescribe the form and manner of presenting such claims.

Washington, D. C., _____, 194__

_____

_____

§ 814.1421 *Form of the Receipt and the Return on reverse of the Requisition.*

THE RECEIPT

Received from _____ at _____ on the ____ day of _____, 194_, in _____ condition, the property covered by the Requisition on the reverse hereof, except as indicated below.

THE UNITED STATES OF AMERICA,
By _____
Title _____

THE RETURN

The Requisition on the reverse hereof was served by me by showing the Original to, and leaving a copy thereof with _____ at _____ this _____ day of _____, 194__.

And in the name of the United States I also give to _____ a receipt for the property, taking possession of the same.

_____
Title _____

EXCEPTIONS AND REMARKS

§ 814.1422 *Form of Notice of Requisition.*

NOTICE OF REQUISITION

War Department Requisition No. ——

To all persons known to have or claim an interest in the property described below:

Please take notice that the property described below was on _____, 194__, requisitioned and taken over for the defense of the United States:

which property at the time of the taking was located at _____

If you had or claimed any interest in such property at the time it was requisitioned you are required to give notice of your claim at once to:

who will prescribe the form and manner of presenting such claim.

Notice of the requisitioning of such property is being given to:

_____

_____

_____

_____

If you know of any other person, firm or corporation which had, or may claim, any interest in the requisitioned property you should so advise at once, specifying in detail the name and address of such person, firm or corporation and the nature of such interest.

Date _____, 194__

_____

_____
(Chief Requisition Officer)

§ 814.1423 *Form of Report of Serving Officer.*

REPORT OF SERVING OFFICER

War Department Requisition No. ——

The undersigned hereby reports and certifies that:

1. The above-numbered War Department Requisition, dated _____, authorizing the taking for the defense of the United States of the following property:

was by me served in person by exhibiting the original manually signed Requisition to, and by leaving a copy thereof (with the Receipt on the reverse thereof duly completed and signed) with, _____ _____;

2. Notices of Requisition, a conformed copy of which as served is annexed, were by me served in person upon:

Name	Address
_____	_____
_____	_____

and were by me served by registered mail, return receipt requested, upon:

Name	Address
_____	_____
_____	_____

which receipts, when returned, will be forwarded by me to _____ (Chief Requisition Officer who signed the proposal)

3. Inquiry made by me indicates that the following persons in addition to those enumerated in paragraph 2 above may have, or assert an interest in the property at the time it was requisitioned or a right to be compensated by reason of its taking.

Name	Address	Nature of Interest
_____	_____	_____
_____	_____	_____

4. The nature and extent of such inquiry was:

5. Such inquiry included (did not include) search of appropriate recording and registry records to ascertain the existence of recorded liens against the property.

6. All the property described in the Requisition was taken thereunder except: _____ _____which was not taken for the following reasons:

_____

7. The following is a more detailed description of the property taken than that set forth in the Requisition:

_____

8. The property taken was disposed of as follows:

_____

9. The condition of the property at the time it was taken was (state fully any factors of condition which may assist in determining the amount of compensation to be paid):

_____

10. Before requisitioning, the property was used as follows:

_____

11. The cost of the property to the owner was:

_____

12. The age of the property at the time the Requisition was served was:

_____

13. The owner had taken depreciation on the property for tax purposes to the extent of:

_____

14. The following negotiable documents of title relating to the property were transmitted to the Initial Compensation Officer designated in the Proposal:

_____

Dated:

_____

_____
(Name and title of Serving Officer)

§ 814.1424 *Form of Notice to Present Claims.*

NOTICE TO PRESENT CLAIMS

War Department Requisition No. _____

To all persons known to have or claim an interest in the property described below:

Please take notice that the property described below was on _____, 194__, requisitioned and taken over for the defense of the United States:

which property at the time of the taking was located at _____

If you had or claimed any interest in such property at the time it was requisitioned you are required to file a claim specifying in detail the nature of your interest. Proof of Claim in the attached form must be filed in triplicate.

If you did not have or claim any interest in such property you are required to file a Disclaimer in the form attached. Such Disclaimer must be filed in triplicate.

Such documents MUST be filed within thirty days of the service hereof with:

_____

unless he extends in writing the time for such filing.

Notice of this requisition has been given to:

_____

_____

_____

_____

If you know of any other person, firm or corporation which had, or may claim, an interest in the requisitioned property you should so advise at once, specifying in detail the name and address of such person, firm or corporation and the nature of such interest.

Dated: _____, 194__

_____

_____

§ 814.1425 *Instructions for the preparation and submission of documents.*

1. Each Proof of Claim and Disclaimer will be filed in triplicate as directed in the annexed Notice to Present Claims.

2. Such documents and all other papers filed will be typewritten on one side of the page only with a margin of 1½" at the top and on the left side of the page.

3. A good quality of white paper stock 8" x 10½" shall be used.

4. Each page will be numbered at the bottom.

5. Each document having more than one page will be secured with a fastener at the top of the page.

6. Proofs of Claim will be in the form prescribed, will contain all the averments indicated in the prescribed form and will be executed and verified as therein prescribed. Disclaimers will be in the prescribed forms and will be duly executed and acknowledged.

7. Claimant will attach to his Proof of Claim such evidence of the title or interest in the requisitioned property which claimant claimed at the time of taking, such as bills of sales, warehouse receipts, trust receipts, etc., or otherwise; such evidence of his payment for the property; and such evidence as to the propriety of the amount of his claim, such as invoices, etc., as shall be appropriate in the particular case. Documents so attached should be originals or photostat copies.

8. If Claimant is a corporation or an association, there will be annexed to the Proof of Claim certified copy of a duly adopted resolution of its Board of Directors or Trustees authorizing the filing of the Proof of Claim. If Claimant is a foreign Government, or an individual desiring to act through an attorney-in-fact, a form of power of attorney which will be acceptable will be supplied on request.

§ 814.1426 *Form of proof of claim.*

In the matter of: (Here insert the name of the person, firm or corporation on whose behalf this proof of claim is being filed)	War Department Requisition No. ____

PROOF OF CLAIM

(Here insert full name and address of claimant and, if a corporation, its principal place of business and state of incorporation) hereby files proof of claim with the United States and avers:

1. That claimant is entitled to fair and just compensation in the amount of $_____ on account of the taking by the United

States, on the _____ day of _____, 194____, under War Department Requisition No. _____, of the following personal property:

_____

_____

(If the description or quantity of the property claimed to have been taken differs from the description and quantity as stated in the Requisition, set forth the differences in a concise and clear manner.)

2. That claimant had, on the date of such taking, the following right, title and interest in and to such property:

(State fully claimant's interest in the property at the time of taking; i. e., whether he was the sole owner or claimed some other interest in the property; how and when such interest was acquired; etc.; also referring to documents evidencing claimant's title, annexing original or photostat copies thereof).

3. That no other persons had any right, title or interest in the property at the time of such taking thereof by the United States *except:*

_____

(If no exceptions so state; otherwise state names and addresses of all other persons having an interest in the property, describing the nature of their respective interests.)

4. That the amount claimed above as fair and just compensation for the interest in the property which claimant avers above was arrived at as follows:

_____

_____

5. That claimant is the present owner of this claim and that neither this claim nor any interest in it has been transferred, sold, pledged or assigned; and, that if such claim or any part thereof is otherwise paid or satisfied, claimant will give prompt notice thereof.

6. _____ is hereby authorized to represent and act for claimant in this proceeding in all respects, including authority to agree as to the amount representing fair and just compensation for the property.

7. Wherefore, claimant requests that fair and just compensation be determined in accordance with the applicable laws, Executive Orders, regulations and rules.

Dated at _____, State of _____
this _____ day of _____, 194____

_____

(Name of Claimant and, if a corporation, partnership, or other entity, name of person authorized to sign, with designation of his title)

Address: _____
Name and address of attorney, if any: _____

_____

§ 814.1427 *Forms of verification*—(a) *Form of verification by an individual.*

State of _____
County of _____
City of _____

(Insert here name of claimant), being first duly sworn, deposes and says that he is the claimant in the above entitled proceeding; that he has read the foregoing Proof of Claim and knows the contents thereof, and that the averments in said Proof of Claim are true of his own knowledge, except as to matters which are therein stated on information or belief, and that as to those matters, he believes the averments to be true.

_____

Subscribed and sworn to before me this____
_____ day of_____, 194____

_____

Notary Public in and for the _____
_____ of _____ State
of _____.

(b) *Form of verification by a corporation.*

State of _____
County of _____
City of _____

(Insert here name of officer or director of the corporation), being first duly sworn, deposes and says that he is the (insert title) of the (insert name of corporation), claimant in the above entitled proceeding; that he is authorized to, and does make this affidavit in its behalf; that he has read the foregoing Proof of Claim and knows the contents thereof, and that the averments in said Proof of Claim are true of his own knowledge, except as to matters which are therein stated on information or belief, and that as to those matters, he believes the averments to be true.

_____

Subscribed and sworn to before me this____
_____ day of _____, 194____

_____

Notary Public in and for the_____
_____of _____, State
of_____.

(c) *Form of verification by, or on behalf of a foreign government.*

State of_____
County of_____
City of_____

_____, being first duly sworn, deposes and says that he is the duly constituted authorized representative of____

_____

a foreign government, that he has read the foregoing Proof of Claim and knows the contents thereof and that the averments in said Proof of Claim are true of his own knowledge except as to the matters therein stated on information and belief, and that as to those matters he believes the averments to be true.

_____

Official Title_____

Subscribed and sworn to before me this____
_____ day of _____, 194____

_____

Notary Public in and for the_____
_____of _____, State
of_____.

§ 814.1428 *Form of Disclaimer.*

DISCLAIMER

War Department Requisition No._____

_____

(Insert name)

having received due notice of the service of the War Department Requisition No._____, dated _____, does hereby disclaim any right, title or interest in or to the property taken under such Requisition and any claim for compensation on account of its such taking.

Dated: _____

_____, 194__

(Attest:

_____

_____[1]

_____

(Add appropriate Acknowledgement of Execution and Authority to Execute.)

[1] Omit if not a corporation.

§ 814.1429 *Form of Notice of Preliminary Determination of Fair and Just Compensation.*

NOTICE OF PRELIMINARY DETERMINATION OF FAIR AND JUST COMPENSATION

War Department Requisition No. _____

TO ALL PERSONS KNOWN TO CLAIM AN INTEREST IN THE PROPERTY DESCRIBED BELOW:

PLEASE TAKE NOTICE that the following preliminary determination has been made with respect to the property described below which was requisitioned by the United States.

Description of Property: _____

_____

_____

Preliminary determination of fair and just compensation therefor: _____

_____

_____

which sum is hereby offered to the person or persons entitled thereto as their interests may appear.

This determination relates only to the aggregate amount of compensation. Payment can be made only to persons who show, to the satisfaction of the Requisitioning Authority, that they are entitled thereto.

If you have any objection to the above preliminary determination, such objection must be made in writing within 30 days of the date hereof and must specify in detail the grounds for such objection.

All communications should bear the reference number appearing above and should be addressed to:

Dated: Washington, D. C.

_____, 194____

_____

_____

(Chief Requisitioning Officer)

§ 814.1430 *Form of Certificate of Ownership and Fair and Just Compensation.*

CERTIFICATE OF OWNERSHIP AND FAIR AND JUST COMPENSATION

War Department Requisition No._____

The undersigned hereby reports and certifies:

1. That the following property was taken for the defense of the United States under the above-numbered Requisition:
2. That he has determined, on behalf of his technical service or service command, $_____ to be fair and just compensation for the property, which amount is within/exceeds the applicable ceiling or fixed price for such property established by the Office of Price Administration, or otherwise established by law; and that such amount was determined and arrived at as follows:
3. That the following inquiry was made to ascertain the former owners of, and claimants of interest in, the property:

_____

as a result of which Notices of Requisition were served upon the following persons:

Name	*Address*	*Nature of Interest or Possible Interest*
_____	_____	_____
_____	_____	_____

4. That he has determined that the following are the only persons who owned, or had any interest in, the property at the time it was so taken:

Name	*Address*	*Nature of Interest*
_____	_____	_____
_____	_____	_____

such determination being based upon the following:

_____

5. That Notice of Preliminary Determination of Fair and Just Compensation for the property was duly served upon:
6. That the undersigned has determined that the fair and just compensation for the property should, and may safely, be paid to the following persons in the following amounts:

Name	*Address*	*Amount*
_____	_____	_____
_____	_____	_____

7. That the following of such persons have agreed to accept such respective sums in full satisfaction and discharge of their respective claims for fair and just compensation on account of the taking of the property, as evidenced by the Stipulation and Releases annexed hereto:

_____

Upon the foregoing, the undersigned recommends that $_____ be determined to be fair and just compensation for the property taken for the defense of the United States under War Department Requisition No. _____

and that an Award of Fair and Just Compensation be made directing that such amount be paid by _____, as disbursing officer, from allotment or appropriation _____, to the persons enumerated, and in the respective amounts stated, in paragraph 6 hereof.
Dated:

_____
_____
(Chief Requisitioning Officer)

§ 814.1431 *Form of Stipulation and Release.*

In the Matter of the Claim of: (Insert Name of Claimant)	War Department Requisition No.. _____

STIPULATION AND RELEASE

It is hereby stipulated and agreed by _____ to and with the United States of America:

1. That War Department Requisition No. _____, which was duly issued pursuant to and in conformity with the Act of _____, as amended, was duly served on _____ by _____ on _____, 194__ and a due and proper receipt given by the United States for the property taken thereunder; and that due and proper Notice of Requisition thereof was served upon the undersigned;

2. That the property authorized to be taken by said War Department Requisition No. _____, and no other property, was taken by the United States, such property authorized to be taken and taken being:

_____
which property at the time of its taking, was located at _____
_____;

[[3. That the undersigned stipulates and agrees that $_____ represents, and is, full, fair and just compensation for such property:]]

4. That, at the time such property was requisitioned, the undersigned had, and hereby warrants to the United States that it had, the following interest in such property:

(If the sole owner thereof, state "full right, title and interest therein, free of all liens and incumbrances of every nature.")

[[and that, at such time, the following other persons and no others, had an interest in such property and therefore are entitled to receive the following proportional amounts of such fair and just compensation:

Name *Address* *Interest* *Amount*]]

_____ _____ _____ _____
_____ _____ _____ _____

5. That the undersigned agrees to accept $_____, without interest, in full and complete settlement and satisfaction of its said interest in such property and of all claims which it has or may have against the United States and its officers, agents and employees on account of the requisitioning of such property;

[6. And that, upon payment by the United States to the undersigned of such $_____, the undersigned will, and it hereby does, agree to indemnify and save harmless the United States from and against any and all claims which may be asserted against the United States, its officers, agents and employees for compensation on account of such taking by the United States of such property [other than claims by the persons, and not in excess of the respective amounts, referred to in paragraph 4 above]; and if it shall hereafter be determined by final judgment or decree of a court of competent jurisdiction that the United States is obligated to pay to any person, other than the undersigned [and those persons referred to in paragraph 4 above] compensation on account of its such taking of such property [or obligated to pay to the persons, or any of them referred to in said paragraph 4, compensation in an amount greater than that there provided.] the undersigned, upon demand, will reimburse the United States the amount of all payments so made by it pursuant to such judicial determination and its costs and expenses in connection with such judicial proceedings, but in no event shall the undersigned reimburse, or be obligated to reimburse, the United States more than $_____ in the aggregate:]

7. And that the undersigned does hereby forever absolve, release and discharge the United States, its officers, agents and employees, and each of them from and of any and all claims which the undersigned has, may have, or could have, by reason of the taking of such property by requisition, for compensation on account of its taking and otherwise;

Provided that, the foregoing indemnity agreement and release are conditioned upon the payment to the undersigned by the United States of $_____, without interest.

_____
_____
Attest:

_____
(Appropriate Acknowledgment of Execution and Authority to Execute to be Added.)

NOTES: (1) The matter in double brackets may be omitted if the person executing is a lien claimant or a person other than the beneficial owner.

(2) The matter in single brackets should be omitted if there is but a single person entitled to receive the fair and just compensation.

§ 814.1432 *Form of Submission to War Department Board of Contract Appeals.*

SUBMISSION TO WAR DEPARTMENT BOARD OF CONTRACT APPEALS

War Department Requisition No. _____
The War Department Board of Contract Appeals is requested to make recommendation as to:

(a) The fair and just compensation (and/or)

(b) The person or persons entitled to receive the fair and just compensation to be paid for the property taken for the defense of the United States under War Department Requisition No. _____

1. The following is a complete and accurate description of the property taken under the Requisition:

2. The property was taken on _____ and, at the time of taking, was located at _____ in the possession or custody of_____;

3. Fair and just compensation for the property was preliminarily determined by the Initial Compensation Officer to be $_____ and by the Chief Requisition Officer to be $_____. The preliminary determination of the Chief Requisition Officer was subsequently revised to $_____ and was preliminarily determined to be payable to the following persons in the following amounts:

4. The following claimants have made the following objections to the amount so preliminarily determined to be payable to them:

and the Chief Requisition Officer is of the following opinion with respect to such objections:

5. There was/was not in effect at the time of the taking of such property the following ceiling/fixed price, established by _____, which ceiling/fixed price was applicable to sales of such property:

6. The undersigned is in doubt as to the persons entitled to receive the fair and just compensation to be paid for the property for the following reasons:

7. The following original documents are submitted herewith:

(1) Requisition, with Receipt and Return endorsed on the reverse thereof.

(2) Notice of Requisition which was served upon:

(3) Report of Serving Officer.

(4) Notice to File Claims.

(5) Report of the Initial Compensation Officer.

(6) Proofs of Claim filed by:

(7) Disclaimers filed by:

(8) Notice of preliminary determination of fair and just compensation which was served on:

(9) Written objections to such preliminary determination filed by:

8. Correspondence from the Board in respect of this matter should be addressed to:

9. The Board's decision in the matter should be delivered to _____ and to the Legal Branch, Director of Matériel, Headquarters, Army Service Forces.

_____
_____
(Chief Requisition Officer)
Dated _____
Approved _____
_____
(Chief of Technical Service)

SUBPART H—MANDATORY ORDERS

§ 814.1450 *Authority to place mandatory orders*—(a) *Basic statute.* Section 9 of the Selective Training and Service Act of 1940 (54 Stat. 892; 50 U. S. C. A. 309) provides:

The President is empowered, through the head of the War Department or the Navy Department of the Government, in addition to the present authorized methods of purchase or procurement, to place an order with any individual, firm, association, company, corporation, or organized manufacturing industry for such product or material as may be required, and which is of the nature and kind usually produced or capable of being produced by such individual, firm, company, association, corporation, or organized manufacturing industry.

Compliance with all such orders for products or material shall be obligatory on any individual, firm, association, company, corporation, or organized manufacturing industry or the responsible head or heads thereof and shall take precedence over all other orders and contracts theretofore placed with such individual, firm, company, association, corporation, or organized manufacturing industry, and any individual, firm, association, company, corporation, or organized manufacturing industry or the responsible head or heads thereof owning or operating any plant equipped for the manufacture of arms or ammunition or parts of ammunition, or any necessary supplies or equipment for the Army or Navy, and any individual, firm, association, company, corporation, or organized manufacturing industry or the responsible head or heads thereof owning or operating any manufacturing plant, which, in the opinion of the Secretary of War or the Secretary of the Navy shall be capable of being readily transformed into a plant for the manufacture of arms or ammunition, or parts thereof, or other necessary supplies or equipment, who shall refuse to give to the United States such preference in the matter of the execution of orders, or who shall refuse to manufacture the kind, quantity, or quality of arms or ammunition, or the parts thereof, or any necessary supplies or equipment, as ordered by the Secretary of War or the Secretary of the Navy, or who shall refuse to furnish such arms, ammunition, or parts of ammunition, or other supplies or equipment, at a reasonable price as determined by the Secretary of War or the Secretary of the Navy, as the case

may be, then, and in either such case, the President, through the head of the War or Navy Departments of the Government, in addition to the present authorized methods of purchase or procurement, is hereby authorized to take immediate possession of any such plant or plants, and through the appropriate branch, bureau, or department of the Army or Navy to manufacture therein such product or material as may be required, and any individual, firm, company, association, or corporation, or organized manufacturing industry, or the responsible head or heads thereof, failing to comply with the provisions of this section shall be deemed guilty of a felony, and upon conviction shall be punished by imprisonment for not more than three years and a fine not exceeding $50,000.

The compensation to be paid to any individual, firm, company, association, corporation, or organized manufacturing industry for its products or material, or as rental for use of any manufacturing plant while used by the United States, shall be fair and just: *Provided,* That nothing herein shall be deemed to render inapplicable existing State or Federal laws concerning the health, safety, security, and employment standards of the employees in such plant.

The power of the President under the foregoing provisions of this section to take immediate possession of any plant upon a failure to comply with any such provisions, and the authority granted by this section for the use and operation by the United States or in its interests of any plant of which possession is so taken, shall also apply as hereinafter provided to any plant, mine, or facility equipped for the manufacture, production, or mining of any articles or materials which may be required for the war effort or which may be useful in connection therewith. Such power and authority may be exercised by the President through such department or agency of the Government as he may designate, and may be exercised with respect to any such plant, mine, or facility whenever the President finds, after investigation, and proclaims that there is an interruption of the operation of such plant, mine, or facility as a result of a strike or other labor disturbance, that the war effort will be unduly impeded or delayed by such interruption, and that the exercise of such power and authority is necessary to insure the operation of such plant, mine, or facility in the interest of the war effort: *Provided,* That whenever any such plant, mine, or facility has been or is hereafter so taken by reason of a strike, lock-out, threatened strike, threatened lock-out, work stoppage, or other cause, such plant, mine or facility shall be returned to the owners thereof as soon as practicable, but in no event more than sixty days after the restoration of the productive efficiency thereof prevailing prior to the taking of possession thereof: *Provided further,* That possession of any plant, mine, or facility shall not be taken under authority of this section after the termination of hostilities in the present war, as proclaimed by the President, or after the termination of the War Labor Disputes Act; and the authority to operate any such plant, mine, or facility under the provisions of this section shall terminate at the end of six months after the termination of such hostilities as so proclaimed.

(b) *Delegation of statutory authority.* (1) By Executive Orders Nos. 8629 (6 F.R. 191), 9024 (7 F.R. 329), 9040 (7 F.R. 527), and 9125 (7 F.R. 2719) the Chairman of the War Production Board was authorized to perform the functions and exercise the authority vested in the President by section 9. By Executive Orders Nos. 9280 (7 F.R. 10179) and 9334 (8 F.R. 5423), the War Food Administrator was authorized to perform such functions and to exercise such authority with respect to food for human and animal consumption.

(2) The Secretary of War has assigned his powers, functions and duties under section 9 to the Under Secretary of War.

(3) The Chairman of the War Production Board has directed and empowered the Under Secretary of War to place orders pursuant to section 9 for such products or material, other than food intended for human or animal consumption, as the War Department may require; and the War Food Administrator has directed and empowered the Under Secretary of War to place orders pursuant to section 9 for food subsistence items.

(4) Under date of 22 May 1944, the Under Secretary issued the following memorandum.

Memorandum for The Commanding General, Army Service Forces.

Brigadier General Albert J. Browning, Special Representative of the Under Secretary of War.

Subject: Authority to place orders pursuant to Section 9 of the Selective Training and Service Act of 1940.

1. The Secretary of War has assigned to me the authority and discretion conferred upon him by Section 9 of the Selective Training and Service Act of 1940.

2. Under date of 7 February 1944 the Chairman of the War Production Board addressed to me the following letter:

"Under and by virtue of authority vested in me by Executive Order No. 9024, dated January 16, 1942, No. 9040, dated January 24, 1942 and No. 9125, dated April 7, 1942, which confer upon me power to exercise the authority vested in the President by section 9 of the Selective and Service Training Act of 1940, I hereby direct and empower you, in addition to the present authorized methods of purchase or procurement, to place orders pursuant to said Act with any individual, firm, association, company, corporation or organized manufacturing industry, for such product or material, other than food intended for human or animal consumption, as the War Department may require and which is of the nature and kind usually produced or capable of being produced by such individual, firm, company, association, corporation or organized manufacturing industry.

"Any order placed in accordance herewith shall take precedence over all other orders and contracts, except that where preference ratings, orders, or regulations issued by or with the authority of the War Production Board under Title III of the Second War Powers Act, 1942, are applicable, it shall take precedence in accordance with such preference ratings, orders or regulations.

"Any powers herein conferred upon you may be exercised by you through such officers or civilian employees of the War Department as may be designated in writing by you or by any person whom you have authorized to make such designation, with such powers of delegation and redelegation as you may deem appropriate."

3. Under date of 28 February 1944 the War Food Administrator addressed to me the following letter:

"Pursuant to the authority conferred by Executive Order No. 9280 dated December 5, 1942, and Executive Order No. 9334 dated April 19, 1943, which vested, in the War Food Administrator, control over the Nation's food program, including purchase and procurement of food by Federal agencies, I hereby direct and empower you, in addition to the present authorized methods of purchase or procurement, until further notice, to place orders pursuant to section 9 of the Selective Training and Service Act of 1940 for food subsistence items with any individual, firm, association, company, corporation, or organized manufacturing industry.

"Any order placed in accordance herewith shall take precedence over all other orders and contracts, except that where preference or priority ratings, orders or regulations issued by or with the authority of the War Food Administrator under Title III of the Second War Powers Act, 1942, are applicable, it shall take precedence in accordance with such preference or priority ratings, orders or regulations.

"Any powers herein conferred upon you may be exercised by you through such officers or civilian employees of the War Department as may be designated in writing by you or by any person whom you have authorized to make such designation, with such powers of delegation and redelegation as you may deem appropriate."

4. I hereby direct and empower each of you, in addition to the present authorized methods of purchase or procurement, to place orders pursuant to section 9 of the Selective Training and Service Act of 1940 in accordance with said section 9 and the authority so conferred upon me by the Chairman of the War Production Board and, in the case of the Commanding General, Army Service Forces, in accordance with the authority so conferred upon me by the War Food Administrator. The authority hereby conferred will be exercised by the Commanding General, Army Service Forces, as to procurement by the Army Service Forces and by my Special Representative as to procurement by the Army Air Forces and, in each case, subject to and in conformity with any rules and regulations issued pursuant to paragraph 5 of this memorandum. Any person acting at the time as Director, Purchases Division, Headquarters, Army Service Forces, may exercise the authority herein conferred upon, and act as, my such Special Representative.

5. The Commanding General, Army Service Forces, may prescribe by Procurement Regulations, manuals, or otherwise, rules and regulations, which have been cleared with the Army Air Forces in the manner provided in paragraph 107.4[1] of War Department Procurement Regulations, governing the exercise of the authority hereby conferred and, without limitation of the generality of the foregoing, such rules and regulations may require that (a) proposed orders shall be submitted for approval to, and (b) proposed redelegations of authority under this memorandum shall be subject to approval of the Director, Purchases Division, Headquarters, Army Service Forces, or whomsoever he may designate. Subject to such rules and regulations, my said Special Representative may prescribe rules and regulations governing the placement of such orders by the Army Air Forces.

6. Subject to any rules and regulations issued in accordance with paragraph 5 of this memorandum, any of the powers herein conferred upon you may be exercised by you through such officers or civilian employees of the War Department as may be designated in writing by you or by any person whom you have authorized to make such designation, with such powers of delegation and redelegation as you may deem appropriate.

ROBERT P. PATTERSON,
Under Secretary of War.

(c) *Authority delegated by these procurement regulations.* Subject to any restrictions provided by these procurement regulations (see e.g. paragraph (d)) or by manuals, rules or regulations issued pursuant to paragraph 5 of the memorandum of the Under Secretary of War set forth in § 814.1450 (b) upon

[1] § 801.107 (d).

the exercise of the authority delegated in this paragraph, there are hereby delegated to each of the chiefs of the technical services the authority to place orders pursuant to section 9 heretofore delegated by the Under Secretary of War to The Commanding General, Army Service Forces and to the Special Representative of the Under Secretary of War (see paragraph (b)). The powers herein delegated may be exercised by the chiefs of the technical services through such officers, civilian employees or agencies under their supervision as may be designated in writing by them or by any person authorized by them to make such designation, with such powers of delegation or redelegation as they may deem appropriate.

(d) *Limitation upon redelegation of authority.* All redelegations of the authority delegated by paragraph (c) made by the chiefs of the technical services will be subject to the prior written approval of the Director, Purchases Division, Headquarters, Army Service Forces, or whomsoever he may designate, except:

(1) Redelegations to persons in the headquarters offices of the Army Air Forces;

(2) Redelegations to persons in the headquarters offices of the major commands within the Army Air Forces; and

(3) Redelegations to persons in the headquarters offices of the chiefs of the technical services of the Army Service Forces.

§ 814.1451 *Definitions.* When used in this subpart:

(a) The term "chief of technical service" has the meaning set out in §§ 801.107 (i) and 801.108 (d) and (e), except that further delegations of the authority granted by § 814.1450 (c) shall be subject to the limitations and restrictions stated in § 814.1450 (c) and (d);

(b) The term "Director, Purchases Division," means the Director, Purchases Division, Headquarters, Army Service Forces, acting as such or, in respect of Army Air Forces matters, as Special Representative of the Under Secretary of War, or any person whom he may have authorized to act for him.

§ 814.1452 *Policy.* (a) Consistent with the War Department's policies of procuring the products and materials which it requires voluntarily and on a normal contractual basis, diligent efforts to negotiate a voluntary order or contract on reasonable terms will be made before resort is had to mandatory order. However, where such efforts are unavailing, a mandatory order will be placed in appropriate cases as provided in this subpart without delay. The policies governing placement of voluntary orders and contracts will similarly govern placement of mandatory orders, to the extent they are applicable.

(b) Appropriate inquiry and investigation in each case will be made to ascertain (1) that the products or materials proposed to be procured by mandatory order are of the nature and kind usually produced, or capable of being produced, by the proposed producer; and (2) that the proposed producer owns or operates a plant equipped for, or capable of being readily transformed into a plant for, the manufacture of the required products or materials in the quantities, with the specifications and under the conditions of the proposed order.

(c) Before any mandatory order is placed, careful consideration will be given to the necessity for the procurement and to the quantities and the specifications of the products or materials to be procured thereby in order to obviate, to the greatest extent possible, subsequent necessity of changing or cancelling the order. Care also will be exercised to provide, both in the mandatory order and in any change order, for delivery schedules which reasonably can be met in view of the preference rating, if any, assigned to the order and the ability of the proposed producer to obtain the materials and labor required to perform the order. After the order is placed, the technical service will give the producer such reasonable assistance in obtaining the materials and labor required for the performance of the order as he may request.

§ 814.1453 *Placing of mandatory orders*—(a) *Placing of mandatory orders.* (1) Any person who has been delegated authority to place mandatory orders (see § 814.1450 (c) and (d)) may place, and may instruct and authorize contracting officers to execute and serve or cause to be served, mandatory orders under section 9 for any product or material, except food for human or animal consumption other than food subsistence items, which his technical service is authorized to procure, under the following circumstances:

(i) With any individual, partnership, company or corporation, (but not an organized manufacturing industry) which has refused to accept a voluntary order or contract for such product or material, in any case in which he shall have determined:

(*a*) That (*1*) every reasonable effort to negotiate a voluntary order or contract with the proposed producer for the required product or material has been made; (2) that the terms of such voluntary order or contract were fair and reasonable under the ascertainable circumstances of the particular procurement; and (3) that, if the refusal to accept such voluntary order or contract was based upon price, the price offered, in his opinion and that of the chief price analyst of his technical service, or the person performing such function, was in light of pertinent data and information possessed by the technical service and furnished by the proposed producer, a reasonable price for the procurement;

(*b*) That the proposed producer owns or operates a plant within the United States which is equipped, without transformation, (see paragraphs (a) (1) (ii) and (b)) for procedure where transformation is necessary to produce, and is producing or is capable of producing therein, the required product or material in the quantities with the specifications and under the conditions of the proposed order (see § 814.1452 (b));

(*c*) That the product or material to be obtained by the order cannot be obtained from any other source with adequate assurance of satisfactory performance and timely deliveries; and

(*d*) That the total value of the procurement will not exceed $5,000,000.

Orders may be placed under such circumstances without further approval of higher authority.

(ii) Under such other circumstances as the Director, Purchases Division, shall have approved. Such approval will be obtained in any case in which the technical service desires to place, and believes section 9 authorizes the placing of, a mandatory order with persons or under circumstances other than those stated in subdivision (i) of this subparagraph.

(2) Requests for the approval required by subdivision (ii) will state the nature of the product or material; the proposed producer; the major terms of the proposed order, including the total value of the procurement; the efforts made to negotiate a voluntary contract or order, and if the refusal to accept such contract or order was based on price, the price offered and the reasons why it is believed to be a reasonable price; why the proposed producer is believed to be capable of producing, including his ability to obtain the required materials and labor, the product or material; the location of his plant; the reasons why it is believed that such plant is equipped without transformation to manufacture the product or material in accordance with the terms of the proposed order, or, if transformation is necessary, the facts which will justify a determination by the Under Secretary of War that the plant is one capable of being readily transformed into a plant for the manufacture of the product or material; whether the product or material can be obtained elsewhere with adequate assurance of satisfactory performance and timely deliveries; and such other information as may be pertinent in the particular case.

(3) Requests for the approval required by paragraph (a) (1) (ii) will be transmitted, by or with the approval of the chief of the technical service, by written memorandum unless the need for the product or material is so urgent as to indicate more prompt action, in which event the required information may be transmitted by teletype or telegraph message or by telephone.

(4) Approval of the Director, Purchases Division, of the placing of any mandatory order under paragraph (a) (1) (ii), if given, will be by written memorandum or indorsement, by teletype or telegraph message or by telephone and the mandatory order may thereupon be placed in accordance therewith. All such mandatory orders will be placed in accordance with any conditions or provisions of such approval.

(b) *Placing of change orders.* Any person who has been delegated authority to place mandatory orders (see § 814.1450 (c) and (d)) may instruct and authorize contracting officers to execute and serve, or cause to be served, upon any person then producing under a mandatory order, change orders which decrease the quantities, or change the specifica-

tions or delivery schedules or the delivery, packing, marking and shipping instructions stated in such mandatory order, in any case in which he shall have determined (1) that the provisions of the change order are necessary in the interest of the war effort, and (2) that the producer is capable of producing the product or material called for by the mandatory order, as modified by such change order, and without a transformation of his plant. No such change order will increase the quantities stated in the mandatory order or so substantially change the specifications as to alter the basic nature of the original procurement.

§ 814.1454 *Provisions of mandatory orders*—(a) *General.* (1) Mandatory orders will be in the form of order set forth in § 814.1460 (a) with such minor modifications therein as may be appropriate under the circumstances of the particular procurement. No substantial changes therein will be made without approval by or on behalf of the Director, Purchases Division.

(2) Change orders will be substantially in the form set forth in § 814.1460 (b).

(3) The blank relating to date in paragraph 5 of the mandatory order will be the earliest date which the producer practicably can supply such data.

(b) *Assignment of preference rating.* Mandatory orders will be assigned the same preference rating as would have been assigned if a voluntary contract were placed for the product and materials, and in the same manner (see § 814.1460 (a) (4)).

(c) *Numbering and distribution of mandatory orders.* Mandatory orders, change orders, and supplemental agreements to mandatory orders will be numbered and distributed in the same manner as voluntary contracts. (See Part 803, Subparts C and D.)

§ 814.1455 *Financing of the producer.* Should the producer require financing in connection with the performance of the order, in an appropriate case such financing may be provided by a direct Government loan or a guaranteed loan to the producer in conformity with the provisions of §§ 803.319 and 803.320 of these procurement regulations.

§ 814.1456 *Service of mandatory orders*—(a) *Method of service.* Where practicable, each mandatory order and change order will be served by hand by a commissioned officer or a United States Marshal or Deputy Marshal upon the proposed producer. If the proposed producer is a partnership, such service will be made upon a partner thereof; if a corporation, upon any officer or agent authorized to act for, bind, or accept service for such corporation. If personal service is impracticable or will involve unreasonable delay, service may be made by mailing, by registered mail, return receipt requested, the mandatory order or change order, addressed to the proposed producer at its usual place of business. The copy of the mandatory order or change order so served will be a duplicate number thereof.

(b) *Return of service.* Promptly after service of a mandatory order or change order the officer making service thereof will execute a certificate as to the time and method of service, the original of which, together with the registered mail receipt, if any, will be attached to the true copy of the mandatory order or change order, as served, to be retained in the files of the technical service.

(c) *Report of service.* Promptly after service of a mandatory order or change order there will be transmitted through channels to the Director, Purchases Division, (1) a copy of the order as served, (2) a copy of such certificate of service and (3) unless already transmitted under § 814.1453 (a) (2), a report containing the data called for by that § 814.1453 (a) (2). In case of the Army Air Forces, transmittal will be through the Army Air Forces, Procurement Liaison Branch, Purchases Division, Headquarters, Army Service Forces.

§ 814.1457 *Determination of reasonable price*—(a) *General.* Persons with whom a mandatory order is placed are entitled to fair and just compensation for the products or materials ordered thereby and are required, under the penalties provided in section 9 of the Selective Training and Service Act (see § 814.1450 (a) (1)), to furnish such products or materials at a reasonable price as determined by the Secretary of War. Such reasonable price will be determined, as hereinafter provided, as promptly as practicable after the placing of the order and the technical service will act with utmost expedition to the end that such price may be fixed, and the producer notified thereof at the earliest practicable date and, whenever possible, prior to the date of the first deliveries scheduled under the order. In each case such reasonable price will be fixed on a unit price basis and will be stated in terms of unit prices.

(b) *Determination by agreement.* All reasonable attempts will be made promply upon the placing of a mandatory order voluntarily to negotiate with the producer, in accordance with any applicable principles set forth in these procurement regulations and Army Service Forces Manual M 601, unit prices for the products or materials to be furnished under the order. Unless the mandatory order has been superseded by a voluntary agreement as permitted by § 814.1458, and if the producer is willing promptly to agree to prices which the chief of the technical service or whomsoever he may designate, deems reasonable under the circumstances of the procurement, an agreement, supplemental to the mandatory order, will be entered into and executed by the contracting officer and producer, (1) setting forth such agreement as to prices, (2) stating that such prices constitute fair and just compensation for the products or materials delivered or to be delivered under the order and (3) containing a waiver by the producer of a determination of reasonable price by the Secretary of War.

(c) *Transmittal of price data.* Unless such agreement as to unit prices is promptly reached and entered into, there will be transmitted through channels to the Director, Purchases Division, such data and information as shall be necessary to permit such reasonable price to be determined by the Under Secretary of War. Such data and information will include the price and other data submitted by the producer, the technical services' analysis and evaluation of such data, the prices which the producer has requested, the prices being paid to, and the experienced and estimated costs of, other producers for the same or comparable products and materials, and the delivery schedules relating thereto, all then available and pertinent information as to the producer's probable cost of producing the products and materials, a statement of past negotiations with the producer for the same or comparable products and materials, and such other information as shall be appropriate. Such data and information will be accompanied by the recommendation of the chief of the technical service as to the unit prices which he deems reasonable for the products and matrials to be furnished under the order.

(d) *Determination of price.* Upon the basis of the data and information so submitted and all other available data the reasonable unit prices for the products and materials will be determined by the Under Secretary of War, and the chief of the technical service promptly will be advised as to such determination.

(e) *Supplement to order stating price.* The contracting officer, by letter signed by him and making reference to the mandatory order by number, promptly will advise the producer as to the reasonable prices so determined.

(f) *Redetermination of price as a result of change orders.* In any case in which a change order to a mandatory order (which has not been superseded by a voluntary agreement as permitted by § 814.1458 so modifies the procurement as equitably to require an adjustment in unit prices theretofore determined either by agreement with the producer or by the Under Secretary of War, as above provided, such unit prices will be redetermined in respect of the products or materials to be affected by such change order and still to be furnished under the mandatory order. Such unit prices will be redetermined by agreement as provided in paragraph (b), if the producer is willing to agree to prices which the chief of the technical service deems reasonable and to enter into an agreement of the nature described in paragraph (b); otherwise they will be redetermined by the Under Secretary of War. In such latter event, there will be transmitted to the Director, Purchases Division, all data and information necessary for such redetermination by the Under Secretary of War, together with the recommendation of the chief of the technical service as to such unit prices as provided in paragraph (c) and the producer will be advised of the redetermined prices, as provided in paragraph (e).

(g) *Redetermination of price upon termination in whole or in part.* In the event a mandatory order is terminated in whole or in part for the convenience of the Government prior to completion of deliveries thereunder, (1) the products and materials completed before the effective date of such termination will be paid for at the unit prices determined as above provided, and (2) fair and just compen-

sation for the work done in connection with the uncompleted portion of the order as far as terminated, including reasonable termination costs (see § 814.1460 (a) (15)), will be determined by agreement with the producer if he is willing to agree to compensation which the chief of the technical service, or whomsoever he may designate, deems to be fair and reasonable for the work done in connection with the uncompleted portions of the order; otherwise such fair and just compensation will be determined by the Under Secretary of War. In such latter event there will be transmitted to the Director, Purchases Division, all data and information necessary for such determination by the Under Secretary of War, together with the recommendation of the chief of the technical service as to the amount which he deems to be such fair and just compensation, and the producer will be advised of such determination as provided in (e).

§ 814.1458 *Execution of voluntary agreements.* A mandatory order may, at any time after it has been served and prior to the completion of payments thereunder, be superseded by and merged into a voluntary contract, if the producer is willing to enter into such a voluntary contract on terms satisfactory to the chief of the technical service. Such voluntary contract shall require only such approvals as would then be required if the procurement had been originally made by voluntary contract and no mandatory order issued.

§ 814.1459 *Non-compliance with mandatory orders.* Should any person upon whom a mandatory order has been served refuse to comply with the terms thereof in any respect, the chief of the technical service placing such order promptly will advise the Director, Purchases Division, as to the nature of such non-compliance and of the reasons therefor given by the producer, and will make recommendation as to the action which he believes should be taken against the producer on account of such non-compliance.

§ 814.1460 *Forms*—(a) *Form of mandatory order.*

WAR DEPARTMENT MANDATORY ORDER

Preference Rating_____ Date_____
No_____

To: (Name)
(Address)

1. Pursuant to the authority conferred upon the President of the United States by section 9 of the Selective Training and Service Act of 1940, (54 Stat. 892, as amended by 57 Stat. 164; 50 U. S. C. 309); pursuant to [Executive Order Nos. 9024 (7 F.R. 329), 9400 (7 F.R. 527) and 9125 (7 F.R. 2719)][1]; and under authority from the [Chairman of the War Production Board][2] and the Secretary of War, the War Department hereby places an order with you for the furnishing and delivery of the products and materials hereinafter described, which are of the nature and kind usually produced or capable of being produced by you, and which are required by the War Department.

[1] If the order relates to food subsistence items, the matter in brackets will read: Executive Order Nos. 9280 (7 F.R. 10179) and 9334 (8 F.R. 5423).

[2] If the order relates to food subsistence items, the matter in brackets will read: War Food Administrator.

2. You are hereby ordered to proceed forthwith with the manufacture of such products and materials.

3. Compliance with this order is obligatory. Reference is hereby made to the penalties and other remedies available to the Government provided by said section 9 for a refusal to comply herewith.

4. This order shall take precedence over all other orders and contracts except that where preference ratings, orders or regulations issued by or with the authority of the War Production Board or the War Food Administration under Title III of the Second War Powers Act, 1942, are applicable, it shall take precedence in accordance with such preference ratings, orders or regulations. Preference rating _____ has been assigned to this order. Claimant Agency Allotment Symbol _____ is applicable to any class B items covered hereby. This symbol is assigned for identification purposes only, its use is governed by CMP Regulations and it cannot be used to obtain Controlled Materials.

5. You are entitled to fair and just compensation for the products and materials ordered hereby. The Contracting Officer, or his authorized representative, will promptly negotiate with you reasonable prices for such products and materials and until _____ or such later date as he
(date)
may permit in writing, you may submit to him at _____ such price or
(place)
other data as you believe pertinent to the determination of such reasonable prices. In the event agreement is reached with you as to such prices, an appropriate agreement supplemental to this order providing for such prices and waiving determination thereof by the Secretary of War will be executed with you; otherwise determination of such reasonable prices will be made by or on behalf of the Secretary of War, which, if accepted by you will be the measure of fair and just compensation to which you are entitled. In no event, however, will the prices for such products and materials exceed the ceiling or other prices for such products or materials established by the Office of Price Administration or otherwise established by law and in effect at the time of delivery.

6. This order may be superceded by and merged into a voluntary contract at any time, in the event you are willing to agree to terms for the procurement which the Contract Officer deems reasonable.

7. The Finance Officer, United States Army, at _____ is designated as the Officer to make payments hereunder. The supplies and services to be obtained by this instrument are authorized by, are for the purposes set forth in, and are chargeable to the following allotments, the available balances of which are sufficient to cover the cost thereof:_____
_____
(Here state allotments)

8. *Scope of the order.* You are ordered to furnish and deliver the following products and materials:
in strict accordance with the specifications, schedules and drawings annexed hereto, all of which are made a part hereof and designated as follows:
_____
_____
Delivery thereof shall be made as follows:
_____
_____
Packing, marking and shipping will be as follows:
_____
_____

9. *Changes.* The Government may at any time, by written order of the Contracting Officer, change the quantities, specifications and delivery schedules, and the delivery, packing, marking and shipping instructions, stated in paragraph 1 hereof, and this mandatory order shall thereupon be modified to the extent and in the manner provided in such change order. If any such change equitably requires an adjustment in the reasonable prices for the products and materials still to be delivered under the order, theretofore agreed to or determined as above provided, such reasonable prices will be modified by negotiation with you or, if agreement cannot be reached, redetermined by or on behalf of the Secretary of War. Unless you submit to the Contracting Officer a written request for such adjustment in price within _____ days after receipt of each such change order, it will be assumed that the reasonable prices theretofore determined are satisfactory to you despite such change order.

10. *Inspection.* The Government may make inspection and test the material and workmanship incorporated in said products and materials at all times and places including, when practicable, during the manufacture, and may make inspection of the finished products or materials prior to or after delivery thereof. Special and performance tests shall be as described in the specifications. You shall furnish all reasonable facilities and assistance for the safe and convenient conduct for such inspections and tests as are to be made on your premises. Finished products and materials rejected because not complying with this order shall be removed by you at your expense unless the Contracting Officer or his representative determines that public necessity requires the acceptance thereof, in which event the reasonable price otherwise payable therefore will be reduced accordingly. Acceptance of products and materials not conforming to this mandatory order, modified as may be by any such change orders, shall in no way excuse you from the penalties provided by Section 9 of the Selective Training and Service Act of 1940, as amended, or make unavailable any of the remedies or provisions of said Section.

11. *Compliance with provisions of applicable laws and Executive orders.* Nothing contained in this order shall be deemed to render inapplicable in the performance hereof existing State or Federal laws concerning the health, safety, security, and employment standards of the employees in your plant. All provisions required by Federal law or Executive Order to be incorporated in War Department contracts in procurements of this nature are made applicable to, and shall be complied with in, the performance of this order.

12. *Notice to Government of labor disputes.* Whenever an actual or potential labor dispute is delaying or threatens to delay the timely performance of this order, you shall immediately give notice thereof to _____ _____. Such notice shall include all available pertinent information with respect to such dispute.

13. *Taxes.* Unless otherwise indicated in this order, the reasonable prices for the products and materials to be furnished hereunder (A) will not include allowance for any State or local sales, use or other tax in effect at the date of this order from which you or this transaction of the procurement of these supplies is exempt but (B) will include allowance for all Federal and all other State and local taxes in effect at the date of this order and applicable to the procurement of the supplies and materials covered by this order.

Upon your request the Government will issue tax exemption certificates or furnish other similar proof of exemption with respect to all taxes for which such allowance is not made.

14. *Payments.* You will be paid, upon the submission of properly certified invoices or

vouchers, the prices determined hereafter as provided for in this order for the products and materials delivered and accepted, less deductions, if any, as herein provided. Unless otherwise specified, payments will be made on partial deliveries accepted by the Government when the amount due on such deliveries so warrants; or when requested by you, payments for accepted partial delivery shall be made whenever such payments would equal or exceed either $1,000 or 50 per cent of the total amount of this procurement.

15. *Termination at the option of the Government.* This order may be terminated by the Government in whole or in part whenever such termination is deemed in the best interests of the Government. In the event of any such termination you will be paid fair and just compensation for compliance with this order prior to the effective date of such termination. You will also be paid fair and just compensation for any reasonable cost incidental to the termination of work under this order in accordance with the directions of the contracting officer. The amount of fair and just compensation payable under this paragraph 15 may be determined by negotiation and agreement between you and the contracting officer but in the absence of such agreement shall be determined by the Undersecretary of War.

16. The term "contracting officer" as used in this order means the undersigned representative of the United States or his duly appointed successor or authorized representative or any officer or employee of the United States designated by or in behalf of the chief of _____ to be contracting
(technical service)
officer with respect to this procurement.

THE UNITED STATES OF AMERICA
By _____
_____
(Official Title)

(b) *Form of Change Order.*

Date _____
Change Order _____
to Mandatory Order No. ____

WAR DEPARTMENT MANDATORY CHANGE ORDER

To: (Name)
(Address)

1. Pursuant to the authorities stated in War Department Mandatory Order No.____, served upon you _____, and in conformity with paragraph 9 thereof, the following changes are made in paragraph 8 of such Mandatory Order:

which is hereby modified accordingly.

2. You are hereby ordered forthwith to furnish and deliver the products and materials called for by such Mandatory Order in accordance therewith and this Change Order.

THE UNITED STATES OF AMERICA,
By _____
_____
(Official Title)

[Procurement Reg. 15]

PART 815—TERMINATION OF CONTRACTS FOR THE CONVENIENCE OF THE GOVERNMENT

SUBPART A—POLICY AS TO TERMINATION OF CONTRACTS AND SUPERVISION OF TERMINATION OF CONTRACTS FOR THE CONVENIENCE OF THE GOVERNMENT

Introduction and Discussion of Policy

Sec.
815.100 Scope of part.
815.101 Necessity for terminations and other cutbacks.
815.102 Importance of manner of effecting cutbacks.
815.103 General policies as to distribution of cutbacks.
815.104 Legal basis for terminations.
815.105 Contract provisions relating to termination for convenience of the Government.
815.106 Policy as to termination procedures.
815.107 Amendments of contracts to insert standard termination provisions.
815.108 Importance of uniform procedures.
815.109 War Department Termination Accounting Manual for Fixed Price Supply Contracts.
815.110 Importance of understanding by contractors of principles applicable to termination.
815.111 Method of discussion in this part.
815.112 Requirement to expedite "Hardship Cases".

Definitions

815.150 Definitions.

Organization and Responsibility for Terminations

815.201 Policy with respect to terminations.
815.202 Staff supervision.
815.203 Policy of decentralization.
815.204 Legal authority to terminate.
815.205 Negotiation of settlement of terminated contract.
815.206 Redelegation of authority.
815.207 Procedures.
815.208 Authority to vary procedures.
815.209 Deviations from prescribed contract articles relating to termination.
815.220 Provisions for review of termination settlement agreements.
815.221 Personnel and services in termination offices.
815.222 Records to support final settlement.

SUBPART B—PROCEDURES RELATING TO TERMINATION OF LUMP SUM SUPPLY CONTRACTS

815.300 Introductory.

Action To Be Taken Prior to Service of Termination Notice

815.301 Direction to terminate.
815.302 Consideration of factors affecting particular terminations.
815.303 Possibility of avoiding termination charges.
815.304 Study of proposed termination by Government personnel prior to giving termination notice.
815.305 Field office study.
815.306 Determination of scope of proposed termination.
815.310 Amendments to insert provisions for negotiated settlement.
815.311 Settlement of contracts containing no termination article.
815.312 Conference with contractor prior to notice of termination.
815.313 Preparation of termination notice.
815.314 Preparation for furnishing contractor with detailed instructions.
815.315 Suspensions of performance undesirable.
815.316 Terminations at the end of hostilities.
815.317 Terminations where there have been defaults.

Service of Termination Notice and Action Connected Therewith

815.320 Service of termination notice.
815.321 Responsibilities of the contractor on receipt of termination notice.
815.322 Commencement of negotiations; initial conference with the contractor at the time of the service of the termination notice.
815.323 Time schedule.
815.324 Release of information concerning cutbacks.
815.325 Termination and settlement of subcontracts.
815.326 Interpretation of provisions of paragraph (b) (4) of the uniform termination article.

Property Disposition

815.350 Disposition of property.
815.351 Inventory.
815.352 Rights of contractor where disposition or retention of property is at a loss to the contractor or a subcontractor.
815.353 Where contractor or subcontractor is willing to forego reimbursement for the cost of any property.
815.354 Return of property by contractor to his vendors and suppliers.
815.355 Retention of property by prime contractor at less than cost.
815.356 Sales by contractor; when made.
815.357 Sales records.
815.358 Sale price.
815.359 Grants of discretionary power to prime contractor.
815.362 Applicability of regulations of other agencies relating to disposition of property.
815.363 Accounting of property disposed of by prime contractor.
815.364 Credit risks on sales.
815.365 Disposition of property by subcontractor.
815.366 Approval of contracting officer.
815.367 Transfer of title to the Government.
815.370 Sales of Government-owned facilities.
815.375 Government-furnished equipment and property.
815.376 Property to which the Government has security title by virtue of provisions of contract article governing partial payment.

Preparation and Review of Contractors' and Subcontractors' Accounting Statements and Proposals for Settlement: Accounting Guides to a Negotiated Settlement

815.400 Summary of action to be taken with respect to presentation of contractor's statements and proposals for settlement.
815.401 Negotiated settlement compared with a formula settlement.
815.402 Standard forms.
815.403 General instructions for use of standard forms.
815.404 Special instructions applicable to Forms C-1, C-2 and C-3.
815.405 Penalties for false certification.
815.406 Prompt submission of proposed settlements with subcontractors.
815.407 Documentary evidence in support of contractor's statement.
815.420 Accounting review of the contractor's and subcontractors' statements.
815.421 The Termination Accounting Manual.
815.422 Function of the contracting officer in reviewing statements and proposals of contractors.
815.423 Accounting personnel and function in connection with termination settlements.

Sec.
815.424 Nature of accounting review.
815.425 Coordination of study of contractor's costs and auditing in certain cases with renegotiation and other termination proceedings.
815.431 Responsibility of contractors and subcontractors to review claims of subcontractors and suppliers.
815.432 Standard of care applicable to review.
815.433 Office review of supplier's statement of charges and settlement proposal.
815.434 Report of accounting personnel.
815.435 Appropriate extent of examination beyond an office review.
815.437 Investigation by Government personnel of subcontractors' and suppliers' claims.
815.438 Definition of costs (subcontractors).
815.439 Subcontractors' inventories.
815.441 General basis of settlement.
815.442 Contract provisions.
815.443 Standard termination article § 803.324; provisions for reimbursment of the contractor.
815.444 The contract article: limitations on reimbursement.
815.445 Accounting guides for use in connection with negotiating settlement.
815.447 Treatment of disposal credits.
815.448 Claims of subcontractors.
815.449 Determination of profit in connection with negotiated settlement.
815.450 Contract formula profit computation.
815.451 Indicated profit rate computation.
815.452 Effect on calculations when a loss on the entire contract is indicated.
815.453 Total cost method of comptation illustrated where profit is indicated.
815.454 Total cost method of computation illustrated where no profit is indicated.
815.455 Limitation on amount of settlement.
815.480 Necessity for determining costs.
815.487 Bond premium computation.
815.488 Infraction of C. M. P. regulations.

Interim Financing of Terminations

815.500 War Department policy.
815.501 Choice of method of interim financing.
815.502 V Loans.
815.503 VT Loans.
815.504 T Loans.
815.505 Partial payments to prime contractors.
815.506 Partial payments to prime contractors.
815.507 Partial payments for the benefit of subcontractors.
815.508 Advance payments.
815.509 Liaison with advance payments and loan or contract financing section of the technical service.
815.510 Consent of surety or guarantor to partial payments; rights of assignees.
815.511 Partial payments where contractor has Government financing.
815.512 Contract financing section.

Negotiation of Settlements

815.530 General.
815.531 Authority of the contracting officer.
815.532 General criteria and guides for the contracting officer.
815.533 Preparation for negotiation conferences with contractor.
815.534 Negotiation conferences and personnel.
815.535 Where prime contractor cannot settle with one or more subcontractors.
815.536 Review of termination settlements by settlement advisory section and settlement review committee.
815.537 Supplemental agreement.
815.550 Relation of termination to statutory renegotiation.
815.552 Settlement in connection with other termination settlements affecting the same contractor.
815.560 Where settlement by negotiation proves impossible; formula settlement.
815.561 Disputes.

SUBPART C—LUMP SUM CONSTRUCTION CONTRACTS

815.600 Introductory.
815.601 Variances in provisions of lump sum construction and lump sum supply termination articles.
815.602 Consideration of certain principles peculiarly applicable to termination of lump sum construction contracts.
815.603 Clause providing for sale of Government property by contractor.
815.604 Notice of termination and request for negotiated settlement.
815.605 Suspension procedure.

SUBPART D—COST-PLUS-A-FIXED-FEE CONTRACTS

General

815.650 Distinction between termination articles of cost-plus-a-fixed-fee contracts and lump sum contracts.
815.651 Steps in the termination of cost-plus-a-fixed-fee contracts.
815.652 Authority to terminate cost-plus-a-fixed-fee contracts.
815.653 Form of notice of termination.
815.654 Payments of costs duly determined.
815.655 Final settlement agreement.
815.656 Release provisions of terminated contract; anticipated litigation.
815.657 Alternative procedures.
815.658 Review of settlement agreements.
815.658a Assignment to Government of premiums due under policies written under War Department insurance rating plan upon termination or completion of cost-plus-a-fixed-fee contracts.

Cost-Plus-a-Fixed eFe Construction Contracts

815.659 Introductory.
815.660 Certain provisions not applicable to cost-plus-a-fixed-fee construction contracts.
815.661 Notice of termination of entire contract.
815.662 Partial termination notice.
815.663 Termination for the fault of the contractor.
815.664 Stop orders.
815.665 Assignment of subcontracts to the Government.
815.666 Reimbursable and non-reimbursable expenditures.
815.667 Service of notice of termination.

SUBPART E—TERMINATION OF PRELIMINARY CONTRACTUAL INSTRUMENTS

Sec.
815.700 Notices of award.
815.701 Letters of intent and letter orders.
815.702 Procedure on termination of letter orders and letter of intent under standard termination provisions.

SUBPART F—REPORTS

815.800 Monthly termination status report.
815.801 Report form.
815.802 Matters to be covered.
815.803 Date for submitting reports.
815.804 Number of copies.
815.805 Report to Contract Termination Branch, Readjustment Division, Headquarters, Army Service Forces.
815.806 Instructions with respect to the report form.

SUBPART F-1—REMOVAL OF PROPERTY FROM CONTRACTORS' PLANTS UPON TERMINATION AT THE OPTION OR FOR THE CONVENIENCE OF THE GOVERNMENT

815.850 Introductory.

General Policies and Procedures with Respect to Fixed-Price Prime Contracts

815.851 Government policy on prompt plant clearance.
815.852 Prompt disposition of property.
815.853 Removal of property upon demand of the contractor.
815.854 Arrangements for storage of property.
815.855 Scrap determination prior to removal.
815.856 Inventory lists to be submitted by contractors.
815.857 Accountable property officers.
815.858 Property accounting records.

Special Instructions with Respect to Fixed-Price Prime Contracts

815.859 Introductory.
815.860 Procedures with respect to property removed from the contractor's premises.
815.861 Procedures with respect to property stored with the contractor pursuant to storage agreement.
815.862 Procedures with respect to property neither removed from the contractor's premises nor stored with him pursuant to agreement.
815.863 Transfer of title to the government.

Policies and Procedures with Respect to Fixed-Price Subcontracts

815.864 Property in the hands of fixed-price subcontractors.

Final Settlement Matters

815.865 Storage or removal of property in connection with final settlement.
815.866 Certification of vouchers in connection with payments under final settlement agreement.

Policies and Procedures with Respect to Cost-Plus-A-Fixed-Fee Supply Contracts

815.867 Removal of property under terminated cost-plus-a-fixed-fee supply contracts.

Government-Owned Facilities

815.868 Government-owned facilities.

SUBPART G—FORMS

Termination Articles

Sec.
815.901 Lump sum supply contract.
815.901a Old Standard article formerly used in lump sum supply contracts.
815.902 Lump sum construction contract.
815.903 Cost-plus-a-fixed-fee supply contract (form sometimes used by Ordnance Department).
815.904 Cost-plus-a-fixed-fee construction contract.
815.905 Army Air Forces; cost-plus-a-fixed-fee supply contract.

Notice of Termination

815.911 Telegraphic notice (preliminary notice).
815.912 Lump sum supply or construction contracts.
815.914 Cost-plus-a-fixed-fee supply contracts.
815.915 Cost-plus-a-fixed-fee construction termination and assignment forms.

Partial Payments

815.921 Supplemental agreement to make payment in trust for subcontractor.
815.922 Form of Supplemental agreement for partial payments pending final determination of amount payable by Government in contion with termination.

Supplemental Agreements to Insert Current Termination Article in Contracts

815.926 Lump sum contracts; supplemental agreement for use where contract contains no provision for the termination for the convenience of the Government or contins a termination article which does not provide for a negotiated settlement of the amount due in respect of the uncompleted portion of the contract.

Final Settlement Agreements

815.931 Settlement agreement for use where a lump sum supply contract contains a provision for termination for the convenience of the Government substantially in the form contained in § 803.324 and permits settlement by negotiation of amount due with respect to uncompleted portion of the contract.
815.932 Settlement agreement for use where a lump sum construction contract contains a provision for termination for the convenience of the Government substantially in the form contained in § 803.324 (a).
815.933 Supplemental agreement for use where a lump sum supply or construction contract contains no article for termination for convenience of the Government and the contractor will not agree to amend the same by inserting the article contained in § 803.324 or § 803.324 (a), or where any such contracts do not contain termination for the convenience of the Government articles and a negotiated settlement can be effected.
815.934 Cost-plus-a-fixed-fee supply contracts.

Instructions to Contractors and Subcontractors

Sec.
815.936 Lump sum contractors.
815.937 Contractor's settlement proposal forms.
815.938 Contractor's own charges schedules.
815.939 Inventory schedules.

Inventory Forms

815.941 Inventory form used pursuant to § 815.351.
815.946 Form of order requesting delivery of and transfer of title to property to the Government.
815.947 Form of approval for sale, return or retention of materials.

Forms with Respect to Removal of Property from Contractors' Plants upon Termination

815.950 Suggested form of receipt.
815.951 Contract with War Contractor for Storage and Service.

SUBPART A—POLICY AS TO TERMINATION OF CONTRACTS AND SUPERVISION OF TERMINATION SETTLEMENTS

Introduction

§ 815.100 *Scope of part.* This part sets forth procedure with respect to the termination of contracts, in whole or in part, for the convenience of the Government. It does not cover:

(a) Terminations for default of the contractor either by virtue (1) of rights and powers which the Government may have at common law, or (2) of the right reserved in many Government contracts, usually under an article entitled "Delays-Damages" (see e.g., §§ 803.352, 813.1302 (i); see also § 803.379 et seq.).

(b) Adjustments under contract articles permitting changes in specifications, quantities, supplies or work to be furnished, delivery instructions, delivery schedules and similar matters (see for example §§ 803.329a, 803.351 (c), 813.1301, Art. 2, 813.1302, Art. 3, 813.1303, Art. I, paragraph 5).

(c) Adjustment under articles providing for the redetermination, renegotiation or escalation of prices under contracts (see Part 812).

§ 815.101 *Necessity for terminations and other cutbacks.* Adjustment of the Army Supply Program takes place as the supply requirements of the armed forces change. These changes normally occur because of strategic changes, development of new projects, invention of new items of war matériel, reallocation of scarce raw materials and other similar factors arising under the changing circumstances of modern war. In the case of curtailment of procurement schedules, resulting cutbacks in production will involve either termination of outstanding contracts or reduction in purchases under outstanding contracts, or both.

§ 815.102 *Importance of manner of affecting cutbacks.* Cutbacks in production resulting from curtailment of procurement schedules will be distributed in such manner as to facilitate the attainment of essential war production. Careful consideration of how reduction in procurement schedules and termination of contracts are to be achieved is essential in order to prevent dislocation of the national economy and to minimize disruption of living conditions and employment in particular areas. Complete records must be maintained to indicate that careful, formal and serious consideration has in fact entered into such decisions.

§ 815.103 *General policies as to distribution of cut-backs.* In selecting contracts to accomplish any necessary readjustment or curtailment of production, the following general policies will, to the extent feasible, be followed until there is a major change in the war situation such as the cessation of hostilities in a major theater:

(a) Wherever practicable, priority of retention in a program will be given to plants not located in Group I or Group II Areas (see § 802.223 (b)) inasmuch as displaced labor in Group I and II Areas can be most readily absorbed in other war production.

(b) The intent of the Smaller War Plants Act (see § 802.225 (a)) will be carried out by retaining in a program, wherever practicable, smaller war plants (i. e., independent concerns with 500 wage earners or less). Likewise, large contractors whose volume is reduced in a curtailment program will be urged not to cut their subcontracting volume to smaller war plants by an amount greater proportionately than their own reductions.

(c) In order to cause a minimum disturbance to the national economy and in the interest of resuming production as promptly as possible if required by future changes in program, consideration will be given to making as large a portion of the cutback in Government-owned facilities as is consistent with cost and future requirements. An exception to this is the case where a cutback of a privately-owned facility which is having difficulty fulfilling its schedules will enable such facility to improve its performance on the remaining contracts. The wishes of private contractors in this regard should be given due consideration.

(d) Government-owned facilities in which production is materially curtailed or terminated will be kept in standby until their productive capacity is clearly no longer required for military needs.

(e) In scheduling the release of plants or industries due consideration will be given to:

(1) Security considerations.

(2) The effect on public transportation; that is, accessibility to the source of raw materials, components, depots or storage facilities, and ultimate destination.

(3) The relative unit cost of production to the Government.

(f) As requirements change, prompt action is necessary to cutback contracts in order to avoid the accumulation of excesses. Therefore, prescribed procedures must be performed with a minimum of delay at each echelon so that appropriate adjustments in production schedules may be made at the earliest possible moment.

(g) In connection with all cutbacks, records will be maintained in the files of the technical services evidencing the ap-

plication in the administration of each case, of the appropriate procedures, with special reference to the general policies outlined above.

§ 815.104 *Legal basis for terminations.* The authority to terminate contracts for the convenience of the Government is based upon the general authority and power of the War Department to make contracts and to amend them in the interest of the Government.[1] The right to terminate a contract for the convenience of the Government by unilateral action of the Government ordinarily is reserved in the original contract or inserted therein by supplemental agreement (see § 815.107). However, even in the absence of a termination article, a contract may be terminated for the benefit of the Government (see discussion § 815.311).

§ 815.105 *Contract provisions relating to termination for the convenience of the Government.* (a) During the period of the present war and the defense period immediately prior to the war, the right to terminate contracts in accordance with a termination article has generally been reserved by contract, at least in larger contracts (see e. g. §§ 803.324, 803.324 (a), 803.350).

(b) The forms of the termination articles included in contracts have changed from time to time. In considering what rights the Government has with respect to the termination of any contract, the termination article in the particular contract should be examined with care in the interest of obtaining uniformity in termination procedures and of facilitating the settlement and completion of terminated contracts, it has been the policy and practice of the War Department to permit amendments of outstanding contracts to include the latest form of appropriate approved termination article (see § 803.324 (b) and (c) as in effect prior to 4 June 1943 and §§ 803.373 and 803.373a as in effect on that date). This liberal policy of amendment is continued by this regulation (Part 815) as stated in § 815.107.

(c) Standard forms of termination articles are set forth in the following paragraphs of Procurement Regulations: § 803.324 (Lump Sum Supply Contracts), § 803.324 (a) (Lump Sum Construction Contracts), § 813.1307 (Letter Order for Supplies; no price stated), § 813.1308 (Letter Order for Supplies; price stated), § 813.1309 (Letter Order for Cost-Plus-A-Fixed-Fee Construction), and § 813.1310 (Letter Order for Lump Sum Construction).

§ 815.106 *Policy as to termination procedures.* The termination articles presently in use in War Department contracts are designed to permit, on equitable terms, consistently with the protection of the Government's interest, and within a wide range of discretion, the partial or total termination by the Government, for any reason whatsoever, of the contractor's right to proceed with the performance of such contracts. To carry out this general policy of all termination articles, the following major principles must be applied:

(a) *Cessation of work and saving of expense.* All work related to the contract, whether performed by the prime contractor or by a subcontractor or supplier is to be stopped promptly, except where the contracting officer has determined that in the interest of the Government, some work in process should be completed. This is to prevent (1) further running up of expense to the Government, and (2) waste of labor and materials (see § 815.321 et seq).

(b) *Disposition of property.* So far as permitted by the terminated contract, property acquired for the performance of the contract is to be disposed of with reasonable dispatch, as advantageously as is reasonably possible and in a manner which makes such property available for other productive use at the earliest possible moment (see § 815.350). Property not disposed of is to be transferred to the Government.

(c) *Payments to contractor.* The contractor is to receive fair and reasonable compensation for the work performed and for the supplies and articles furnished under the terminated contracts, consistently with the provisions of the applicable contract article relating to termination.

(d) *Promptness of payment.* Amounts owing to contractors, by reason of termination are to be paid promptly and without administrative delay.

(e) *Accounting Investigation.* Intelligent reviews are to be made of the requests of contractors for payments in connection with termination to verify their accuracy and propriety (see § 815.420 et seq). To avoid delays and because of shortages of accounting personnel, detailed auditing will be reduced to a minimum consistent with the protection of the Government's interests.

(f) *Partial payments.* Full use must be made of the provisions of termination articles relating to partial payments, so that all amounts, which are clearly due to prime contractors and, through them, to their subcontractors and suppliers, will be paid at the earliest possible moment (see § 815.500 et seq.).

(g) *Liquidation of advance payments and guaranteed loans.* Advance payments and guaranteed loans (which are existing or potential charges against the funds allocated to terminated or curtailed contracts) will be liquidated in an orderly manner; affording, so far as reasonably possible, protection to the contractor's financial structure so that the contractor and financing institutions cooperating in the financing of War Department procurement will be protected to the extent compatible with the Government's interest and that a multiplicity of calls by financing institutions upon the War Department to take up guarantees of loans will be avoided (see § 815.511 (a)).

(h) *Settlements with subcontractors.* Prime contractors must be pressed to effect prompt, fair and reasonable settlements of their outstanding commitments to subcontractors and suppliers and pass on to them a reasonable share of partial payments on account of terminations (see §§ 815.325 et seq., 815.507 et seq., 815.654 (a)).

(i) *Partial terminations.* Where contractors are directed to reduce production by partial terminations, equitable adjustments of costs will be made consistently with the applicable contract articles or with an appropriate and equitable supplemental agreement (see § 803.306 (c) and following sections) in the event that the change causes an increase in the contractor's costs.

§ 815.107 *Amendments of contracts to insert standard termination provisions.* In order to facilitate prompt settlement of contracts and to encourage uniformity of procedure, amendments of contracts to insert standard termination articles currently in use will be encouraged. The previous assent of each surety, guarantor or assignee should be obtained. The chiefs of the technical services are authorized to make such amendments in accordance with paragraphs (a) to (c) of this section.

(a) *Lump sum contracts.* The chief of any technical service (see §§ 815.150 (a), 815.206) without approval of higher authority, may amend any lump sum contract, even after the giving of notice of termination, to insert therein the standard termination articles set forth in paragraphs §§ 803.324, 815.901 (lump sum supply contracts) and § 803.324 (a) (lump sum construction contracts), whichever is appropriate in the particular case. Such amendments will take place wherever possible prior to giving formal notice of termination.

(b) *Letters of intent, letter contracts and letter orders.* (1) The standard termination provisions for inclusion in letter orders (see § 803.303a) are referred to in § 815.105 (c). As to letters of intent, provisions conforming as nearly as may be to the provisions for letter orders referred to in § 815.105 (c) shall be regarded for purposes of this part as standard termination provisions. As used in this regulation and in §§ 803.303a and 803.303a (a), the term "letter order" includes instruments of the type hitherto sometimes referred to as letter contracts or letter purchase orders.

(2) The chiefs of the several technical services, in their discretion and without the approval of higher authority, are hereby authorized by supplemental agreement to amend any letter of intent or letter order to include therein the substance of the appropriate standard termination provisions, other than those portions of the standard provisions which permit an allowance of profit (except that the unit price may be paid for completed articles if the terminated instrument specifies a unit price). Wherever possible, such amendments will be made prior to the giving of notice of termination. However, the chiefs of the several technical services are authorized to make such amendments even after the giving of a termination notice where, through inadvertence or other circumstances, an earlier amendment has been neglected or could not be obtained.

[1] The authority to make and amend contracts by negotiation, including, of course, all reasonable and appropriate contract provisions is granted by Public Law 703, 76th Congress (54 Stat. 712), continued in effect by Public Law 580, 77th Congress (56 Stat. 314), and by the First War Powers Act, 1941, Title II (55 Stat. 839).

(3) Prior to but not after the giving of notice of termination the termination provisions of a letter of intent or letter order may be amended in the instances and in the manner set forth in § 803.303a (a) (2) in order to include appropriate provisions for an allowance of profit in the event of termination.

(4) Amendments of the termination provisions of a letter of intent or letter order in any other manner, or at any other time, than is authorized in subparagraphs (2) and (3) of this paragraph (and other than the execution of a definitive contract), will be made only with the approval of the Director, Purchases Division, Headquarters, Army Service Forces, but no such amendments to include provisions permitting an allowance of profit (not theretofore provided by such order) shall be made after the giving of notice of termination.

(5) Amendments pursuant to this paragraph should not be utilized to delay in any manner whatsoever the execution of a definitive contract (see § 803.303a).

(c) *Standard termination articles and provisions furnish expeditious method of termination settlement.* The provisions of the articles set forth in § 803.324 (see § 815.901) and § 803.324 (a) (with respect to lump sum contracts) and the standard termination provisions for letters of intent, and letter orders (with respect to such letters of intent and letter orders) provide expeditious methods of settlement of the amounts due by reason of the termination of contracts, letters of intent and letter orders, as the case may be, for the convenience of the Government. Their use (1) will reduce expense, expenditure of time, auditing difficulties and administrative inconvenience both for the Government and for the contractor, and (2) helps to eliminate the obstacles to procurement which arise from the apprehension, frequently expressed by contractors, that there will be long delays in the making of settlements in the event of the termination of contractual instruments for the convenience of the Government (including any such terminations which may take place as the result of the conclusion of hostilities). Use of such standard articles and provisions will also assist materially in enabling contractors affected by terminations to undertake other war work or other productive enterprise at an early date, in a manner consistent with the public interest. Accordingly, pursuant to the First War Powers Act, 1941, and Executive Order No. 9001, authority is delegated to the chiefs of the several technical services to make amendments consistently with the provisions of paragraphs (a) and (b) of this section. It is determined that the making of such amendments will facilitate the prosecution of the war. The chiefs of the technical services will be liberal in permitting and agreeing to such amendments. Each such amendment will recite that it is made pursuant to the First War Powers Act, 1941, and Executive Order No. 9001.

§ 815.108 *Importance of uniform procedures.* Uniformity of procedures will facilitate the prompt settlement of contracts. If contractors, many of whom deal with more than one technical service, can use substantially the same methods in terminating contracts with each service, they will be able to set up their own internal arrangements for this work on a more efficient basis. Uniformity will also make possible the concentration of procurement and auditing personnel in any part of the War Department where termination work may be heavy at any given time, with assurance that similar methods will be in force throughout the department. It is, of course, important, as a matter of common justice and sound public relations, that contractors receive equal and uniform treatment and that procedures and policies be equitably and evenly applied. For this reason, these regulations have been developed on a basis which, so far as practicable, is generally consistent with the termination procedures outlined in contract articles employed by other procurement agencies. The chiefs of the technical services will take steps to see that termination methods are employed in their respective services which carry out the policy of uniformity stated in this section (see § 815.207).

§ 815.109 *War Department Termination Accounting Manual for Fixed Price Supply Contracts.* The Office of the Fiscal Director, Headquarters, Army Service Forces, has prepared and published a Termination Accounting Manual for Fixed Price Supply Contracts (herein called the Termination Accounting Manual and usually cited as "T. A. M.") prescribed for use by accounting personnel of all agencies of the War Department in connection with the accounting review or examination of settlements proposed by contractors and subcontractors for negotiation in connection with the termination of lump sum supply contracts. It is also applicable to accounting reviews of settlements proposed in connection with the termination of fixed price supply subcontracts under cost-plus-a-fixed-fee prime supply contracts. The Termination Accounting Manual (see T. A. M. introduction and §§ 811.1101 and 811.1103) is not directed to contracting officers (although they should be familiar with it) but is designed to give to Government accounting personnel accounting and auditing instructions consistent with Procurement Regulations applicable to the subject of terminations. In the event of revisions in Procurement Regulations, it is planned that appropriate revisions will be made in the Termination Audit Manual. In all matters covered by this part provisions of this part are controlling and will be followed by contracting officers. The reports and procedures set forth in the Termination Accounting Manual will not limit or affect the ultimate legal authority of the contracting officer to effect negotiated settlements in connection with terminations.

§ 815.110 *Importance of understanding by contractors of principles applicable to termination* It is important that war contractors, subcontractors and suppliers be familiar with the procedures and principles applicable to terminations for the convenience of the Government. To assist in this understanding, copies of this part and of the Termination Accounting Manual for Lump Sum Supply Contracts (see § 815.109) may be made available to such contractors, subcontractors and suppliers. Contracting officers will take all necessary steps to see that contractors are assisted in familiarizing themselves with the procedures outlined in this regulation. It is particularly important that these contractors, subcontractors and suppliers understand:

(a) The significance of the termination articles in their respective contracts.

(b) The necessity of keeping acounting and other records in such manner and in such detail, and of maintaining such adequate cost accounting systems, as will enable them to produce the cost and other figures necessary to prove their rights under the termination articles in the event of termination.

§ 815.111 *Method of discussion in this regulation.* All terminations for the convenience of the Government, under any type of contract, involve the same general problems (see §§ 815.106 and 815.300 (a)). In this part these problems are first discussed in detail as they arise in the settlement of lump sum supply contracts (§815.300 and following sections) terminated under the standard form of termination article for such contracts (§803.324). The variations from the procedures under lump sum supply contract terminations necessary with respect to terminations of other types of contracts are then discussed as follows:

(a) Lump sum construction contracts; § 815.600 et seq.

(b) Cost-plus-a-fixed-fee contracts; § 815.650 et seq.

(c) Letters of intent and other temporary contractual instruments; § 815.700 et seq.

§ 815.112 *Requirement to expedite "hardship cases."* It is War Department policy to expedite settlement of all terminated contracts and subcontracts and to give special administrative priority to further expedite "hardship cases" as defined below.

(a) *Definition of a "hardship case."* A "hardship case" is any unsettled termination case judged by the contracting officer, or such other officer as may be designated by the chief of the technical service concerned or by higher authority, to be a situation where (1) the termination has resulted in rendering the contractor or subcontractor financially unable to carry on normal manufacturing or business operations either in the performance of other Government contracts or civilian business, or the termination has resulted in placing the contractor or subcontractor in imminent danger of bankruptcy; and (2) the contractor or subcontractor would probably be financially able to carry on normal operations or to avert bankruptcy if the amounts due it in the settlement of its terminated contract were immediately ascertainable and payable; and (3) the contracting officer, or the officer designated, determines that neither Government nor commerical financing is practicably available to the contractor or subcontractor to the extent necessary to alleviate its financial situation.

(b) *Procedure.* (1) When a contractor or subcontractor makes a request to the contracting officer for special administrative priority, claiming a "hardship case", the contracting officer, or the officer designated, will make whatever investigation is practicable under the circumstances and consistent with the necessity for speed. The investigating officer, will set forth his judgment with respect to the above in a memorandum for file.

(2) If it is judged in accordance with the above that the case is not a "hardship case", expedited treatment over other termination cases is not required and the contractor may, in the judgment of the contracting officer, be so notified.

(3) If the case is judged in accordance with the above to be a "hardship case", the contracting officer, as well as accounting personnel, property disposal personnel, the settlement advisory section and others engaged in settling the contract or subcontract will give special administrative priority to the settlement of the contract or subcontract, until the necessary partial payment or final payment has been made. In carrying out this special administrative priority, contracting officers are authorized to accelerate and, in matters not involving established policy, to vary normal administrative procedures within reasonable limits, provided that in their judgment the interest of the Government is not thereby adversely affected.

(c) *Expediting settlements other than hardship cases".* Nothing in § 815.112, 815.112 (a) or 815.112 (b) shall be construed to prohibit a contracting officer from expediting the settlement of any contract or subcontract at a greater rate than other contracts, when in his opinion it is advisable to do so.

Definitions

§ 815.150 *Definitions.* The following terms as used in this part shall have the following meanings.

(a) *Chief of Technical Service.* The term "Chief of a technical service" includes the chief of any one of the technical services of the Army Service Forces, the Commanding General, Army Air Forces, and the Commanding General of any Service Command (see §§ 801.108 (a), 801.108 (e) and 815.206, 815.220).

(b) *Common item.* "Common item" means raw materials, parts and other supplies (whether partially or completely processed) which are normally usable not only in connection with the terminated contract but also on or in connection with other work being performed by a contractor or subcontractor.

(c) *Continued portion of contract.* "Continued portion of contract" means that portion of a terminated contract not already completed which, in accordance with a notice of termination, the contractor must continue to perform.

(d) *Contracting officer.* "Contracting officer" means the officer or employee who signs a contract on behalf of the Government and includes a duly appointed successor or authorized representative of such a contracting officer, all as set out in § 803.302 (c) of Procurement Regulations. The term shall have the same breadth of meaning as in § 803.302 (c).

(e) *Contractor.* The term "contractor" means the holder of a prime contract with the United States.

(f) *Other work.* "Other work" means all work being handled by a particular contractor or subcontractor other than that related to the particular terminated contract or subcontract under discussion and includes both other Government and non-Government business.

(g) *Subcontract.* "Subcontract" includes any purchase order or agreement to perform all or any part of the work or to make or furnish any article required for the performance of another contract or subcontract. The term "article" includes any material, part, assembly, machinery, equipment or other personal property.

(h) *Subcontractor.* The term "subcontractor" means the holder of a subcontract.

(i) *Termination.* "Termination" means the discontinuance by the Government for its convenience of a contractor's right to proceed with the performance of the whole or any part of a contract with the United States. The term does not include a situation where a reduction in quantities is made and wholly compensatory increased unit prices are granted for the balance of the contract through an appropriate adjustment (see T. A. M. 1117.1).

(j) *Uncompleted portion of the contract.* "Uncompleted portion of the contract", when the term is used with respect to a terminated lump-sum supply contract, means that portion of the contract which does not relate either (1) to completed supplies called for by the contract or (2) to any continued portion (see § 815.150 (c)) of the contract.

Organization and Responsibility for Terminations

§ 815.201 *Policy with respect to terminations.* The duty of formulating policy with respect to terminations has been placed by the Under Secretary of War in the Director, Readjustment Division, Headquarters, Army Service Forces, acting under the supervision of the Director of Matériel in matters relating to the Army Service Forces, and as the Special Representative of the Under Secretary of War in matters relating to the Army Air Forces.

§ 815.202 *Staff supervision.* Staff supervision of terminations in the Army Service Forces is assigned to the Director of Matériel who will coordinate the activities of all headquarters staff divisions relating to this subject through the Readjustment Division. With respect to the Army Air Forces, staff supervision of terminations is vested in the Commanding General, Army Air Forces who acts with respect to such matters through the Assistant Chief of Air Staff, Matériel, Maintenance and Distribution.

§ 815.203 *Policy of decentralization.* It is the policy of the War Department to decentralize to the chiefs of the several technical services administration of contract terminations as fully as possible. The extent to which they in turn will decentralize such administration is left to each chief of a technical service (see § 815.150 (a)) for his determination subject to the provisions of this part as from time to time in force. The chief of each technical service will make periodic checks of the progress of terminations and the settlement thereof, to insure that no unreasonable delays occur.

§ 815.204 *Legal authority to terminate.* Authority to terminate any War Department contract, under his administration, consistently with the provisions of this part is delegated to the chief of each technical service, regardless of the amount of such contract, and without the approval of higher authority. Such power may be exercised even though the contract expressly states that the approval of the Secretary of War is required for such termination.

§ 815.205 *Negotiation of settlement of terminated contract.* The authority to terminate contracts granted by § 815.204 includes the authority:

(a) To enter into supplemental agreements relating to the terminated contracts consistently with this part and with other applicable regulations and

(b) To make agreements settling the whole or any part of the amount due on any terminated contract when and to the extent that such agreements are authorized by the terminated contract itself or are otherwise authorized by this part.

§ 815.206 *Redelegation of authority.* The chief of each technical service may redelegate any authority, power, or discretion granted to him by this part with or without power of redelegation, except where action is explicitly required to be by the chief of the technical service himself or by the settlement review committee designated by him (see §§ 815.220, 815.311 (d) and 815.535). Except as otherwise provided in the preceding sentence, references in this part to the chief of any technical service shall be deemed to include any duly authorized representative.

§ 815.207 *Procedures.* The chief of each technical service, subject to the policy declared in § 815.103, may prescribe procedures for his service consistent with the principles declared in this part and in other procurement regulations to expedite the settlement of the amounts due to prime contractors and subcontractors by reason of the termination of contracts, to provide for efficient supervision of partial payments on account of amounts due in connection with terminations, to secure the prompt filing of settlement proposals, inventories and other documents by prime contractors, both in their own behalf and in behalf of subcontractors, and to insure that disposal of property in connection with terminations proceeds rapidly, efficiently and in a manner consistent with the best interests of the Government.

§ 815.208 *Authority to vary procedures.* The chief of each technical service, consistently with the general policy of this part and with the policy stated in § 815.105, may authorize variations from the procedures herein prescribed in any case or class of cases, unless in his opinion such variation involves a matter of policy which should be considered and passed upon by higher authority. In determining whether a matter of policy should be

considered and passed upon by higher authority, consideration shall be given by the chief of the technical service to the following factors:

(a) Whether there is involved a conflict with a policy theretofore approved by higher authority;

(b) Whether there is involved a decision on an important question of policy which has not theretofore been passed upon by higher authority;

(c) Whether there is involved a decision on any matter in which uniformity among the several technical services is especially desirable;

(d) Whether there is involved a decision on an important or doubtful question of law, cost interpretation, accounting practice or fiscal policy;

(e) Whether deviation from the procedures herein prescribed will tend to set a precedent which may be undesirable in other cases.

In any case where a substantial deviation from the general policies prescribed in this part is involved, such deviation may be made only with the approval of the Director, Purchases Division, Headquarters, Army Service Forces, who will obtain any appropriate concurrences of other Headquarters staff divisions, where in his judgment such concurrences are desirable.

§ 815.209 *Deviations from prescribed contract articles relating to termination.* No deviations from the form of a prescribed contract article relating to termination (see §§ 803.324, 803.324 (a) and 803.350) will be made without the approval of the Director, Purchases Division, Headquarters, Army Service Forces, or the Chief Counsel or Chief, Legal Branch, of that Division.

§ 815.220 *Provisions for review of termination settlement agreements.* (a) The chief of each technical service will establish for the assistance of contracting officers engaged in the settlement of termination cases, one or more settlement review boards composed of at least three responsible officers or civilian employees of the War Department. So far as is practicable in view of the volume of cases being handled and the availability of qualified personnel, such boards will be established at regional offices where responsibility for negotiation of settlements is placed. The duties of such boards may be assigned to the members of any boards or sections already in existence or already charged with other duties. The contracting officer himself will not be a member of the settlement review board or appoint any such member, unless the contracting officer is also the chief of a regional office having responsibility for the negotiation of settlements.

(b) Each proposed settlement (including not only proposed settlements made by the Government but also proposed settlements made by prime contractors and subcontractors with their subcontractors and suppliers) providing for payment to any prime contractor, or to any subcontractor, of an amount in excess of $25,000 will be examined by such review board prior to approval by the contracting officer of such settlement. The chief of the technical service concerned may require proposed settlements involving amounts of $25,000 or less to be submitted for review by the board. Contracting officers in their discretion may submit to the board any proposed settlement or matter in connection therewith at any time and generally should do so whenever any novel or special problem arises upon which the contracting officer desires the advice of the board.

(c) The review board will submit to the contracting officer a written recommendation with respect to each proposed settlement or other matter considered by the board. Any proposed settlement disapproved by the review board shall not be executed unless approved by the authority which appointed the board. If the amount of the proposed settlement exceeds $500,000, it shall, after the approval by the review board, be submitted to such higher authority as the chief of the technical service concerned shall deem appropriate, and shall not be executed until approved by such authority acting personally or through such person or persons as he shall specifically designate to act for him.

(d) For the purpose of this section, the amount of any proposed settlement of a prime contract or of a subcontract shall be determined without deducting disposal credits (see § 815.447) but by excluding (1) amounts payable for completed items or work at the contract price and (2) amounts payable for the discharge of all claims of subcontractors or suppliers under such prime contract or subcontract, as the case may be.

(e) It shall be the function of the review board to determine the over-all reasonableness of the proposed settlement from the standpoint of protecting the Government's interests. It is not the function of the board to examine in detail every element entering into the determination of the amount proposed to be paid, but it will frequently be appropriate to select specific items for inquiry as to the basis of the proposed disposition in order to determine that negotiations have been conducted competently and in the light of adequate information. The scope and intensity of the review may be varied according to the reliability of the contractor, the size and complexity of the proposed settlement, and any other relevant factors. If review is required for settlements with subcontractors in the amount of $25,000 or less, the review may, and generally should, in accordance with the principles stated in § 815.437, be limited to an inquiry as to whether an adequate examination of the claim was made by the prime contractor or any intermediate subcontractor, and to the reasonableness of relying on the examination so made. The board may act upon records submitted by the contracting officer or may require the submission of additional information.

(f) Except to the extent that the chief of the technical service concerned may prescribe otherwise, partial payments (see § 815.506 et seq.) may be made without the necessity of obtaining the approval of the review board. Dispositions of property are subject to review by disposal boards to the extent provided in Part 807 (see especially § 807.105 et seq., § 807.208 et seq.), and shall not otherwise be reviewed.

§ 815.221 *Personnel and services in termination offices.* The chief of each technical service should provide, so far as possible, in each contracting office, district office, or area office which is given final authority with respect to termination settlements, adequate and competent technical, legal, accounting and other personnel to protect the interests of the Government.

§ 815.222 *Records to support final settlement.* It is the responsibility of the chiefs of the technical services to assure that adequate records will be kept in accordance with the standards of prudent business judgment to substantiate settlements made by contracting officers. Such records will be kept for at least five years subsequent to the final settlement of the terminated contract.

(a) Chiefs of technical services will prescribe the manner in which termination settlement records are to be kept and the location where the records will be kept. Normally and whenever practicable termination settlement records for each settlement should be maintained in a single file.

(b) Unnecessarily voluminous files should not be accumulated, particularly in the case of small settlements. In determining the specific records to be maintained in each case consideration will be given to the need for prompt settlement. Below are indicated records or information which should be kept in each case to the extent applicable. Certain of this information will be included in the Standard Forms filed by the Contractor (see § 815.937 et seq.), making separate records of such information unnecessary.

(1) Copy of prime contract.

(2) Copies of supplemental agreements which are material to the termination settlement or which add or change the termination article.

(3) Copy of the notice of termination.

(4) Proposals for settlement submitted by the prime contractor, including related certificates, statements of charges and inventory schedules.

(5) Copy or record of subcontract settlement agreements expressly approved or ratified by the contracting officer, and copy of any report of investigation made pursuant to § 815.437 by Government personnel of settlements with subcontractors.

(6) Record of partial payments or other interim financing.

(7) Copies of authorizations to contractors for final settlement of subcontractors' claims, and for disposal of property.

(8) Reports of audit or office reviews.

(9) Records of disposal credits.

(10) Memorandum or other pertinent information concerning important conferences with contractor at which decisions were made affecting the settlement.

(11) Memorandum setting forth the factors considered by the contracting officer in reaching the conclusion that the settlement is fair and reasonable to the Government and to the contractor.

(12) Record of any actions by settlement advisory boards, property disposal boards, review boards, and appeal boards.

(13) Additional records in the case of formula settlements as required. (See § 815.560).

(14) Any other records necessary in particular cases.

SUBPART B—PROCEDURES RELATING TO TERMINATION OF LUMP SUM SUPPLY CONTRACTS

§ 815.300 *Introductory.* The discussion in this subpart relates primarily to the termination of lump sum supply contracts. However, the procedures herein discussed are in many instances equally applicable to lump sum construction contracts and to cost-plus-a-fixed-fee contracts (to the extent indicated in the discussion of those types of contract) (see § 815.600 et seq. and § 815.650 et seq.). In some instances, particularly in the termination of contracts for standard supplies and ordinary commercial articles, the procedures outlined in this subpart may be in part unnecessary. In such instances, in accordance with the policies set out in § 815.208, the chiefs of the several technical services are authorized to modify such procedures appropriately by general regulation or to permit deviations to specific cases. Each such general regulation will be reported in writing to the Contract Termination Branch, Purchases Division, Headquarters, Army Service Forces.

(a) The discussion in this subpart deals with the principal termination problems in the order in which they normally occur chronologically in the course of a termination settlement. In general the principal subjects of discussion are:

(1) Action to be taken prior to service of a termination notice.

(2) The service of a notice of termination and action related thereto.

(3) Obtaining an inventory of the property acquired for the terminated contracts and its disposition.

(4) Obtaining cost statements and proposals for settlements from contractors and subcontractors, and reviewing them.

(5) Interim financing and partial payments.

(6) Negotiation of settlement.

Action To Be Taken Prior to Service of Termination Notice

§ 815.301 *Direction to terminate.* Termination in whole or in part of any contractual instruments, including lump sum supply contracts, will be effected only upon prior authorization of the chief of the technical service involved (see § 815.206).

§ 815.302 *Consideration of factors affecting particular terminations.* Before a particular contract is terminated, reasonable consideration of the policies mentioned in § 815.103, so far as relevant, should be given by the appropriate echelon of the technical service.

§ 815.303 *Possibility of avoiding termination charges.* In many instances it will be possible, by careful study of a general program of curtailment of production, to terminate contracts in a manner which will wholly eliminate or greatly reduce termination charges of contractors. This study should be conducted rapidly and should not delay termination, once it has been decided to terminate a particular contract. However, by pursuing a policy, in appropriate cases, of reporting the availability of the facilities of the contractor to other technical services and to the appropriate industry divisions of the War Production Board, all possibilities of placing new contracts with the contractor can be developed. Where such new contracts are placed with the contractor, frequently, the loss to the contractor and the expense to the Government arising from termination may be avoided in whole or in part. In general, in connection with terminations, effort will be made to avoid financial hardship to contractors and to preserve the potential productive ability of such contractors and subcontractors as going concerns even though in the light of immediate production needs, their facilities are not needed.

§ 815.304 *Study of proposed termination by Government personnel prior to giving termination notice.* Prior to exercising the Government's right to terminate any type of contract for the convenience of the Government, it is important that preliminary study be given to make certain that the notice of termination orders discontinuance or changes in the future performance by the contractor only to the extent which is in the best interests of the Government. In any case, careful planning prior to issuing the termination notice will greatly simplify later work in connection with the termination settlement, will avoid confusion and expense to the contractor and to the Government and will tend to expedite settlement.

§ 815.305 *Field office study.* In some cases a complete analysis of the effect of a particular proposed termination cannot be made in the office of the chief of the technical service concerned. In such cases, it is important that the situation be appraised in the field establishment in charge of the administration of the particular contract. In proper cases, the field establishment should not hesitate to ask reconsideration of the proposed termination where such action is considered unwise.

§ 815.306 *Determination of scope of proposed termination.* (a) It is important that the requirements for subassemblies and maintenance parts as well as completed end products be carefully reviewed before termination of any particular contract takes place. An effort should be made to anticipate (within the limits of the Army Supply Program) the reasonable prospective needs of the War Department (including requirements of spare parts for units in service or to be completed) for specific items included in the end product covered by a contract about to be terminated and to permit the completion of those parts or items. Similar consideration should be given to such needs in determining how to dispose of work in process or parts on hand.

(b) In determining the point at which a contract is to be terminated, consideration will be given to the actual status of production of end products and components, so as to avoid, as far as possible, uneconomical waste of useful materials. In some instances it may be wiser to permit some further processing to get a useable end product or component, rather than to halt production immediately at a stage when work in process is useful only for junk. In general, however, once the decision to terminate a contract has been made, no further work on an end item or part should be permitted unless there is a reasonably ascertainable use for it, or opportunity to dispose of, the item or part, if completed. Any other course involves a waste of material and labor. In the absence of specific instructions from the chief of the technical service to the contrary, decision on this question will be made by the contracting officer in accordance with his sound judgment in the light of the factors mentioned above, as to how the War Department procurement program will best be served.

(c) Government inspectors, plant agents, expediters and others who have been concerned in the plants of the contractors and subcontractors with the administration of the terminated contract will ordinarily be in possession of first hand information as to the status of production under the contract, production methods, and other details. These readily available sources of information should be utilized by the contracting officer in obtaining information as to the contract.

§ 815.310 *Amendments to insert provisions for negotiated settlement.* (a) Whenever it is proposed or contemplated that a lump sum supply contract which contains a termination article be wholly or partially terminated, the contract will be scrutinized by the contracting officer to determine whether it contains the uniform termination article for use in lump sum supply contracts (§§ 803.324, 815.901) which provides for a negotiated settlement of the amount due with respect to the termination and certain other important provisions not in some earlier forms of the termination article (see § 815.901a and note to that section).

(b) Where the termination article does not conform to the uniform article set out in § 803.324 (see § 815.901), the contracting officer, prior to serving the notice of termination, will attempt to amend such contract to include the uniform article by supplemental agreement. The previous assent of each surety, guarantor or assignee should be obtained. A form of appropriate supplemental agreement is set out in § 815.926. Such amendments are permitted at the times and under the conditions set forth in §§ 815.107 to 815.107 (c), inclusive. However, emphasis is placed upon the fact that such amendments wherever reasonably possible should be completed prior to the giving of a formal notice of termination.

(c) If such an amendment can be effected, termination will take place pursuant to the uniform termination article (§§ 803.324, 815.901).

(d) If no such amendment can be effected, settlement will be made pursuant

to the termination article in fact in the contract.

(e) If at any stage of the settlement procedure, the contracting officer and the contractor reach an agreement as to a negotiated settlement of the amount payable on account of a contract which does not then contain a uniform termination article, an amendment may then be made to embody the uniform termination article in the contract by supplemental agreement. Thereafter and by separate supplemental agreement the settlement which has been reached may be concluded.

§ 815.311 *Settlement of contracts containing no termination article.* (a) When the Government desires to terminate contracts containing no termination article, the prompt termination and final settlement of such contracts are in the interest of the Government. Such action will assist materially in enabling contractors affected by terminations to undertake other war work or other productive enterprise at an early date in a manner consistent with the public interest. Accordingly, pursuant to the First War Powers Act, 1941, and Executive Order No. 9001, there is hereby delegated to the chiefs of the several technical services the authority set forth in subparagraphs (1), (2), and (3) below. It is determined that the execution of supplemental agreements in accordance with the authority so delegated will facilitate the prosecution of the war.

(1) Contracts containing no termination article may be terminated and finally settled by supplemental agreement where such termination is to the interest of the Government. Pending the execution of such a supplemental agreement work may be suspended.

(2) Usually it will be desirable to provide for stopping work on such contracts well in advance of making a settlement. In such cases the contracting officer will attempt to amend the contract by supplemental agreement with the contractor so as to include in the contract the standard termination article for use in the type of contract involved (e. g. §§ 803.324, 815.901, or 803.324 (a)). Once the amendment to include such an article is made, any termination may proceed in accordance with its provisions.

(3) If the contractor will not agree to include a standard termination article in the contract by amendment, the chief of any technical service, without the approval of higher authority, may make an agreement for the discontinuance of performance and settlement of such a contract, or provide for its settlement by reason of such termination, in such form as he may deem for the best interests of the Government.

(b) If no satisfactory agreement for the termination of such a contract can be made, the chief of the technical service concerned, acting personally or through a duly authorized representative within his own headquarters office (or in the Army Air Forces within the headquarters office of any of the major component commands of the Army Air Forces), may authorize the contracting officer to order the contractor to discontinue further performance. Where speed is essential such authority may be granted by teletype or telegraph. The contractor may thereafter present his claim, if any, for damages arising out of this order, to the General Accounting Officer or to the courts for settlement. Where such action is taken special care will be taken to record and preserve the circumstances and reasons leading to such action, together with a statement of the grounds on which it was determined that such action was in the interests of the Government. It is not consistent with War Department policy for the Government to commit breaches of contract and such action will be taken only in unusual cases and where all other reasonable efforts to prevent the incurring of unnecessary expense for the Government have been exhausted. In any such case, even after the issuance of the order to stop performance, if the contractor is willing to agree to terminate the contract and to make a reasonable settlement thereof, such a settlement agreement (subject to the provisions of § 803.308g may be made in the manner permitted by paragraph (a) (3) above.

§ 815.312 *Conference with contractor prior to notice of termination.* In some cases the complexity of the proposed termination or other factors may make desirable a conference with the contractor prior to the service of the notice of termination. Whether such a conference will be held is solely in the discretion of the contracting officer. In such a conference, if held, the following points should be discussed:

(a) Appropriate effective date of termination notice;

(b) Work in process which may advantageously be completed;

(c) Status of performance of prime contract, subcontracts and unfilled purchase orders, with a view to determining which, if any, subcontracts and purchase orders appropriately should be retained and completed;

(d) Financial problems of the contractor and subcontractors which may arise in connection with the termination;

(e) Problems of labor relations and unemployment which may be created (see §§ 815.103, 815.324 et seq.)

(f) Procedures to be followed by the contractor upon the effective date of the termination.

The effective date of the termination will be determined in the light of the considerations mentioned in § 815.306 (b).

As a matter of sound public relations the necessity for the termination should be explained as fully as possible.

In deciding whether to hold such a conference the following considerations should be taken into account:

(1) Whether such a conference is necessary to obtain information needed in the preparation of the termination notice or required in deciding the extent of a partial termination;

(2) The risk that the contractor may take action prior to the effective date of termination, which may unnecessarily increase the termination charges to the Government.

(3) The possibility that, because of the importance of the particular contract to the contractor, or for other similar reasons, such a conference (i) will enable the contractor to arrange his affairs in advance of formal termination, or (ii) is otherwise expedient as a matter of sound public relations.

§ 815.313 *Preparation of termination notice.* The termination notice for a lump sum supply contract containing the uniform termination article (§§ 803.324, 815.901a) or the old standard termination article (§ 815.901a) will be in substantially the form set out in § 815.912 (a).[1] In any case or class of cases in which the chief of the technical service concerned shall determine that any portion of the form of notice in § 815.912 (a) is unnecessary or inappropriate such portion may be varied or omitted. There shall be included in any such notice a statement of

(a) The effective date of the termination notice which should not be earlier than the date of delivery of the notice to the address of the contractor;

(b) The performance to be discontinued;

(c) In the event of a partial termination, any portions of the contract which are to be continued, unless this clearly appears from the statement required by (b);

(d) Any subcontracts or purchase orders which are not to be cancelled;

(e) Any special directions as to the protection of Government property in the custody of the contractor;

(f) Any limitations upon the authority of the contractor to retain property acquired for the contract for the cost of which he is willing to refrain from seeking reimbursement (see §§ 815.353 to 815.354).

(g) Any directions, which then can be given, with respect to the sale or retention by the contractor or the transfer to the Government of property acquired for the contract. (Instructions for transfer of title to the Government should be given only in rare instances where it is known that the Government for some special reason wishes to acquire such property.[2])

§ 815.314 *Preparations for furnishing contractor with detailed instructions.* So far as practicable, preparations should be made in advance of the service of the termination notice, for furnishing to the contractor detailed instructions as to the course of action to be followed by him immediately upon receipt of the termination notice. A form of standard instructions to contractors is set out in § 815.936. A copy of these instructions in every case should be furnished to the contractor with the termination notice, modified or supplemented

[1] The same form of notice with modifications noted in § 815.912 (a) is appropriate for use in terminating lump sum construction contracts which contain a contract article substantially in the form set out in § 803.324 (a) of Procurement Regulations.

[2] Ordinarily no delivery or transfer to the Government of title to contractor-owned property will be made (a) until reasonable efforts have been made to dispose of the property advantageously (see § 815.350 et seq.), or (b) until specific written directions for such delivery or transfer are issued by the contracting officer (see § 815.367).

to the extent deemed necessary by the contracting officer in any particular case. The language of the form of instructions set out in § 815.936 is based upon a study of various forms hitherto in use. In the interest of uniformity of procedure, that language should not be varied except for substantial reasons arising in particular cases.

§ 815.315 *Suspensions of performance undesirable.* (a) Contracting officers will avoid suspending performance of contracts by contractors while attempting to decide whether to terminate a particular contract. Although, occasionally it may be justifiable to request a contractor to suspend performance because of a possible termination, experience has shown that this course results in confusion to the contractor, increased costs to the Government, and disorganization of the contractor's working forces and operations. In any case where this course is pursued the following policies are suggested:

(1) The nature of the suspension should be discussed with the contractor and the terms upon which the suspension is to be made should be determined and reduced to writing. The contractor is entitled to written instructions from the contracting officer and the contracting officer should have the agreement of the contractor to the terms of the suspension.

(2) The suspension should be limited in time. Delay in effecting a decision as to termination should not occur.

(3) The contracting officer should not request a suspension unless he is sure that the resulting cost to the Government will be materially less than either (i) allowing performance of the contract to continue, or (ii) effecting immediate termination.

(b) A suspension should not be continued beyond a very limited period unless the contractor is offered an appropriate supplemental agreement formally modifying the delivery schedule in the contract and providing for the payment of any additional costs caused by the suspension. In any event, whether the contract is reinstated or terminated, the reasonable costs of the contractor caused by the suspension should be paid either pursuant to an appropriate supplemental agreement or as a part of the termination settlement.

(c) In some instances, while working out with the contractor appropriate preliminary arrangements for a termination which has definitely been decided upon, a short suspension may be arranged by letter, conference or telegram (see form set out in § 815.911). The method should not be pursued except where it is certain that the contract will be terminated in whole or in part in the manner stated in the notice of suspension and is designed merely to afford an opportunity to make appropriate arrangements with the contractor prior to giving formal notice of termination (see e. g. §§ 815.310, 815.312).

§ 815.316 *Terminations at the end of hostilities.* In November, 1942, special provisions were included in paragraph (1) in each of the standard termination articles for lump sum contracts (§ 803.324, 803.324 (a)) dealing with the problem of terminations taking place at the end of the present hostilities. A substantial number of contractors had expressed fear that, at the end of the war because the supplies or work called for by their contracts were no longer necessary, the Government would take occasion to terminate the contracts for trivial or purely technical defaults rather than under the equitable provisions of the contract articles governing termination for the convenience of the Government. It was determined (a) that war procurement would be assisted by relieving the fears of contractors as to this point at once, and (b) that the Government, in equity and good conscience, should not at the end of the war take advantage of purely technical defaults to reduce its liability to contractors, in any cases where such defaults would not have caused termination for default during the war. Accordingly, the contract article was revised to provide that termination of lump sum contracts, as a part of the general termination of war contracts at the time of the cessation of the present hostilities, would take place under the article set forth in § 803.324 or 803.324 (a), as provided in paragraph (1) of those articles, even if the contract could then be terminated under any contract article relating to "Delays-Damages" (see e. g. §§ 803.352 and 813.1302 (i)) by reason of the default of the contractor, unless the contracting officer should find that such default had been (1) gross or willful, and (2) had caused substantial damage to the Government. The second sentence of paragraph (1) does not in any way affect or relate to the termination of contracts during the war or, indeed, any terminations except those which may take place as a part of the general termination of contracts at or about the end of the present war.

§ 815.317 *Terminations where there have been defaults.* The regulations with respect to terminations for default are set forth in §§ 803.379 and 803.380. Attention is directed to the authority given by § 803.379 (c) (2) to terminate a contract, in such instances, under any contract article providing for termination for the convenience of the Government, when the defaults of the contractor have not been gross or willful and have not caused substantial injury to the Government, if the contracting officer shall find that the use of that termination article will facilitate the prosecution of the war.

Service of Termination Notice and Action Connected Therewith

§ 815.320 *Service of termination notice.* (a) In all instances, the termination notice (see §§ 815.313, and 815.911 to 815.912) should be served in written form, preferably by delivery by hand, registered mail or telegram. Where the notice of termination is sent by telegram, a letter of confirmation should be transmitted. Appropriate record of the fact of service should be made. Copies of the notice of termination should be sent to any assignee, guarantor or surety of the contractor with respect to the terminated contract. The obligation of the contractor to continue performance (except the performance required in connection with the termination article of the contract and by the termination notice) terminates on the effective date of the termination notice (as stated specifically in the notice), except as otherwise directed by the contracting officer. The contract, however, remains executory and subject to amendment (see § 803.308f) until the obligations of the parties under the termination, article have been carried out. The instructions in the termination notice may be rescinded, modified or revised if the contractor consents to such modification or revision or unless the contractor in reliance upon such instructions has materially changed his position in a manner for which compensation cannot reasonably be given by termination charges.

(a) *Prompt inspection and acceptance of completed articles.* Promptly after giving the contractor notice of termination of a contract, the contracting officer will take steps to inspect and accept all completed articles which comply with the provisions of the contract and which do not represent unreasonable anticipation of production schedules, and will approve payment of the contract price therefor, unless the contractor and the contracting officer agree on other disposition thereof.

§ 815.321 *Responsibilities of the contractor on receipt of termination notice.* The contractor upon receipt of the termination notice should do the following things which are required by the standard termination article (§ 803.324) or which the contracting officer is empowered by that article to require:

(a) He must complete the continued portion of the contract (see § 815.150 (c)).

(b) In this connection he should bring promptly to the attention of the contracting officer any requests for equitable adjustment in the terms and prices governing the performance of any part of the contract which has not been terminated and which is to be continued, together with any evidence showing changes in the probable cost of such performance (as distinguished from costs to be taken into account in the termination settlement).

(c) The contractor must discontinue the making of subcontracts and take all necessary steps to terminate work as promptly as practicable on and after the effective date of the termination notice. This requires action by the contractor within a reasonable time. Work done after a reasonable period has elapsed will not be the basis for any compensation or reimbursement of costs in connection with the termination settlement. The contractor should call to the attention of the contracting officer at once any special circumstances making either necessary or desirable a continuance of the work or some phases of it in order to utilize effectively materials or work in process.

(d) Except as provided in the termination notice, the contractor must take steps to terminate, with or without the consent of the subcontractors, all his unperformed or partially performed subcontracts. Such subcontracts must be

terminated promptly on and after the effective date of the termination notice, or, if the termination notice so provides, subsequently at such times as the contracting officer may direct. The contractor must take steps to settle such subcontracts and commitments (see further discussion of this subject, § 815.325). Subcontractors in turn should be required to pass along the same requirements to their immediate subcontractors and suppliers.

(e) The contractor must use reasonable care, and in addition, take such action as may be directed or approved by the contracting officer, to protect and preserve property in its possession in which the Government has, or may acquire, an interest, and to reduce or prevent loss or damage to the Government.

(f) The contractor should take such action as may be directed by the contracting officer to secure to the Government, by assignment or otherwise, the benefits of any of the contractor's rights under subcontracts.

(g) The contractor should promptly notify the contracting officer, in writing, of any legal proceedings against the contractor, based upon any subcontract or commitment related to the terminated contract, that are pending on the effective date of the termination notice or that may be brought at any time thereafter. The contracting officer should give notice (through channels) of all such litigation, with his recommendation thereon, to the Litigation Division, Office of the Judge Advocate General, so that office may consider the desirability of assuming control of any such case and defending against the claims by suitable arrangement with the contractor (see A. R. 410-5).

(h) The contractor should develop and present to the contracting officer a program for the disposition of property acquired or produced for the purposes of the terminated contract, not only by the contractor itself but by the various tiers of subcontractors, and shall issue instructions through and to his immediate subcontractors as to the methods of carrying out such a program.

(i) The contractor must proceed to prepare his inventory of property allocable to the contract, his statement of costs and his proposal for settlement of the amounts due by reason of the termination. He should take steps to obtain similar statements and proposals from his subcontractors and suppliers (see discussion in § 815.430 et seq.; see form of instructions for contractors in § 815.936).

§ 815.322 *Commencement of negotiations; initial conference with the contractor at the time of the service of the termination notice.* (a) In the case of each termination of a substantial contract, at the time of service of the termination notice, or as promptly as possible thereafter, a conference should be held with the contractor to negotiate the general outlines to be followed in making settlement and to develop a definite program to be followed by all parties participating in the work of settlement. Negotiations should be carried out at this conference sufficiently completely so that the basic terms on which settlement is to be effected are at least tentatively determined and so that there is a clear understanding as to what information is to be furnished by the contractor, what methods are to be pursued in disposing of property, what the general principles of settlements are to be and what accounting or other investigation is to be undertaken.

(b) The importance of this initial conference is emphasized by the memorandum of the Under Secretary of War dated 10 February 1944 reprinted at § 815.422. Special attention is directed to paragraph 2 of that memorandum. This conference should be regarded as an important step in the negotiation of a settlement and every effort should be made at that time to dispose of as many questions as possible by agreement.

(c) It is important that all interested groups in the office of the contracting officer should be represented at the initial conference. This will normally include the principal representative of the contracting officer, hereinafter mentioned, and also appropriate negotiating, technical, engineering, legal and accounting personnel. At or before the initial conference some one person will be designated by the contracting officer as his principal representative in connection with the particular termination, but it should be made wholly clear to the contractor that such representative is not authorized to agree finally upon a supplemental agreement making settlement of the amount, if any, due by reason of the termination. The contracting officer's representative should be given authority, either general or limited:

(1) To approve dispositions of property,

(2) To approve settlements with subcontractors up to some stated amount,

(3) To pass upon the miscellaneous minor questions which inevitably arise in connection with a termination settlement,

(4) To negotiate a settlement subject to any required approval.

(d) It is good practice, although not always necessary, to have a statement of the scope of the authority of the contracting officer's principal representative reduced to writing. In appropriate cases, to avoid misunderstandings, a copy should be furnished to the contractor.

(e) At this conference, if no conference prior to termination has been held, the various matters mentioned in § 815.312 should be covered thoroughly. In addition the contracting officer's representative should be certain that the contractor understands fully his obligations as outlined in § 815.321.[1] Particular emphasis should be placed on the following matters:

(1) Termination of subcontracts and purchase orders.

(2) Settlement of claims of subcontractor and the methods of review thereof to be employed by the prime contractor.

(3) A program for the disposition of property acquired for the terminated contract:

(i) By the prime contractor.

(ii) By or for his subcontractors.

(4) The responsibilities to the War Manpower Commission and to employees mentioned in § 815.324.

(f) In some cases, the contracting officer may wish to examine the physical inventory at once and to check it against book inventory.

§ 815.323 *Time schedule.* It will assist the orderly progress of the termination settlement if at the initial conference a time schedule is worked out for the specific steps immediately required for the settlement.

(a) Directions to stop work should ordinarily have been given before the conference.

(b) Subcontracts and purchase orders, so far as to be terminated, should be terminated at once, if that has not already been done.

(c) A complete list of subcontracts and outstanding purchase orders should be prepared by the contractor promptly. When this has been furnished it should be checked with the contractor to see that all subcontractors and suppliers listed have been notified to file with the prime contractor their inventories, statements of costs and proposals for settlement.

(d) A schedule for furnishing the prime contractor's inventory, statement of costs and proposals for settlement should be set.

(e) Schedules should also be laid out for the furnishing of similar papers by subcontractors.

As rapidly as inventories and cost statements are received, time schedules for subsequent action can be arranged.

§ 815.324 *Preparation and release of information concerning cutbacks.* When production is to be substantially decreased through cutbacks, resulting from reduction of procurement schedules or termination of contracts, the procedures set forth in paragraphs (a) to (c), inclusive, will be carried out.

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[1] (a) The furnishing of advice (in the ordinary routine of operations) on the procedures and methods to be employed by the contractor and subcontractors in connection with the termination and its settlement and in determining and presenting statements of termination charges is a part of the official duty of Government personnel performing functions in connection with termination settlements and is not regarded as in any way in conflict with Criminal Code, section 109; 18 U. S. Code 198.

(b) In this connection the Judge Advocate General rendered an opinion on 10 May 1944 as follows:

"It is the opinion of this office that an officer or employee of the War Department assigned to or regularly called upon to perform duties in connection with the termination of contracts may, without compensation or gratuity from the Government contractor directly or indirectly, comply with the directives of the Secretary of War contained in § 815.322, 8 March 1944, or with other duly authorized regulations or instructions of a similar nature, as a discharge of his proper official duties. The performance of such official duties, as indicated by the footnote to the mentioned procurement regulation, is not a violation of section 109 of the Criminal Code (18 U. S. C. 198)."

The footnote referred to in the last sentence of the quoted opinion of the Judge Advocate General is that numbered 1 (a) above.

(a) *Coordinated release of publicity; information to War Production Board and War Manpower Commission.* Adequate provision must be made for the coordinated release of publicity and the furnishing of information to the War Production Board and the War Manpower Commission. Such data will be made available at the earliest possible moment after final decision to decrease production in a given facility has been reached, so that those agencies can assist in arranging for the prompt reemployment of released workers and facilities in other production which is essential to the war effort.

(b) *Notice to contractors and workers; cooperation by contractors with War Manpower Commission and United States Employment Service.* The matters provided in this section are to be observed in order to avoid impairment of management and labor morale, and to avoid any mistaken public impression that curtailments are due to inefficient management or unsatisfactory work by the employees displaced. Notice of the proposed cutback will be given, as far in advance as possible, to each contractor whose production is to be substantially decreased. Particular care will be taken to include in this notice as detailed a statement of the reasons as appears advisable. The technical service concerned will urge the contractor to include a statement of the reasons for the cutback in a notification to the workers and their union representative, and to request his subcontractors and suppliers to take similar action. The contractor also will be urged to cooperate with the War Manpower Commission by making known his new net labor requirements and allowing the United States Employment Service representative to conduct job interviews at the plant if sufficiently large numbers of workers are to be displaced.

(c) *Preparation of official statements.* When, in the opinion of the chief of the technical service concerned, the case is of sufficient public interest, the office of the chief of the technical service will prepare an official statement to serve as the basis for a press release announcing the curtailment and the reasons for it. This statement will include the name of the municipality in which the plant or facility is located, the name of the plant or plants affected, the effective date of the curtailment, the end item or items affected, and the probable effect on future employment. At an appropriate time, copies of this statement will be furnished to the following:

(1) The Bureau of Public Relations, War Department.

(2) The Legislative and Liaison Division, War Department Special Staff.

(3) The Industrial Personnel Division, Headquarters, Army Service Forces.

(4) The Director of Matériel, Headquarters, Army Service Forces.

(5) The appropriate field office of the technical service concerned for preparation of the press release and its release in the affected locality.

Copies of this statement will also be furnished to such other offices as may be prescribed by an appropriate headquarters.

§ 815.325 *Termination and settlement of subcontracts.*—(a) *Duty to terminate.* Paragraph (b) (3) of the uniform termination article (§§ 803.324, 815.901) for lump sum supply contracts[1] requires that the prime contractor "terminate all orders and subcontracts to the extent that they relate to the performance of any work terminated by the Notice of Termination", except as otherwise directed by the contracting officer. This obligation of the contractor should be performed immediately upon receipt of the notice of termination. Settling with the subcontractors and suppliers then becomes an obligation and responsibility of the contractor, subject to the approval (when required) of settlements by the contracting officer.

(b) *Rights of subcontractors.* (1) Under the uniform termination article (§§ 803.324, 815.901) for lump sum supply contracts,[2] subcontractors and suppliers have no direct rights against the Government upon the termination of a prime contract for the convenience of the Government. The rights of such subcontractors and suppliers are against the prime contractor or intermediate subcontractor who is directly obligated to them on the subcontract or purchase order which they hold. The extent of these rights will generally depend upon the terms of the subcontract or purchase order in question.

(2) Paragraph (e) (2) of the uniform termination article (§§ 803.324, 815.901) provides that the obligation of the Government to make payments under the article shall, with certain exceptions, be subject, in the discretion of the contracting officer, to deduction in respect of the amount of any claim of any subcontractor or supplier whose subcontract or order shall have been terminated. The purpose of this provision was to permit the withholding of sums owing by the prime contractor to his subcontractors, in order to assure their receipt by the subcontractor. In any case in which use is made of this provision, the prime contractor is entitled to have the withheld sum applied for his benefit in such a way as to exonerate him, to that extent, from the claim of the subcontractor.[3]

NOTE: Subparagraph (1) of paragraph (b–1) has been reprinted without change as paragraph (a) of § 815.437, and subparagraph (2) of paragraph (b–1) has been reprinted without substantial change as § 815.437a. Subparagraph (3) of § 815.324 (b–1) is eliminated, and the subject matter which was dealt with therein is now covered in § 815.437.

(c) *Action to be taken by prime contractor with respect to settlement of subcontracts.* The prime contractor to carry out his functions in connection with the settlement of subcontracts must arrange to see:

(1) That his subcontractors and suppliers stop work. (A form of suggested notice to them is set out in § 815.912 (b)).

(2) That they are requested to state promptly whether there will be any termination charges (as a result of the termination of their subcontracts), and if so that they are directed to file, and file seasonably, inventory schedules, contractor's own charges schedules, and contractor's settlement proposals, on the appropriate standard forms set forth in §§ 815.937 (a) to 815.939 (c) inclusive, in accordance with the instructions set forth in §§ 815.403 and 815.939 (d).

(3) That they are advised of the basis upon which they may obtain partial payments (see § 815.502 et seq.)

(4) That they arrange a proper program of disposal of property acquired for the performance of their subcontracts (see note following paragraph (b) and § 815.350 et seq.).

(5) That the statements of subcontractors are adequately reviewed (see §§ 815.431 to 815.435, inclusive).

(6) That a proper settlement of each subcontract and purchase order is negotiated with all possible speed (see paragraph (a)) and promptly presented to the contracting officer for approval, where such approval is required.

§ 815.326 *Interpretation of provisions of paragraph (b) (4) of the uniform termination article.* The following interpretation of paragraph (b) (4) of the uniform termination article (§§ 803.324, 815.901) has been approved by the Joint Contract Termination Board and issued by the Director, Office of War Mobilization on 2 May 1944:

Paragraph (b) (4) of the article provides that the prime contractor shall assign to the Government, in the manner and to the extent directed by the contracting officer, all of the right, title and interest of the prime contractor under the orders or subcontracts terminated by reason of their relationship to the work terminated by the termination notice. This provision was designed to assure the Government's right to require the transfer to it of the property and rights under the subcontract or order acquired by the prime contractor from his subcontractors through payments for which the prime contractor is reimbursed by the Government. Accordingly, paragraph (b) (4) is not to be construed as requiring transfer to the Government of other rights of the prime contractor against the subcontractor (such as set-offs or counterclaims) for which no Government reimbursement is made to the prime contractor. In this connection it was recognized in the preparation of the article that uniform provisions could not be drawn which would provide adequately in all cases for the disposition of patent rights involved in prime contracts or subcontracts, and the article is not intended to forbid the inclusion in contracts of separate provisions covering the disposition of such rights on termination.

[1] A similar provision is found in paragraph (a) (1) of the old standard termination article (§ 815.901a) formerly authorized for lump sum supply contracts and in paragraph (b) (2) of the standard termination article (§ 803.324 (a)) for lump sum construction contracts.

[2] (a) Subcontractors also have no direct rights against the Government in the event of termination under the old standard termination article (§ 815.901 (a)) formerly authorized for lump sum supply contracts or under the standard termination article (§ 803.324 (a)) for lump sum construction contracts.

(b) Subparagraph (2) of § 815.325 (b) is taken from a Directive Order issued by the Director, Office of War Mobilization, on 2 May 1944.

Property Disposition

§ 815.350 *Disposition of property.* As stated in paragraph (b) of § 815.106, so far as permitted by the contract being terminated, property acquired for the performance of the contract is to be disposed of with reasonable dispatch, as advantageously as is reasonably possible and in a manner which makes such property available for other productive use at the earliest possible moment. The settlement and payment of the amount owing to the contractor is not, however, to be delayed by reason of failure to dispose of property. Property not disposed of prior to the reaching of an agreement for settlement will be transferred to the Government, unless previously transferred in accordance with the provisions of subpart F–1 of this part (§ 815.850 et seq.). The policies and procedures with respect to the removal of property from contractors' plants subsequent to termination are set forth in said subpart F–1. Property included in termination inventories will be disposed of in accordance with the provisions in Part 807, which set forth procedures to be followed and price policies applicable to various classes of property.

(a) *Contract provision.* The uniform termination article for use in lump sum supply contracts (§§ 803.324, 815.901) provides in part as follows:

(b) After receipt of a Notice of Termination and except as otherwise directed by the contracting officer, the contractor shall * * *: (6) transfer title and deliver to the Government in the manner, to the extent and at the times directed by the contracting officer (i) the fabricated or unfabricated parts, work in process, completed work, supplies and other material produced as a part of, or acquired in respect of the performance of, the work terminated in the Notice of Termination, and (ii) the plans, drawings, information and other property which, if the contract had been completed, would be required to be furnished to the Government; (7) use his best efforts to sell in the manner, to the extent, at the time, and at the price or prices directed or authorized by the contracting officer, any property of the types referred to in subdivision (6) of this paragraph: *Provided, however,* That the contractor (i) shall not be required to extend credit to any purchaser and (ii) may retain any such property at a price or prices approved by the contracting officer.

Attention is invited also to the last two sentences of paragraph (a) of the standard termination article formerly authorized for use in lump sum supply contracts which is reprinted for the convenience of Government personnel in § 815.901a.

(b) The policy as to the disposition of contractor-owned property pursuant to the provision quoted in paragraph (a) has been stated by the Under Secretary of War as follows:

JUNE 30, 1943.

Memorandum for: The Commanding General, Army Air Forces. The Commanding General, Army Service Forces.

Subject: Disposition of Contractor-Owned Property on Termination of Contracts for the Convenience of the Government.

1. At the present time a substantial number of war contracts have been terminated for the convenience of the Government because of necessary changes in the procurement program. Contractors and sub-contractors have acquired for the performance of these contracts considerable quantities of raw materials, parts and supplies. In addition they have considerable quantities of work in process.

2. These inventories of materials, parts, supplies and work in process must be utilized promptly in war production in the most efficient manner possible. Much of this material is critically needed by other war manufacturers and producers and it is the duty of War Department procurement officers to see that the material is made available at the earliest possible moment for use in essential war work. This usually can best be accomplished by disposing of these inventories promptly, either through the same industrial organization which acquired or produced them or through other recognized industrial channels for the particular type of material in question.

3. The standard form of contract article for termination of contracts for the convenience of the Government now used by the War Department provides broad and ample authority for any Contracting Officer to authorize or direct the contractor to sell or retain, at a price approved by the Contracting Officer, any supplies, partially completed supplies, work in process, or material acquired or manufactured by the contractor in the performance of the contract and further provides that the proceeds of such sale or agreed price shall be paid or credited to the Government in such manner as the Contracting Officer directs so as to reduce the amount payable to the contractor by the Government by reason of the termination. The prompt and courageous exercise to the fullest extent possible of this authority given to Contracting Officers to dispose of this contractor-owned property in accordance with the principles of sound business judgment will achieve the objective of returning the property to use in war production. Such action is essential also to the expeditious settlement of termination claims. It will in a very real sense facilitate the prosecution of the war.

4. Frequently this material must be sold at a substantial amount below its cost. In many instances work in process must and should be sold as scrap for scrap prices. It is inevitable that losses will take place. Rarely will delay in disposing of such property help the war effort or result in any substantial savings to the Government. Under present circumstances, no materials should be hoarded merely in the vague hope that at some future date the property may have a future use or a greater value.

5. You will order your contracting officers to pursue a vigorous policy of disposing of such property, promptly and intelligently. They will be supported in the exercise of their honest judgment in carrying out these instructions.

6. The same policy must be applied to obsolete or unneeded machinery and equipment. Where it has no suitable use in production it should be disposed of promptly so that the scarce and critical materials out of which it is made can be used in the manufacture of new and vitally needed instruments of production.

ROBERT P. PATTERSON,
Under Secretary of War.

(With respect to paragraph 6 of this memorandum, see footnote 1.)

[1] The cost of machinery and equipment owned by the contractor will ordinarily be taken into account in connection with the termination settlement only consistently with §§ 815.484, 815.485 and 815.486. Where such cost is properly to be taken into account and charged to the terminated contract, such property may be sold (a) prior to the transfer of title to the Government and the sale price credited to the Government as provided in § 803.352 (a) and other provisions of §§ 815.350, to 815.377, inclusive, or (b) after transfer of title to the Government, pursuant to Part 807. No such sale should be approved by the Contracting Officer until he has determined that the cost of such property is properly to be taken into account in connection with the determination settlement in accordance with the principles of this part.

(c) *Approval of the contracting officer.* Pursuant to the provision quoted in paragraph (a) the contractor (1) may be authorized or directed by the contracting officer to make reasonable efforts to sell property to which he has title at prices approved by the contracting officer, or (2) may be permitted to retain such property to which he has title with the approval of the contracting officer at a price mutually agreeable. Such authorizations to sell or retain property shall be subject to the regulations relating to sales of termination inventories set forth in Part 807. In each instance the prior approval or subsequent ratification of the contracting officer must be obtained except as provided in § 815.354.

(d) *Protection of the rights of assignees and the Government.* (1) If the amounts payable under the contract have been assigned by the contractor, the contracting officer should take appropriate steps in each case to see that the proceeds of any sale or retention of property are dealt with in a manner to protect the proper interests of the assignee. If the amounts of property to be sold are to be substantial, or if a series of sales is likely, normally the written consent of the assignee should be obtained to the method of disposition proposed.

(2) The assignee of a contract which contains, prior to the assignment, the uniform termination article (§ 803.324) or the standard article formerly authorized for use (see § 815.901a) takes his assignment subject to the provisions of such article (quoted or referred to in paragraph (a)) but even in such cases the contracting officer should make reasonable efforts to protect the proper interests of the assignee.

(3) Where the Government has made advance payments, or partial payments pursuant to §§ 815.500 to 815.512, or participated in guaranteed loans, related to the contract in process of termination, the interest of the Government in preserving adequate security or obtaining payment where property is to be retained by the contractor or in the proceeds of the property which is to be sold or retained for sale by the contractor should be protected by proper coordination, in advance, with the officers or Branch charged with the administration of such advance payments, partial payments, or loans.

§ 815.351 *Inventory.* Obtaining an inventory of property on hand is the first step in proceeding to dispose of property acquired or produced for the performance of the terminated portion of the contract. The standard inventory schedules for use by prime contractors and subcontractors, Forms C–1, C–2, and C–3, are set forth in §§ 815.939 (a) to 815.939 (c) inclusive. The General Instructions for use of all the Standard Forms are set forth in § 815.403, and the Special Instructions for Description of

Inventory in Standard Forms C–1, C–2, and C–3 are set forth in § 815.939 (d).

(a) *Basis of pricing inventory.* Instructions for completing the cost data of inventories appear on Standard Forms C–1, C–2, and C–3. Cash discounts, trade discounts, special rebates, and similar price reductions should be reflected either in the detailed cost data or as a separate deduction.

(b) *Inventory should include bids for contractors' or subcontractors' property which they are willing to retain.* Usually the most effective method of making property available for other essential war work is to have the contractor or subcontractor take it over and use it himself or dispose of it (see § 815.361). Accordingly columns have been provided in Standard Forms C–1, C–2, and C–3 for offers by the prime contractor or subcontractor filing the forms, in which may be shown the items which he wishes to retain and the prices offered therefor.

(c) *Partial inventories.* Contractors should be encouraged to submit partial inventories, preferably by classification or location, where they have an offer for the property so listed. Partial inventories should also be encouraged covering those articles in which the contractor and the trade have no particular interest and which will probably have to be disposed of through other channels. The prompt submission of partial inventories will enable the contracting officer to approve disposition when bids or offers by the contractor or others are included. It should be pointed out to contractors that cooperative action in this respect will expedite the removal of unneeded property from their plants.

(d) *Copies.* The contracting officer should advise the contractor of the number of copies of Standard A, B, and C Forms that will be required for use of the Government in a particular case, and the contractor should supply this information to his subcontractors and suppliers. Contractors and subcontractors will in addition prepare as many additional copies of the forms for their own use as they may deem necessary. The paper on which the forms are prepared can be used for reproduction by liquid process duplicating machines.

§ 815.352 *Rights of contractor where disposition or retention of property is at a loss to the contractor or a subcontractor.* (a) Where the sale or retention of property (properly allocable to the uncompleted portion of a terminated contract) at a price less than its cost is approved in advance or ratified by the contracting officer, the contractor will be allowed in the termination settlement the cost of the item and the proceeds of the sale or the agreed value will be credited to the Government as the contracting officer may direct.

(b) Similar treatment will be accorded to subcontractors.

§ 815.353 *Where contractor or subcontractor is willing to forego reimbursement for the cost of any property.* Frequently as to certain property (e. g. standard materials and parts) the contractor be willing to retain or take over property at cost and agree not to include such property in any request for reimbursement. Unless in rare instances where the contracting officer wants the specific property transferred to the Government (as, for example, because it is a critical material or because it has risen sharply in value) it will be normal procedure for the contracting officer to notify the contractor, at the time of serving the termination notice or by subsequent written instructions (see par. 7a of suggested instructions to contractor, § 815.936), that, without further authority of the contracting officer, the contractor may retain any property to which he has title if he agrees to make no request for reimbursement. The contracting officer should direct the contractor similarly to advise subcontractors and suppliers. However, in any case where there is an advance payment or partial payment outstanding with respect to the contract, or a guaranteed loan outstanding to the contractor, subcontractor or supplier, no such blanket authority will be given by the contracting officer without proper coordination in advance with the officers or branch charged with the administration of advance payments, partial payments, or guaranteed loans, as provided in § 815.350 (d) (3). Where such blanket authority has previously been granted, it should appropriately be limited or conditioned, if the interests of the Government so require, before an advance or partial payment is thereafter made.

§ 815.354 *Return of property by contractor to his vendors and suppliers.* (a) The contracting officer may authorize in advance the return of property by a contractor to his suppliers in appropriate cases (see 2d sentence § 815.353) where no cost to the Government is involved other than reasonable transportation charges for such property. The contracting officer in addition, in appropriate cases, may include in such authority the incurring of reasonable packing and handling charges.

(b) The contracting officer will ordinarily authorize the return of property by a contractor to his suppliers, even if a loss to the Government is involved, unless he in his discretion determines that the discount is unreasonable or that uneconomical or unreasonable transportation is involved. Authorizations under this paragraph shall be subject to the regulations relating to sales of termination inventories set forth in Part 807.

§ 815.355 *Retention of property by prime contractor at less than cost.* The fixing of a value to a contractor for property which he will agree to retain should take into consideration, to the extent deemed relevant in the particular case, the same factors that are considered in the matter of sales by the prime contractor except that there is the additional factor of the utility to the contractor of the property in his own manufacturing operations. All retentions by a prime contractor at less than cost must be approved by the contracting officer pursuant to § 815.350 (c), and shall be subject to the regulations relating to sales of termination inventories set forth in Part 807.

(a) *Diversion of property or orders to other contracts.* (1) It is the policy of the War Department to encourage contractors and subcontractors so far as possible to divert to other war production all materials, equipment, and supplies which have become excess by reason of the termination of a contract or subcontract. If notice of termination of any contract to which such property is diverted is thereafter given, the contractor is entitled in the settlement of this contract to reimbursement for the property so diverted to the extent that the property is properly allocable to this contract and is within the reasonable quantitative requirements of the entire contract. Thus, where the cost of such property was not included in the settlement of the original terminated contract, or where the cost was included but the contractor retained the property at an agreed value, the cost or agreed value, as the case may be, together with any charges properly applicable thereto, may be included in the termination settlement of the contract to which such property was diverted.

(2) Where a saving to the Government may be effected, contractors and subcontractors should divert property from a terminated contract to a continuing contract in accordance with subparagraph (1) above even if it necessitates the cancellation of orders which have already been placed for materials, equipment, or supplies under the continuing contract. If notice of termination of the continuing contract is subsequently given, the reasonable cost to the contractor of cancelling these orders may be included in the termination settlement as part of the cost of materials applicable to the terminated portion.

(3) Similarly, it is the policy of the War Department to encourage the transfer of orders for materials, equipment, supplies and services from contracts or subcontracts being terminated to continuing contracts or subcontracts where a saving to the Government may be effected and where the property or services covered by the orders transferred will be properly allocable to the continuing contract and within the reasonable quantitative requirements of the entire contract. Where the transfer of an order from a contract being terminated to a continuing contract necessitates the cancellation of orders under the continuing contract, the cancellation charges thereon may be included in the settlement of the contract being terminated.

§ 815.356 *Sales by contractor; when made.* Such sales will ordinarily be made after the taking of a physical inventory (see Termination accounting Manual, pars. 2301 et seq., 3101 et seq.) pursuant to the provisions of § 815.321 (i). However, as set forth in § 815.351 (c) (regarding the submission of partial inventories), a list of any property available for sale should be presented by the contractor at any time, when an offer for particular property is available.

§ 815.357 *Sales records.* The contractor's records shall clearly show all sales with specific detailed identification of the

items sold and the individual sales prices. The contractor's procedures shall also provide for the separate invoicing of sales and the crediting of these amounts in the proposed settlement (see Termination Accounting Manual, pars. 2301 et seq., 3501 et seq.).

§ 815.359 *Grants of discretionary power to prime contractor.* (a) The factor of time is frequently one of the most important elements in determining whether a prospective sale will or will not be made by a contractor or a subcontractor. It is therefore essential to eliminate insofar as possible, the necessity for the contracting officer's approval of each prospective sale. To accomplish this in appropriate cases and with proper safeguards to prevent abuse, a contracting officer may, in his discretion authorize a contractor, in advance, to dispose of property at stated discounts off cost for specific classes of property involved in a particular contract. A contracting officer may also authorize a contractor, within such limits as the contracting officer may prescribe, to permit any of his subcontractors or suppliers to retain or dispose of property in their possession, acquired or manufactured for the work under the contract, at similar discounts. Authorizations under this paragraph shall be subject to the regulations relating to sales of termination inventories set forth in Part 807.

(b) Where a range of discretion is granted to a prime contractor as to the sale of property in his possession, or as to the sale or retention of property by subcontractors, frequent periodic reports by the contractor to the contracting officer of the exercise of this discretion should be required.

§ 815.362 *Applicability of regulations of other agencies relating to disposition of property.* Sales or other disposition of property will be made in accordance with the rules and regulations of the War Production Board, Office of Price Administration, the Aircraft Resources Control Office of the Aircraft Production Board and any other Governmental agency having jurisdiction thereof. Responsibility for compliance therewith shall rest with the contractor. Contracting officers and their staffs will assist in every reasonable manner in obtaining necessary clearances.

§ 815.363 *Accounting of property disposed of by prime contractor.* The contractor's accounting procedures should comply with the standards outlined in the Termination Accounting Manual. The Government accounting personnel in reviewing disposals or retentions of property by the contractor should establish, within the limits of the accounting review directed by the contracting officer in the particular case, the accuracy with which the dispositions of property approved by the contracting officer have been reflected in the settlement proposed by the contractor (see § 815.357). However, it is not the responsibility of the accounting personnel to pass upon the fairness of the prices at which such property has been disposed of nor to question the judgment of the contracting officer in authorizing such disposal. The results of their review should be included in any report prepared for the guidance of the contracting officer in connection with the proposed settlement. (See Termination Accounting Manual, paragraphs 2301 et seq., 3201, 3501 et seq.).

§ 815.364 *Credit risks on sales.* Sales will ordinarily be made for cash. No contractor or subcontractor shall be obligated to sell except for cash, and credit will be extended by any contractor or subcontractor at his own risk.

§ 815.365 *Disposition of property by subcontractor.* The sale or disposition of property related to the terminated contract which is in the hands of subcontractors or suppliers will be dealt with in accordance with any applicable provisions of the subcontract or purchase order in question and with substantially the same procedures, prescribed in § 815.350, and for the disposition of property in the hands of prime contractors. Except as provided in § 815.359, all disposals or retentions of property by subcontractors involving a loss which will become a part of termination charges to be borne by the Government should be submitted to the prime contractor for necessary approval or should be made consistently with a program approved by the prime contractor acting pursuant to authority granted by the contracting officer.

§ 815.366 *Approval of contracting officer.* Normally both the prime contractor and any subcontractor or supplier will desire to have the contracting officer's approval of the sale or retention by such subcontractor or supplier of property, acquired in connection with the performance of a terminated contract. Such sales or retentions will enter as credits into the settlement of the termination charges of such subcontractors or suppliers and in obtaining reimbursement of these charges, prime contractors will need to obtain the approval of the contracting officer (see § 815.325 (b)). Accordingly such approval should be obtained currently as the prime contractor authorizes each sale or retention of property, unless he is acting within the range of a prior grant of authority pursuant to § 815.359. The contracting officer in granting or withholding such approval must as a practical matter rely on the prime contractor's judgment and should grant approval in all cases where a proposed sale or retention recommended by the prime contractor is consistent with usual business practice, and with the regulations relating to sales of termination inventories set forth in Part 807.

§ 815.367 *Transfer of title to the Government.* Provisions governing the transfer to the Government of title to property in the possession of contractors and subcontractors are set forth in § 815.863.

§ 815.370 *Sales of Government-owned facilities.* When any supply contract is terminated, the contracting officer will ascertain whether or not the contractor is in possession of any Government financed-facilities required under any Emergency Plant Facilities contract, Special Facilities contract, Defense Plant Corporation lease agreement, facilities article set forth in § 803.332, or other contract, lease or article providing for facilities to be financed by the Government, and will determine or recommend to higher authority whether or not such possession by the contractor should be terminated. Generally, disposition of such facilities will be in accordance with the terms of the termination provisions in the facilities contract, lease or article, as the case may be. Subject to such provisions, disposition of such facilities (other than real estate) will follow the procedure set forth in Part 807. When the standard Government-owned facilities article (§ 803.332) is included in a supply contract, the contracting officer should ascertain whether the contractor has been given written approval to use such facilities for any additional work for which the Government has contracted. The last sentence in paragraph (b) of the standard Government-owned facilities article prescribed in § 803.332, reads as follows:

> The government hereby grants to the contractor the right to use, without the payment of rental therefor, such facilities in connection with the work herein contracted for and, subject to written approval of the contracting officer, for any additional work for which the government may contract.

If such prior written approval has been given, the contracting officer would be without authority to direct the disposition of such facilities.

§ 815.375 *Government-furnished equipment and free-issue property.* Government furnished equipment and Government free-issue property included in termination inventories may be sold or otherwise disposed of by the contracting officer in accordance with the regulations relating to sales of termination inventories set forth in Part 807.

§ 815.376 *Property to which the Government has security title by virtue of provisions of contract article governing partial payment.* Property to which the Government has security title by virtue of provisions of a contract article governing partial payments of the type set forth in §§ 803.330 and 803.331 may be disposed of in termination proceedings pursuant to the provisions of the new uniform termination article (§§ 803.324, 815.901) or the old standard termination article (§ 815.901a) and this part, irrespective of whether subparagraph (d) is contained in the partial payment article as authorized by §§ 803.330, 803.331 and 803.331a. In approving the disposition of such property to or through the contractor, care will be exercised to protect the interest of the Government or of assignees as provided in § 815.350 (d).

Preparation and Review of Contractors' and Subcontractors' Accounting Statements and Proposals for Settlement: Accounting Guides to a Negotiated Settlement

§ 815.400 *Summary of action to be taken with respect to presentation of contractor's statements and proposals for settlement.* The following principal steps will be taken to bring about the

settlement and payment of amounts, if any, due to the contractor and his subcontractors and suppliers in connection with the termination settlement:

(a) An initial conference will be held with the contractor at or about the time that the termination notice is sent (see § 815.322). At this conference the general outlines to be followed in making the settlement will be negotiated and a definite program for its completion will be worked out in detail.

(b) The contractor will file the appropriate Standard Forms referred to in § 815.402, in accordance with the Instructions set forth in §§ 815.403 and 815.939 (l).

(c) The various subcontractors will file with their immediate purchasers similar appropriate Standard Forms. In any instance where the settlement of a subcontract is likely to be complicated, the preparation of the Standard Forms should usually be the subject of a conference between the prime contractor or the subcontractor and his immediate supplier.

(d) Each contractor and subcontractor will review, through his own personnel, the statements presented by his immediate subcontractors and suppliers (see §§ 815.431 to 815.435, inclusive) and will negotiate settlements with them, subject to the approval of the contracting officer where such approval is required.

(e) The contracting officer will utilize the services of the Government accounting personnel in connection with the settlement to the extent that he deems desirable in the particular case. In this connection special attention is invited to the fourth paragraph of the memorandum of the Under Secretary of War dated 10 February 1944 set forth in § 815.422. Any report requested of Government accounting personnel (see § 815.424), and the comments and recommendations therein contained, will be regarded as advisory only and will not bind or control the discretion of the contracting officer.

§ 815.401 *Negotiated settlement compared with a formula settlement.* The preparation of accounting data and of a proposal for settlement are designed to facilitate the negotiation of a settlement of the amount due in connection with the termination of the contract. Such a negotiated settlement is authorized by paragraph (c) of the new uniform termination article for use in lump sum supply contracts (§§ 803.324, 815.901) and in the old standard article (see § 815.901a). If such a settlement cannot be negotiated between the contracting officer and the contractor, then, under the termination article, settlement will be made in accordance with the formula contained in paragraph (d) of both the new uniform article (§ 803.324) and the old standard article (§ 815.901a). A negotiated settlement can be made more expeditiously than a formula settlement and results in more prompt payment of the amounts owing to contractors and subcontractors. The method of settlement by negotiation, therefore, is to be regarded as the primary and more satisfactory method of settlement. Settlement by formula will be a secondary method and will be resorted to as provided in § 815.560.

§ 815.402 *Standard Forms.* Standard Forms have been adopted covering (a) Contractor's Settlement Proposal, Forms A–1, A–2, A–3 and A–4 (set out in § 815.937 (a), (b), (c), and (d)); (b) Contractor's Own Charges Schedule, Forms B–1 and B–2 (set out in § 815.938 (a) and (b)); and (c) Inventory Schedule, Forms C–1, C–2 and C–3 (set out in § 815.939 (a), (b) and (c)). These forms are for use by prime contractors and subcontractors alike. The terms "subcontractor" and "supplier" are used interchangeably to refer to such persons in all tiers, and include materialmen.

§ 815.403 *General Instructions for use of Standard Forms.* The following General Instructions are applicable to the use of the Standard Forms referred to in § 815.402:

GENERAL INSTRUCTIONS FOR USE OF STANDARD FORMS IN PRESENTING SETTLEMENT PROPOSALS ARISING FROM TOTAL OR PARTIAL TERMINATION OF FIXED PRICE SUPPLY CONTRACTS

I. INSTRUCTIONS APPLICABLE TO ALL FORMS

General policy regarding use of standard forms. 1. As a means of assisting prime and subcontractors in the preparation of settlement proposals and of expediting the review of such proposals, the War Department has provided standard forms for general use.

2. These forms are to be used in connection with all fixed price supply contracts terminated after 15 May 1944. In exceptional cases, if the forms fail to present the essential facts or are not sufficiently applicable, contracting officers may authorize some other method of presentation on forms specially designed for the purpose. Contractors having contracts terminated prior to 15 May 1944 should also use the forms, where proposals have not yet been prepared on other forms. All subcontractors should use the standard forms, to the greatest extent practicable.

3. Contracting officers are authorized to permit the omission of data called for by the standard forms in particular instances to the extent that such data are not applicable, are not reasonably obtainable, or are not deemed necessary for the adequate substantiation of proposals for settlement or for disposal of property and to require additional data when necessary for settlement.

4. Information should be supplied in accordance with the requirements set forth on the forms. Failure to do this may result in delayed settlements.

5. The forms are designed to present information required for settlement of terminated contracts as well as for disposal of property resulting from such terminations. In connection with property disposal, contractors and contracting officers will be guided by the general policy that, without delaying the final settlement, surplus raw materials and work in process should be disposed of finally, to the extent practicable, promptly after termination so that delivery of property or passing of title to the Government will be unnecessary. Where the settlement proposal is less than an amount to be prescribed from time to time in regulations, *all* property involved should normally be finally disposed of so that no delivery or passing of title to the Government is involved.

Types of Standard Forms Provided. 1. The following outline indicates the individual forms provided and when they are to be used:

Where Settlement Proposal, before Disposal Credits, is $10,000 or over—Long Form Procedure

Form A–1 Contractors Settlement Proposal—Summary Statement:

This Statement is supported by a schedule of the contractor's own charges to date of termination—B–1 or B–2.

Form B–1 Contractor's Own Charges Schedule—If contractor is presenting his charges on an *Inventory* basis.

Form B–2 Contractor's Own Charges Schedule—If contractor is presenting his charges on a *Total Cost* basis.

The "B" schedule is supported by Inventory Forms:

Form C–1 Raw Materials, Purchased Parts and Supplies.

Form C–2 Work in Process.

Form C–3 Jigs, Tools, Dies, Fixtures, etc.

Where Settlement Proposal, before Disposal Credits is Under $10,000—Combination Form Procedure

One Combination Statement Form may be used.

Form A–2, if contractor is presenting his proposal on the *Inventory* basis.

Form A–3, if contractor is presenting his proposal on a *Total Cost* basis.

Where Settlement Proposal is under $500 the Short Form A–4 may be used

2. Even though a particular settlement proposal, before disposal credit is under $10,000 the contractor may use the "C" schedules if he finds them more appropriate, or he may use the entire long form procedure, if he prefers.

Inventory vs. Total Cost Methods for Presenting Proposals. 1. Under the inventory method, the costs allocable to the work done on the uncompleted portion of the contract plus profit, if any, are presented in the proposal. This method should be followed, wherever practicable.

2. Under the total cost method, the costs applicable to all work done on the contract are summarized, plus profit, if any, and deduction is made for payments made or to be made for completed units. This method should be used only when the inventory method is not practicable.

Cost Data Presented in Standard Forms. 1. In presenting all cost data on standard forms the contractor should be guided by the Statement of Principles for Determination of Costs Upon Termination of Government Fixed Price Supply Contracts (§ 815.481) issued by the Joint Contract Termination Board, together with any further interpretations which may subsequently be issued.

2. It is of special importance that adequate explanations be submitted as to the methods followed in allocating common items of inventory, common claims of suppliers, indirect factory expense, and general administrative expense.

Finished Units on Hand at Date of Termination. 1. Normally prime contractors will obtain payment for finished units at the contract price and such units will not be reported on inventory forms.

2. Subcontractors may not in all cases be permitted to obtain payment through regular billing procedure for finished units on hand at date of termination. If such finished units can properly be included in the settlement proposal under the existing contractual arrangements, they should be reported as follows:

Contractors Using Combination Form Procedure

List and describe in Inventory Schedule provided on Form A–2 or A–3.

Contractors Using Long Form Procedure

Use a separate page of Form C–1 with headings appropriately modified.

1. In filling out the inventory schedules, it is permissible to lump small quantities of items under a "Sundry" caption with a general description of the type of items included, where the aggregate amount involved does not warrant greater detail. As a general rule, the cost of the items included under the "Sundry" caption should not total more than 20% of the total cost of the particular inventory classification or $1,000—whichever is less.

2. If the proposal is submitted on the "Inventory" basis, no item of property for which the contractor does not propose to make a charge need be listed. If, however, the contractor seeks any profit on such items, the basis of such a charge must be clearly set forth.

Miscellaneous Instructions. 1. A separate set of forms should be submitted for each contract terminated unless grouping of several contracts of the same contractor for settlement purposes is approved by the contracting officer.

2. All certificates must be signed by authorized representatives of the contractor. Only one executed certificate is required for each form or schedule—irrespective of the number of pages—unless additional certificates are requested by the contracting officer.

Other Applicable Regulations—War Department Contracts. 1. The general procedures for the handling of terminated War Department fixed price supply contracts are contained in Procurement Regulations No. 15. Instructions as to the accounting review of termination settlements by Government personnel are contained in TM 14–320, Termination Accounting Manual for Fixed-Price Supply Contracts.

2. These regulations should be consulted by contractors as further guides as to the nature of the data to be presented in these standard forms.

II. INSTRUCTIONS APPLICABLE ONLY TO LONG FORM PROCEDURE

Time of presenting individual forms. 1. The following plan may be followed, to the extent practicable:

a. Submit "C" Inventory Schedules as quickly as possible to facilitate disposition of inventory. Cost data should be completed to the extent practicable, without unduly delaying submission of forms. However, cost information is particularly needed for property disposal purposes in connection with property listed on the C–1 form.

b. Submit "B" Contractor's Own Charges Schedule supported by "C" schedules containing cost data so that the accounting review of these charges can be started.

c. Submit "A" Contractor's Settlement Proposal—Summary Statement which is the basis for the negotiation of a final settlement.

2. All of above forms and schedules may, however, be filed at one time. In some cases the "C" schedules can be filed first and then the "B" schedule and "A" form be filed together.

Inventory schedules. 1. Where any inventory schedule requires the use of two or more sheets, the entire heading need not be repeated on the second and subsequent sheets. Only the contractor's name and the Government contract number, need be repeated, plus the required page number information.

2. Inventory schedules listing Government owned property should be submitted *only* for property disposition purposes and should *not* be filed as a part of the Settlement Proposal. "Contractor Owned" inventory includes all property for which reimbursement may be claimed even though security title may have passed in connection with partial or progress payments.

3. Special instructions for describing inventory in column 2 of all "C" forms have been prescribed to facilitate property disposition and to comply with the requirements of the various property disposal agencies. These instructions are attached as Appendix A (see § 815.939 (d). Additional instructions and administrative interpretations may be given from time to time through contracting officers.

§ 815.404 *Special instructions applicable to Forms C–1, C–2 and C–3.* Special instructions have been adopted for the description of inventory in Forms C–1, C–2 and C–3, and are set out in § 815.939 (d) immediately following these forms.

§ 815.405 *Penalties for false certification.* Contractors and subcontractors, in executing the certificates included in the standard forms, are subject to penalties for any false certification. (See 18 U. S. Code 80.)

§ 815.406 *Prompt submission of proposed settlements with subcontractors.* Proposed settlements with subcontractors, which are to be approved or ratified by the contracting officer pursuant to the provisions of § 815.437, should be submitted to the contracting officer from time to time as promptly as it is possible to do so.

§ 815.407 *Documentary evidence in support of contractor's statement.* War Department requirements as to documentary evidence, such as are in force with respect to cost-plus-a-fixed-fee contracts, are not applicable to negotiated termination settlements of fixed price supply contracts. In the case of settlements by negotiation, no such documentary evidence is to be submitted to the disbursing officer. Contractors and subcontractors, however, are held to the standards of good commercial practice as to possession and maintenance of records, and should preserve all pertinent records and supporting papers so that the Government can make such inspection of them as it deems necessary. In paragraph (h) of the new uniform termination article (§§ 803.324, 815.901), a requirement of preservation of such records for three years has been established. It should be remembered that when a fixed price supply contract is completed, the contractor is not ordinarily required to prove his costs under the contract, except possibly in connection with renegotiation proceedings, and even these are usually conducted on an "over-all" basis for each contractor. The contractor should therefore not be required to state his costs in unresonable detail in connection with termination proceedings. There is no justification for obliging a contractor to maintain an otherwise unnecessarily elaborate cost accounting system merely because of the possibility that his fixed-price contracts may be terminated for the convenience of the Government.

§ 815.420 *Accounting review of the contractor's and subcontractors' statements.* Accounting reviews will be made in accordance with the provisions of § 815.421 et seq.

§ 815.421 *The Termination Accounting Manual.* The Termination Accounting Manual is designed (see § 815.109) for the assistance of contractors and accounting personnel in reviewing the statements and proposals of contractors and subcontractors.

(a) *Matters included in Termination Accounting Manual.* The Termination Accounting Manual contains certain of the provisions set forth in this part as necessary background for the instructions given to the Government accounting personnel. For the convenience of Government personnel engaged in and conducting termination settlements, there have been set out in this regulation certain material also found in the Termination Accounting Manual.

(b) *Termination Accounting Manual not applicable to formula settlements.* The Termination Accounting Manual (T. A. M., par. 1113) does not prescribe audit procedures for settlement made through the use of the formula set forth in paragraph (d) of either the old standard termination article (see § 815.901a) or of the new uniform termination article (§§ 803.324, 815.901), as contrasted with settlements made on the negotiated basis pursuant to paragraph (c) of such termination articles. Procedures for formula settlements will be determined by the chief of the technical service concerned consistently with this part and with accounting methods prescribed by the Office of the Fiscal Director, Headquarters, Army Service Forces. The cost principles set forth in § 815.480 and following sections will be applied in making formula settlements. Prompt written notice will be given to the Contract Termination Branch, Readjustment Division, Headquarters, Army Service Forces (through the chief of the technical service), of any settlement which is to be made in whole or in part on a formula basis but action by the chief of the technical service with respect to such settlement will not be delayed to await any action upon the report. Such report will contain a full statement of the issues remaining unsettled where a partial settlement has been effected (see §§ 815.535 and 815.560).

(c) *Examination of subcontractors' claims.* The Termination Accounting Manual (see T. A. M., par. 1114) is prescribed as a guide in making an accounting examination of claims of subcontractors when such examinations are to be made by Government accounting personnel (see § 815.437). It is also suitable for use by contractors in the examination by them of subcontractors' charges.

(d) *Termination Accounting Manual not applicable to sections of contract already on a cost basis.* Some fixed-price supply contracts provide that certain facilities shall be furnished on a cost basis. Since reimbursement has been made for these facilities on a cost basis to the extent completed, the Termination Accounting Manual is, therefore, not applicable to such portions of the contract (see T. A. M., par. 1115). The audit pro-

cedures in connection with costs of facilities contracts are set forth in the Manual for Administrative Audit of Cost-Plus-a-Fixed-Fee Supply Contracts.

§ 815.422 *Function of the contracting officer in reviewing statements and proposals of contractors.* The contracting officer has the responsibility for passing upon the contractor's proposal and arriving at an agreement with the contractor. In carrying out these functions, the contracting officer must decide the extent to which he requires independent review and verification of the contractor's statement by personnel qualified to deal with accounting matters (see T. A. M., par. 1104). In this connection, the accounting personnel operate to assist the contracting officer in an advisory capacity when such technical assistance is requested by him. Contracting officers will pursue a policy of reducing auditing to a minimum consistent with protecting the interests of the Government. Whenever possible, reliance should be placed on intelligent reviews of contractors' data rather than on detailed audits. In those cases where audits do appear to be necessary, it is also expected that they will be carried out in accordance with the principles of selective auditing (see T. A. M., par. 1106).

Attention is invited to the following memorandum of the Under Secretary of War which indicates the nature of the responsibility of the contracting officer to expedite negotiations and the proper method of utilizing the services of accounting personnel:

10 FEBRUARY 1944.

Memorandum for the Commanding General, Army Service Forces. The Commanding General, Army Air Forces.

Subject: Approval of Contractors' Statements of Charges in Contract Termination Settlements.

1. Termination procedures established in the contracting offices of the Army Service Forces and the Army Air Forces have not produced expected results. The reluctance of Contracting Officers to execute courageously their responsibilities as outlined in Procurement Regulation 15[1] continues to delay unnecessarily contract termination settlements. This reluctance is evidenced by the number of settlements awaiting Contracting Officers' approval as to disposition of contractor-owned property or as to contractors' statements of charges. My position regarding disposition of contractor-owned property was discussed in memoranda dated 30 June and 30 December, 1943. It is important that the principles stated in those memoranda be applied.

2. Statistics available indicate that contractors' statements of charges are often substantially in excess of amounts included in negotiated settlement agreements. This condition arises in most cases because contractors are not completely familiar with the proper method of presenting a statement of charges. It is a primary duty of Contracting Officers to instruct contractors in the general principles stated in Procurement Regulation 15[1] and the Termination Accounting Manual in order that they may be able to prepare statements of charges which can be included properly in the negotiated settlement agreements. At the time of the first conference with the contractor, the Contracting Officer should develop the general outlines on which settlement will be made. The problems of the particular case should be analyzed and wherever possible an agreement should be reached as to the general basis for the preparation of the contractor's statement. If properly done, this will reduce the amount of accounting review necessary and result in fewer differences between contractors' settlement proposals and the sum finally agreed upon.

3. It is the policy of the War Department, definitely stated in Procurement Regulation 15,[1] that the contractor receive fair and reasonable compensation for the work performed and for the supplies and articles furnished under the terminated contract. In this respect the work of Contracting Officers will be evaluated not by the extent to which they succeed in reducing the settlements proposed by contractors, but by the extent to which prompt settlements, which are fair both to the contractor and to the Government, are made.

4. The delay in approving contractors' statements of charges results not only from improper preparation of statements but also from the unreasonable utilization of detailed auditing. Reluctance to make use of the office review procedure and an insistence on field audits have delayed settlements for extended periods. It is important that office reviews of the scope outlined in Procurement Regulation 15 be utilized to the fullest extent and that field audits be the exception rather than the rule. Contracting Officers should bear in mind that in submitting statements to the Government the contractor represents that the facts stated are true and he is subject to penalty for any false certificate. (See 18 U. S. C. 80). Both Procurement Regulation 15[1] and the Termination Accounting Manual place responsibility on the Contracting Officer for deciding the extent to which he requires verification of the contractor's statement. While the Contracting Officer should have adequate accounting information available in making his decisions, it is his responsibility to make prompt and final decisions after having obtained the reports prepared by accounting personnel.

5. It is suggested that Contracting Officers be instructed in accordance with the foregoing.

ROBERT P. PATTERSON,
Under Secretary of War.

§ 815.423 *Accounting personnel and function in connection with termination settlements.* In connection with termination settlements, Government accounting and auditing personnel will make those investigations, reviews and audits which are directed or requested by the contracting officer (see T. A. M. 1104) to determine that the settlement proposed is in accordance with the termination provisions of the particular contract, and that it is substantiated by the contractor's records and other supporting evidence.

§ 815.424 *Nature of accounting review.* The nature of the accounting examination to be required in each particular case will be determined by the contracting officer or by his duly authorized representative charged with that responsibility. In determining what type of review is necessary to protect the Government's interest, the contracting officer, or his appropriate representative, will have in mind the different types of review contemplated by §§ 815.421 (a) and 815.424 (b) and, after consultation with the accounting personnel (which usually should take place after the office review, see § 815.424 (a)) will give instructions as to what further examination, if any, is to be required in the particular case. The contracting officer will be warranted in relying upon the advice of the accounting personnel as to the extent of any such further examination required in any particular instance.

(a) *Office review by accounting personnel.* In every instance, in order to protect the Government's interests adequately, at least an office review will be made by qualified accounting personnel of each statement and settlement proposal submitted by a contractor in connection with a lump sum supply contract termination (see T. A. M. 1107).

(b) *Scope of office review.* In making the office review (T. A. M. 1107.1 et seq.) of the contractor's statement, the following matters should be given special attention:

1. Does each item appear to be of a type that is proper in the light of the definition of cost set forth in § 815.430 et seq.?

2. Does each item appear reasonable in amount in relation to other items in the statement?

3. Does each item appear reasonable in amount in relation to the stage of completion?

4. Do the quantities of material and work in process on hand appear reasonable in relation to the quantitative requirements of the uncompleted portion of the contract?

5. Does each rate of overhead, if overhead is included, appear reasonable?

6. Do the materials and items appear to be of a "common" nature (see § 815–150 (b)) and if such is the case has the portion thereof included in the statement been properly determined?

7. Does the statement appear to have been prepared in accordance with recognized accounting practices?

The office review will include a verification of the mathematical accuracy of the contractor's statement and supporting schedules and a check of the accuracy of information submitted in connection with (i) outstanding "V" loans and advance payments and (ii) schedules of completed units.

(c) *Appropriate extent of examination beyond an office review.* (1) It is the contracting officer's responsibility (see T. A. M. 1108) to determine what further examination will be made of the contractor's proposed settlement beyond the office review. In making this decision, the following factors should be considered among others:

(i) The amount and complexity of the proposed settlement.

(ii) The conclusions of the accounting personnel as a result of the office review.

(iii) Available reports of independent public accountants.

(iv) Any information available from War Department personnel having contacts with the operations under the contract.

(v) The status of renegotiation proceedings (see § 815.500).

(2) The contracting officer after such consultation with accounting personnel as he may deem appropriate, will then

[1] Part 815.

determine what further examination, if any, is to be made. The following further steps are illustrative of the types of additional investigation which may prove to be appropriate:

1. The contractor may be requested to submit additional data or explanations.

2. Governmental accounting personnel may be instructed to visit the contractor's plant to discuss the statement and to make any necessary reference to the accounting records.

3. An audit by qualified accounting personnel may be requested in accordance with the procedures outlined in this part and with the Termination Accounting Manual (T. A. M. par. 3101 et seq.).

(3) While it is the contracting officer's responsibility to decide whether or not an audit is to be made, the procedures by which such examinations are actually carried out are dependent upon the judgment and technical knowledge of the accounting personnel.

(d) *Accounting report to contracting officer.* Written evidence of the reviews of the accounting personnel, whether office reviews or more extensive examinations, will be submitted in an appropriate manner (see T. A. M. 1109, 4201 et seq.; see §§ 815.434, 815.532), to the contracting officer. The accountant's report should comment in reasonable detail upon the basis of the determination of the rate or rates of profits used in the computations. The report should also call to the attention of the contracting officer any special factors relating to the allowance of profit which should be given study in connection with the settlement negotiations and should suggest any qualifications of the results of the accounting computations which may occur to the accounting personnel as deserving consideration by the contracting officer. The following information should also be shown in the report in adequate detail:

(1) The summary of costs included in the accountant's report should be such as will disclose adequately by major classifications the nature of the work done;

(2) Relatively large costs arising from unprocessed standard raw materials may represent no substantial work and therefore should be separately shown;

(3) Costs of an unusual nature and important in amount should be shown separately.

The accounting report and computations may be considered by the contracting officer together with all other appropriate information and criteria in determining the amount of a proper settlement. He will give it such weight and qualify the results of its computations to such an extent as he may consider necessary or reasonable under all the circumstances.

(e) *Expediting partial payments.* Paragraph (g) of the new uniform termination article (§§ 803.324, 815.901) provides that "the Government shall make partial payments and payments on account, from time to time, of the amount to which the contractor shall be entitled under this Article", and the old standard termination article (§ 815.901a) contains a similar provision in paragraph (i). It is the duty of accounting personnel to facilitate such partial payments in every proper manner. For example, in appropriate cases a brief preliminary office review may suffice as a basis for the authorization of partial payment by the contracting officer.

§ 815.425 *Coordination of study of contractor's costs and auditing in certain cases with renegotiation and other termination proceedings.* All Government study of the contractor's costs and accounting work in connection with the performance of the terminated contract should be coordinated to avoid duplication of effort (see T. A. M. 1110, 1111).

(a) Auditing and accounting in connection with renegotiation and termination should be combined so far as possible (see § 815.550, T. A. M. 1110).

(b) Where more than one contract is being terminated the auditing should be consolidated (T. A. M. 1111).

(c) Full use should be made of accounting reports in connection with other termination settlements with the same contractor (T. A. M. 1116).

§ 815.431 *Responsibility of contractors and subcontractors to review claims of subcontractors and suppliers.* It is the primary responsibility of each contractor and subcontractor to review or examine in an appropriate manner all statements of charges and settlement proposals submitted by his immediate subcontractors and suppliers, arising out of the termination. The problem which he then faces is similar to that faced by Government personnel with respect to the statement of charges and settlement proposal of the prime contractor. Each contractor and subcontractor should advise his immediate subcontractors and suppliers that the statements of charges submitted by them may be audited by Government auditors. The subcontractor and supplier is thus put on notice that his statement of charges and settlement proposal will be used by his purchaser in compiling the latter's settlement proposal for submission either directly or indirectly to the Government.

§ 815.432 *Standard of care applicable to review.* In making such review or examination, the contractor and the subcontractor will be held to the same degree of care that a businessman would employ in the conduct of his own affairs, but will not be required to warrant the accuracy of the statements contained in the papers so reviewed or examined.

§ 815.433 *Office review of supplier's statement of charges and settlement proposal.* The contractor or subcontractor charged with the duty of making any such review or examination will at least cause an office review to be made, by qualified accounting personnel in his employ, of each statement of charges and settlement proposal submitted by his immediate subcontractors and suppliers. He should, in each such case, give special attention to the matters listed in § 815.424 (b).

§ 815.434 *Report of accounting personnel.* Each contractor or subcontractor will have his accounting personnel furnish a written report of each office review, and will upon request make a copy thereof available to his immediate purchaser and to Government personnel.

§ 815.435 *Appropriate extent of examination beyond an office review.* (a) It is the responsibility of each contractor and subcontractor to determine in the first instance what examination, if any, beyond an office review should be made by him of any proposed settlement with any of his immediate subcontractors and suppliers. In making this decision the following should be considered:

(1) The amount and complexity of the proposed settlement.

(2) The report of the office review.

(3) Available reports of independent public accountants.

(4) Any information available from personnel familiar with operations under the subcontract.

(b) If it is determined that any further examination should be made, the following are illustrative of the steps which may then be taken:

(1) The subcontractor or supplier may be requested to submit additional data or explanations in writing.

(2) The contractor or subcontractor may have his accounting personnel visit the supplier's plant to discuss the statement of charges, with such reference to the accounting records as may be appropriate.

(3) An audit may be made by qualified accounting personnel in accordance with the procedures outlined in the Termination Accounting Manual.

§ 815.436 *Settlement of subcontractors' and suppliers' claims.* (a) The settlement of subcontracts will be greatly facilitated by the use of the approved subcontract termination article (815.1006 (b)) in first tier or more remote fixed price subcontracts or purchase orders for the manufacture of supplies. When this article is employed the term "recognized commercial accounting practices", as used in the article, will be considered as equivalent to the statement of principles for determination of costs upon termination of Government fixed price supply contracts (§ 815.480). Other Governmental policies applicable to the uniform termination article (§§ 803.324 and 815.901) will also be recognized as applying to the subcontract article, as for example the policy against reimbursing contractors at the contract rate on termination for completed undelivered articles which represent unreasonable anticipation of production schedules (§ 815.320 (a)), and the policy against taking advantage of technical defaults when the real reason for termination is the termination of a prime contract by the Government (§ 803.379).

(b) It is the policy of the Government, unless the particular subcontract being settled provides otherwise, to favor the settlement of first tier or more remote subcontracts or purchase orders on the basis of the rights and principles embodied in the approved subcontract article. As wide use as possible should be made of the process of negotiation for settlement of terminated subcontracts. Except in those cases where the particular subcontract being settled contains a

termination article specifically limiting the subcontractor's right of compensation in the event of termination to a smaller amount than is payable under the approved subcontract article, a settlement based upon a reasonable estimate by the parties of the aggregate amounts which would be due under subparagraphs (1), (2) and (3) of paragraph (b) of the approved subcontract article will be considered fair and reasonable. In some instances, because of the terms of the particular subcontract being settled, the Government will be under an obligation either to make reimbursement for, or to assure the defense against, a demand by a subcontractor or supplier which is greater in amount than would be recognized by the principles of the approved subcontract article. On the submission to the contracting officer for his approval of a settlement which provides for the payment of such an amount, the contracting officer will decide whether the settlement should be approved or ratified and whether the Government should protect the prime contractor or intermediate subcontractor from the asserted liability. See § 815.437.

§ 815.437 *Subcontractors' and suppliers' claims; investigation and approval by Government personnel*—(a)[1] *Contract provisions.* Paragraph (b) (5) of the uniform termination article (§§ 803.324, 815.901) for lump sum supply contracts provides that after receipt of a notice of termination, the contractor shall terminate all orders and subcontracts to the extent that they relate to the performance of work terminated and shall "settle all claims arising out of such termination of orders and subcontracts with the approval or ratification of the contracting officer to the extent that he may require, which approval or ratification shall be final for all the purposes of" such article. (Note 1.)

(b) *Authorizations to prime contractors, subcontractors and suppliers to make settlements with those having claims against them involving payment of not more than $10,000.* To expedite the settlement of subcontracts, contracting officers will authorize certain prime contractors, subcontractors and suppliers to settle termination claims asserted against them by their subcontractors and suppliers in cases where the settlement will not call for a payment in excess of $10,000 without deducting disposal credits. The terms and conditions under which such an authorization may be granted are set out in detail in § 815.437a. Such authorizations will be granted to the greatest possible extent where these terms and conditions are satisfied. Settlements made pursuant to such an authorization need not be submitted to the contracting officer for approval or ratification pursuant to this section.

(c) *Settlements in excess of $25,000.* The contracting officer will require that there be submitted to him for approval or ratification each settlement with a subcontractor in any tier where the settlement will be in excess of $25,000, determined in the manner provided in paragraph (d) of § 815.220. The chief of any technical service in his discretion may reduce the figure of $25,000, but shall not require approval of ratification of any settlement made under § 815.437a.

(d) *Settlements with first tier subcontractors.* The contracting officer will also require that each settlement by a prime contractor with his subcontractors in the first tier be submitted to him for approval or ratification, except settlements made under § 815.437a.

(e) *Settlements with second tier and more remote subcontractors.* It is recognized that (except as provided in paragraph (c) above) it will not ordinarily be feasible for contracting officers to review settlements made by subcontractors with their subcontractors, except in selected cases. In this connection the contracting officer will be guided: (1) By the necessity for the accomplishment of speedy and final settlements as well as the protection of the interests of the Government, and (2) by the policy of the War Department that a high degree of reliance must and should be placed on the investigation made by the reviewing contractor of the basis for the settlement. However, except as provided in § 815.437a below, it is the policy of the War Department that any settlement with any subcontractor in any tier may be selected by the contracting officer for approval or ratification; and the contracting officer should from time to time require selected settlements with subcontractors in the second or more remote tiers to be submitted for his approval or ratification, in addition to those referred to in subparagraph (c) above. The contracting officer should make such selections in such manner as (1) to satisfy himself that the general procedures and personnel employed by subcontractors which have negotiated settlements in relatively large amounts are adequate to protect the interest of the Government and (2) to insure the exercise of good faith and reasonable care by other subcontractors through the selective check of the methods and procedures of some of them.

(f) *Any subcontract settlement may be submitted for approval.* Any settlement with a subcontractor in any tier may be submitted by the prime contractor to the contracting officer for approval or ratification.

(g) *Method of submitting subcontract settlement for approval; forms.* Whenever a settlement with a subcontractor is submitted for approval or ratification the amount of the settlement will be included in a settlement proposal (partial or final) of the prime contractor on the appropriate Standard A Form set forth in §§ 815.937 (a) to (d), and must be accompanied by a certificate as to the examination made by the reviewing contractor and by certificates of intervening contractors. These certificates shall conform to the applicable portions of the certificates on the Standard A Forms and shall in each case be accompanied by a schedule made up with the same headings as shown in schedule A–1–c of Standard Form A–1 (§ 815.937 (a)). For the purpose of presenting these certificates, the use of Standard A Forms is recommended.

(h) *Standards for approval of subcontract settlements.* In determining whether to approve or ratify a settlement with a subcontractor which is submitted to him for approval or ratification, the contracting officer should satisfy himself that the settlement was arrived at in good faith and is not unreasonable in amount (see § 815.436), and that the allocation to the prime contract of the charges included in the settlement is based on reasonable grounds. This may be accomplished by an examination of the individual settlement. However, whenever the contracting officer is satisfied that the proposed settlement has received an adequate review, he will be warranted in approving or ratifying the settlement, on the basis of the prime contractor's and the intermediate subcontractors' certificates in connection with such settlement when such certificates are made in accordance with paragraph (g) hereof. The contracting officer may be satisfied with the general procedures of contractors by check of other settlements made by them or in any other appropriate manner.

(i) *Lower tier subcontract settlements which are not submitted for approval.* Final settlement may be made with the prime contractor without examination by the contracting officer or by Government accounting personnel of the individual settlements with subcontractors which are not submitted for approval or ratification pursuant to paragraphs (c), (d), (e) or (f) above, unless special circumstances indicate the need for such examination. Any settlement shall become final and not subject to examination if the settlement itself or another settlement in which it is included has been approved or ratified.

§ 815.437a *Authorizations to prime contractors and subcontractors to make subcontract settlements involving payments of not more than $10,000*—(a) *Authorizations of settlements by prime contractors.* In the settlement of fixed-price

[1] The old standard termination article (§ 815.901a) formerly authorized for lump sum supply contracts and the standard termination article (§ 803.324 (a)) for lump sum construction contracts contain no requirement that subcontract settlements be approved or ratified by the contracting officer where settlement of the prime contract is on a negotiated basis. However, because such articles provide that the contractor will be reimbursed for such of his costs, expenditures, liabilities, commitments and work as was "reasonably necessary", many contractors requested approval of contracting officers before making subcontract settlements. In addition, such articles require approval by the contracting officer of such settlements as a condition of reimbursing the contractor in a settlement by formula.

supply contracts, contracting officers will authorize prime contractors to settle their terminated subcontracts and purchase orders wherever:

(1) The settlement agreement will call for the payment of not more than $10,000 without deducting disposal credits,

(2) The contracting officer is satisfied that the prime contractor will give adequate reviews to subcontractors' statements of charges and to subcontractors' proposals for retention or sale of property allocable thereto, and

(3) All the property allocable to the terminated portion of the subcontract or purchase order, the cost of which is included in the statement of charges, will be retained or disposed of by the prime contractor or the subcontractor and credited at fair and reasonable values.

Subparagraph (3) above is subject to the exception, however, that, if the prime contractor or subcontractor is unable to obtain what the prime contractor considers a fair and reasonable price for part or all of the property, taking into full consideration the difficulties to be encountered in the shipment and handling of small amounts of property if delivered to the Government, then the prime contractor may make special arrangements with the contracting officer for transfer of title and delivery to the Government of such unsold property.

The authorization permitted by this section may be given in connection with fixed-price supply contracts containing either the uniform termination article (§§ 803.324, 815.901) or the old standard article set forth in § 815.901a.

(b) *Authorizations to subcontractors.* Similar authorizations should also be extended by contracting officers to subcontractors at any tier under the same conditions, if the number of subcontracts justifies the authorization.

(c) *Affiliates of authorized contractor.* Authorizations given to the prime contractor or to subcontractors should exclude authority to settle claims of subcontractors which are affiliated with the authorized contractor.

(d) *Paragraph not applicable to cost-plus-a-fixed-fee prime contractors.* No authorization may be given in connection with the settlement of terminated subcontracts or purchase orders under cost-plus-a-fixed-fee prime contracts.

(e) *Selective review of settlement methods.* In the cases where the type of authorization permitted by this section has been granted, the contracting officer will from time to time make selective reviews of the settlements so made by the prime contractor or the subcontractor receiving the authorization, to determine whether the prime contractor or subcontractor is carrying out adequate reviews and fair settlements, and whether the authorization should remain outstanding.

(f) *Certificate required in connection with authorized subcontract settlements.* When contractors act under authorization granted to them pursuant to this section, the settlement agreement should bear an appropritae approval, signed by a representative of the contractor authorized to execute the same. Such approval in substantially the following form is authorized:

> The undersigned certifies that it has examined, or caused to be examined, to an extent which it considers adequate in the circumstances, the statement of charges of its within named supplier, and that in its opinion the within settlement is properly allocable to the terminated portion of prime contract with the Government No. W ------, is fair and reasonable, was negotiated in good faith, and is not more favorable to said supplier than one which the undersigned would make if reimbursement by the Government were not involved. The undersigned certifies that it has no knowledge to doubt the reasonableness of the settlements with more remote suppliers or to doubt that the charges for them are allocable to said contract. The undersigned shall not be deemed to have made any representations with respect to the more remote suppliers' claims or the settlement thereof other than those expressed in this certificate.
>
> On the basis of the foregoing, the within settlement is approved pursuant to authorization dated ----------, 194--. All the property allocable to the terminated portion of the subcontract or purchase order, the cost of which was included in the statement of charges, has been retained or disposed of, and credited at what the undersigned considers to be fair and reasonable values.
>
> ----------
> (Name of Contractor)
>
> By ----------
> (Authorized Representative)

(g) *Authorized settlements recognized in the absence of fraud.* Settlements made by a contractor (prime or sub) with a subcontractor in accordance with this authorization will be recognized for the purposes of the uniform termination article (§§ 803.324, 815.901) and of the old standard termination article (§ 815.901a), in the absence of fraud on the part of the contractor. Any settlements made by the subcontractor with his suppliers (and included in the settlement between the prime contractor and the subcontractor) in accordance with this authorization will be similarly recognized in the absence of fraud on the part of the prime contractor.

(h) *Section 815.220 not applicable to authorized settlements.* The provisions of § 815.220, relating to reviews of termination settlements are not applicable to settlements approved in accordance with the authorization provided for by this section.

(i) *Prior memorandum superseded.* The foregoing provisions of this section supersede the memorandum to the Commanding Generals of the Army Air Forces and Army Service Forces from the Under Secretary of War, dated 4 March 1944, subject: "Subcontract Settlements".

§ 815.438 *Definition of costs.* The definition of costs set out in § 815.480 et seq. is applicable to subcontractors' claims in connection with the compilation of costs, subject to any specific terms of the subcontract.

§ 815.439 *Subcontractors' inventories.* The contractors should satisfy themselves that the subcontractors have taken physical inventories of materials pertaining to the terminated contracts in substantially the manner outlined in the Termination Accounting Manual (par. 2201 et seq.).

§ 815.440 *Recognition of final judgments secured by subcontractors against prime contractors.* Under certain circumstances, final judgments secured by subcontractors against prime contractors in courts of competent jurisdiction will be regarded as determinations, binding upon the Government, of the amount of the obligation owing by the prime contractor to the subcontractor. In any case involving a subcontract which does not contain unusual termination provisions unreasonably increasing the common law rights of the subcontractor, and in which the prime contractor, after making unsuccessful efforts to settle with his subcontractor, is sued in a court of competent jurisdiction, gives prompt notice of such suit to the contracting agency involved and offers to the Government control of the defense of suit, the contracting officer should accept any final judgment as determining the amount of the obligation between the parties to the suit, and as fixing the amount of the Government's obligation to reimburse the prime contractor, to the extent that the subcontract is properly allocable to the prime contract. The propriety of this allocation remains for the determination of the contracting officer.

§ 815.441 *General basis of settlement.* The general basis of settlement is set forth in the following sections.

§ 815.442 *Contract provisions.* In determining what constitutes a proper negotiated settlement, the contracting officer must, of course, be wholly familiar with the contract provisions under which he is acting. Accounting personnel in preparing accounting guides for the contracting officer's assistance in negotiating such a settlement will also have these provisions in mind.

§ 815.443 *Termination articles; provisions for reimbursement of the contractor.* Under the uniform termination article (§§ 803.324, 815.901) and the old standard termination article (§ 815.901a), for use in lump sum supply contracts, reimbursement is to be made to the contractor upon the basis set forth in paragraphs (a) to (d), inclusive.

(a) *Payments for completed supplies.* Under the uniform termination article (§§ 803.324, 815.901) the contractor will receive the contract price of all completed articles which comply with the provisions of the contract and which do not represent unreasonable anticipation of production schedules, unless the contractor and the contracting officer agree on other disposition thereof (§ 815.320 (a)). Payment of the contract price for completed supplies under the old standard termination article (§ 815.901a) is provided for in paragraph (b) thereof.

(b) *Negotiated settlement.* Under paragraph (c) of the uniform termination article "the contractor and the contracting officer may agree upon the whole or any part of the amount or amounts to be paid to the contractor by reason of the total or partial termination of work * * *, which amount or amounts may include a reasonable allowance for profit". Similar provisions, with respect to the uncompleted portion of the contract, are contained in paragraph (c) of the old standard termination article.

(c) *Uncompleted portion of the contract; formula settlement.* Under paragraph (d) of the old standard termination article (§ 815.901a), and in the new uniform termination article (see §§ 803.324, 815.901), if the contracting officer and the contractor cannot agree upon a negotiated settlement pursuant to the applicable termination articles, the Government, without duplication of any other payments made pursuant to the termination article or prior to giving notice of the termination of the contract, shall compensate the contractor in accordance with the formula set out in paragraph (d) of the applicable article. Attention is invited to §§ 815.535 and 815.560 which discuss the possibility of partial negotiated settlements.

(d) *Expenses of settlement and post termination expenses.* Under paragraph (c) of the uniform termination article and under paragraph (e) of the old standard termination article, the contractor and the contracting officer may agree upon the amount to be paid for post termination expenses and settlement costs. If the parties are unable to agree as to the amount so to be paid, the provisions of paragraph (d) (3) of the uniform termination article and the appropriate provisions of paragraph (e) of the standard termination article apply.

§ 815.444 *The contract article; limitations on reimbursement.* There are certain limitations on reimbursement of the contractor which should be taken into account in connection with negotiating a settlement and in preparing an accounting guide for assistance in such negotiation. These are referred to in §§ 815.444 (a) to (c), inclusive.

(a) *Maximum payments.* Under paragraph (g) of the old termination article (§ 815.901a), the payments to be made under the article, when added to "the sum of all amounts previously paid under the terminated contract, shall not exceed the total contract price", adjusted as provided in paragraph (g), in the event that the contract contains an article providing for price adjustment or an escalator clause. A somewhat similar limitation applicable to formula settlements is found in paragraph (d) of the new uniform termination article (see §§ 803.324 and 815.901). Even under the new uniform termination article no negotiated settlement will cause total payments under the contract (other than reimbursement of post termination expenses) to exceed the contract price, except with the written approval of the Director, Readjustment Division, Headquarters, Army Service Forces.

(b) *Supplies undeliverable because of destruction or damage.* Under the conditions provided in paragraph (d) of the uniform termination article, except for normal spoilage and to the extent the Government shall have otherwise expressly assumed the risk of loss, the contractor is not to be reimbursed with respect to property which is destroyed, lost, stolen or damaged. The corresponding provision, differing in certain respects, is contained in paragraph (d) of the old standard termination article. These provisions are strictly applicable only to formula settlements. They should, however, be given consideration in connection with negotiated settlements.

(c) *Miscellaneous offsets.* Paragraph (e) of the uniform termination article and paragraph (f) of the old standard termination article provide for certain additional offsets and deductions which should be taken into account.

§ 815.445 *Accounting guides for use in connection with negotiating settlement.* In negotiating a settlement, the contracting officer should have as a guide an accounting memorandum, prepared by Government accounting personnel, containing the available accounting data as to the costs incurred by the contractor with respect to the uncompleted portion of the contract and computations based upon such data and other available information as to the rate of profit which it is expected the contractor would have earned if he had been permitted to complete the contract. This accounting memorandum will ordinarily be prepared upon one or the other of the bases set forth below in § 815.446.[1] This memorandum will not limit the contracting officer in arriving at what he considers to be a proper settlement, but should be given weight by him in connection with other relevant and available criteria and considerations.

§ 815.447 *Treatment of disposal credits.* Disposal credits may arise either from the retention of items by the contractor or subcontractor or from the sale of property to others. The total amount of such credits will be deducted in arriving at the amount of the Settlement Proposal. (See §§ 815.937 (a) to (d), inclusive.)

§ 815.448 *Claims of subcontractors.* The costs arising out of the settlement of claims of subcontractors with respect to the uncompleted portion of the contract as of the effective date of the termination notice, and as properly approved by the contracting officer, will be added to the portion of any proposed settlement covering the contractor's own costs. However, in negotiating a settlement, and in determining a proper profit allowance, appropriate consideration may be given by the contracting officer to the extent of the actual work done by the contractor in arranging and supervising a program of subcontracting.

§ 815.449 *Determination of profit in connection with negotiated settlement.* Paragraph (c) of the standard termination article (§ 803.324) provides that the contracting officer shall include in a negotiated settlement such allowance for profit with respect to the uncompleted portion of the contract as is reasonable under all the circumstances. The contracting officer is not tied down to any particular method of computing this profit allowance. He must exercise a sound judgment in determining a method appropriate for use in each particular case. As guides for his assistance in negotiation, the principles and computations mentioned in §§ 815.450 and 815.451 may be taken into account. However, in such negotiations the contracting officer should agree only to such allowance for profit as is fair in the light of (1) work actually done by the contractor and (2) materials actually obtained or furnished. It is not intended that the contractor shall be allowed any profit with respect to work which has not been done.

The extent to which profit on the uncompleted portion of the contract will be permitted should depend principally on the contracting officer's estimate, under all the circumstances in each instance, of the extent to which the contrator has completed his work on the uncompleted portion of the contract. For determining this the contracting officer should consider the following factors among others:

(a) The total work required of the contractor and the extent to which this has been completed.

(b) The difficulty of the work which has been done and of that which remains to be done.

(c) The extent to which engineering work, production scheduling, planning, technical study and supervision, and other services involving special skill and knowledge, have been performed by the contractor. [Such work is frequently properly applicable to work or units not completed as well as to completed units.]

(d) The extent to which costs already incurred involve only the purchase of raw materials and standard parts and supplies.

(e) The extent to which the work of arranging and supervising a pogram of subcontracting has already been done by the contractor and its importance in the performance of the contract.

Even if the formula method (see § 815.450) of computing a profit is not employed, these factors should be given consideration and appropriate weight in reviewing and testing the fairness of the accounting guides and profit computations prepared by the accounting personnel (see §§ 815.445 et seq., 815.451).

§ 815.450 *Contract formula profit computation.* A computation of profit may be made in general along the lines of the formula which would be applicable, pursuant to paragraph (d) (3) of the termination article (§803.324), in the event that it should prove impossible to negotiate a settlement of the amount due with respect to the uncompleted portion[1] of the contract. The formula method is computed in three steps:

(a) The contracting officer estimates the profit which the contractor would have "realized on the uncompleted portion of the contract if the contract had been completed and labor and material costs prevailing at the date of termination had remained in effect".

(b) He then "estimates from a consideration of all relevant factors, the percentage of completion of the uncompleted portion of the contract".

(c) He multiplies "the anticipated profit determined under (a) by the percentage determined under (b). The result is the amount to be paid to the Con-

[1] § 815.446 is reserved.

[1] In the case of a lump sum construction contract containing the standard termination article § 803.324 (a), the profit formula for use in a formula settlement is found in paragraph (d) (3) of that article.

tractor as a proportionate share of profit, if any, "upon the uncompleted portion of the contract."

For example, if it is estimated (1) that the total profit on the uncompleted portion of the contract, if completed, would have been $100,000, and (2) that the portion of the contract not represented by completed articles is half complete—under the formula the contractor would be allowed $50,000.

It is to be emphasized that the use of this formula for the computation of profit is not required where a settlement is effected by negotiation. Even if the contracting officer uses the formula method he is not bound to apply it in any rigid manner (see § 815.443 (c)) for the formula method for computing a profit in effect, is only a statement of fair, general principles for the guidance of the contracting officer. Its use involves the exercise of sound administrative judgment in the light of all relevant criteria.

§ 815.451 *Indicated profit rate computation.* In many cases an approximation of the rate of profit which would be allowed by a formula settlement may be obtained by applying an appropriate rate of profit to all costs of the uncompleted portion of the contract or different rates of profit to the several classes of costs (see T. A. M. 1206 et seq.).

(a) *Indicated rate; how computed.* Where a single rate of profit is to be applied to all or some of the contractor's costs, the rate may be, and should not exceed, the rate of profit which, it is indicated, would have been earned under the contract if the contract had run to completion. If different rates are to be applied to the several classifications of the contractor's costs, the weighted average of these rates should not exceed the indicated rate. The indicated rate should be determined in the light of the following factors:

(1) The contractor's accounting data as to the costs of performance of the contract prior to the effective date of the termination notice.

(2) The contractor's data as to the costs which would probably have been incurred necessarily in completing performance of the contract, if the contract had run to completion.

In computing the indicated rate there may be taken into consideration nonrecurring preparatory costs and other "starting load" costs incurred in the early periods of the contract but which are properly applicable to the entire contract (see § 815.490). Where the contract is terminated at an early stage there frequently will be inadequate data available to indicate what rate of profit would have been earned if the contract had been completed. In such cases, a rate of profit should be employed which is reasonable in the light of the contractor's cost analyses furnished at the time of placing the contract, the available financial data as to the contractor's general operations (obtained through prior renegotiation proceedings or otherwise), information obtained as to the profit experience of other contractors of equal efficiency engaged in comparable work and other similar criteria.

(b) *Application of indicated rate to costs.* The amount of profit may be computed by applying one rate so determined to all the appropriate costs or different rates to various classes of costs. In selecting the rate or rates of profit to be so applied, consideration should be given to the nature of the work and services of the contractor involved in the costs to which the rate or rates of profit are applied. For example, if certain of the contractor's costs represent only purchase of raw materials and standard parts, a lower rate of profit (representing only a handling profit or charge for services in purchasing such materials and parts) may be applied to such costs than to costs which represent materials partly manufactured by processes requiring substantial engineering, tooling, technical skill and supervision. On the other hand, there may be employed an average rate, determined on the basis of an appraisal of all the work done and services rendered by the contractor and reasonable in the light of the available data as to the contractor's indicated rate of profit.

The rate or rates of profit will be applied to the appropriate inventory costs when the inventory method is used. When the total cost method is used, the rate or rates of profit so determined will usually be applied to total costs on the contract, inasmuch as the payments for completed units (which include an allowance for profit) are to be deducted from total costs under the total cost method of computation. Under either the inventory or total cost method, the contracting officer, in his sound judgment and discretion, should exclude from the costs to which the rate of profit is applied the costs of any items with respect to which the contracting officer is of the opinion that the contractor has performed no substantial service, or he may make such other modifications of the results of the application of the profit rate as in his judgment (1) are necessary to protect the Government's interests or to be fair to the contractor under all the circumstances and (2) to compute a reasonable profit with respect to the work actually done on the uncompleted portion of the contract (see § 815.449).

§ 815.452 *Effect on calculations when a loss on the entire contract is indicated*—(a) According to the provisions of the formula contained in paragraph (d) of the termination article (§803.324) the contractor is to receive reimbursement on the basis of his costs applicable to the uncompleted portion of the contract regardless of an indicated loss applicable thereto. If in connection with a negotiated settlement it is desired to apply the same principle, it may be done, although, of course, the formula is not controlling when a negotiated settlement is made (see § 815.443 (c)). Under the inventory method no deduction is necessary for an indicated loss because the method of settlement does not deal with the costs applicable to the completed units.

(b) Under the total cost method, however, it is necessary to adjust the amount deducted for payments for the completed units to reflect the fact that the indicated cost of these units exceeds the contract price. Thus, if a 6% loss on cost were indicated, the contract price of the completed units would represent 94% of the indicated cost. By dividing these contract prices by 94%, the indicated cost can then be determined. The deduction of the higher amount will then leave in the indicated equitable settlement only the costs applicable to the uncompleted portion of the contract. (See illustration, § 815.454.)

§ 815.453 *Total cost method of computation illustrated where profit is indicated.* The total cost method of computing a guide for use by the contracting officer in reaching a negotiated settlement may be illustrated as follows:

Add	
1. Total contract costs incurred (excluding claims of subcontractors)	$1,000,000
2. Rate of profit applicable (not in excess of indicated contract rate as determined from available data) in relation to such contract costs. For an example, this is taken at the rate of (8% (of costs[1]) which is illustrative only, inasmuch as the rate of reasonable profit will vary depending upon the facts of the particular case	80,000
	1,080,000
Deduct	
3. Payments already made for completed and delivered units	600,000
4. Payments to be made for completed units not delivered	50,000
	650,000
5. Indicated equitable settlement for uncompleted portion of the contract before deductions for disposal credits and excluding subcontractor's charges and other adjustments	430,000

[1] In the example given above a rate of 8% of costs is equal to a rate of 7.4% of the total of costs plus profit.

NOTE: In the foregoing example, it has been assumed that it is not necessary in the particular case to exclude from the cost base, to which the agreed percentage of profit is applied, any items of cost on the ground that they do not represent substantial work by the contractor. (See § 815.451 (b).) If the contract costs include any allowance for special obsolescence (see § 815.485), a deduction should be made from the cost base for the purpose of computing the allowance for profit. Also the example does not take into account all of the adjustments referred to in § 815.444 (c).

§ 815.454 *Total cost method of computation illustrated where no profit is indicated.* Assume an indicated loss of 6 percent on the cost of the entire contract:

Payments made and to be made for completed portion	$650,000—94%
Indicated cost of completed portion (A)	691,489—100%

Total contract costs incurred to date of termination	$1,000,000
Indicated cost of completed portion (A)	691,489
Indicated equitable settlement for uncompleted portion before deduction for disposal credits and excluding subcontractors' charges	308,511
Total payments to the contractor plus the indicated amount of the settlement would then be:	
Payments made and to be made for completed portion	650,000
Indicated equitable settlement for uncompleted portion (before deductions for disposal credits and excluding subcontractors' charges)	308,511
	[1] 958,511

[1] Also before certain adjustments referred to in § 815.444 (c).

§ 815.455 *Limitation on amount of settlement.* The amount of the negotiated settlement must not, when added to payments previously made or to be made, exceed the limit described in paragraph (g) of the termination article (§ 803.324; see § 815.444 (a)).

§ 815.480 *Necessity for determining costs.* In connection with termination settlements, it will frequently be necessary to determine costs. The "Statement of Principles for Determination of Costs upon Termination of Government Fixed Price Supply Contracts approved by the Joint Contract Termination Board, December 31, 1943" referred to in paragraph (h) of the new termination article (see §§ 803.324 (g) and 815.901) is reproduced below.[1]

STATEMENT OF PRINCIPLES FOR DETERMINATION OF COSTS UPON TERMINATION OF GOVERNMENT FIXED PRICE SUPPLY CONTRACTS

General principles. The costs contemplated by this Statement of Principles are those sanctioned by recognized commercial accounting practices and are intended to include the direct and indirect manufacturing, selling and distribution, administrative and other costs incurred which are reasonably necessary for the performance of the contract, and are properly allocable or apportionable, under such practices, to the contract (or the part thereof under consideration). The general principles set out in this Statement are subject to the application of any special provisions of the contract. Certain costs are specifically described below because of their particular significance, and, as in the case of other costs, should be included to the extent that they are allocable to or should be apportioned to the contract or the part thereof under consideration.

(a) *Common inventory.* The costs of items of inventory which are common to the contract and to other work of the contractor.

(b) *Common claims of subcontractors.* The claims of subcontractors which are common to the contract and to other work of the contractor.

(c) *Depreciation.* An allowance for depreciation at appropriate rates on buildings, machinery and equipment and other facilities including such amounts for obsolescence due to progress in the arts and other factors as are ordinarily given consideration in determining depreciation rates. Depreciation as defined herein shall not include loss of useful value of the type covered by subparagraph (f).

(d) *Experimental and research expense.* General experimental and research expense to the extent consistent with an established pre-war program, or to the extent related to war purposes.

(e) *Engineering and development and special tooling.* Costs of engineering and development and of special tooling; provided that the contractor protects any interests of the Government by transfer of title or by other means deemed appropriate by the Government.

(f) *Loss on facilities; conditions on allowance.* In the case of any special facility acquired by the contractor solely for the performance of the contract, or the contract and other war production contracts, if upon termination of the contract such facility is not reasonably capable of use in the other business of the contractor having regard to the then condition and location of such facility, an amount which bears the same proportion to the loss of useful value as the deliveries not made under the contract bear to the total of the deliveries which have been made and would have been made had the contract and the other contracts been completed, provided that the amount to be allowed under this paragraph shall not exceed the adjusted basis of the facility for Federal income tax purposes immediately prior to the date of the termination of the contract, and provided further than no amount shall be allowed under this paragraph unless upon termination of the contract title to the facility is transferred to the Government, except where the Government elects to take other appropriate means to protect its interests.

(g) *Special leases.* (1) Rentals under leases clearly shown to have been made for the performance of the contract, or the contract and other war production contracts, covering the period necessary for complete performance of the contract and such further period as may have been reasonably necessary; (2) costs of reasonable alteration of such leased property made for the same purpose; and (3) costs of restoring the premises, to the extent required by reasonable provisions of the lease; less (4) the residual value of the lease; provided that the contractor shall have made reasonable efforts to terminate, assign, or settle such leases or otherwise reduce the cost thereof.

(h) *Advertising.* Advertising expense to the extent consistent with a pre-war program or to the extent reasonable under the circumstances.

(i) *Limitation on costs described in subparagraphs (d), (e), (f), (g), and (h).* In no event shall the aggregate of the amounts allowed under subparagraphs (d), (e), (f), (g), and (h) exceed the amount which would have been available from the contract price to cover these items, if the contract had been completed, after considering all other costs which would have been required to complete it.

(j) *Interest.* Interest on borrowings.

(k) *Settlement expenses.* Reasonable accounting, legal, clerical and other expenses necessary in connection with the termination and settlement of the contract and subcontracts and purchase orders thereunder, including expenses incurred for the purpose of obtaining payment from the Government only to the extent reasonably necessary for the preparation and presentation of settlement proposals and cost evidence in connection therewith.

(l) *Protection and disposition of property.* Storage, transportation and other costs incurred for the protection of property acquired or produced for the contract or in connection with the disposition of such property.

Initial costs. Costs of a non-recurring nature which arise from unfamiliarity with the product in the initial stages of production should be appropriately apportioned between the completed and the terminated portions of the contract. In this category would be included high direct labor and overhead costs, including training, costs of excessive rejections and similar items.

Excluded costs. Without affecting the generality of the foregoing provisions in other respects, amounts representing the following should not be included as elements of cost:

(a) Losses on other contracts, or from sales or exchanges of capital assets; fees and other expenses in connection with reorganization or recapitalization, anti-trust or federal income-tax litigation, or prosecution of federal income tax claims or other claims against the Government (except as provided in paragraph (k) of General Principles); losses on investments; provisions for contingencies; and premiums on life insurance where the contractor is the beneficiary.

(b) The expense of conversion of the contractor's facilities to uses other than the performance of the contract.

(c) Expenses due to the negligence or wilful failure of the contractor to discontinue with reasonable promptness the incurring of expenses after the effective date of the termination notice.

(d) Costs incurred in respect to facilities, materials or services purchased or work done in excess of the reasonable quantitative requirements of the entire contract.

(e) Costs which, as evidenced by accounting statements submitted in renegotiation under Section 403 of the Sixth Supplemental National Defence Appropriation Act, 1942, as amended, were charged off during a period covered by a previous renegotiation, may not be subsequently included in the termination settlement if a refund was made for such period, or to the extent that such charging off is shown to have avoided such refund.

To the extent that they conform to recognized commercial accounting practices and the foregoing Statement of Principles, the established accounting practices of the contractor as indicated by his books of account and financial reports will be given due consideration in the preparation of statements of cost for the purposes of this article.

The failure specifically to mention in this statement any item of cost is not intended to imply that it should be included or excluded.

§ 815.487 *Bond premium computation.* See § 804.408 (a) for bond premium computation on terminated contracts.

§ 815.488 *Infraction of C. M. P. regulations.* The War Production Board polices C. M. P. regulations and may impose applicable penalties for deliberate infractions, but it does not look for enforcement of such regulations to the contracting officers charged with settling terminated contracts. Contracting officers, therefore, may reach a decision, in accordance with the principles set forth in this part, as to the materials allocable to a contract in process of termination, without deciding whether such materials are in excess of any amount permitted by C. M. P. regulations of the War Production Board.

§ 815.489 *Continuing costs after notice of termination.* It may be impossible in many instances to discontinue certain costs and expenses incurred in connection with the performance of a contract immediately after notice of termination in spite of all reasonable efforts by the contractor to stop work promptly in accordance with the notice of termination. Where the contractor proceeds as rapidly as is practicable after receiving notice of termination to discontinue such costs

[1] The statement is designated paragraphs 15-481 to 15-486, inclusive, in the Procurement Manual.

in accordance with the notice of termination, reimbursement for such costs should not be denied merely because they were incurred after notice of termination.

Interim Financing of Terminations

§ 815.500 *War Department policy.* (a) The necessity of extending prompt financial assistance to war contractors in connection with the termination of their contracts is recognized by the War Department as of paramount importance. It is essential that procurement offices take definite action to ascertain which of their prime contractors and subcontractors desire interim financing and to see that it is made available to them.

(b) War contractors and subcontractors who are greatly overextended and are doing a volume of business wholly out of proportion to their working capital, may suffer acute financial embarrassment if they do not receive very promptly a substantial part of the amounts owing to them on terminated contracts. Moreover, interim financing is essential in order to provide ready working capital for such contractors and subcontractors quickly so that they will be enabled immediately to carry on or convert to other war work or, in the event of post-war termination, to undertake other production work. The importance of making every reasonable effort to effect interim financing at the earliest possible date by one or more of the following methods cannot be overemphasized:

(1) For contractors still in war production guaranteed V and VT Loans are now available which may be utilized to provide financing in the event of termination (§§ 803.319, 803.320, 815.502 and 815.503);

(2) It is expected that a new simplified type of guaranteed T Loan, solely for use on termination, will shortly be made available (§ 815.504);

(3) Contractors will be given liberal partial payments while their terminated contracts are in process of settlement (§§ 815.505 to 815.507 (d)).

(4) Advance payments authorized prior to termination may be used to pay for items reimbursable under the termination article (§ 815.508).

(c) In order that these loans and payments may be utilized to best advantage, contracting officers, fiscal officers and contractors themselves, must become fully conversant with the purpose of each type of financing and with the specific regulations applicable to it, and must know the actual steps necessary to make this financing effective. Pending issuance of more detailed regulations (now in preparation) there are set forth herein (1) a summary of the various types of interim financing and (2) recommendations as to the machinery which procurement offices should establish to insure that the benefits of such interim financing will reach all prime contractors and subcontractors who are entitled to such assistance.

§ 815.501 *Choice of method of interim financing.* It is the general policy of the War Department that contractors will be given partial payments of amounts owed them where that method of interim financing is administratively practicable. In the case of contractors who have numerous contracts with several procurement agencies or technical services or who are primarily subcontractors, financing through V, VT or T Loans will probably be the most practicable method for initially financing the borrower's total termination claims on an over-all basis.

§ 815.502 *V Loans.* (a) Guaranteed or Regulation V Loans were provided for under Executive Order 9112 in March, 1942, primarily for the purpose of financing subcontractors, mixed prime and subcontractors, and prime contractors where the latter held numerous contracts with several procurement agencies. In these cases over-all financing of the borrower's war production was needed as distinguished from financing of one or two prime contracts by advance payments.

(b) The practical procedure to obtain a V Loan is for the contractor to consult his local bank, and then, either personally or through the local bank, to discuss the matter with the Federal Reserve Bank and the Liaison Officer assigned thereto by the Office of the Fiscal Director, Headquarters, Army Service Forces. If the application appears reasonable, the Liaison Officer then requests the important interested war procurement agencies, technical services and prime contractors for opinions as to the necessity of the loan and the ability of the contractor to perform the contracts at the prices specified. Assuming such opinions are favorable (after presentation of a budget showing need for the money in connection with war production and other information) an agreement for the loan is entered into between the contractor and the local bank and a guarantee agreement in standard prescribed form is executed and delivered to the local bank by the Federal Reserve Bank, the latter acting as Fiscal Agent for the War Department. If the loan is over $100,000 the guarantee must be authorized by a financial contracting officer in Washington. The actual money is advanced by the local bank. The percentage guaranteed depends generally on the quality of the borrower's credit and normally does not exceed 90% except in the case of a very weak credit where a higher percentage of guarantee may be authorized if the production of the contractor is essential. The contractor pays interest at rates varying from 2½% to 5% per annum depending upon the risk, size of the loan, and supervision required. The Government receives a guarantee fee which varies with the percentage of guarantee. In the case of a 90% guarantee the fee is 25% of the interest payable on the guaranteed part of the loan.

(c) Under the provisions of section 6 of the standard form of guarantee agreement, V Loans give the borrower termination protection in that maturity is suspended until final settlement on a portion of the loan which bears the same ratio to the whole loan as the cancelled portion of the war producer's contracts bears to his total backlog of war contracts unperformed at the time of termination. Likewise interest is waived on this suspended portion of the loan and the Government pays the bank interest on that amount of the loan at its previous rate less guarantee fee, or at the rate of 2½% per annum, whichever is less. By section 5 of the guarantee agreement the bank in a V Loan is protected on termination by a "step-up" of guarantee based on that same ratio. Neither provision comes into effect unless the ratio is 25% or more.

§ 815.503 *VT Loans.* (a) During the summer of 1943 some large contractors and their banks became concerned over the amount of working capital that might be tied up in the event of substantial contract terminations, particularly if these should occur suddenly. In many cases the resources of these contractors were adequate to finance their war production, so they were ineligible for V Loans. Therefore, as a means of freeing the contractor's own working capital upon termination of war contracts, Government guaranteed loans were liberalized by the development of the VT type loan. These differ from V Loans only in these respects:

(1) The contractor does not have to establish that he needs the money for present war production, although at least part of it is available for that purpose.

(2) The amount that may be borrowed must be based on a formula predicated on receivables and inventories attributable to cancelled as well as uncancelled war contracts and on amounts which the contractor has paid or concurrently is to pay to the tier of subcontractors immediately below him.

(3) The percentage of guarantee cannot exceed 90% and the "step-up" provision of Section 5 of the guarantee agreement has therefore been eliminated.

(4) The banks are allowed to charge a commitment fee up to ½ of 1% (instead of ¼ of 1% which is the maximum which can be charged on V Loans) in which the guarantor shares on the same basis that it shares in interest.

The routine for setting up the VT Loan or credit is identical to that followed for V Loans.

(b) It cannot be emphasized too strongly that the essential question whether a V or VT guaranteed loan gives satisfactory termination protection depends not upon whether it is a V or VT Loan, but upon whether it has a loan formula permitting borrowings to be outstanding against a substantial amount of the contractor's investment in cancelled as well as uncancelled contracts. For example, if a borrowing formula of the VT type, described in paragraph (a) (2) above, is used, a V Loan gives the same termination protection as a VT Loan. In the case of a weak credit the banks which would not be willing to make a VT Loan, where the guaranteed percentage never exceeds 90%, will be more willing to make a V Loan with this type of formula since upon cancellation of the borrower's contracts the percentage of guarantee under Section 5 of the guarantee agreement "steps up" in an amount proportionate to the ratio which the cancelled portion of the war producer's contracts bears to his total backlog of unperformed war contracts. Thus, the strong credit can

secure termination protection through a VT Loan; any other contractor who is still in war production can secure equal termination protection under a V Loan using a VT type formula.

§ 815.504 *T Loans.* Neither a V nor a VT Loan may be obtained after all of a contractor's war production is terminated and he is no longer a necessary war facility. However, a new type of guaranteed T Loan is now under consideration and forms are being prepared so that the procuring agencies will guarantee or make commitments to guarantee loans made to contractors by local banks to finance war inventories and receivables pending final settlement. Established mechanisms employed in V and VT Loans will be used but procedures and forms will be much simplified. It is expected that further instructions on T Loans will be issued in the near future.

§ 815.505 *Partial payments*—(a) *Authority.* The making of partial payments on account of the amounts due to the contractor in the event of termination, either total or partial, is authorized by paragraph (g) of the uniform termination article (§§ 803.324, 815.901) and paragraph (i) of the standard termination article (§ 815.901a) for use in lump sum supply contracts.[1] Such payments may be made, therefore, wherever a contract originally contains this article or is amended to contain it and should be made promptly wherever circumstances warrant such action.

(b) *Policy.* When a contract is terminated the contracting officer or other person responsible for handling termination settlements is charged with responsibility for making due inquiry whether or not the contractor, either for his own account or for any of his subcontractors, needs or desires a partial payment. This inquiry should appear prominently on the negotiator's check list. In the event the contractor desires a partial payment, practical means should be adopted for making it promptly. In general, partial payments should be accomplished through an agreement supplemental to the prime contract substantially in the form set forth in § 815.922. This form of agreement provides that any excess partial payment made pursuant to such an agreement is treated as a loan. It is the duty of prime contractors to inform their subcontractors that they are entitled to partial payments, and to pass on to subcontractors their fair share of partial payments.

§ 815.506 *Partial payments to prime contractors*—(a) *Criteria.* (1) Subject to the provisions of §§ 815.509 to 815.511 (b), partial payments should be made wherever:

(i) The contractor represents that at least the amount of the proposed partial payment is due;

(ii) Such amount is payable without prejudice to the determination of any of the other items involved in the termination;

(iii) An agreement supplemental to the prime contract in substantially the form set forth in § 815.922 is entered into between the Government and the prime contractor; and

(iv) The contracting officer is satisfied that the amount of the proposed partial payment is clearly within the amount due to the contractor in connection with the termination.

(2) If it is not readily determinable whether the total amount of the proposed partial payment is clearly within the amount due to the contractor, the contracting officer, nevertheless, if the conditions set forth in subdivisions (i), (ii) and (iii) of subparagraph (1) above are satisfied, may authorize controlled partial payments to be made through a special bank account, subject to such provisions for security as may be available or possible and subject in any event to prior approval of all withdrawals, for the purpose of financing termination costs allocable to the contract (including bills of subcontractors and suppliers) in a manner similar to the handling of advance payments. In such cases the special bank account will be established under a supplemental agreement substantially in the form set forth in § 815.922 with the addition of the provisions substantially as set forth in paragraph (a) of § 815.922. Contract Financing Sections (§ 815.512) authorizing withdrawals will clear all doubtful items with the contracting officer and no withdrawal will be permitted unless the contracting officer determines that the amount of the withdrawal, together with all amounts previously withdrawn or paid, will not exceed the total amount due the contractor.

(b) *Basis for determination.* Contracting officers are authorized to make determinations as to the amounts of partial payments to be made on the basis of such evidence as they deem proper in the circumstances. Ordinarily, it can be ascertained fairly promptly and without any exhaustive audit that the contractor will be entitled to receive at least some minimum amount on the terminated contract. This amount, or some substantial part of it, should be paid to the contractor on account as promptly as possible. Such payment will be warranted upon (1) the presentation of accounting information, as to the whole or any part of the terminated contract supported by reasonable schedules, certified by the contractor, showing that at least some stated amount is owing to him in connection with the termination, and (2) upon written determination by the contracting officer after a limited accounting review that the amount to be paid is less than the amount due to the contractor by reason of the termination. Ordinarily, in making such limited review the contracting officer should rely on the certifications of independent public accountants, where such certified statements are available, with respect to accounting information submitted by the contractor, and should act promptly upon the basis of other types of financial data which he deems reliable. Usually, in connection with the making of partial payments, it should not be necessary for the contracting officer to require that accounting data be certified by independent public accountants.

(c) *Conditions which may be imposed in connection with partial payments.* (1) Contracting officers in making partial payments on the basis of a partial statement of termination charges and request for partial payment submitted by the contractor, may require that any or all of the following conditions be met by the contractor:

(i) The submission of a partial statement of costs and termination charges certified as correct by at least two duly authorized officers of the contractor (one of which should be the chief accounting officer), in the case of a corporation; and by at least two members in the case of a partnership.

(ii) A statement by the contractor that the payment requested has not been assigned, or if it has been assigned, that the assignee has consented in writing to the making of the payment. Direct payment to an assignee may be made, if otherwise authorized.

(iii) Statement by or in behalf of the contractor that all statements of fact and representations made in the request for payment, the partial statement of charges and the schedules in support thereof are true and correct and that they are made subject to the penalties provided in section 35A of the United States Criminal Code as amended April 4, 1938, 50 Stat. 197, (18 U. S. Code 80).

(2) The extent to which the contracting officer will require these conditions to be met in any case is left to his discretion subject to such regulations or instructions as the chief of the technical service may issue.

§ 815.507 *Partial payments for the benefit of subcontractors*—(a) *Direct payments not authorized.* Except with the written consent of the prime contractor, contracting officers are not authorized to make partial payments directly to subcontractors, vendors or suppliers whose subcontracts or purchase orders have been terminated or cancelled as a result of the termination of a prime contract with the War Department.[1] This is based on the following reasons (see § 815.325 (b)):

(1) There is no direct contractual relationship between the Government and the subcontractor.

(2) There is no assurance that counterclaims and set-offs by the prime contractor (or by intermediate subcontractors) against the subcontractor in question will have been taken into account by the contracting officer in making partial payment.

(3) There is no assurance that the amounts of such partial payments will be taken into account in determining the amount due the prime contractor.

[1] A similar provision is found in the standard termination article (§ 803.324 (a)) for use in lump sum construction contracts. The provisions of §§ 815.500 to 815.512, inclusive, are applicable to the termination of lump sum construction contracts containing the standard termination article (§ 803.324 (a)).

[1] Some cost-plus-a-fixed-fee contracts, however, expressly authorize such payments. The text does not apply to such contracts.

(4) The administrative difficulties involved in attempting to deal directly with subcontractors will tend to delay the settlement of terminated contracts.

(b) *Partial payments through prime contractor.* (1) Such partial payments for the benefit of subcontractors can be made through the prime contractor and should be so made as promptly as is practicable. Where it is desired to do this the contracting officer may make a partial payment to the prime contractor based upon the contracting officer's approval of the settlement of the whole or some part of the amount due from the prime contractor to the subcontractor in connection with the uncompleted portion of the terminated contract.[1]

(2) Ordinarily partial payments to the prime contractor (intended to put him in funds or to reimburse him for partial payments to a subcontractor) will be made simply as payments on account to the prime contractor or under the controlled account procedure provided for in § 815.506 (a) (2). In some cases, however, it may be desired to make such a payment in trust for the subcontractor or for the benefit of a specific second tier or more remote subcontractor or supplier. To accomplish this, an agreement supplemental to the prime contract, in substantially the form set forth in § 815.-921, may be entered into among the following parties: (i) The Government, (ii) the prime contractor, (iii) the subcontractor who is to receive the partial payment, and (iv) any intermediate subcontractors. Under this form of agreement.

(*a*) All of the parties will agree that the payment (which may be for all or part of the subcontractor's termination charges), may be made;

(*b*) That it is within the amount clearly owing on account of the termination of the prime contract (*1*) to the subcontractor who is to receive the payment, and (2) to the prime contractor and each intermediate subcontractor, if any;

(*c*) The parties will warrant that no set-offs or counterclaims are outstanding against the subcontractor who is to receive the payment;

(*d*) All the parties will give releases for the benefit of the Government, to the extent of the payment made, and will agree not to seek further reimbursement of this amount by reason of the termination. The payment is then made to the prime contractor but on account of, and in trust for, the subcontractor who is ultimately to receive it. It should be noted that the use of this arrangement continues the policy of creating no direct obligation on the part of the Government to any subcontractor.

The contracting officer makes payment only to the prime contractor, who presents the subcontractor's request for the partial payment and passes the payment on to the subcontractor when it is made.

(3) Contracting officers are also authorized to make such partial payments (intended for particular subcontractors) through prime contractors for the benefit of subcontractors by means of any other less formal arrangement which, in their opinion, will adequately protect the interests of the Government, especially with respect to any set-offs or counterclaims which may exist against the subcontractor who is ultimately to receive the partial payment (or against any intermediate subcontractor) and which might affect the amount owing to the person receiving. Such protection may, in some cases, be secured through the use of appropriate language in the invoice or voucher submitted by the contractor for such partial payment.

(c) *Determination of amount of payment.* The provisions of § 815.506 (b) will be applied in determining the amount of a partial payment for the benefit of a subcontractor. However, the prime contractor, in accordance with the provisions of § 815.431 et seq., will make his own review of the subcontractor's statement of termination charges, which may be a partial statement of such charges, and that statement may be checked to such extent by Government accounting personnel as the contracting officer may deem appropriate. The contracting officer may give consideration and appropriate weight to reviews made by the prime contractor and the prime contractor's recommendation. He should place suitable reliance also upon any relevant reports which may be available, prepared by independent public accountants.

(d) *Conditions on partial payments for the benefit of subcontractors.* In connection with any partial payment to a prime contractor for the benefit of any subcontractor or supplier, the contracting officer may impose such conditions, of the type mentioned in § 815.506 (c), upon the prime contractor or upon any subcontractor receiving the payment as he may, in his discretion, consider proper.

§ 815.508 *Advance payments.* Advance payments previously authorized in connection with the performance of a terminated contract may also be utilized to finance terminations, either total or partial, provided that the contracting officer determines that such advances, in addition to those previously made, will be less in amount than the estimated termination charges. The release of such advance payments from special bank accounts is authorized since liquidation of the amount due on termination is within the purposes of the contract. This method may be used in addition to, or in substitution for, partial payments, subject to the provisions of §§ 815.509 to 815.511 (b).

§ 815.509 *Liaison with advance payments and loan or contract financing section of the technical service.* The Advance Payments and Loan Section, the Contract Financing Section, or the District Financial Officer of the office of the contracting officer concerned (or any other section or officer discharging responsibilities with respect to the financing of contracts by advance payments, guaranteed loans or other methods) will be notified promptly by the contracting officer that a contract has been or is about to be terminated, either in whole or in part, so that consideration may be given to the effect of such termination on the financing program, if any, previously worked out in connection with the terminated contract and any other contracts held by the contractor. In the case of guaranteed loans or direct Government loans; such financing sections or officers will furnish the necessary information with respect to the termination to the Liaison Officer of the Advance Payments Loan Branch stationed in the appropriate Federal Reserve District. Thereafter the closest liaison will be maintained by the contracting officer with such persons during the progress of the termination settlement. See also § 815.512.

§ 815.510 *Consent of surety or guarantor to partial payments; rights of assignees.* Where a contractor who has received Government financing (in the form of an advance payment or a guaranteed loan) requires partial payments in connection with the settlement on the termination of his contract, proper notice thereof will be given to, and consents obtained from, any surety or guarantor on the instruments previously offered as security for such Government financing. Where assignments of amounts due under the contract have been made, partial payments can be made only consistently with the assignment.

§ 815.511 *Partial payments where contractor has Government financing—* (a) *Government financing by advance payments.* Ordinarily, the Government's principal security for an advance payment is the contract itself. Advances are liquidated by pro rata liquidating deductions from payments made by the Government for goods delivered and accepted. When a contract is terminated in whole or in part, the number of units to be delivered is decreased and the security for the advances is diluted accordingly. In effect, termination costs are substituted as security for the eliminated contractual units. Partial payments on account of a termination settlement without a commensurate deduction of a pro rata portion of outstanding advances diminishes the security. Advance payments, therefore, should ordinarily be liquidated from amounts paid in settlement of a termination.

(b) *Government financing by guaranteed loan.* Compliance with § 815.509 will ordinarily provide sufficient protection to the Government where guaranteed loans are involved. The contracting officer will thus be apprised of any outstanding guaranteed loans to the contractor and of any recommendation with respect thereto which the Liaison Officer in the Federal Reserve District may have and the Liaison Officer will be apprised of the termination. Frequently, such early notification may enable the bank, which has made the loan, to obtain or call for an assignment of the contract where such assignment has not previously been made. Such action may prevent a call on the War Department to participate in the loan to the extent of its guarantee agreement.

[1] This would be with respect to any part of the terminated contract in the case of a lump sum construction contract containing the standard termination article for use in such contracts (§ 803.324 (a)).

§ 815.512 *Contract Financing Section.* (a) Where offices of the technical services have not established Contract Financing Sections or Advance Payment or other units qualified to assist contractors with their financial problems, such sections will be created. Their personnel should be competent to advise contractors and persons responsible for contract terminations with respect to the various types of financial assistance available to them if needed, and especially with reference to interim financing in connection with contract terminations. With respect to partial payments these sections are expected to work under the direction of the person responsible for contract terminations and as part of the group or team working with him. They should also facilitate cooperation with the Federal Reserve Banks through the Liaison Officers.

(b) In addition to their normal duties of approving the financial status of contractors as the basis for awarding contracts and of recommending and administering advance payments and coordinating with the Liaison Officers in arranging for V and VT Loans, the following are specific examples of functions that will be performed by Contract Financing Sections in connection with terminations:

(1) Such sections will effect internal coordination so far as practicable with persons responsible for the decision to terminate contracts with respect to liquidation of advance payments before a termination notice has been sent out, and thereafter with persons responsible for settlement.

(2) Such sections will administer partial payments where controlled accounts are utilized (§ 15.506 (a) (2)).

(3) There should be the closest sort of external coordination between the Contract Financing Sections and the Liaison Officers in the Federal Reserve Banks, especially with respect to the following:

(i) As required by § 815.509, pretermination coordination should be effected through the Contract Financing Sections with Liaison Officers where substantial terminations, cut-backs or slow-downs of contracts are impending with respect to financially weak contractors who are being financed by guaranteed loans. Under some conditions it may be desirable for the Contract Financing Sections to ascertain from the Advance Payment and Loan Branch, Office of the Fiscal Director, Washington, D. C., whether such financially weak contractors are being so financed. That Branch will then inform the Contract Financing Section of the particular Liaison Officer who should be contacted. This is similar to the internal coordination between the termination groups and the Contract Financing Sections with respect to liquidation of advance payments.

(ii) Where assignments or advance payments are involved, internal coordination should be effected between the Contract Financing Sections and the termination groups authorizing the disposition or retention of property, and

(iii) Where V or VT Loans are involved, similar external coordination should be effected through the Contract Financing Sections with Liaison Officers (§ 815.350 (d)).

(4) Through coordination with Liaison Officers and termination personnel Contract Financing Sections should encourage the making of proper partial payments where suspension of maturity and waiver of interest has been made under section 6 of the standard form of guarantee agreement (§ 815.502). The making of such partial payments may reduce Government expense and tends to conserve appropriations of the interested technical service which otherwise would be charged for interest paid by the Government on behalf of contractors whose loans have been suspended as a result of terminations.

(5) Close coordination between Liaison Officers, Contract Financing Sections and termination personnel is also important with respect to advance payments or V Loans where the Government's interest in such financing is in jeopardy. Procedures for tapering off work while liquidation is going on, arrangements for set-offs and other techniques for minimizing losses should be developed.

Negotiation of Settlements

§ 815.530 *General.* The negotiation of a settlement of the amount to be paid to a contractor with respect to the uncompleted portion of a terminated lump sum supply contract is primarily a problem calling for the exercise of sound business judgment by the contracting officer and the members of his staff participating in such negotiation. The negotiation should be carried on in the light of available accounting and other relevant data and as a business negotiation to be completed speedily and equitably.

§ 815.531 *Authority of the Contracting Officer.* The contracting officer, in determining a proper settlement under the standard termination article for use in lump sum contracts (§ 803.324) providing for a negotiated settlement of the uncompleted portion of the contract[1] is given a very wide range of discretion and may act upon such evidence as is satisfactory to him under all the circumstances, with a view to reaching a fair adjustment expeditiously and with a minimum of technicality. He may allow the contractor by way of settlement such amount as will, in his judgment, give to the contractor fair, full and reasonable compensation for the contractor's costs, expenditures, liabilities and commitments incurred in connection with the uncompleted portion of the contract, together with such reasonable allowance for profit on the uncompleted portion of the contract as the contracting officer deems just and equitable and as affording to the contractor, under all the circumstances, such profit as the contractor has actually earned by work in fact done on the uncompleted portion of the contract (see § 815.449).

[1] In negotiating a settlement of a lump sum construction contract under the standard termination article for use in such contracts (§ 803.324 (a)), the settlement, of course, relates to the whole contract rather than to the uncompleted portion only, as in the case of a lump sum supply contract (§ 803.324).

§ 815.532 *General criteria and guides for the contracting officer.* The negotiated settlement gives the contracting officer maximum flexibility in working out with the contractor a fair settlement of the amount due on the uncompleted portion of the contract under the standard termination article (§ 803.324) for use in lump sum supply contracts (see note to §815.531). To arrive at such a fair settlement, however, the contracting officer will make use of all relevant and available guides as to what constitutes an equitable amount to be paid to the contractor. The principal accounting guides are discussed in § 815.445 and following sections. It is to be emphasized that none of such guides and no report of the accounting personnel (see §§ 815.434 and 815.451 (c)) shall be regarded as controlling any such settlement but merely as providing assistance to the contracting officer in connection with the determination of the appropriate amount of such a settlement.

§815.533 *Preparation for negotiation conferences with contractor.* In preparing for negotiation conferences with representatives of the contractor, the contracting officer or his representatives, and any appropriate members of his staff who will participate in such conferences:

(a) Should familiarize themselves completely with all available information concerning the particular termination;

(b) Should consider, as fully as possible, and in advance, all accounting, legal and other problems which are likely to arise in the course of the negotiation, and

(c) Should have determined what steps should be taken to coordinate the termination settlement with statutory renegotiation with the contractor (see §§ 805.551 to 805.551 (b)).

Such preparatory work will facilitate the progress of the negotiation and will enable the contracting officer and his staff promptly to pass upon the contentions of the contractor in connection with the settlement.

§ 815.534 *Negotiation conferences and personnel.* The negotiation conferences with the contractor should be attended by such representatives of the contracting officer as may be concerned with the subject matter of the particular conference. Such representatives should include, where necessary, a negotiator and legal, accounting, technical and property disposition advisers. So far as possible, personnel in each of these categories should be assigned to specialize in work on terminations so that an experienced and trained staff will be available to assist the contracting officer. Such personnel should therefore be chosen with extreme care. The negotiator (see § 815.322) will normally be the representative of the contracting officer with respect to each negotiation as a whole, so that his recommendations will undoubtedly carry special weight in the ultimate settlement. The extent of the contracting officer's personal participa-

tion in such negotiation conferences is a matter for his own discretion, in the light of the complexity of the termination, the problems to be discussed at a particular conference and similar factors.

§ 815.535 *Where prime contractor cannot settle with one or more subcontractors.* Where the prime contractor is unable to effect a settlement, which the contracting officer will approve (where such approval is required), with one or more subcontractors, the settlement agreement between the Government and the prime contractor may exclude the amounts due to such subcontractors from the negotiated settlement, leaving to later determination the question of the payment to be made to the prime contractor with respect to such subcontracts. In appropriate cases, with the written approval of the officer or employee of the War Department in charge of the procurement office in which the settlement is being administered, acting personally or through a representative designated for the purpose, the Government in the settlement agreement with the prime contractor may assume and agree to pay the obligation of the prime contractor with respect to such subcontracts, so far as related to the uncompleted portion of the terminated prime contract. Each such agreement to assume such an obligation shall provide that the amount to be paid under such assumption of liability shall not exceed a stated amount and, where appropriate, will contain an assignment of all rights of the prime contractor relating to such obligation. This amount will be determined at a figure sufficiently low so that the total payments under the terminated prime contract will not exceed any maximum limit set for payments under the applicable termination article (see §§ 803.324 and 815.444 (a)). In the event of such an assumption of the prime contractor's obligation, the settlement agreement shall include suitable provisions requiring the contractor (a) to give prompt notice to the contracting officer of the commencement of any litigation with respect to the obligation, and (b) to permit the Government to assume the defense of such litigation as a condition of the Government's liability (see § 815.321 (g)). Similar arrangements may be made, with the written consent of the prime contractor and of all intervening subcontractors, where a subcontractor of any tier cannot make settlement with one or more subcontractors of the next tier below him. A written report of each agreement entered into pursuant to this paragraph will be made through channels to the Director, Readjustment Division, Headquarters, Army Service Forces.

§ 815.536 *Review of termination settlements before execution of agreement.* See § 815.220.

§ 815.537 *Supplemental agreement.* When the contracting officer and the contractor reach an agreement as to the total amount payable to the contractor in connection with the termination of a contract, subject to the provisions of §§ 815.220 and 815.536, the contracting officer and the contractor shall proceed to enter into a supplemental agreement for the final termination of the contract. Such supplemental agreement shall be substantially in the form set forth in § 815.931, and will (1) recite that it is made pursuant to the First War Powers Act, 1941, and Executive Order No. 9001, and (2) be entered into consistently with any applicable requirements of §§ 803.306 to 803.308g, inclusive. Any such final settlement agreement pursuant to this authority will ordinarily constitute an amendment made for adequate consideration. Accordingly, in the absence of unusual provisions in the particular supplemental agreement, no approval by the Director, Purchases Division, Headquarters, Army Service Forces, of any such settlement agreement is required by § 803.308a. Approval by the Director, Purchases Division, is not required merely because the amount of the settlement exceeds $5,000,000 or any other amount. The consent to such agreement of any assignee of the amounts payable under the contract should be obtained.

(a) *General provisions.* In the case of a lump sum supply contract containing a termination article substantially in the form set forth in § 803.324[1] such agreement shall provide for the payment to the contractor, subject to any deductions set forth in § 815.537 (b), of the sum of:

(1) The agreed amount on account of the uncompleted portion of the contract; and

(2) All as more fully provided in the contract, (i) the contract price, to the extent unpaid, of all supplies (including spart parts, drawings, information and other things) which have been completed and delivered, or work performed, in accordance with the provisions of the contract and title to which has been transferred to the Government; (ii) the agreed amount for, or reimbursement of, expenditures made and costs incurred by the contractor subsequent to the receipt of the termination notice for the protection of Government property; and for such other expenses and costs as may be necessary in the settlement of the contract (see § 815.443 (d)).

(b) *Deductions and reservations.* The settlement agreement should take into account the following

(1) *Renegotiation.* It should be specifically stated whether and to what extent the terminated contract and the settlement agreement is to be exempted from subsequent renegotiation (see §§ 815.551 et seq. and 812.1204 (i)).

(2) *Deductions for damaged property and defects.* A reasonable deduction should be made for damaged property (see § 815.444 (b)), defects of materials and workmanship (§ 815.444 (c)) in property title to which is to be transferred to the Government, or which has been sold at the direction of the contracting officer in connection with the termination setlement, to the extent that this factor has not otherwise been taken into account adequately in connection with the negotiation.

(3) *Deductions for Government claims in connection with the contract.* The agreement should cover any set-offs and counter-claims which the Government may have in connection with the contract (see § 815.444 (c)).

(4) *Disposal credits.* The agreement or the settlement itself should take into the account credit to the Government for the sales price or agreed price of any property sold or retained by the contractor at the discretion of the contracting officer in connection with the termination settlement (see § 815.350 et seq.).

(5) *Provisions to protect subcontractors and suppliers.* In the discretion of the contracting officer, the amount of the settlement may cover or may be made subject to deduction to meet the unsettled claims asserted by any person for labor, supplies, or materials. The agreement may make such provision, for direct payments to the claimants, escrow payments or otherwise, as the contracting officer may deem proper, to ensure the payment of such claims (see § 815.444 (c)).

(6) *Reserved rights.* Rights of the Government and of the contractor, which are to be reserved and are not to be affected by the settlement agreement should be specified to the extent reserved, as for example:

(i) Rights under contract provisions relating to inventions, patent rights, patent infringements, licenses and reproduction rights;

(ii) The right of the Government to effect an adjustment of patent royalties under the provisions of Public Law 768, 77th Congress, and

(iii) The rights of either party under options, covenants not to compete, covenants of indemnity, and facilities agreements.

(7) *Maximum limit.* The agreement shall not provide for payment in excess of the maximum limit on compensation stipulated in the applicable termination article (see § 815.444 (a)).

(8) *Offsets and credits for payments previously made.* All offsets mentioned in § 815.444 (c) and all advance, progress, partial and other payments previously made will be taken into account appropriately.

§ 815.550 *Relation of termination to statutory renegotiation.* The settlement of terminated contracts will not be delayed pending completion of renegotiation proceedings. However, the following points must be considered in reaching settlement agreements:

(a) The Statement of Principles for Determination of Costs upon Termination of Government Fixed Price Supply Contracts provides that the following should not be included as an element of cost:

Cost which, as evidenced by accounting statements submitted in renegotiation under Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended, were charged off during a period covered by a previous renegotiation, may not be subsequently included in the termination settlement if a refund was made for such

[1] The settlement agreement for use in connection with lump sum construction contracts containing a standard termination article (§ 803.324 (a)) is mentioned in §§ 815.601 and 815.602, and a form of such agreement is set out in § 815.932.

period, or to the extent that such charging off is shown to have avoided such refund.

(b) In some cases contractors are willing to waive or otherwise release any claim for payment of costs and profit thereon to which they may be entitled as a result of termination of contracts. The signing of such a waiver will not prejudice whatever rights the contractor has to include such costs in accounting statements submitted in renegotiation. It should be pointed out to contractors, however, that the waiver of payment must be made within the contractor's fiscal year if the applicable costs are to be included in accounting statements submitted in renegotiation for that year. Profit consideration in renegotiation with respect to that segment of production represented by the costs on contracts terminated will generally be dependent on the extent and character of the manufacturing contribution represented by those costs.

(c) Contracting officers and accounting personnel will take full advantage of accounting and cost information in the possession of the Price Adjustment Board or section charged with renegotiation dealings with a contractor whose contract has been terminated and will keep that board or section fully informed and make available to it the information developed in connection with the termination settlement.

§ 815.552 *Settlement in connection with other termination settlements affecting the same contractor.* Settlement of the amount due by reason of the termination or partial termination of a particular contract in the discretion of the contracting officer, and with the approval of the contractor, may be made in connection with similar settlements of amounts due under other terminated contracts with the same contractor. Where such action is taken, accounting work should be consolidated to the greatest practicable extent. The several settlement agreements, or a single over-all settlement agreement covering the contracts in question, should apportion the total amount of the settlement to the several contracts on some reasonably satisfactory basis (see T. A. M. 1111). In such cases precise allocation of costs to particular contracts will serve no useful purpose, will not decrease termination charges and will merely increase administrative work.

§ 815.560 *Where settlement by negotiation proves impossible; formula settlement.* (a) Where settlement by negotiation of the amount due with respect to the contract (or any portion as to which settlement by negotiation is permitted) proves to be impossible, settlement will be made by formula. Contracting officers will take action promptly to make settlement by formula wherever a negotiated settlement is being unreasonably delayed by the contractor or seems unlikely to be effected within a reasonable time because of inaction by the contractor. Such action will be pressed with special vigor where the interests of subcontractors may be adversely affected by delay of the prime contractor in acting on settlements with his subcontractors.

(b) Resort to a complete formula settlement may in some instances be avoided in part by (1) limiting the formula settlement to any separable issues which are in dispute and (2) negotiating a partial settlement agreement covering all clearly separable issues as to which fair agreement can be reached without unreasonable concessions to the contractor (see also in this connection § 815.535). This course, however, should not be pursued unless exhaustive and diligent effort has been made to negotiate a complete settlement of all the matters arising in connection with the termination. Even then, partial settlement should be employed cautiously and no partial settlement should be made if such a settlement will prejudice the Government's interests in the light of the issues left unsettled. The chiefs of the technical services may authorize the execution of such partial settlement agreements either in specific cases or by general rule or delegation of authority. As a general rule, partial settlements covering particular items of the contractor's proposal should not be made during the course of negotiations, since such partial settlements may embarrass the Government's negotiating position as to a final settlement. This general rule, however, is not applicable to agreements approving subcontract settlements or approving dispositions of property and credits arising therefrom.

(c) Where a settlement by formula is to be made of the whole or any part of the amount due in connection with a contract in process of termination, the contracting officer will give the contractor not less than fifteen (15) days written notice by registered mail to produce on or prior to a stated date his written evidence bearing upon the determination of the amount due, including such vouchers, verified transcripts of books of account, affidavits, audit reports and other documents, as the contractor may wish to submit or as the contracting officer in his discretion may require. If the contractor wishes to present oral testimony or if the contracting officer wishes testimony presented in behalf of the Government or by independent experts or to examine persons whose affidavits or reports have been submitted by the contractor, in the discretion of the contracting officer a hearing may be held. If such a hearing is held, the contractor shall be given due notice in writing. The contracting officer may cause such accounting and other investigations and audits to be made as he may deem appropriate. Ordinarily, an investigation will be made on all issues which the negotiations reveal to be in dispute and such additional documents and data may be required as the contracting officer in his discretion considers necessary in the particular case. It is not intended, even in connection with a formula settlement (see §§ 815.407, 815.421 (b)), that the chief of the technical service shall require the contractor to furnish detailed evidence, vouchers and other data to the extent ordinarily required in cost-plus-a-fixed-fee contracts. The purpose in making investigation and in directing the submission of evidence should be to require the contractor to establish by proof, satisfactory to the contracting officer, the substantial facts as to the amount owed to him. The burden of proof is upon the contractor. The nature of the additional data to be furnished will depend upon the situation in the particular case and upon the character of the issues remaining in dispute. Generally, photostatic or other copies of such documents and records as the contracting officer may require will be sufficient for the purposes of the contracting officer and for this reason originals should not be required except where the authenticity of particular documents is in dispute. In all cases the contractor should be given full opportunity to submit within a reasonable time such additional documents, records and other evidence as he may deem appropriate to support his claim.

(d) After a review of the additional accounting information prepared by his own office (see § 815.421 (b)) and any additional data or evidence furnished by the contractor, the contracting officer will make administrative findings of fact and a determination on the issues still in dispute and will transmit a copy of such findings and determination to the contractor by registered mail. In this communication the contracting officer should also refer the contractor to the provisions of his contract giving him any right of appeal which may exist (see § 803.326). Such determination shall be based upon the applicable formula in the termination article in the particular contract and shall comprehend the following items (without duplicating amounts included in partial settlements arrived at through negotiation):

(1) A summary of the costs to be paid under the formula settlement. Such costs should ordinarily be summarized in substantially the same manner as the summary shown on Standard Form A–1 (§ 815.937 (a)) with the detailed supporting data shown in the summary on Standard Form B–1 (§ 815.938 (a)) or on Standard Form B–2 (§ 815.938 (b)), whichever is applicable. Such summary of costs, however, may be in such form as the contracting officer deems appropriate in the particular case.

(i) When the costs are presented on the "inventory basis" the figures on the cost summary should be supported by an inventory list. Where the inventory is comprised of more than three pages, a reasonable analysis only will be presented. This analysis (which should not require more than one or two pages) should show the description, quantity, prices (if appropriate) and extensions of the important classifications of inventory. For example, raw material may be listed by major groupings, and principal purchased components may be briefly described. Work in process will be listed to show the dollar amounts by departments or other appropriate classifications.

(ii) When the cost summary is presented on the "total cost basis" each major element of cost on the summary should be supported by an appropriate short analysis or schedule of one or two pages. This analysis in respect to direct material will show to the extent practi-

cable the several major classes as indicated by the contractors' records, such as steel, copper, lumber, etc., subdivided as to grade for the major elements. Such a break-down should seldom include more than 15 or 20 items. Direct labor may be summarized by plant operations, production centers or other appropriate classifications, if the contractor's accounting system so provides or if such an analysis can be readily obtained. Other direct charges, if important, may be succinctly analyzed. Usually indirect factory expenses will be reflected in not more than 25 or 30 major accounts. The basis of allocation to the contract being terminated should be clearly described. A similar schedule should be submitted for administrative expenses and any other major groups shown on the cost summary if and to the extent deemed appropriate by the contracting officer.

(2) A statement of the amount allowed by the contracting officer by way of profit. If the contract contains the new uniform termination article (§§ 803.324, 815.901) this item of profit should show separately (i) the amount allowed with respect to the cost of articles or materials not processed by the contractor, and (ii) the amount allowed with respect to other costs of the contractor. If the contract contains the old standard form of termination article (see § 815.901a) the contracting officer will include a statement of his estimate of the profit which would have been realized on the uncompleted portion of the contract if the contract had been completed and his determination of the percentage of completion of the uncompleted portion of the contract, as well as the amount of profit allowed with respect to the work done on the uncompleted portion of the contract.

(3) A supporting analysis of disposal credits, if substantial or if they cannot be appropriately explained in the summary, segregated as to those arising from property retained by the contractor and those arising from sales to outsiders. In no event is it expected that such analysis will require more than two or three pages.

(4) A list of all settlements with immediate (first tier) subcontractors and suppliers with the name and address of each subcontractor and supplier and the amount of each settlement as approved or authorized by the contracting officer.

(5) A schedule of settlement expenses (sometimes referred to as post-termination expenses) including the cost of preserving and protecting the property. This schedule will show the major items by classification followed by a description where necessary to clarify the figures and should seldom exceed one page.

(6) The total amount found to be due to the contractor. (Any amounts payable to the contractor in connection with a partial negotiated settlement should be listed separately for purposes of information.)

(7) In addition to the accounting statements and schedules enumerated above, there should be furnished the following supplemental or collateral data:

(i) The administrative accounting reports to the contracting officer by Government accounting personnel.

(ii) Copies of correspondence directly bearing on the findings of the contracting officer.

(iii) An appropriate certificate by the contracting officer supporting his findings of fact and stating that the amount of the termination settlement agreement is in his judgment just and reasonable.

(e) In connection with a formula settlement, settlements with subcontractors and suppliers made with the approval of the contracting officer, prior or subsequent to the breakdown of negotiations will not be reexamined and the cost of such settlements will be reimbursed to the contractor under the applicable termination article as part of the formula settlement. Similarly, other action taken by the contractor prior or subsequent to the breakdown of negotiations in reliance upon the written approval of the contracting officer in connection with the termination settlement, e. g., dispositions of property, will be treated as final in connection with the formula settlement.

(f) If the contractor does not take an appeal from the decision of the contracting officer within the time set forth in the Disputes article of the contract (see § 803.326), the administrative findings of fact and determination of the contracting officer made in accordance with paragraph (d) above shall thereupon become the determination of the War Department with respect to the amount due to the contractor in connection with the termination or so much thereof as is dealt with in such determination.

(g) In the event of an appeal by the contractor from the decision of the contracting officer, the contracting officer will transmit to the appropriate appeals agency a narrative statement of the action, relevant to the issues raised by the appeal, taken prior to the appeal. He may in his discretion include such schedules, office reviews, audit reports and records as he deems appropriate. He will also transmit to the appeals agency a copy of his administrative finding and determination together with such other documents and papers as the rules of the appeals agency may require. At the present time most such appeals will be to the War Department Board of Contract Appeals (see §§ 803.318d to 803.318f (e)), although in some contracts made prior to the formation of that Board, appeals lie to the chief of the technical service concerned. The burden of proof as to the amount due rests upon the contractor. Upon a determination by the appropriate appeals agency, such determination shall thereupon become the determination of the War Department with respect to the amount due to the contractor in connection with the termination or so much thereof as is dealt with in such determination. In the event that the contractor does not accept the decision of the appropriate appeals agency, he remains free to prosecute any claim, which he may have and as to which the decision of the appeals agency is not final, without further action on the part of the War Department.

(h) The contracting officer shall retain in the files of the procurement office to which he is attached or in the office of the chief of the technical service, as the chief of the technical service may direct, a file containing copies of all written evidence and other data relied upon by him in making his administrative findings of fact and determination, except that original books of account and other original papers and documents may be returned to the contractor upon the contractor's agreement to preserve the same available for examination for a period of not less than three years from the date of final settlement.

(i) The chief of the technical service will notify the Director, Readjustment Division, Headquarters, Army Service Forces, of each such appeal which is taken either to the chief of the technical service, the War Department Board of Contract Appeals or any other appeals agency.

(j) (1) Notwithstanding proceedings have been commenced to make settlement by formula, the contracting officer, unless the chief of the technical service otherwise directs, may make or authorize a negotiated settlement with the contractor at any time prior to the time when the contracting officer has administratively determined the amount due on account of the formula settlement by sending to the contractor the communication referred to in paragraph (d) above.

(2) If the contracting officer's determination is, by the terms of the contract, subject to review by the Secretary of War, or his duly authorized representative, and if the contractor perfects his right to such review, the contracting officer unless the chief of the technical service otherwise directs, may make or authorize a negotiated settlement at any time prior to final action on such review (see § 803.308f).

(k) (1) Within 30 days after delivering to the contractor the findings and determination referred to in paragraph (d) above the contracting officer, upon the execution of a supplemental agreement similar in form to that set forth in § 815.922, but with modifications as hereinafter provided, will authorize a partial payment to the contractor of 75% of the amount determined by him to be due, after deducting from said 75% the amount of any outstanding interim financing applicable to the contract in process of termination, including any previous partial payments. The contracting officer before approving such a partial payment, may require a statement by the contractor that the payment requested has not been assigned, and if it has been assigned, will require the written consent of the assignee to the making of the payment, as provided under § 815.501 (d).

(2) In preparing a supplemental agreement for the purposes of a partial payment under this paragraph, the third and fourth recitals of the form of supplemental agreement set forth in

§ 815.922 will be revised to read as follows:

Whereas, under the terms of the said Contract, under the First War Powers Act, 1941, and Executive Orders Numbers 9001 and 9112, payments may be made to the contractor pending final payment of the amount to which the contractor will be entitled by reason of such termination, and

Whereas, the contractor hereby represents to the Government that at least the sum of $_____ is due the contractor by reason of the termination of said contract and the Government desires to make a payment to the contractor pending final settlement of such contract.

The first two sentences of Article III of such form of supplemental agreement will be revised to read as follows:

ART. III. Said payments shall be applied against the amount finally payable by the Government to the contractor in connection with such termination. If such payments exceed the amount finally payable to the contractor in connection with such termination, the contractor agrees to repay the excess to the Government on demand together with interest thereon at the rate of 6% per annum from the date of receipt of such excess payment by the contractor to the date of the repayment of such excess.

(l) After a final determination of the amount due to the contractor has been made by the War Department in accordance with paragraphs (f) or (g), if the contractor is prepared to accept that determination, a voucher should be prepared in the usual manner, covering such portion of the determined amount as remains unpaid and will be presented to the finance officer. Normally this unpaid amount will be the 25% remaining after the 75% partial payment authorized by paragraph (k). The finance officer will forward to the Office of the Fiscal Director, Headquarters, Army Service Forces, the voucher, together with the findings of fact, determination and supporting papers referred to in paragraph (d), and also any finding on appeal which may have been made (see paragraph (g) above). The Office of the Fiscal Director will review the file and take such steps as are necessary to establish the sufficiency of supporting papers. When this has been done the file will be returned by the Office of the Fiscal Director to the finance officer with appropriate instructions, and any amount due will be paid to the contractor after the execution of a supplemental agreement which will constitute a release by the contractor of all further charges under the contract.

§ 815.561 *Disputes.* Questions of fact relating to termination settlements are subject to determination by the contracting officer subject to appeal by the contractor under the usual disputes article (§ 803.326) and in accordance with its provisions. However, the contracting officer in his absolute discretion may refuse to agree to make a negotiated settlement of the whole or any part of the amount due upon a terminated lump sum contract, and his action in so refusing is not subject to appeal under the disputes article.

SUBPART C—LUMP SUM CONSTRUCTION CONTRACTS

§ 815.600 *Introductory.* The policies and procedures set forth in Subpart B shall in general be considered as guides for, and applicable to, the termination of lump sum construction contracts. In some instances the strict application of those policies and procedures will not be possible because the lump sum construction contract termination article (§ 803.324 (a)) varies in some respects from the lump sum supply contract termination article (§ 803.324). The outstanding variations are indicated in § 815.601.

§ 815.601 *Variances in provisions of lump sum construction and lump sum supply termination articles.* Some of the outstanding differences in provisions of these articles are as follows:

(a) The lump sum supply termination article (§ 803.324) is operative only as to the uncompleted portion of the contract while the lump sum construction termination article (§ 803.324 (a)) is operative as to all the work covered by the contract.

(b) In determining what constitutes a proper negotiated settlement under a lump sum contract the entire contract must be considered and not merely the uncompleted portion of the contract.

(c) The lump sum supply termination article specifically provides for delivery to the Government, f. o. b. a stated point, such property acquired in connection with the contract as the contracting officer may direct, while the lump sum construction termination article contemplates delivery of such property at the project site.

(d) Even though the lump sum construction contract has been let on a unit price basis the provisions of paragraph (a) above are applicable.

§ 815.602 *Consideration of certain principles peculiarly applicable to termination of lump sum construction contracts.* (a) The policy set forth in § 815.311 (b) should be adhered to in terminating lump sum construction contracts.

(b) The instructions contained in the last sentence of § 815.325 (b) should be observed.

(c) As is true in connection with the terminations of lump sum supply contracts it is not intended in negotiating the termination of lump sum construction contracts that the contractor is to be allowed any prospective profit on work not done. (See § 815.449.)

(d) In all lump sum construction contracts there is a "mobilization cost" which bears many resemblances to the "starting load costs" of lump sum supply contractors. (See § 815.496.)

(e) The principles expressed in § 815.315 are pertinent to military lump sum construction contracts but not applicable to River and Harbor and Flood Control lump sum construction contracts.

§ 815.603 *Clause providing for sale of Government property by contract.* When the lump sum construction termination article is altered to make provision for sale of Government-owned property by the contractor, the clause set forth in § 815.376 (b) should be altered by adding the following sentence to the end thereof: "The provisions of this paragraph (d) shall not be considered as operative as to any property which has been attached to and is a part of real estate."

§ 815.604 *Notice of termination and request for negotiated settlement.* When the contract contains or has been amended to contain an article substantially in the form set forth in § 803.324 (a), the notice of termination and request for a negotiated settlement shall be in conformity with § 815.912 (a).

§ 815.605 *Suspension procedure.* If after consideration of all factors it is deemed advisable to suspend work under a contract without terminating the contract in its entirety, a supplemental agreement shall be negotiated to compensate the contractor for all completed work plus an equitable amount representing the expense of demobilizing contractor's plant and organization. Such supplemental agreement shall also provide for a redetermination of the contract price applicable to the remainder of the work to be performed under the contract; the redetermination to be made at the time resumption of work is requested by the Government. A supplemental agreement of this type shall also contain the standard article providing for termination for the convenience of the Government (§ 803.324 (a)), if the contract does not already contain such an article substantially in the form currently prescribed, so that, if the Government later deems it advisable to complete the project or work through another contractor, or abandon the work entirely, the contract may be terminated in accordance with its terms. The supplemental agreement shall also provide that, in case of disagreement between the contracting officer and the contractor as to the contract price applicable to the remainder of the work at the time the Government desires resumption of the work, the contract shall be terminated in accordance with the termination for the convenience of the Government article incorporated therein by such supplemental agreement. This procedure will be particularly pertinent to lump sum construction contracts for civil work. Supplemental agreements effecting a suspension of the performance of contracts as contemplated in this paragraph shall be executed subject to the approval of the Chief of Engineers.

SUBPART D—COST-PLUS-A-FIXED-FEE CONTRACTS

General

§ 815.650 *Distinction between termination articles of cost-plus-a-fixed-fee contracts and lump sum contracts.* (a) The termination of cost-plus-a-fixed-fee contracts presents a number of prob-

lems different from those presented by the termination of lump sum contracts. The differences rest (1) upon the nature of a cost-plus-a-fixed-fee contract as one under which the Government obligates itself to reimburse the contractor for all of stated categories of costs incurred by him and to pay him a fixed fee in lieu of; and usually smaller than, a normal profit upon a lump sum contract; and (2) the special provisions of the termination articles usually found in such contracts. Since the termination articles are for use in contracts being carried out on a cost basis, they provide primarily for:

(i) Discontinuance of the contractor's performance,

(ii) Transfer to the Government (or other appropriate disposition) of property in the hands of the contractor which has been acquired for the contract,

(iii) Payment of the contractor's costs so far as not already paid, and

(iv) Adjustment of the fixed fee in the light of the reduced amount of work.

Many of the articles also provide for the assumption of the contractor's liabilities and commitments related to the contract.

(b) The discussion in this Subpart D relates primarily to the termination of cost-plus-a-fixed-fee supply contracts. However, the procedures herein discussed are in many instances equally applicable to cost-plus-a-fixed-fee construction contracts (see § 815.659 *et seq.*,).

§ 815.651 *Steps in the termination of cost-plus-a-fixed-fee contracts.* Termination of each cost-plus-a-fixed-fee contract will be made in accordance with the provisions of the termination article in such contract. However, the following general steps listed in the following paragraph will be applicable to any termination of a cost-plus-a-fixed-fee contract:

(a) *Issuance of a notice of termination and action directed therein.* The contracting officer will issue a notice of termination (see §§ 815.914 and 815.915) to the contractor ordering the contractor to stop all work and the making of all commitments and directing him to issue similar orders to all subcontractors, vendors and suppliers, and to request them to furnish statements of charges on account of such termination. Provision may be made for ordering the continuation of some of the work, in the discretion of the contracting officer. With respect to the issuance of a notice of termination, the following provisions of this part relating to the termination of lump sum supply contracts are also applicable to the termination of cost-plus-a-fixed-fee contracts.

(1) Preparatory steps, §§ 815.301 to 815.306, 815.312, 815.313, 815.315.

(2) Service of termination notice and action connected therewith, §§ 815.320 and 815.321 except paragraph (b) and so much of paragraph (i) as relates to the preparation of a proposal by the contractor himself for a settlement by negotiation. [He should, of course, obtain a statement of charges and a proposal for settlement from each of his subcontractors and suppliers despite the fact that the Government may have agreed to assume his commitments to such subcontractors and suppliers.]

(3) Initial conference, §§ 815.322 and 815.323, except so much as relates to preparation of a proposal by the contractor himself for a settlement by negotiation.

The attention of the contractor should be directed particularly to the necessity of prompt performance of the applicable obligations listed in § 815.321.

(b) *Termination and settlement of subcontracts.* Subcontracts and purchase orders of the prime contractor will be (1) assumed by the Government and settled by the contracting officer or (2) settled by the contractor, depending on the terms of the termination article in the terminated prime contract. In any event, however, the prime contractor will take steps forthwith upon receipt of the termination notice to terminate subcontracts and purchase orders in compliance with such notice, to obtain inventories, accounting data and cost statements and proposals for a negotiated settlement of any lump sum subcontracts and purchase orders. (See §815.325 (c).) In the case of cost-plus-a-fixed-fee subcontracts, in lieu of proposals for a negotiated settlement, the prime contractor will obtain the accounting data and vouchers necessary to permit final determination and payment of the reimbursable costs under such subcontract and to make any necessary adjustment of the fixed fee thereunder.

(c) *Settlement of fixed price (lump sum) subcontracts, purchase orders and obligations.* (1) Numerous cost-plus-a-fixed-fee contracts now in effect contain a provision for termination for the convenience of the Government substantially in the form set forth in § 803.350. In terminating such contracts, effort will be made to obtain the full cooperation of the prime contractor in connection with the termination and settlement of his obligations and commitments. The contractor clearly remains liable upon his subcontracts and commitments. He is also plainly under obligation to obtain from his subcontractors, vendors and suppliers their statements of amounts due on account of the termination or cancellation of their subcontracts, purchase orders and other commitments and to lend all reasonable assistance in their settlement.

(2) Reimbursement will be made to a prime contractor (whose cost-plus-a-fixed-fee contract is in process of termination) of any amount paid by the prime contractor to a subcontractor or other obligee under a fixed price (lump sum) subcontract, purchase order or obligation pursuant to a termination settlement agreement with the subcontractor,

(i) if the prime contractor negotiates such settlement in good faith with the subcontractor or other obligee for the purpose of agreeing upon an amount which the subcontractor or other obligee will accept in satisfaction of his claim;

(ii) if the amount thus agreed upon is embodied in a settlement agreement between the prime contractor and subcontractor or other obligee releasing the prime contractor and Government from any further liability; and

(iii) if the settlement in question is approved by the contracting officer as being a reasonable and proper settlement and in the best interest of the Government.

The foregoing principles are applicable regardless of whether or not the subcontract, purchase order or other obligation includes a termination article and, if it includes a termination article, regardless of whether such article includes a settlement formula or provides expressly that upon termination, settlement of the subcontract, purchase order or other obligation may be made by negotiation.

(3) In determining the fair amount of the adjustment to be made in the fixed fee of a contractor, whose cost-plus-a-fixed-fee contract has been the subject of a notice of termination for the convenience of the Government pursuant to an article like that set out in § 803.350 (see especially subparagraph (3) (v)) or in § 815.905 (see especially subparagraph (2) (d) of such article), the extent of the work and cooperation of the contractor in effecting settlement of the prime contract and of subcontracts may be given consideration. Ordinarily, assignments to the Government of subcontract rights will not be made by the contractor unless the contracting officer is of the opinion that some pecuniary or administrative advantage to the Government will result from such assignment and specifically directs that it be made.

(4) In some cost-plus-a-fixed-fee contracts[1] there has been included a termination article (hitherto principally used by the Ordnance Department) providing expressly that it is the duty of the prime contractor to settle the amount due to subcontractors, vendors and suppliers on account of termination. Under contracts containing an article of this type, subcontract settlements will be made by the prime contractor in accordance with the procedure set forth in subparagraph (2) above. It is expected that shortly an approved uniform termination article for use in cost-plus-a-fixed-fee supply contracts will be prescribed which in general will be of the type described in this subparagraph.

(5) It is the general policy of the War Department to encourage, to the greatest extent possible, the settlement by the prime contractor of all obligations arising out of the termination of subcontracts, purchase orders or other commitments as the result of the termination of a cost-plus-a-fixed-fee contract, as such settlement tends to expedite payments to subcontractors.

(d) *Settlement of cost-plus-a-fixed-fee subcontracts, purchase orders and other obligations of the prime contractor.* Ordinarily, it will be feasible to settle cost-plus-a-fixed-fee subcontracts, purchase orders and other commitments of a prime contractor under a cost-plus-a-fixed-fee prime contract in accordance

[1] The nature of this article is such that it has not been regarded as appropriate for use in connection with cost-plus-a-fixed-fee construction contracts.

with the terms of the instrument containing such cost-plus-a-fixed-fee obligation. If this is done, audit and payment of the unreimbursed costs of such obligation will be made in a manner consistent with the applicable instructions set forth in the appropriate War Department Manual for Administrative Audits of cost-plus-a-fixed-fee contracts[1] However, in the interest of expeditious settlement of such claims, the prime contractor and the subcontractor may settle by negotiation in the manner set forth in paragraph (c) (2), all amounts due with respect to the subcontract, the amount of any adjustment of any fixed fee payable under the subcontract, and the costs and expenses incurred by the subcontractor in connection with the termination and settlement of such cost-plus-a-fixed-fee subcontract; and the amount of any such settlement, when approved by the contracting officer as made in good faith and with protection of the interests of the Government, shall be reimbursable to the prime contractor.

(e) *Authorization of direct payment of subcontractors in certain cases.* (1) The procedure set forth in this paragraph is authorized in connection with the termination of any prime contract containing (i) a termination article in substantially the form set forth in §§ 803.350, 815.903, or 815.905, under which it is provided the Government "shall assume and become liable for" certain obligations of the contractor, or (ii) a provision (which may be inserted by amendment) permitting the direct payment by the Government of obligations of the prime contractor related to the prime contract and the release of the Government, by virtue of such direct payment, of all liability with respect to such obligations so paid.

(2) By any supplemental agreement between the prime contractor under a contract of the type mentioned in subparagraph (1) and a subcontractor, entered into pursuant to paragraph (c) or (d), fixing the amount owed by the prime contractor to the subcontractor, the parties thereto may agree (i) that payment of such amount when approved by the contracting officer, will be made by the Government directly to the subcontractor and (ii) that, upon the making of such direct payment the Government will thereby be discharged of all liability to the prime contractor and to the subcontractor with respect to the obligation settled by such supplemental agreement. Direct payment to the subcontractor of the amount agreed upon in such supplemental agreement may be made by the Government upon the approval of the supplemental agreement by the contracting officer.

(3) Such direct payments under prime contracts of the type referred to in subparagraph (1) will frequently expedite termination settlement of such prime contracts and will facilitate the prosecution of the war. Accordingly, the chief of each technical service may authorize the amendment of any such prime contract pursuant to the First War Powers Act and Executive Order No. 9001, either before or after the giving of a notice of termination of such prime contract, to provide for such direct payment.

(4) In determining whether the procedure under this paragraph, permitting direct payments to subcontractors will be approved, the contracting officer should proceed only after adequate consideration of any possible legal problems in any case where the prime contractor or any intermediate subcontractor is believed to be in financial difficulties. This procedure should not be used in any case,

(i) Where the written consent of the prime contractor and any intermediate subcontractors has not been obtained, or

(ii) Where the amount of the payment may impair any right of set-off possessed by the Government or the ability of the Government to enforce any claim against the prime contractor.

In any case where the prime contractor, the subcontractor, or any intermediate subcontractor is in receivership, reorganization or bankruptcy, the advice of the Director, Readjustment Division, Headquarters, Army Service Forces, should be sought before utilizing this procedure.

(f) *Disposition of property.* (1) Government property in the hands of the prime contractor will normally be disposed of pursuant to the provisions of Part 807, especially Subpart B. Many cost-plus-a-fixed-fee contracts contain the provision set forth in § 803.363, relating to the disposition of Government-owned property placed in the care, custody or possession of the contractor in connection with the terminated contract. Under contracts containing this provision, sale of Government property pursuant to the terms of the provisions is expressly authorized by § 807.306. Attention is invited to the fact that this provision may be inserted by amendment in any cost-plus-a-fixed-fee contract heretofore or hereafter executed when it is determined by the chief of the technical service concerned that such an amendment will facilitate the prosecution of the war or is necessary to carry out the purposes in section I of the act of July 2, 1940 (Public Law 703, 76th Congress, 54 Stat., 712; see opinion of the Judge Advocate General dated May 14, 1943, SPJGC 1943/6630). In the absence of this provision, sale of cost-plus-a-fixed-fee termination inventories may be made by the contracting officer in accordance with the regulations relating to sales of termination inventories set forth in Part 807.

(2) Property in the hands of subcontractors, if title thereto has passed to the Government, may be disposed of consistently with the foregoing subparagraph (1). Property in the hands of subcontractors, title to which has *not* passed to the Government, but with respect to which a termination charge will be presented, may be disposed of with the approval of the contracting officer subject to the provisions relating to the sale of termination inventories set forth in Part 807.

(3) In the unlikely event that there should be any property acquired by the prime contractor in connection with the performance of a terminated cost-plus-a-fixed-fee contract, title to which has not passed to the Government, such property may be disposed of consistently with the provisions of this part governing the disposition of property in connection with lump sum contracts (see § 815.350 *et seq.*).

(4) Property which has finally and inseparably become a part of Government real estate will be disposed of in accordance with the provisions of law relating to disposition of such real estate and with any applicable provisions of the terminated contract or any related contract, as to options to purchase, disposition of property and similar matters.

(g) *Audit of costs incurred by the prime contractor.* Unlike the situation which exists with respect to a lump sum contract, machinery already exists, in the case of every cost-plus-a-fixed-fee contract, for the audit of the costs incurred by the prime contractor. Therefore, the unreimbursed costs, incurred both prior to the effective date of the termination notice and in connection with the termination, will be presented for reimbursement by the prime contractor under a terminated cost-plus-a-fixed-fee contract, in accordance with the terms of his contract, and will be audited by the appropriate auditing personnel at the direction of the contracting officer in accordance with such terms and in accordance with the applicable instructions set forth in the appropriate War Department manual for administrative audit of cost-plus-a-fixed-fee contracts (see paragraph (d), note 1). Similar audit will be made in the case of cost-plus-a-fixed-fee subcontracts and purchase orders. In reviewing settlements of lump sum subcontracts and purchase orders arrived at by the contractor, the contracting officer and accounting personnel will be guided, in so far as applicable, by the provisions of this part, and by the Termination Accounting Manual, relating to the review of settlements with subcontractors made by fixed price prime contractors.

(h) *Determination of costs.* In effecting settlement of terminated cost-plus-a-fixed-fee contracts, the provisions of the particular contract governing reimbursable costs will determine what costs are properly allowable. Some cost-plus-a-fixed-fee contracts embody Treasury Decision 5000 in their definition of costs. It should be recognized that the definition of costs contained in Treasury Decision 5000 is, in some material respects, different from the definition contained in this part (§815.480 *et seq.*).

(i) *Payments and adjustments of fixed fee.* (1) The amount of the prime contractor's fixed fee due and unpaid to the effective date of the termination notice will be computed, adjusted and paid in accordance with the terms of the terminated contracts.

(2) Where, in the event of termination, the fixed fee is to be revised on the

[1] (a) *Cost-plus-a-fixed-fee supply contracts*—See "Manual for Administrative Audit of Cost-Plus-A-Fixed-Fee Supply Contracts", 14 August 1942.

(b) *Cost-plus-a-fixed-fee construction contracts*—See "War Department Corps of Engineers—Manual for Administrative Audit of Cost-Plus-A-Fixed-Fee Construction Contracts" 29 August 1942.

basis of an estimate of the percentage of the completion of the contract, the contracting officer will ordinarily take into account the following factors:

(i) The ratio of the actual costs incurred to the amount estimated by the contracting officer as of the date of the notice of termination (in the light of actual experience in the performance of the contract) as the probable total cost of the contract if it had been completed.

(ii) The extent to which costs already incurred involve only the purchase of raw materials and standard parts and supplies.

(iii) The ratio of completed units delivered to the total units to be delivered by the contractor.

(iv) The character and quality of the work done and of that which remains to be done, including the extent to which engineering work, production scheduling, planning, technical study and supervision, and other services involving special skill and knowledge have been performed by the contractor.

(v) The extent to which the work of arranging and supervising a program of subcontracting of importance in the performance of the contract has been done.

(vi) The cooperation of the contractor in connection with the termination of the contract, including his efficiency in settling the claims of subcontractors and in disposing of surplus property.

(vii) Other relevant factors present in the particular case.

(3) In the event of a reduction or partial termination of a contract, the revision of the fixed fee should normally be based on consideration of the estimated decrease in the cost of performing the contract together with consideration of any of the factors enumerated above that may be pertinent in the circumstances.

(4) In arriving at the amount of the adjustment in the fixed fee the contracting officer should give consideration to the views of the contractor with respect to the factors on which the adjustment was based, and where possible, with proper protection of the Government's interests, should reach an agreement with the contractor as to the amount of the adjustment.

(5) If the contract provided for adjustment of the fixed fee, in the event of total or partial termination, upon the basis of some other criterion than percentage of completion, such adjustment will be made in accordance with the applicable provisions of the contract giving weight to the factors set forth in subparagraph (2) above so far as they may be relevant.

§ 815.652 *Authority to terminate cost-plus-a-fixed-fee contracts.* The chiefs of the technical services may prescribe rules and regulations, consistent with the provisions of this part, governing the authorization of the termination of cost-plus-a-fixed-fee contracts under their respective jurisdictions.

§ 815.653 *Form of notice of termination.* Whenever the complete termination of a cost-plus-a-fixed-fee supply contract has been authorized by proper authority, such termination will be effected by a notice substantially in the form set out in § 815.914 (a) or 815.914 (b), whichever is appropriate (see as to construction contracts § 815.661).

§ 815.654 *Payments of costs duly determined.* Pending the final determination of the total amount due the contractor on account of termination, the contracting officer is authorized to make partial payment on account thereof against approved-reimbursement vouchers or vouchers for the payment of approved portions of the fixed fee. Full utilization will also be made of available advance payment balances for the same purposes, consistently with the principles outlined in §§ 815.508 to 815.511 (a), inclusive, so far as applicable.

(a) *Interim financing.* (1) Except as provided in subparagraph (2) below, the provisions of §§ 815.500 to 815.529, relating to interim financing, are generally applicable to cost-plus-a-fixed-fee contracts.

(2) Where advance payment funds have been established they should be utilized in lieu of partial payments. These funds are available for the payment of all termination costs, including the making of partial payments to subcontractors. In the case of a total termination such funds may be utilized on termination without further payment of interest (§§ 803.348a and 813.1321). In the case of partial terminations (whether effected under the termination article or the changes article of the contract), many advance payment agreements outstanding require the payment of interest. The procurement regulations have been amended so as to authorize the amendment of existing advance payment agreements, either before or after termination, to provide that in the case of partial or total terminations of prime contracts, the advance payment balance outstanding, to the extent that partial payments out of the revolving fund are made to subcontractors or suppliers against their termination claims, shall not bear interest from the time those partial payments are made until the contractor is reimbursed for termination settlements with such subcontractors. (See §§ 803.321 (m) and 803.349a.)

(3) Where advance payment funds have not been established, partial payments on account of amounts due to a cost-plus-a-fixed-fee contractor on a termination (including amounts necessary to put him in funds, or to reimburse him, for partial payments to subcontractors) may be made, provided the cost-plus-a-fixed-fee contract contains a provision authorizing such payments. Partial payments will assist materially in enabling contractors and particularly fixed-price subcontractors affected by termination to undertake other war work or other productive enterprise at an early date, in a manner consistent with the public interest. Accordingly, pursuant to the First War Powers Act, 1941, and Executive Order No. 9001, authority is delegated to the chiefs of the several technical services to amend cost-plus-a-fixed-fee contracts by including therein a provision for partial payments substantially in the form of the provision contained in paragraph (g) of the uniform termination article (§§ 803.324, 815.901). It is determined that the making of such amendments will facilitate the prosecution of the war. Each such amendment will recite that it is made pursuant to the First War Powers Act, 1941, and Executive Order No. 9001. Partial payments made pursuant to this authorization shall comply with the requirements of §§ 815.505 to 815.507 (d). Reimbursement of cost-plus-a-fixed-fee contractors for costs and expenses paid to subcontractors in partial or final settlement of their termination claims are not to be regarded as partial payments within the contemplation of § 815.505 to 815.507 (d), and such reimbursement may be made regardless of whether or not the contract contains a provision authorizing the making of partial payments.

§ 815.655 *Final settlement agreement.* Upon the determination of the total amount due the contractor as reimbursement for all costs incurred in accordance with the terms of the contract, and of the total amount due the contractor as payment of the fixed fee in accordance with the terms of the contract, and concurrently with the final payment of cost reimbursement and of the fixed fee, the contracting officer and the contractor will execute a final settlement agreement,[1] in the form of a supplemental agreement to the contract (see § 815.934). Such supplemental agreement will set forth the amount of such final payment of cost reimbursement and of the fixed fee, will state the terms of any adjustment of the fixed fee, will state that all Government property under the contract and theretofore undisposed of has been delivered to the Government, will list such property or will incorporate a list thereof by reference, will embody a general release by the contractor and the Government of all claims against each other, and will state in detail all the exceptions to said release (see, for list of such possible deductions, exceptions and reservations, § 815.537 (b)). The contracting officer will determine whether there will be any negotiated adjustment of the fixed fee which makes desirable coordination of the settlement agreement with statutory renegotiation.

§ 815.656 *Release provisions of terminated contract; anticipated litigation.* The release provisions of the particular terminated cost-plus-a-fixed-fee contract should be followed in framing the releases to be inserted in the settlement agreement. Where there is substantial risk of later litigation (for example, actions under the Wages and Hours Act, State taxes) affecting reimbursable costs under the terminated contract, such items may be expressly excepted from the releases if the contract provision with respect to releases (either as originally set forth in the contract or as inserted by amendment) authorizes such exceptions.

[1] No such final settlement agreement need be entered into where, as in the case of a cost-plus-a-fixed-fee construction contract, the problems incident to the termination are relatively simple and the terms of the termination article are self-operating.

§ 815.657 *Alternative procedures.* Subject to the provisions of §§ 815.106, 815.108, 815.220, and 815.207 to 815.209, inclusive, chiefs of the technical services may authorize the adoption of other procedures, consistent with this part, for the termination of particular cost-plus-a-fixed-fee contracts the provisions of which render compliance with any or all of the foregoing procedures inappropriate or inexpedient.

§ 815.658 *Review of settlement agreements.* (a) Except with respect to the adjustment of fixed fees, the review procedure set forth in § 815.220 is applicable to cost-plus-a-fixed-fee prime contracts and fixed-price and cost-plus-a-fixed-fee subcontracts thereunder, so far as settlement of such contracts is accomplished by a negotiated settlement. (See § 815.651 (c) and (d).) Review by the settlement review board is not required in the case of costs which are not settled by negotiation but are reimbursed after appropriate audit.

(b) All supplemental agreements adjusting fixed fees in connection with the complete termination of a cost-plus-a-fixed-fee prime contract or subcontract will be submitted to the review board for approval prior to execution. In the case of a partial termination such review will be required where the estimated cost of the work terminated exceeds $50,000. If such adjustment of fixed fee is made by the contracting officer pursuant to any formula contained in the contract (see § 815.651 (i)) and not by a negotiated agreement, the function of the review board will be to advise the contracting officer with respect to the reasonableness of the proposed adjustment.

§ 815.658a *Assignment to Government of premiums due under policies written under War Department Insurance Rating Plan upon termination or completion of cost-plus-a-fixed-fee contracts.* See § 804.484.

Cost-Plus-a-Fixed-Fee Construction Contracts

§ 815.659 *Introductory.* The discussion in §§ 815.659 to 815.667 relates exclusively to the termination of cost-plus-a-fixed-fee construction contracts. The term "cost-plus-a-fixed-fee construction contracts" as used in §§ 815.659–815.667, unless it is specifically indicated otherwise, shall be deemed to be applicable to cost-plus-a-fixed-fee construction, architect engineer, and architect-engineer-manager contracts. Except as hereinafter indicated in §§ 815.659 to 815.667, the provisions of §§ 815.650 to 816.658a inclusive of this Subpart D shall be considered as generally applicable to cost-plus-a-fixed-fee construction contracts.

§ 815.660 *Certain provisions not applicable to cost-plus-a-fixed-fee construction contracts.* The provisions of §§ 815.313 and 815.321 referred to in § 815.651 (a) will not be considered as applicable to cost-plus-a-fixed-fee construction contracts. The forms of notices hereinafter prescribed in §§ 815.659 to 815.667 adequately suggest the steps which should be taken by contracting officers in advance of serving the termination notice.

§ 815.661 *Notice of termination of entire contract.* In the event it is determined that the entire contract is to be terminated, notice thereof shall be given to the contractor in the form set out in § 815.915 (a). The termination for convenience articles (§ 803.350; see also Article VI, W.D. Contract Form No. 3, § 813.1303; Article III-L, W.D. Contract Form No. 4, § 813.1304; Article XVI, W.D. Contract Form No. 12, § 813.1312), provide that unless the notice of termination directs otherwise, the contractor shall, among other things, proceed to cancel all existing orders and terminate all subcontracts. In many instances, it may not be desirable for the contractor to cancel all unperformed purchase orders and terminate all unperformed subcontracts, the performance of which by vendors or subcontractors is necessary to the completion of the project, even though the prime contract is terminated. If such purchase orders and subcontracts are terminated, advantage thereof cannot be taken. Therefore, care should be exercised in listing of those purchase orders and subcontracts, as required under paragraph 3 of the form (§ 815.915 (a)), which the contracting officer thinks should be performed as well as all those which he thinks further investigation might reveal should be fully performed. Purchase orders and subcontracts which have been fully performed by vendors and subcontractors should not be listed.

§ 815.662 *Partial termination notice.* Where it is deemed desirable merely to terminate a portion of a contract for the convenience of the Government, the form set out in § 815.915 (b), shall be used. It will ordinarily be impracticable for the contracting officer to list all purchase orders and subcontracts which are pertinent only to that portion of the work which is not to be terminated. Therefore, paragraph 3 of the form to be used does not provide for listing of any purchase orders and subcontracts. Consequently, the portion of the contract which is not to be terminated should be described with particularity under paragraph 2 of the form. A notice of partial termination should not be issued under a termination for the convenience of the Government article in any case where it would be appropriate to issue a change order under the change article to eliminate work. Furthermore, the notice for partial termination should not be used where the project is nearing completion and only a minor amount of work remains uncompleted.

§ 815.663 *Termination for the fault of the contractor.* Where a cost-plus-a-fixed-fee construction contract is terminated for the default of the contractor, the form set out in § 815.915 (c) shall be used.

§ 815.664 *Stop orders.* Stop orders shall not be used to effect termination of cost-plus-a-fixed-fee construction contracts or in anticipation of such termination, since their use is incompatible with the notices of termination prescribed by these regulations and with the termination for the convenience of the Government article. Their proper use in connection with cost-plus-a-fixed-fee construction contracts is limited to effecting a temporary cessation of work during the course of the performance of the contract.

§ 815.665 *Assignment of subcontracts to the Government.* The form set out in § 815.915 (d), shall be used in all cases where it has been determined that an assignment to the Government of an instrument is to be made. It does not follow that all unperformed purchase orders, subcontracts, and other commitments should be assigned to the Government merely because they are unperformed at the time a contract is terminated. The contracting officer should require an assignment only in cases where there is a pecuniary or an administrative advantage to be obtained. In all cases of an assignment, the vendor or subcontractor should be notified thereof by letter.

§ 815.666 *Reimbursable and non-reimbursable expenditures.* All articles used in cost-plus-a-fixed-fee construction contracts, which provide for termination for the convenience of the Government, stipulate that the contractor shall not be entitled to reimbursement for expenditures made after the date of termination, except for expenditures to protect Government property and for accounting services in settling the contract as are required or approved by the Contracting Officer. Those articles also provide that, if the contract is terminated due to fault of the contractor, no additional payments on account of the fee will be made. In the case of those contracts which are terminated for the convenience of the Government, the final voucher shall show that the contractor has been paid only that portion of the prescribed fee which the physical work actually completed bears to the entire physical work under contract less fee payments previously made. In order that the record may be complete, a finding of fact with regard to the portion of the contract work actually completed by the contractor shall be made and filed in the records of the contracting officer.

§ 815.667 *Service of notice of termination.* In the event a contractor refuses to acknowledge receipt of a notice of termination, the service thereof upon the contractor by leaving a copy with the contractor or by mailing the same to the contractor by registered mail, return receipt requested, has the same legal effect. If the notice is delivered in person, a memorandum to that effect should be made and filed in the records of the contracting officer.

SUBPART E—TERMINATION OF PRELIMINARY CONTRACTUAL INSTRUMENTS

§ 815.700 *Notices of award.* As used in this paragraph the term "notices of award" refers to a binding contractual instrument based on an offer by the contractor and signed by a contracting officer. Although such a notice of award will ordinarily not contain an article providing for termination for the convenience of the Government, such a notice of award may be terminated and settled in the same manner as provided

in this part for a formal definitive contract, which contains no termination article (§ 815.311), making due allowance for the difference between such an instrument and a formal definitive contract.

§ 815.701 *Letters of intent and letter orders*—(a) *Letters of intent and letter orders which contain standard termination provisions.* Letters of intent and letter orders which contain or have been amended to contain the standard termination provisions for inclusion in such instruments (see § 815.107 (b)) will be terminated in accordance with such provisions.

(b) *Where instrument does not contain standard termination provisions.* Where a letter order or letter of intent does not contain such standard termination provisions, and it is desired to terminate such an instrument, the contracting officer will make every reasonable effort to include the appropriate standard termination provisions (other than those which provide an allowance of profit) by amendment of such instrument in accordance with § 815.107 (b). If such amendment is effected, termination will be effected in accordance therewith. If no such amendment can be effected, then such instrument will be terminated (1) in accordance with any provisions for termination for the convenience of the Government, or any applicable provisions for termination in the absence of agreement upon a definitive contract, contained in such instrument, or (2) if the contract contains no such termination provisions, in accordance with the provisions of § 815.311.

§ 815.702 *Procedure on termination of letter orders and letter of intent under standard termination provisions.* In general, the procedure in terminating letter orders and letters of intent containing standard termination provisions will be similar to that provided in this part for definitive contracts of the type contemplated by the particular letter order or letter of intent being terminated. Due allowance for the differences between such instrument and definitive contracts will be made and the procdeures set out in this regulation need be used only so far as reasonably applicable to such temporary instruments. The chief of each technical service may prescribe instructions, not inconsistent with this part regarding termination of such instruments.

SUBPART F—REPORTS

§ 815.800 *Monthly Contract Termination Status Report.* Each procurement office (except those reporting to the Commanding General of a Service Command) will prepare a Monthly Contract Termination Status Report.

§ 815.801 *Report form.* The report will be prepared on W. D., A. G. O. Form No. 505 (Monthly Contract Termination Status Report). This report is carried in stock at the Adjutant General Pentagon Depot, Washington 25, D. C., and will be ordered by reference to W. D., A. G. O. Form No. 505. The Control Approval Symbol is PDE–10.

§ 815.802 *Matters to be covered.* The report will cover all terminations of contracts for the convenience of the Government, regardless of the type or amount of the contract. It will cover all such terminations completed during the month and those still in process. If no such terminations have been completed and none are in process, a negative report will be made. When a final settlement has been made with a contractor and reflected in a monthly report, it will not be reflected in subsequent reports. Cost-plus-a-fixed-fee contract terminations will be reported separately. "Cost-plus-a-fixed-fee" will be typed immediately below the report title of such reports. Any portion of a supply contract pertaining to facilities to be acquired for Government account will be excluded from each column of the report. (If no definite segregation is made in the contract, this instruction may be waived as to Column 7).

§ 815.803 *Date for submitting reports.* The report will be submitted monthly and will be filed with the office of the chief of the service (the Assistant Chief of Staff MM&D for Army Air Forces) on or before the 10th day of the month following that for which the report is made, or on any earlier date specified by the chief of the service.

§ 815.804 *Number of copies.* The number of copies of the report to be filed will be prescribed by the chief of the service.

§ 815.805 *Report to Contract Termination Branch, Readjustment Division, Headquarters, Army Service Forces.* On or before the 15th day of the month following that for which the report is made, the chief of each technical service (the Assistant Chief of Staff MM&D for Army Air Forces) will file with the Chief, Contract Termination Branch, Readjustment Division, Headquarters, Army Service Forces, the original and one copy of each monthly contract termination status report filed with him.

§ 815.806 *Instructions with respect to the report form*—(a) *Successive partial terminations.* (1) In the event that successive partial terminations are effected in regard to one prime contract, each such termination will be treated as a separate transaction (see paragraph (d) (1)) unless it is intended to settle all partial terminations in one supplemental agreement.

(2) When a further termination is made against a contract which has already been partially terminated, and it is intended to settle all partial terminations in one supplemental agreement, the previous partial termination or terminations should be listed in the "Rescinded" section of the Monthly Status Report with an appropriate explanation. The total terminations "to date" against the contract would then be picked up as a single authorized case under the date of the latest current termination.

(b) *Dollar amounts and dollar symbols.* The sums shown in the amount columns will be to the nearest dollar. Fractions of a dollar will not be shown. Likewise no dollar symbols ($) will be used in the amount columns.

(c) *Order of listing terminations.* (1) Terminations completed during the month will be listed first in chronological order (based on the effective date of termination). Above these, centered, there will appear the heading "Terminations Completed". Columns 8, 10, 12, 14, 15, 17, 18, 19, 20 and 21 are to be added individually and the totals entered in the respective columns.

(2) Terminations rescinded or transferred will then be listed in chronological order (based on the effective date of termination). Above these, centered, there will appear the heading "Terminations Rescinded or Transferred". Columns 8, 10, 12, 14 and 15 are to be added individually and the totals entered in their respective columns. This grouping is to represent cases previously reported as "Terminations in Process" which will not require completion of settlement action because of the reinstatement of the contract, or because of the transfer of administration to another procurement office. A termination transferred will not be so reported until the office to which the transfer was made has acknowledged receipt, and has stated that the termination will be picked up on its next report. Offices to which transfers are made will acknowledge receipt, advise the transferring office, and pick up the transferred case as authorized during the month (see paragraph (f)).

(3) Terminations in process will then be listed in chronological order (based on the effective date of termination). Above these, centered, there will appear the heading "Terminations in Process". Columns 8, 10, 12, 14, and 15 are to be added individually and the totals entered in their respective columns.

(d) *Columnar information.* There are set forth in the succeeding subparagraphs instructions with respect to the information to be contained in the various columns of the report form. Subparagraph (1) contains instructions with respect to Column 1. Subparagraph (2) contains instructions with respect to Column 2 and so forth.

(1) Column 1—Insert contract or other identification number. In the event that a contract under termination has more than one partial termination, the contract number will be entered for each of the additional partial terminations.

(2) Column 2—Name of contractor—Because of limited space, the full name of the contractor need not be given. Sufficient information will be given to permit identification.

(3) Column 3—Item—Because of limited space, the full description of the items need not be given. Sufficient information will be given to permit identification of the item being manufactured under the contract.

(4) Column 4—Partial or complete—Indicate by the symbol "P" or "C" whether the termination is partial or complete. A partial termination is one in which only a part of the uncompleted portion of the contract is terminated and the balance is to be continued after the effective date of termination. A complete termination is one in which the entire uncompleted balance of a con-

tract is terminated. From a practical standpoint, it may be said that a complete termination is one in which the contract price of items cancelled is equal to the entire remaining balance of the contract.

(5) Column 5—Date termination authorized—The date of termination authorization will be the date on which the authorization of termination was written in the office of the chief of the service. There may exist, however, certain cases wherein termination proceedings are initiated prior to approval from the office of the chief of the service. In such cases, the date on which the termination action was initiated by the contracting officer will be used as the date of termination authorization.

(6) Column 6—Effective date of termination—This is the date designated in the notice of termination as the effective date of termination. With particular reference to partial termination, this is the date the contractor is required to take action to stop work and cancel subcontracts with respect to the terminated portion of the contract. This is not to be construed as meaning the estimated date of completion of the continued portion of the contract unless no action is to be taken by the contractor until the continued portion of the contract is completed. In the event of successive partial terminations affecting the same contract, effective dates for each will be shown. In all instances where the effective date of termination is changed from that shown on the previous month's report, the revised date will be prefixed by "R". The reason for such changes will be explained in the space provided for status of settlement action.

(7) Column 7—Amount of contract—Enter the total amount of the contract and all supplements as of the date of termination authorization.

(8) Column 8—Total contract price of items cancelled—This column is to reflect the dollar value of the terminated portion of the contract. In some instances it may not be possible to determine accurately the exact contract price of items cancelled. In such cases the best possible estimate will be used until correct figures can be ascertained. In all instances where the total contract price of items cancelled is changed from that shown on the previous month's report, the revised amount will be prefixed by "R".

(9) Column 9—Contractor's proposal—Date of filing—Enter the date on which the contractor's proposal was received. In the event of partial proposals or revisions of proposals previously submitted due to post termination expenses, etc., carry the original date until the case has been completed. Dates of revised claims will be shown below the original date prefixed by "R".

(10) Column 10—Contractor's proposal—Amount exclusive of subcontractors—This column is to reflect the dollar amount representing the contractor's proposal for settlement of the terminated contract. The amount will be exclusive of (i) charges submitted by subcontractors to the prime contractor and (ii) the contract price of all completed units which have been or will be accepted under the contract. Thus this amount will represent the prime contractor's statement of charges with respect to the uncompleted portion of the contract (prior to negotiation), and therefore the difference between this amount and the amount entered in Column 17 will represent the net change resulting from negotiations. In the event of contractor's revision of preliminary or partial proposals, exclusive of reductions arising from negotiation, the amount of the most recent revision will be shown opposite the most recent revision date (see Column 9). Previous claim figures will be omitted, but the dates of such previous claims will continue to be shown. Explanation of the revision will be made in space provided for explanations of status.

(11) Column 11—Subcontractors' claims—Number of claims submitted—Enter number of first tier subcontractors' claims submitted by the prime contractor to the office administering the termination. This includes claims of suppliers and vendors of standard articles.

(12) Column 12—Subcontractors' claims—Total amount—Enter the total dollar value of all first tier subcontractors' claims submitted by the prime contractor to the office administering the termination. This column is intended to represent the amounts approved by the prime contractor, and is not necessarily the same as the amount approved by the contracting officer in final settlement as shown in Column 18.

(13) Column 13—Subcontractors' claims—Number of claims approved—Enter the number of first tier subcontractors' claims which have been approved by the contracting officer as of the date of preparation of the report.

(14) Column 14—Partial payments—For the benefit of prime contractor—Enter the total amount of partial payments made to the prime contractor covering amounts intended solely for the use and benefit of the prime contractor. Advance payments or payments made as reimbursement for costs under a CPFF contract will not be included. Advance payments are to be noted in the space provided for explanations of status of incomplete cases.

(15) Column 15—Partial payments—For benefit of subcontractors—Enter the total amount of partial payments made for the use and benefit of subcontractors whether such amounts are paid to the prime contractor for the account of the subcontractors or are paid direct to subcontractors.

(16) Column 16—Details of final settlement—Date—Enter the date on which the supplemental agreement incorporating the final settlement is received by the contracting officer, signed by both the contractor and the contracting officer. For those services requiring approval by the office of the chief, the transaction must be considered as pending until this approval is received.

(17) Column 17—Details of final settlement—Gross amount excluding subcontractors—This represents the gross amount of the settlement agreement including expenses subsequent to termination but excluding that portion of the contractor's settlement represented by payments to subcontractors. Differences between Columns 10 and 17 represent negotiated reductions between the contractor's claim and the final settlement.

(18) Column 18—Details of final settlement—Amount subcontractors—Enter the amount of payments made to subcontractors by the prime contractor and thus included in his final settlement. Differences between Columns 12 and 18 represent any negotiated reductions made by the contracting officer in subcontractors' settlements previously approved by the prime contractor and submitted to the contracting officer for approval.

(19) Column 19—Details of final settlement—Disposal credits—The amount credited to the Government by the prime contractor for receipts from sales or retention of property included in his gross settlement proposal. Sales to the Government under Purchase Orders will be included in this column and will not be confused with the amount allowed for property taken over by the Government as reported in Column 21.

(20) Column 20—Details of final settlement—Net amount of settlement—The net payment to the contractor in settlement of the proposal. This is Column 17 plus 18 minus 19.

(21) Column 21—Details of final settlement—Amount allowed for property taken over by the Government—The amount which is allowed to the contractor for property taken over by the Government will be shown in this column. This is the amount included in the net settlement, shown in Column 20, required to reimburse the contractor for the cost of his inventory taken over by the Government. When an exact allowance cannot be assigned to this property, as in some settlements on a total cost basis, the best possible estimate will be given.

(e) *Special instructions with respect to Columns 16, 17, 18, 19, 20 and 21.* These columns will be filled in only for terminations which have been completely settled during the month. In the case of "Terminations in Process", the space occupied by these columns will be used to explain briefly the status of settlement action. Such explanations will include such information as "Awaiting Contractor's Claim", "Property Disposal", "Contractor's Settlement Proposal Being Audited", "In Process of Negotiation" ("In Process of Negotiation" is considered to apply only to such cases in which audit and property disposition is completed), "Awaiting Final Agreement" and so on. In termination involving subcontractors, it is desirable to show the total number of first tier subcontractors from whom claims are expected, so as to provide a comparison between probable subcontractors' claims and subcontractors' claims submitted as shown in Column 11.

(f) *Reconciliation—Number of terminations.* A reconciliation of the number of terminations received, completed and on hand is to be shown on the last sheet of each report and in the following form:

Terminations pending per last report.
Terminations authorized during month.
Total terminations to be accounted for.

Terminations settled during month.
Terminations rescinded or transferred during month.
Terminations pending end of month.
Terminations pending 0–6 months.
Terminations over 6 months.

Cases reported as rescinded or transferred must be completely explained so that the proper correction may be made in the consolidated War Department reports. Any further aging of cases pending less than 6 months will be as determined by the chief of the service.

(g) *Optional reporting of terminations involving less than $10,000 in contract price of items cancelled.* If so directed by the chief of the service concerned, terminations involving less than $10,000 in contract price of items cancelled may be reported in total only. The method of such reporting will be as follows:

(1) Terminations completed — Enter totals of Columns 7, 8, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, and 21 for such terminations involving settlement of contractors' claims completed during the month, as the first line of "Terminations Completed" (see paragraph (c) (1)). Enter the number of such cases completed in Column 1 and "Cases Under $10,000" in Column 2. Enter totals of Columns 7 and 8 for such terminations involving no contractors' claims completed during the month as the second line of "Terminations Completed." Enter the number of such cases completed in Column 1 and "Cases Under $10,000" in Column 2.

(2) Terminations rescinded or transferred—Enter totals of Columns 7, 8, 10, 12, 14, and 15 of any such cases rescinded or transferred, as reported on the preceding month's report for "Terminations in Process", as the first line of "Terminations Rescinded or Transferred". Enter the number of such cases in Column 1 and "Cases Under $10,000" in Column 2.

(3) Terminations in process—Enter totals of Columns 7, 8, 10, 12, 14, and 15 for such terminations still in process as the first line of "Terminations in Process". Enter the number of such cases in Column 1 and "Cases Under $10,000" in Column 2.

(4) All such cases must be accounted for in the reconciliation provided in paragraph (f).

SUBPART F–1—REMOVAL OF PROPERTY FROM CONTRACTORS' PLANTS UPON TERMINATION AT THE OPTION OR FOR THE CONVENIENCE OF THE GOVERNMENT

§ 815.850 *Introductory.* This section incorporates government policies which have been made effective with respect to the prompt removal and disposition of property from the plants of contractors upon termination of their contracts. It also contains instructions with respect to procedures to be followed in carrying out these policies pending final development of regulations with the Surplus War Property Administrator. The instructions apply generally in the case of all terminated fixed-price prime supply contracts and are designed primarily to implement the prescribed policy for prompt clearance of a contractor's plant prior to final settlement.

In addition, certain instructions have been included with reference to the application of the policy and procedures to the removal of property from the plants of fixed-price subcontractors under terminated fixed-price or cost-plus-a-fixed-fee prime supply contracts § 815.864) and with reference to the removal of property from plants of cost-plus-a-fixed-fee prime or subcontractors (§ 815.867).

Special instructions have also been prescribed with reference (a) to the removal or storage of property which is to be taken over at the time of the execution of the final settlement agreement and (b) to the certification of final payment vouchers insofar as property which has been removed or stored is concerned (§§ 815.865 to 815.866).

The provisions of this section are not applicable to government-owned facilities (§ 815.868).

This section does not cover the handling in the final settlement agreement of property which for any reason cannot be removed or stored with the contractor at the time of the execution of that agreement.

General Policies and Procedures With Respect to Fixed-Price Prime Contracts

§ 815.851 *Government policy on prompt plant clearance.* The report of Messrs. Baruch and Hancock on war and post-war adjustment policies released by the Office of War Mobilization on 15 February 1944, recommends the prompt clearance of property from contractors' plants not later than sixty days after the filing of inventory lists. The report also incorporates a statement of the policy of the Joint Contract Termination Board as to removal and disposition of property from the plants of contractors in connection with termination of their contracts, in which it is provided that:

(a) As soon as possible after receipt of notice of termination of any contract, the contractor should submit partial or complete inventory lists of property furnished by the government or to which the government is entitled and which is no longer required for the performance of the contract;

(b) The contractor may, unless the contract otherwise provides, at any time after receipt of notice of termination, remove such property and store it at his own risk, and the government with his consent may remove and dispose of any such property prior to final settlement;

(c) The portion of this property not disposed of within sixty days after delivery by the contractor of such an inventory list, will, upon demand of the contractor and unless the contract otherwise provides, be removed from his premises by the procuring agency unless it may have previously determined that such property is not chargeable to the government or does not belong to the government; and

(d) Any such property not so removed upon demand may be stored by the contractor at the expense and risk of the procuring agency either on his premises or, if he determines that space is not available, for that purpose, then elsewhere, provided in either case the contractor takes reasonable precautions for the protection of the property and notifies the procuring agency of the action taken.

These policies have been made effective, and, pending development of regulations with the Surplus War Property Administrator, the instructions set forth in this Subpart F–1 will be observed by the technical services in handling the removal and disposition of property involved in the terminated portions of War Department fixed-price supply contracts, whether the property is owned by the contractor and claimed by him to be allocable to the terminated contract, or has been furnished to him by the government. Where it is determined prior to final settlement that the government has removed or disposed of property which is not allocable to the terminated portion of the contract, then the government in arriving at the amount of the final settlement will take into account either the disposal value of the property at the time of removal or the proceeds realized from the disposal of the property, or will return the property to the contractor at government expense, all at the election of the government; and after final settlement the contractor will have no claim against the government by reason of any such removal or disposition.

§ 815.852 *Prompt disposition of property.* In order to make the property available for other production use at the earliest possible moment after termination, contractors and contracting officers upon termination and without waiting for the expiration of the sixty-day period (see § 815.851 (c)) will make every effort to dispose of the property with reasonable dispatch and as advantageously as is reasonably possible. This policy with respect to prompt disposition of property upon termination to or through contractors, as set forth in §§ 815.350 to 815.399 of this part, will continue in full force and effect and is to be vigorously pursued. The prompt disposition of certain items of property may be important either to the contractor or the government. To expedite disposition in such cases, contractors should be encouraged to submit promptly after receipt of termination notice inventory lists (see § 815.856) of that portion of the inventory to be disposed of and without waiting to obtain more complete information than that necessary to meet the minimum requirements for property disposition.

§ 815.853 *Removal of property upon demand of the contractor.* Property not disposed of as provided in the preceding paragraph within sixty days after it is first reported on an inventory list, will, upon demand of the contractor accompanied by tender of title (see § 815.863) and inventory lists (see § 815.856) and unless the contract otherwise provides, be promptly removed or a storage agreement entered into with him. Wherever this is not accomplished, the chief of the technical service concerned will promptly notify the Director, Readjustment Division, Headquarters, Army Service Forces, of the circumstances.

§ 815.854 *Arrangements for storage of property.* Property taken over from contractors and not otherwise disposed of may be stored (a) with the contractors concerned under a storage agreement entered into by the technical service terminating the contract; (b) in government-owned or leased installations available, or which are made available, to the technical services for storage purposes; (c) in commercial warehouses or other storage space under contracts to be negotiated by the technical service terminating the contract; or (d) in the premises leased for storage purposes under current regulations. It is recognized that available warehouse space is wholly insufficient to store the large volume of property which may be involved in contract termination, and that appropriate contractual arrangements in most cases will have to be made for the storage of such property by the contractors whose contracts are terminated. The technical services are authorized to enter into contracts for the storage of property with such contractors, and where this cannot be accomplished and suitable government-owned or leased installations are not available, they are authorized to enter into contracts for commercial warehouse services. Any contract involving the acquisition of an interest in real estate will be executed by the Division Engineer in accordance with existing regulations. At Regional Quartermaster and Army Service Forces Depots there are commercial warehouse officers who are familiar with available storage space, prevailing storage rates in various areas and commercial warehousing practices. These officers will be available for advice on all storage matters and the technical services will consult with them before entering into service contracts with commercial warehouses solely for the purpose of storage: *Provided,* That such action will not unduly delay clearance of the contractor's plant. The Storage Branch, Storage & Distribution Division, Office of the Quartermaster General, Washington, D. C., will furnish the name and address of any or all of the commercial warehouse officers upon request. Both the contracts executed with contractors and those for warehouse services will be financed from funds available to the technical services concerned. To the extent, if any, that the provisions hereof are in conflict with ASF Circulars No. 65 (Section VIII) and No. 71 (Section III), 1944, the provisions hereof shall govern. Open storage will be utilized wherever consistent with the proper care and preservation of the property. Transportation and drayage costs will be kept to a minimum.

§ 815.855 *Scrap determination prior to removal.* To preclude unwarranted record keeping and physical handling of property, it is imperative that a determination be made prior to the removal of the property from the contractor's plant as to whether it is scrap, and if so, the property should be classified as scrap and handled accordingly.

§ 815.856 *Inventory lists to be submitted by contractors.* (a) In addition to the inventory lists submitted in the first instance after receipt of notice of termination (see § 815.851 (a)), the contractor will be required to submit with his demand for removal inventory lists of the property requested to be removed. Each of these inventory lists, including those referred to in § 815.851 (a), will be prepared on Inventory Schedules Numbers C–1, C–2 and C–3 (Forms, W.D., A.G.O. 247, 248 and 249) and will be certified as prescribed thereon adding to the certificate, in the case of lists submitted with the demand for removal, a statement that the property listed is on hand on the date thereof. In order to avoid unnecessary duplication of work, contractors should be encouraged to prepare these forms in as many copies as is anticipated will be needed by both the government and themselves in the termination proceedings.

(b) The contracting officer will require the contractor to submit with his demand for removal as many copies of the inventory lists as is anticipated will be needed to meet reasonable government requirements. As a minimum, five copies of the lists will normally be required for property disposition and property accounting purposes. The contracting officer will retain one copy for filing in the War Department's permanent file relating to the contract termination settlement and will furnish the other four copies to the designated accountable property officer for use as follows: One copy for use by government personnel in checking the accuracy of the lists and for filing in the accountable property officer's jacket file (see § 815.858 (a)); where required, one copy to be receipted in accordance with the provisions of § 815.860 (b) and returned to the contractor for retention by him; and two copies for forwarding to the appropriate government agencies charged with disposal of property.

(c) Where several contracts with the same contractor are grouped for termination settlement purposes, the inventory lists need not segregate contractor-owned property for contracts, but only by locations.

§ 815.857 *Accountable property officers.* (a) Subject to such procedures as the chiefs of the technical services may prescribe for purposes of uniformity, commanding officers of procurement districts or similar agencies terminating contracts will designate accountable property officers to be charged with the assumption and maintenance of accountability as herein prescribed for the property under such terminated contracts, provided that in any event:

(1) Accountable property officers so designated must be stationed at the same location where other records with respect to the termination settlement are maintained, and

(2) If such a designation results in the activation of a new property account, a copy of the pertinent order will be sent to the Fiscal Director of the service command in which the new account is located.

(b) Neither accountable property officers nor contracting officers have responsibility, within the meaning of Army Regulations, for property in the possession of contractors or commercial warehousemen.

§ 815.858 *Property accounting records.* (a) Except for government property furnished to the contractor under a War Department contract and for which accountability has previously been established, accountability for all property taken over from the contractor or stored with him pursuant to an agreement will be established in the first instance by the accountable property officer designated in accordance with the provisions of § 815.857 (a). Accountable property officers involved are authorized to establish and maintain "jacket file accountability". Under this system a file will be established for each terminated contract, or group of contracts where they are so treated (see § 815.856 (c)), and in it will be included all documents pertaining to the assumption of and relief from accountability. Such files will be controlled by the contract number(s) to which they relate. Accountable documents pertaining to terminated contracts will be assigned property voucher numbers and recorded in a voucher register as prescribed in AR 35–6700. In those cases where an accountable property officer who is presently maintaining a property account is also charged with the duty of establishing and maintaining accountability for property under terminated contracts, accountable documents relating to the terminated contracts will be included in the established series of property voucher numbers for the account and will in each case bear reference to the terminated contract number(s) prefixed by the letter "T" or other appropriate symbol to clearly establish that the document pertains to termination transactions. This information will also be shown in the voucher register.

(b) In lieu of establishing individual stock record cards for each item of the inventory lists, accountable property officers are authorized to use their copy of the lists as work sheets for the purpose of reflecting the ultimate disposition of property. Under this procedure as an item is disposed of, the quantity involved together with the assigned credit voucher number of the document covering the disposition will be entered opposite the particular item on the list. Where numerous transactions with respect to a given item are involved, auxiliary records (stock record cards or other suitable forms) will be established or disposition will be recorded on the lists in a manner which will provide an accurate and complete record of disposition of the original balance of the item involved.

(c) At War Department storage installations receiving property from contractors' plants, usual War Department regulations with respect to property accountability will be observed and stock record cards will be maintained. In this connection attention is invited to the simplified inventory adjustment procedure prescribed in Circular 94, War Department, 1944.

Special Instructions With Respect to Fixed-Price Prime Contracts

§ 815.859 *Introductory.* Detailed procedures are hereinafter set forth in §§ 815.859 to 815.863 with respect to (a) property which will be removed from the contractor's premises by the technical service, (b) property which will be stored with the contractor pursuant to a storage agreement made with him by the technical service, and (c) property which is neither removed nor stored pursuant to such an agreement but is held by the contractor at the expense and risk of the government and for the protection of which the contractor is required to take reasonable precautions and to notify the contracting officer concerned of the action taken.

§ 815.860 *Procedures with respect to property removed from the contractor's premises*—(a) *Check of quantities.* Contracting officers are instructed to waive 100% verification of the quantities of property at the time of removal from the contractor's plant by the government in all cases except those in which the contracting officer has reason to believe that complete verification is necessary. Taking into consideration the size of the inventory, nature of the property involved and past experience with the contractor, the contracting officer will prescribe the extent of selective checks of quantities to be made by government personnel. The quantities and weights stated in the inventory lists will ordinarily be accepted for all purposes if they are determined by such checks to be within reasonable plus or minus tolerances in accordance with good commercial practice. Government personnel making the selective check will be required to make suitable notation on the copy of the lists to be returned to the accountable property officer as to items selected for count and the results of their counts. If the position of an item on the production line at the time of the suspension of production is an important factor in a determination of allocability or extent of completion, an agreement should be reached as to these facts, where possible, prior to the removal of the item and while it is in place on the production line.

(b) *Acknowledgment of receipt.* Based on the procedures set forth in paragraph (a), technical service personnel charged with the supervision of removal of the property from the contractor's premises will furnish the contractor with appropriate acknowledgment of the physical receipt of property as removed. This receipt if executed prior to final settlement agreement, unless otherwise specifically directed by the contracting officer, will be without prejudice to any determination of allocability of contractor-owned property to the terminated portion of the contract and will expressly so provide. The receipt will otherwise be unconditional. Where feasible such receipt will be accomplished on copies of the lists to be retained by the contractor. When the property is removed from the contractor's premises in lots, copies of the covering shipping documents may be used for this purpose or reference may be made in the receipt to item identification numbers on the inventory lists. A suggested form of receipt for contractor-owned property is set forth in § 815.950.

(c) *Accountability.* Accountability for property removed from the contractor's plant, unless previously established, will vest in the accountable property officer designated pursuant to the provisions of § 815.857 (a) when he is advised that acknowledgment of receipt of the property by the government (see paragraph (b)) has been furnished to the contractor. The accountable property officer will be relieved from accountability in such cases by means of the covering Vendor's Shipping Document, War Department Shipping Document or Shipping Ticket, whichever is in current use at the installation concerned; and where the shipment is made in connection with a sale by the War Department, the provisions of Section II, AR 35–6660 with respect to sales of property will be observed. Inasmuch as copies of the acknowledgment of receipt and of the covering shipping document normally should be received by the designated accountable property officer at the same time, the assumption of and relief from accountability under the "jacket file" procedure in most cases will occur simultaneously.

(d) *Shipping documents.* The prescribed certificates on the Vendor's Shipping Document, normally required to be executed for purposes of payment of a vendor, will be deleted when this form is used for purposes herein prescribed inasmuch as payment to the contractor will be supported by the termination settlement agreement and not by the Vendor's Shipping Document. In all cases, distribution of copies of the shipping document forms (regardless of type) will be the same as is prescribed for the War Department Shipping Document. It is pointed out that this distribution does not require the forwarding of copies to Finance Officers for property audit or any other purpose. Where practicable, in lieu of duplicating the listng of property on the shpping document, a copy of the inventory list or applicable portions thereof will be appended.

(e) *Discrepancies incident to shipments.* Wherever discrepancies or damages are disclosed by a War Department consignee upon receipt of property removed and shipped from a contractor's plant, the following action will be taken:

(1) Where it is obvious that the delivering common carrier or other delivering transportation agency is not liable for the shortage or damage, or where there is an overage, the discrepancies will be listed for record purposes on W. D., Q. M. C. Form No. 445 (Over, Short and Damaged Report) prepared in duplicate. One copy will be attached to the receiving voucher in support thereof and the other copy appropriately marked "Information Copy" will be forwarded to the contracting officer under the terminated contract for his advice. In the event of recurring or abnormal shortages the contracting officer will (i) direct that government personnel intensify their check of quantities as removed from the contractor's plant (see paragraph (a), (ii) consider the advisability of requesting an investigation of the conduct of the contractor, or (iii) initiate such other action as he may deem advisable.

(2) Where it appears that the common carrier or other transportation agency may be liable for shortages or damage disclosed upon receipt of a shipment, the report of survey procedure prescribed in paragraph 4, AR 35–6640, paragraph 28e, AR 55–150 and Circulars No. 147 (Section IV) and No. 295 (Section V), War Department, 1943, notwithstanding the provisions of the first two lines of paragraph 1 of Circular No. 295, will be observed.

§815.861 *Procedures with respect to property stored with the contractor pursuant to storage agreement*—(a) *Form of storage agreement.* Agreements with contractors for the storage of property will be executed substantially in the form set forth in § 815.951.

(b) *Check of quantities.* Prior to execution of the storage agreement by the government, the contracting officer for the terminated contract will make appropriate arrangements with the contractor for a joint check of quantities by representatives of both the contractor and the government. The extent and character of the checks to be required of both the contractor and government representatives will be prescribed by the contracting officer who in this connection will observe the instructions contained in § 815.860 (a).

(c) *Acknowledgement of receipt.* Acknowledgement of receipt of the property by the government is covered in the form of storage agreement and no further or other action in this respect is necessary.

(d) *Accountability.* Unless previously established, accountability for property placed in storage with contractors will vest in the accountable property officer designated pursuant to the provisions of § 815.857 (a) upon receipt by him from the contracting officer of a conformed copy of the storage agreement. It will be noted that under the form of storage agreement set forth in § 815.951 the contractor is responsible for the care and safekeeping of the property.

(e) *Relief from accountability in connection with shipments.* Relief of the designated accountable property officer from accountability for property removed and shipped from storage by a contractor will be accomplished by use of the Vendor's Shipping Document, War Department Shipping Document or Shipping Ticket, whichever is in current use at the installation concerned. In this connection, the provisions of § 815.860 (d) hereof with respect to deletion of inapplicable certificates on the Vendor's Shipping Document and distribution of completed documents, will be observed. The shipping document will be prepared by the accountable property officer upon receipt of instructions from appropriate authority to move the property and all copies must bear the notation "Shipped from Contractor Storage". Copies of the document will be used as an order directing the contractor to release the property for shipment. The contractor will be instructed to return one copy of the document bearing his certification

that quantities listed have been shipped as directed. This copy will serve as an acceptable credit voucher to the accountable property officer's account for the property shipped; and where the shipment is made in connection with a sale by the War Department, the provisions of Section II, AR 35–6660 with respect to sales of property will be observed.

(f) *Relief from accountability and related action with respect to losses in storage.* Instances of losses of or damage to property which may occur while in storage will be reported to the contracting officer under the storage agreement for appropriate action with respect to the liability, if any, of the contractor under the terms of the storage agreement. The contracting officer will advise the accountable property officer in writing of the amount of the loss involved, his findings with respect to the contractor's liability, if any, the amount of liability assumed by the contractor, and a statement as to action initiated to collect amounts which may be due the government. In all cases an extra copy of the written advice will be prepared and held by the contracting officer for service command property auditors. The written advice received from the contracting officer will in all cases and regardless of the nature of the findings, serve as an acceptable credit voucher to the accountable property officer's account for the property involved.

(g) *Discrepancies incident to shipments.* Whenever shortages or damage are disclosed by a War Department consignee upon receipt of property which has been removed and shipped from storage by a contractor, the following action will be taken:

(1) Report of Survey procedure prescribed in paragraph 4, AR 35–6640, paragraph 28e, AR 55–150 and Circulars No. 147 (Section IV) and No. 295 (Section V), War Department, 1943, notwithstanding the provisions of the first two lines of paragraph 1 of Circular No. 295, will be observed; and

(2) Where it has been determined in the survey proceeding that the shortages or damage are not the delivering carrier's responsibility, W. D., Q. M. C. Form No. 445 (Over, Short and Damaged Report) will be prepared and forwarded to the contracting officer under the storage agreement requesting his statement of findings with respect to the liability, if any, of the storage contractor under the terms of the storage agreement for the shortages or damage and any action taken to effect settlement of amounts which may be due from the contractor. This statement will be attached as an exhibit to the Report of Survey.

§ 815.862 *Procedures with respect to property neither removed from the contractor's premises nor stored with him pursuant to agreement.* (a) Where property owned by the contractor and claimed by him to be allocable to the terminated contract is neither removed from his premises upon demand nor stored with him pursuant to agreement, accountability will not be established until such time as the property is removed, a storage agreement is executed or the government by other means accepts the property.

(b) Considering the nature and utility value of the property, the technical services will take appropriate steps to determine that the contractor is taking reasonable precautions for the protection of all of the property in which the government has an interest.

§ 815.863 *Transfer of title to the government.* While it is considered that the formal demand of the contractor for removal of property owned by him and claimed to be allocable to the contract is in effect a tender of title, the demand must specifically include or be accompanied by a statement that title is tendered to the government free and clear of all liens and encumbrances. Unless otherwise expressly agreed between the contracting officer and contractor, the following instructions will be observed in connection with the transfer of title to such property to the government:

(a) In the case of property removed from the contractor's premises by the technical service (see § 815.860), title will be transferred to the government at the time of removal and receipt for such property. The provisions of the suggested form of receipt set forth in § 815.950, together with the tender of title accompanying the contractor's demand for removal, are considered adequate for this purpose in the normal case.

(b) In the case of property stored with the contractor pursuant to a storage agreement made with him by the technical service (see § 815.861), provision is made in the form of storage agreement set forth in § 815.951 for transfer of title to the government.

(c) The contracting officer may rely upon the statement of the contractor in the demand or in the storage agreement that the title to such property is free and clear of all liens and encumbrances.

(d) In the case of property which is neither removed from the contractor's plant nor stored with him pursuant to agreement (see § 815.862), title will not be transferred to the Government unless and until the property is removed, a storage agreement is executed, or the government by other means agrees to accept title.

Policies and Procedures With Respect to Fixed-Price Subcontracts

§ 815.864 *Property in the hands of fixed-price subcontractors.* (a) The foregoing policies and procedures with respect to fixed-price prime supply contracts are applicable to property in the hands of fixed-price subcontractors of any level under War Department fixed-price or cost-plus-a-fixed-fee prime supply contracts (when the property is not to be retained or disposed of by the prime contractor or a subcontractor) to the extent that whenever a subcontractor's required inventory lists (accompanied by a certificate of the prime contractor as hereinafter provided or other satisfactory evidence of allocability) are submitted to the contracting officer of the applicable prime contract, together with the subcontractor's demand for removal, every effort will be made by the technical service promptly to remove the property from the subcontractor's plant or to enter into a storage agreement with him, substantially in the form set forth in § 815.951, observing the instruction therein with respect to modification. Such certificate of the prime contractor involved shall be to the effect that the termination of the prime contract and that the property involved is believed to be properly allocable to the prime contract, i. e., includible in the settlement of the prime contractor's claim. The lists must be forwarded to the prime contractor by the interested subcontractor through intermediate subcontractors, if any, unless the contracting officer otherwise directs.

(b) In no case will the property be removed or a storage agreement entered into without such physical check of the accuracy of the lists by representatives of the government as the contracting officer under the terminated prime contract deems necessary in accordance with policies expressed in § 815.860 (a) hereof. In determining what physical check of the accuracy of a subcontractor's lists shall be made by representatives of the government, the contracting officer shall give due consideration to the checks made by the superior subcontractor or by the prime contractor.

(c) The privilege of contractors under § 815.851 (d) to store property not removed on demand at the expense and risk of the procuring agency has not been extended to subcontractors. Thus the government does not assume risk of loss or expense of storage of subcontractor's property unless and until it is removed by the government or a storage agreement entered into, and in the latter case only to the extent, if any, provided in such agreement.

Final Settlement Matters

§ 815.865 *Storage or removal of property in connection with final settlement.* (a) To the extent applicable, the foregoing procedures with respect to removal or storage of property and the accounting therefor may also be employed in connection with any property which the fixed-price prime contractor still has on hand at the time of the execution of the final settlement agreement and which is to be taken over by the government at that time. The procedures may also be employed in connection with property which a fixed-price subcontractor still has on hand at the time of a final settlement with him which is approved by the contracting officer; and the form of storage agreement, with appropriate modifications (including deletion of the provisions by which the government reserves the right to contest allocability to the contract) may be executed directly with the subcontractor, without liability of the prime contractor with respect to the subcontractor's performance of his obligations under the storage agreement.

(b) This subpart does not cover the handling in the final settlement agreement of property which for any reason cannot be removed or stored at the time of the execution of that agreement.

§ 815.866 *Certification of vouchers in connection with payments under final settlement agreement.* Officers charged

with the certification for payment of Public Vouchers, Standard Form No. 1034, covering a contractor's termination settlement are authorized to rely upon the statement of property shown on the inventory lists or other documents in the quantities for which acknowledgment of receipt has been furnished to the contractor (see § 815.860 (b)), or, in the case of property stored with a contractor pursuant to an agreement, in the quantities stated on the lists of property annexed to the storage agreement (see §815.861).

Policies and Procedures With Respect to Cost-Plus-A-Fixed-Fee Supply Contracts

§ 815.867 *Removal of property under terminated cost-plus-a-fixed-fee supply contracts.* In the case of cost-plus-a-fixed-fee supply contracts, title to the property acquired in connection with performance of the contract is already vested in the government; accountability has been established; and procedures for taking joint inventories upon termination by both the contractor and the government and for relief from accountability have been prescribed in the War Department Industrial Property Accounting Manual, 16 February 1943, as amended. In order to carry out the underlying policy of prompt clearance of property from contractors' plant upon termination of their contracts, the policies and procedures set forth in this subpart are applicable to property involved in terminated War Department cost-plus-a-fixed-fee supply contracts to the following extent:

(a) Government-owned property not otherwise disposed of within sixty days after it is first reported by the contractor on a certified inventory list as prescribed in § 815.856 to the extent that it is located in a plant or portion of a plant not owned by the government will, unless the terminated contract otherwise provides, be removed or a storage agreement entered into with the contractor for its storage promptly after demand accompanied by the prescribed certified list of the property so requested to be removed; provided, that the property will not be removed or a storage agreement entered into unless the joint inventory by the government and the contractor as prescribed in section X of the War Department Industrial Property Accounting Manual shall have been accomplished. Where the property is to be removed or a storage agreement entered into with the contractor within a reasonable period after termination, then for purposes of convenience to both the government and the contractor the joint inventory prescribed in the manual may be delayed until the date that the property is removed or the storage agreement is executed.

(b) The provisions of §§ 815.854, 815.855, 815.860 and 815.861 will be applicable in the case of such removal or storage. Where the property is to be stored with the contractor, an agreement substantially in the form set forth in § 815.951 may be used provided the recitals are suitably modified and the provisions with respect to transfer of title and allocability to the contract are deleted. In the case of property removed from the contractor's premises, the acknowledgment of receipt provided for in § 815.860 (b) will be appropriately modified, will not be qualified as to allocability and will omit reference to transfer of title. If it is later determined that property of the contractor was removed by mistake, an adjustment should be made in arriving at the amount of the final settlement which will allow the contractor the current disposal value of the property at the time of removal, or the government may return the property in kind.

(c) In the case of property removed or stored with the contractor pursuant to agreement, and where such action will simplify the task of record keeping, the accountable property officer is authorized to establish and maintain "jacket file accountability" as described in § 815.858 (a). In such cases the inventory lists covering the property removed or stored will serve both as a credit voucher to the established property account and as a debit voucher to the "jacket file" account.

(d) If property which the contractor is entitled to have removed by the government under the provisions of paragraph (a) is not removed or stored with him pursuant to agreement, the contractor, unless the contract otherwise provides, may store such property at the expense and risk of the government either on his premises or if he determines that space is not available for that purpose then elsewhere, provided in either case the contractor, regardless of any terms of the terminated contract providing for a lesser degree of responsibility for the care and preservation of property during performance of the contract, takes reasonable precautions for the protection of the property and notifies the contracting officer of the action taken.

(e) At any time after the joint inventory has been taken and agreed upon, the contractor may, unless the contract otherwise provides, remove such property and store it at his own risk and expense.

(f) The principles set forth in this section are also applicable to cost-plus-a-fixed-fee subcontracts under cost-plus-a-fixed-fee prime supply contracts.

Government-owned Facilities

§ 815.868 *Government-owned facilities.* The provisions of this subpart are not applicable to government-owned facilities in the custody or possession of contractors under facilities contracts and facilities clauses of terminated contracts. When removal and disposal policies as to these facilities have been determined, appropriate instructions will be issued.

SUBPART G—FORMS

Termination Articles

§ 815.901 *Lump sum supply contract.* The following is the new termination article:

ARTICLE _____. *Termination at the option of the Government.* (a) The performance of work under this contract may be terminated by the Government in accordance with this Article in whole, or from time to time in part, whenever the contracting officer shall determine any such termination is for the best interests of the Government. Termination of work hereunder shall be effected by delivery to the contractor of a Notice of Termination specifying the extent to which performance of work under the contract shall be terminated, and the date upon which such termination shall become effective. If termination of work under this contract is simultaneous with, a part of, or in connection with, a general termination (1) of all or substantially all of a group or class of contracts made by the War Department for the same product or for closely related products, or (2) of war contracts at, about the time of, or following, the cessation of the present hostilities, or any major part thereof, such termination shall only be made in accordance with the provisions of this Article, unless the contracting officer finds that the contractor is then in gross or wilful default under this contract.

(b) After receipt of a Notice of Termination and except as otherwise directed by the contracting officer, the contractor shall (1) terminate work under the contract on the date and to the extent specified in the Notice of Termination; (2) place no further orders or subcontracts for materials, services or facilities except as may be necessary for completion of such portions of the work under the contract as may not be terminated; (3) terminate all orders and subcontracts to the extent that they relate to the performance of any work terminated by the Notice of Termination; (4) assign to the Government, in the manner and to the extent directed by the contracting officer, all of the right, title and interest of the contractor under the orders or subcontracts so terminated; (5) settle all claims arising out of such termination of orders and subcontracts with the approval or ratifications of the contracting officer to the extent that he may require, which approval or ratification shall be final for all the purposes of this Article; (6) transfer title and deliver to the Government in the manner, to the extent and at the times directed by the contracting officer (i) the fabricated or unfabricated parts, work in process, completed work, supplies and other material produced as a part of, or acquired in respect of the performance of, the work terminated in the Notice of Termination, and (ii) the plans, drawings, information and other property which, if the contract had been completed, would be required to be furnished to the Government; (7) use his best efforts to sell in the manner, to the extent, at the time, and at the price or prices directed or authorized by the contracting officer, any property of the types referred to in subdivision (6) of this paragraph: *Provided, however,* That the contractor (i) shall not be required to extend credit to any purchaser and (ii) may retain any such property at a price or prices approved by the contracting officer; (8) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and (9) take such action as may be necessary or as the contracting officer may direct for protection and preservation of the property, which is in the possession of the contractor and in which the Government has or may acquire an interest.

(c) The contractor and the contracting officer may agree upon the whole or any part of the amount or amounts to be paid to the contractor by reason of the total or partial termination of work pursuant to this Article, which amount or amounts may include a reasonable allowance for profit, and the Government shall pay the agreed amount or amounts. Nothing in paragraph (d) of this Article prescribing the amount to be paid to the contractor in the event of failure of the contractor and the contracting officer to agree upon the whole amount to be paid to the

contractor by reason of the termination of work pursuant to this Article shall be deemed to limit, restrict or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the contractor pursuant to this paragraph (c).

(d) In the event of the failure of the contractor and contracting officer to agree as provided in paragraph (c) upon the whole amount to be paid to the contractor by reason of the termination of work pursuant to this Article, the Government, but without duplication of any amounts agreed upon in accordance with paragraph (c), shall pay to the contractor the following amounts:

(1) For completed articles delivered to and accepted by the Government (or sold or retained as provided in paragraph (b) (7) above) and not theretofore paid for, forthwith a sum equivalent to the aggregate price for such articles computed in accordance with the price or prices specified in the contract;

(2) In respect of the contract work terminated as permitted by this Article, the total (without duplication of any items) of (i) the cost of such work exclusive of any cost attributable to articles paid or to be paid for under paragraph (d) (1) hereof; (ii) the cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in paragraph (b) (5) above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the notice of termination of work under this contract which amounts shall be included in the cost on account of which payment is made under subdivision (i) above; and (iii) a sum equal to _____% (Note 1) of the part of the amount determined under subdivision (i) which represents the cost of articles or materials not processed by the contractor, plus a sum equal to _____% (Note 2) of the remainder of such amount, but the aggregate of such sums shall not exceed 6% of the whole of the amount determined under subdivision (i), which for the purpose of this subdivision (iii) shall exclude any charges for interest on borrowings;

(3) The reasonable cost of the preservation and protection of property incurred pursuant to paragraph (b) (9) hereof; and any other reasonable cost incidental to termination of work under this contract, including expense incidental to the determination of the amount due to the contractor as the result of the termination of work under this contract.

The total sum to be paid to the contractor under subdivisions (1) and (2) of this paragraph (d) shall not exceed the total contract price reduced by the amount of payments otherwise made and by the contract price of work not terminated. Except for normal spoilage and to the extent that the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the contractor as provided in paragraph (d) (1) and paragraph (d) (2) (i), all amounts allocable to or payable in respect of property, which is destroyed, lost, stolen or damaged so as to become undeliverable prior to the transfer of title to the Government or to a buyer pursuant to paragraph (b) (7) or prior to the 60th day after delivery to the Government of an inventory covering such property, whichever shall first occur.

(e) The obligation of the Government to make any payments under this article: (1) shall be subject to deductions in respect of (i) all unliquidated partial or progress payments, payments on account theretofore made to the contractor and unliquidated advance payments, (ii) any claim which the Government may have against the contractor in connection with this contract, and (iii) the price agreed upon or the proceeds of sale of any materials, supplies or other things retained by the contractor or sold, and not otherwise recovered by or credited to the Government, and (2) in the discretion of the contracting officer shall be subject to deduction in respect of the amount of any claim of any subcontractor or supplier whose subcontract or order shall have been terminated as provided in paragraph (b) (3) except to the extent that such claim covers (i) property or materials delivered to the contractor or (ii) services furnished to the contractor in connection with the production of completed articles under this contract.

(f) In the event that, prior to the determination of the final amount to be paid to the contractor as in this article provided, the contractor shall file with the contracting officer a request in writing that an equitable adjustment should be made in the price or prices specified in the contract for the work not terminated by the Notice of Termination, the appropriate fair and reasonable adjustment shall be made in such price or prices.

(g) The Government shall make partial payments and payments on account, from time to time, of the amount to which the contractor shall be entitled under this Article, whether determined by agreement or otherwise, whenever in the opinion of the contracting officer the aggregate of such payments shall be within the amount to which the contractor will be entitled hereunder.

(h) For the purposes of paragraphs (d) (2) and (d) (3) hereof, the amounts of the payments to be made by the Government to the contractor shall be determined in accordance with the Statement of Principles for Determination of Costs upon Termination of Government Fixed Price Supply Contracts approved by the Joint Contract Termination Board, December 31, 1943. The contractor for a period of three years after final settlement under the contract shall make available to the Government at all reasonable times at the office of the contractor all of its books, records, documents, and other evidence bearing on the costs and expenses of the contractor under the contract and in respect of the termination of work thereunder.

§ 815.901a *Old standard article formerly used in lump sum supply contracts.* The following article was prescribed for use in lump sum supply contracts from December 1942 until 20 February 1944.[1] It is no longer authorized for use but is here reprinted merely for the convenience of Government personnel because of its inclusion in so many outstanding contracts:

Article _____. *Termination for the Convenience of the Government.* (a) The Government may, at any time, terminate this contract in whole or in part by a notice in writing from the Contracting Officer to the Contractor that the contract is terminated under this Article. Such termination shall be effective in the manner and upon the date specified in said notice and shall be without prejudice to any claims which the Government may have against the Contractor, or any claims which the Contractor may have against the Government. Upon receipt of such notice the Contractor shall, except as the Contracting Officer directs otherwise, (1) discontinue all work and the placing of all orders for materials and facilities in connection with performance of this contract, cancel all existing orders chargeable to this contract, and terminate all subcontracts chargeable to this contract; (2) transfer to the Government, by delivery f. o. b. _____ or by such other means as the Contracting Officer may direct, title to all completed supplies (including spare parts, drawings, information and other things) called for herein, not previously delivered, and partially completed supplies, work in process, materials, fabricated parts, plans, drawings, and information acquired or produced by the Contractor for the performance of this contract; and (3) take such action as may be necessary to secure to the Government the benefits of any rights remaining in the Contractor under orders or subcontracts wholly or partially chargeable to this contract to the extent that such orders or subcontracts are so chargeable. If and as the Contracting Officer so directs or authorizes, the Contractor shall sell at a price approved by the Contracting Officer, or retain at a price mutually agreeable, any such supplies, partially completed supplies, work in process, materials, fabricated parts or other things. The proceeds of such sale or the agreed price shall be paid or credited to the Government in such manner as the Contracting Officer may direct so as to reduce the amount payable by the Government under this Article.

(b) The Government shall, upon such termination of this contract, pay to the Contractor the contract price of all supplies, (in-

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NOTES 1 AND 2: The chief of each technical service may provide for determining the percentages to be inserted at Note 1 (which in no event will exceed 2%) and at Note 2 (which may be greater or less than or equal to 6%). The general use of 2% and 8%, respectively, as arbitrary figures is recommended in the interest of expediting the execution of contracts. Where the use of arbitrary figures is not desired for any reason the methods to be used in arriving at the percentage to be inserted at Note 2 shall be the same as those now used in price analysis. When the intended rate of profit on the finished article covered by the contract is lower than 8% the insertion of a lower figure at Note 2 will of course be desirable.

[1] This contract article, as from time to time revised, originally appeared as Article 14 of Supply Contract Form No. 1 (approved Sept. 1941). From 1 July 1942 until 21 January 1944 it appeared at all times in § 803.324. On 21 January 1944 it was supplanted by the uniform termination article prescribed by the Office of War Mobilization (§ 803.324). The contract article set forth above is in the form appearing after revisions made late in 1942. Such revisions were principally as follows:

(1) A provision explicitly permitting a negotiated settlement of the amount due with respect to the uncompleted portion of the contract by reason of the termination was inserted (see par. (c) of the termination article).

(2) Sales of property, title to which the Government might require to be transferred to it upon the termination, were expressly permitted. This involved the addition of the last two sentences of paragraph (a) of the termination article as presently printed above.

(3) A negotiated settlement of the amount due (a) for protecting Government property after the date of the termination and (b) for other settlement expenses was expressly permitted by an amendment of paragraph (e) of the termination article.

(4) Partial payments on account of amounts due under the termination article were permitted by the addition of paragraph (i).

(5) Termination under the provisions of the termination article (rather than for default) was made mandatory in the case of certain terminations at the end of hostilities. This provision is found in paragraph (1) of the article.

At the same time similar changes were made in the standard termination article for lump sum construction contracts (§ 803.324 (a)).

cluding spare parts, drawings, information, and other things) called for herein which have been completed in accordance with the provisions of this contract and to which title has been received by the Government under the provisions of Paragraph (a) (2) of this Article and for which payment has not previously been made.

(c) In addition to, and without duplication of, the payments provided for in paragraph (b), or of payments made prior to the termination of this contract, the Government shall pay to the Contractor such sum as the Contracting Officer and the Contractor may agree by Supplemental Agreement is reasonably necessary to compensate the Contractor for his costs, expenditures, liabilities, commitments, and work in respect to the uncompleted portion of the contract so far as terminated by the notice referred to in paragraph (a). The Contracting Officer shall include in such sum such allowance for anticipated profit with respect to such uncompleted portion of the contract as is reasonable under all the circumstances.

(d) If the Contracting Officer and the Contractor, within 90 days from the effective date of the notice of termination referred to in paragraph (a) or within such extended period as may be agreed upon between them, cannot agree upon the sum payable under the provisions of paragraph (c), the Government, without duplication of any payment made pursuant to paragraph (b) or prior to the termination of this contract, shall in the above events compensate the Contractor for the uncompleted portion of the contract as follows:

(1) By reimbursing the Contractor for all actual expenditures and costs certified by the Contracting Officer as having been made or incurred with respect to the uncompleted portion of the contract;

(2) By reimbursing, or providing for the payment or reimbursement of, the Contractor for all expenditures made and costs incurred with the prior written approval of the Contracting Officer in settling or discharging that portion of the outstanding obligations or commitments of the Contractor which had been incurred or entered into with respect to the uncompleted portion of the contract; and

(3) By paying the Contractor, as a profit on the uncompleted portion of the contract insofar as a profit is realized hereunder, a sum to be computed by the Contracting Officer in the following manner:

(A) The Contracting Officer shall estimate the profit which would have been realized on the uncompleted portion of the contract if the contract had been completed and labor and material costs prevailing at the date of termination had remained in effect.

(B) Estimate, from a consideration of all relevant factors, the percentage of completion of the uncompleted portion of the contract.

(C) Multiply the anticipated profit determined under (A) by the percentage determined under (B). The result is the amount to be paid to the Contractor as a proportionate share of profit, if any, as above provided.

Notwithstanding the above provisions, no compensation shall be paid under this Paragraph (d) by way of reimbursement for expenditure, including expenditures made in settling or discharging obligations or commitments, or by way of profit on account of supplies and other things which are undeliverable because of destruction or damage, whether or not because of the fault of the contractor.

(e) The Government shall pay to the Contractor such sum as the Contracting Officer and the Contractor may agree upon for expenditures made and costs incurred with the approval of the Contracting Officer (a) after the date of termination for the protection of Government property, and (b) for such other expenditures and costs as may be necessary in connection with the settlement of this contract, and in the absence of such agreement as to the amount of such expenditures and costs shall reimburse the Contractor for the same.

(f) The obligation of the Government to make any of the payments required by this Article shall be subject to any unsettled claim for labor or material and to any claim which the Government may have against the Contractor under or in connection with this contract, and payments under this Article shall be subject to reasonable deductions by the Contractor Officer on account of defects in the materials or workmanship of completed or partially completed supplies delivered hereunder.

(g) The sum of all amounts payable under this Article, plus the sum of all amounts previously paid under this contract, shall not exceed the total contract price, adjusted in the event that this contract contains an article providing for price adjustment, on the basis of the estimate of the Contracting Officer, to the extent which would have been required by such article if this contract had been completed and labor and materials costs prevailing at the date of termination had remained in effect.

(h) Should the above provisions of this Article not result in payment to the Contractor of at least $100, then that amount shall be paid to the Contractor in lieu of any and all payments hereinbefore provided for in this Article.

(i) The Government shall promptly make partial payments to the Contractor

(1) on account of the amounts due under paragraphs (b), (c) and (d) of this Article to the extent that, in the judgment of the Contracting Officer, such payments are clearly within the amounts due under such paragraphs, and

(2) of such amounts as the Contracting Officer may direct, on account of proposed settlements of outstanding obligations or commitments, to be made by the Contractor pursuant to paragraph (d) (2) of this Article, if such settlements shall have been approved by the Contracting Officer and subject to such provisions for escrow or direct payment to the persons entitled to receive such settlement payments as the Contracting Officer may require.

(j) Any disputes arising out of termination under this Article shall be decided in accordance with the procedure prescribed in Article 12 of this contract.

(k) Upon the making of the payments called for by this Article, all obligations of the Government to make further payments or to carry out other undertakings hereunder shall cease forthwith and forever, except that all rights and obligations of the respective parties under the Articles, if any, of this contract applicable to patent infringements and reproduction rights shall remain in full force and effect.

(l) The Government shall terminate this contract only in accordance with this Article, except as otherwise provided by law or by Article —— (Delays-Damages). Notwithstanding Article —— (Delays-Damages) and any defaults of the Contractor, the Government shall terminate this contract only in accordance with this Article if such termination is simultaneous with or part of or in connection with a general termination of war contracts at, about the time of, or following the cessation of the present hostilities or the end of the present war, unless the Contracting Officer finds that the defaults of the Contractor (1) have been gross or willful and (2) have caused substantial damage to the Government.

§ 815.902 *Lump sum construction contract.* This article appears in § 803.324 (a).

§ 815.903 *Cost-plus-a-fixed-fee supply contract.* (Form sometimes used by Ordnance Department.) The following article is now in use by the Ordnance Department.

ARTICLE ____. *Termination by Government.* (1) The Government may terminate this contract at any time by a notice in writing from the Contracting Officer to the Contractor. Such termination shall be effective in the manner and upon the date specified in said notice and shall be without prejudice to any claims which the Government may have against the contractor or which the Contractor may have against the Government. Upon receipt of such notice, the Contractor shall, unless the notice directs otherwise, immediately discontinue all work and the placing of all orders for materials, facilities, and supplies in connection with performance of this contract and shall proceed to cancel promptly all existing orders and terminate all subcontracts insofar as such orders and subcontracts are chargeable to this contract.

(2) If this contract is terminated for the fault of the Contractor, the Contracting Officer may enter upon the premises for the purpose of completing the work contemplated by this contract, take possession of any or all materials, tools, machinery, equipment and appliances, and exercise all options, privileges, and rights, and may complete or employ any other person or persons to complete said work.

(3) Upon the termination of this contract, full and complete settlement of all claims of the Contractor arising out of this contract shall be made as follows:

(a) The Government shall assume and become liable for all obligations, commitments, and claims that the Contractor may have theretofore in good faith undertaken or incurred in connection with said work and the cost of which would be reimbursable in accordance with the provisions of this contract; and the Contractor shall, as a condition of receiving the payments mentioned in this Title, execute and deliver all such papers and take all such steps as the Contracting Officer may require for the purpose of fully vesting in the Government the rights and benefits of the Contractor under such obligations or commitments.

(b) The Government shall reimburse the Contractor for all expenditures made in accordance with Title IV and not previously reimbursed.

(c) The Government shall reimburse the Contractor for such further expenditures, made after the date of termination, for the protection of Government property and for accounting services in connection with the settlement of this contract as are required or approved by the Contracting Officer.

(d) If the contract is terminated for the convenience of the Government, the Contractor will be paid all fees which have accrued at the date of termination, less fee payments previously made. If the contract is terminated due to fault of the Contractor, no additional payment on account of the fixed-fees will be made.

(e) The obligation of the Government to make any of the payments required by this Title shall be subject to any unsettled claims in connection with this contract which the Government may have against the Contractor.

(4) Prior to final settlement the Contractor shall furnish a release as required in Section 4 of Article IV-B of Title IV hereof.

§ 815.904 *Cost-plus-a-fixed-fee construction contract.* This article is found in § 803.350.

§ 815.905 *Army Air Forces—Cost-plus-a-fixed-fee supply contract.* The following article is now in use by the Army Air Forces:

ARTICLE_____. *Termination of contract by government.* (1) Should the contractor at any time refuse, neglect or fail to prosecute the work with promptness and diligence, or default in the performance of any of the agreements herein contained, or should conditions arise which make it advisable or necessary in the interest of the Government that work be discontinued under this contract, the Government may terminate this contract by a notice in writing from the Contracting Officer to the Contractor. Such termination shall be effective in the manner and upon the date specified in said notice and shall be without prejudice to any claims which the Government may have against the Contractor. Upon receipt of such notice the Contractor shall, unless the notice directs otherwise, immediately discontinue all work and the placing of all orders for materials, facilities and supplies in connection with performance of this contract and shall proceed to cancel promptly all existing orders and terminate work under all subcontracts insofar as such orders and/or work are chargeable to this contract.

(2) Upon the termination of this contract as hereinbefore provided, full and complete settlement of all claims of the Contractor arising out of this contract shall be made as follows:

(a) The Government shall assume and become liable for all obligations, commitments and claims that the Contractor may have theretofore in good faith undertaken or incurred in connection with said work and in accordance with the provisions of this contract, and the Contractor shall, as a condition to receiving the payments mentioned in this Article, execute and deliver all such papers and take all such steps as the Contracting Officer may require for the purpose of fully vesting in the Government the rights and benefits of the Contractor under such obligations or commitments.

(b) The Government shall reimburse the Contractor for all expenditures made in accordance with Article 3 and not previously reimbursed.

(c) The Government shall reimburse the Contractor for such further expenditures after the date of termination for the protection of Government property and for accounting services in connection with the settlement of this contract as the Contracting Officer may approve.

(d) If the contract is terminated for the convenience of the Government the Contractor shall be paid a percentage of the fee set forth in Article 3, equivalent to the percentage of completion of the contract, less payments previously made.

(e) If the contract is terminated for the fault of the Contractor, the Contractor shall be paid a percentage of the fee set forth in Article 3, equivalent to the percentage of completion of the contract, less ten per cent (10%) of such amount and less payments previously made.

(f) The obligation of the Government to make any of the payments required by this Article shall be subject to any unsettled claims for labor or material or any claim the Government may have against the Contractor.

(3) Upon the making of said payments all obligations of the Government to make further payments or to carry out other undertakings hereunder shall cease forthwith and forever, except that all rights and obligations of the respective parties under the Articles, if any, of this contract applicable to Patent Infringements and Reproduction Rights shall remain in full force and effect.

Notice of Termination

§ 815.911 *Telegraphic notice (preliminary notice).* (a) Substantially the following form will be used where it is desired to notify the contractor of the termination of a contract by telegram or teletype:

XYZ CORPORATION,
New York, New York.

Pursuant to article _____ of your contract No. _____ the Government hereby terminates that contract (or "cancels items _____ of article _____ of that contract.") Request you stop all work and making of all commitments in connection therewith and advise all subcontractors and suppliers by telegraph to do likewise. Letter and instructions follow.

JOHN DOE,
Lieut. Col., A. C., Contracting Officer.

(b) In those cases where it is desired to effect a temporary suspension of a contract which is to be terminated prior to giving formal notice of termination, the following form of telegram may be employed (see § 815.315 (c)).

XYZ CORPORATION,
New York, New York.

Due to changed requirements Government desires to cancel *item*[1] _____ of contract No. _____ pending formal action for cancellation of said *item* _____ *of said* contract, it is requested that all work by your company and subcontractors with respect thereto be stopped and no further commitments made or obligations incurred on account thereof. Request you contact _____ for any information in connection therewith. Letter follows. End.
Prepaid

§ 815.912 *Lump sum supply or construction contracts*—(a) *Letter notice to prime contractor.* Substantially the following form of notice of termination will be used in all cases where a lump sum contract is being terminated for the convenience of the Government:

XYZ CORPORATION,
New York, New York.

GENTLEMEN: 1. The necessity and convenience of the Government require that your Contract No. _____ be terminated, such termination to be effective at _____ o'clock _____ M on _____, 194__, and that steps be taken immediately upon such effective date of this notice to agree with you upon a settlement, if any is necessary, that will properly and justly compensate you for the *uncompleted portion* of the contract.[1a] Accordingly,[2] that contract is hereby terminated, (or "items _____ of Article _____ of that contract are hereby canceled), pursuant to Article _____ of that contract.

2. You are hereby instructed immediately upon such effective date of this notice (1) to stop all work and the placing of any subcontracts or purchase orders in connection with that contract; and (2) to terminate all existing subcontracts and purchase orders and to cause all work in connection therewith to be stopped at once. A form of termination notice to subcontractors, marked "Exhibit 1", is inclosed for use in this connection. The instructions in (1) and (2) do not apply to the following:

(Here list exceptions.)

3. You are also instructed to take the following action with respect to Government property now in your custody:

(Here list instructions.)

4. You are requested to submit, as promptly as possible, the following data, to serve as a basis for a settlement of the amount due you by reason of this termination:—

(a) A statement of your costs and a proposal for a negotiated settlement (of the amount payable for the uncompleted portion of the contract), in the form and certified as stated in the inclosed "Instructions to Contractors."

(b) An inventory prepared in accordance with the inclosed "Instructions to Contractors." Upon receipt of such inventory the undersigned will inform you, in writing, as to the disposition to be made of it. You are requested to include in your inventory a statement of your best bid for any of the items there listed, either by items or by groups of items. For any items as to which you make no bid, you are requested to obtain the best available offers.[3] The following items are to be delivered to the Government at once, f. o. b. _____; and are to be omitted from your inventory:—

(Here list items, if any.)

Partial inventories should be submitted as soon as possible with respect to articles for which you make bids or for which you may receive offers approved by you.

(c) A statement of costs and a proposal for a negotiated settlement from each of your subcontractors and suppliers in the form and certified by them and by you as stated in the inclosed "Instructions to Contractors." Such statements and proposals may be presented separately. No such statement need be obtained from subcontractors or suppliers who will make no request for payment of any termination charges. Please note that you are required to review each of these statements in accordance with the Instructions, and to state your recommendation, based upon your negotiations with the subcontractor or supplier concerned, as to the amount properly payable thereon. All settlements with subcontractors and suppliers should be submitted for approval by the Contracting Officer.

5. All accounting and other records pertinent to the determination of the amount of the settlement should be carefully preserved by you and your subcontractors and suppliers. They may be audited by the Government.

6. Upon receipt of the foregoing data the undersigned will arrange a conference with you for the purpose of negotiating the settlement.

7. The instructions contained in this notice may be modified from time to time, except as to those instructions with respect to which you have previously taken substantial action in reliance thereon.

8. Please acknowledge receipt of this notice by signing the original and one copy and returning them to this office not later than _____, 1943. The other copy is for your files.[4]

JOHN DOE,
Major, A. C., Contracting Officer.

Accepted: _____, 1943
(contractor)

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[1] Omit italicized words where whole contract is to be terminated.

[1a] The words "for the uncompleted portion of the contract" will be omitted in the case of a lump sum construction contract.

[2] If the telegraphic notice set forth in § 815.911 has previously been sent, insert here the words "and confirming the undersigned's telegram to you dated _____."

[3] Omit remainder of paragraph where inapplicable and in the case of lump sum construction contracts it should be provided that the items are to be delivered at the site of the work rather than f. o. b. a stated point.

[4] In lieu of including paragraph 8 of the above form of notice, the notice may be sent by registered mail with a request for a return receipt. In this event paragraph 8 and the indorsement of acceptance need not be called for. When the returned receipt is signed by or in behalf of the contractor and received by the procurement office initiating the notice, the receipt will be attached to one signed copy of the original notice which will be preserved in the files of the procurement office.

(b) *Letter notice to subcontractor or supplier.* Substantially the following form will accompany the notice set forth in § 815.912 as Exhibit 1 thereto:

ABC COMPANY,
Detroit, Michigan.

GENTLEMEN: 1. Our contract No. _____ with the War Department has just been terminated. We there find it necessary to terminate our Order No. _____ with you, effective at once, since we will have no further use for the articles under that order. Pursuant to the directions of the contracting officer on that contract, you are hereby instructed immediately (1) to stop all work and the placing of any subcontracts or purchase orders in connection with that Order No. _____; and (2) to terminate all existing subcontracts or purchase orders and to cause all work in connection therewith to be stopped at once. The instructions in (1) and (2) do not apply to the following:

(Here, list items, if any)

2. No charge on account of this termination will be allowed you to the extent that they are found by us or by the contracting officer to have resulted from your failure effectively to take the foregoing action within a time found by us or by the contracting officer to be reasonable under all the circumstances.

3. You are also instructed to take the following action with respect to Government property in your custody:

(Here list action to be taken.)

4. You are requested to submit, as soon as possible, the following data, to serve as a basis for the negotiation of a settlement of the amount due you by reason of this termination:

a. A statement of your costs and a proposal for a negotiated settlement, prepared and certified in accordance with the attached form.[1]

b. An inventory of articles on hand, produced or acquired in connection with our order, and prepared in accordance with the attached form.[1]

5. Upon receipt of such inventory you will be informed as to the disposition to be made of it. You are requested to include in your inventory a statement of your best bid for any of the items listed in your inventory which you are willing to retain. Such bid may be made by items or groups of items. For any items listed for which you make no bid, you are requested immediately to obtain the best available offers and to include them in the inventory. Partial inventories of any items which you wish to retain, or of which you recommend the sale, may be furnished at any time. The following items are to be delivered to us, f. o. b. _____, and are to be omitted from your inventory:

(Here list items. Omit preceding sentence if not applicable.)

6. You are requested to omit from your inventory:

a. Articles which can be used by you or sold to others, without charge to us.

b. Articles which can be returned to your suppliers for full credit less freight charges. [In this event you may include the reasonable freight charges in your statement of costs arising out of the termination.]

7. In view of the fact that our order was issued to you in connection with our work on a Government contract now terminated, and that the amount due you because of the termination of our order will be a cost to us to be reimbursed by the Government, you are advised that your statement of costs may be subject to Government audit and the articles listed in your inventory may be subject to Government inspection. All accounting and other records pertinent to the determination of the amount of the settlement due you should be carefully preserved by you. These documents will be of importance in connection with our negotiations, both with you and with the Government.

8. In order to relieve you, to the greatest extent possible, of financial inconvenience caused by this termination of our order, partial payments on account of the amounts owing to you by reason of this termination will be made to you as rapidly as you make it possible to do so. Subject to the approval of the contracting officer, a partial payment will be made to you whenever we are in agreement that at least the amount of the proposed partial payment is clearly owing to you. You may request a partial payment at any time, but your request should be supported by sufficient accounting data for us and the contracting officer to find that at least the amount requested is due you on account of this termination.

9. Please acknowledge the receipt of this notice by signing the original and _____ copies and returning them to this office. The other copy is for your files.

Very truly yours,

_____
(Contractor)

Accepted: _____, 1943
(Subcontractor)

§ 815.914 *Cost-plus-a-fixed-fee supply contracts—(a) Letter of notice to prime contractor who will not negotiate settlements with subcontractors or suppliers.* (1) Whenever the complete termination of a cost-plus-a-fixed-fee supply contract has been authorized, such termination will be effected by a notice substantially in the following form:

XYZ Corporation
New York, New York.

Gentlemen: The necessity and convenience of the Government require that your contract No. _____ be terminated at once. Pursuant to the provisions of Article _____ of that contract, that contract is hereby terminated. Effective at once, you will (1) stop all work and the placing of any subcontracts and purchase orders in connection therewith, and (2) terminate all existing subcontracts and purchase orders and cause all work thereunder to cease. The instructions contained in (1) and (2) do not apply to the following:

(Here list exceptions.)

Subject to customary approval or ratification by the contracting officer, you are authorized and requested to pay all invoices, charges, salaries, wages and other obligations actually incurred by you in connection with this contract and due on or before the effective date of this notice.

You are requested to advise all lump sum suppliers and subcontractors to submit to you, as promptly as possible, a statement of the charges that will be involved in the cancellation and termination of their orders or subcontracts. Such charges shall be computed in accordance with the termination provisions, if any, contained in said orders or subcontracts, and shall be prepared as set forth in the inclosed "Instructions to Subcontractors." (A form of "Instructions to Subcontractors" similar to that contained in § 815.936 is being prepared). All such suppliers and subcontractors should be advised that they may be required to support such statement of charges with appropriate and pertinent accounting and other records; that the statement of charges may be subject to an audit by Government auditors; and that an inspection of the supplies and materials covered by the purchase order or subcontract will be made by a Government inspector. Suppliers and subcontractors should be directed to preserve all relevant records and papers.

You will be reimbursed for the cost of all services rendered by you in connection with this termination of contract No. _____, in accordance with the provisions of the contract applicable to reimbursement of costs.

(2) In the event of partial termination the first paragraph of the foregoing notice will be omitted and in lieu thereof the following paragraph will be used:

Pursuant to Article __ of Contract No. _____ entitled "Changes" you are directed to omit work covered by the contract as follows: (Here insert a statement of the work to be omitted, and following that the remainder of the notice set forth above).

(b) *Letter to prime contractor who will negotiate settlements with subcontractors and suppliers.* [Reserved.]

(c) *Letter notice to lump sum subcontractors or suppliers.* Substantially the form set out in § 815.912 (b) will be used.

§ 815.915 *Cost-plus-a-fixed-fee construction termination and assignment forms.* The forms prescribed in paragraphs (a), (b), and (c) shall be used in connection with the termination of cost-plus-a-fixed-fee construction contracts, as defined in § 815.659. The form prescribed in paragraph (d) shall be used in connection with assignments to the Government of subcontracts and other obligations and commitments under such contracts:

(a) *Complete termination form.* Substantially the form herein prescribed will be used for complete termination of cost-plus-a-fixed-fee construction contracts for the convenience of the Government:

NOTICE OF TERMINATION FOR CONVENIENCE OF THE GOVERNMENT terminating cost-plus-a-fixed-fee contract No. W_____ dated _____ between the United States of America and _____
_____
for _____ services at _____
with any or all amendments thereto.
Name of Contractor _____
Address _____
_____
(Place)
_____
(Date)

GENTLEMEN: 1. Pursuant to the provisions of Article _____, of the above described contract, you are notified that said contract is hereby terminated for the convenience of the Government as of 11:59 P. M. this date.

(If it is desired to terminate the contract as of a future date, the phrase "as of 11:59 P. M. the _____ day of _____ 194__" should be substituted for the phrase "as of 11:59 P. M. this date.")

2. You shall immediately discontinue all work and the placing of all orders for materials, facilities, and supplies, in connection with the performance of said contract.

(If a future date of termination is provided for under paragraph 1, above, the phrase, "on the date specified in paragraph 1, above." should be added at the end of the sentence.

[1] These forms should be prepared by the contractor substantially in accordance with the forms furnished for his own use.

8. You shall immediately proceed to cancel all existing orders and commitments and terminate all subcontracts which are chargeable to said contract, except the following:

(If a future date of termination is provided for in paragraph 1, above, the phrase "on the date specified in paragraph 1, above." should be inserted preceding the comma. Care should be exercised to list all unperformed purchase orders commitments and subcontracts except those that the Contracting Officer knows should not be performed.)

4. You are requested to advise all vendors and subcontractors to submit to you, as promptly as possible, a statement of the charges that will be involved in the cancellation and termination of their orders or subcontracts. Such charges shall be set forth substantially under the following headings:

(1) Amount of total contract price previously paid.
(2) Direct labor.
(3) Direct materials.
(4) Indirect expense.[1]
(5) Administrative expenses.[1]
(6) Subcontractors' claims.
(7) Credits for refunds on insurance, etc.
(8) Engineering and similar expenses.[1]
(9) Other items of claim in detail.

Vendors or subcontractors whose classifications or accounts are similar to the above may follow their own classification. All such vendors and subcontractors should be advised that they may be required to support such statement of charges with appropriate and pertinent accounting and other records that the statement of charges may be subject to an audit by Government auditors; and that an inspection of the supplies and materials covered by the purchase order or subcontract may be made by a Government inspector. Vendors and subcontractors should be directed to preserve all relevant records and papers.

5. No reimbursement will be made for obligations incurred under said contract subsequent to the date indicated in paragraph 1 of this Notice, except for expenditures made pursuant to the directions contained in this Notice and for the protection of Government property and accounting services in connection with the settlement of this contract as are required or approved by the Contracting Officer.

6. It is requested that you promptly acknowledge receipt of this Notice on the original and a copy thereof and that they be returned to the Contracting Officer. The second copy is for your files.

_____
(Contracting Officer)

Receipt is acknowledged of the above Notice as of _____ day of _____, 194__

_____
(Contractor)

By _____

(b) *Partial termination form.* The form prescribed herein will be used for partial termination of cost-plus-a-fixed-fee construction contracts for the convenience of the Government:

NOTICE OF PARTIAL TERMINATION FOR CONVENIENCE OF THE GOVERNMENT

Termination portion of cost-plus-a-fixed-fee contract No. W_____ dated _____ between the United States of America and_____ for _____ services at_____ with any or all amendments thereto.

Name of Contractor _____
Address _____

_____
(Place)

_____
(Date)

[1] Items 4, 5, and 8 to be omitted unless applicable in the particular instance.

GENTLEMEN: 1. Pursuant to the provisions of Article ____, of the above described contract, you are notified that said contract is hereby partially terminated for the convenience of the Government as of 11:59 p. m. this date.

(If it is desired to partially terminate the contract as of a future date, the phrase "as of 11:59 p. m. the _____ day of _____, 194___" should be substituted for the phrase "as of 11:59 p. m. this date.").

2. You shall immediately discontinue all work and the placing of all orders for materials, facilities, and supplies, in connection with the performance of said contract, except that you shall continue all work and the placing of all orders that may be necessary to complete the following portion of the work covered by said contract:

(If a future date of partial termination is provided for under paragraph 1, above, the phrase "on the date specified in paragraph 1, above," should be inserted preceding the comma following the word "contract" in the third line).

3. You shall immediately proceed to cancel all existing orders and commitments and terminate all subcontracts which are chargeable to said contract, except that all orders, commitments, and subcontracts which are necessary to complete the portion of the work covered by said contract which is to be completed and which is excepted from the operation of this Notice, as fully set forth in paragraph 2, above, shall remain unmolested and uncancelled.

(If a future date of partial termination is provided for in paragraph 1, above, the phrase "on the date specified in paragraph 1, above," should be inserted preceding the comma following the word "contract" in the third line).

4. You are requested to advise all vendors and subcontractors whose orders or subcontracts are by this Notice required to be cancelled to submit to you, as promptly as possible, a statement of the charges that will be involved in the cancellation and termination of their orders or subcontracts. Such charges shall be set forth substantially under the following headings:

(1) Amount of total contract price previously paid.
(2) Direct labor.
(3) Direct materials.
(4) Indirect expense.[1]
(5) Administrative expenses.[1]
(6) Subcontractors' claims.
(7) Credits for refunds on insurance, etc.
(8) Engineering and similar expenses.[1]
(9) Other items of claim in detail.

All such vendors or subcontractors whose classifications of accounts are similar to the above may follow their own classification. All such vendors and subcontractors should be advised that they may be required to support such statement of charges with appropriate and pertinent accounting and other records; that the statement of charges may be subject to an audit by Government auditors; and that an inspection of the supplies and materials covered by the purchase order or subcontract may be made by a Government inspector. All such vendors and subcontractors should be directed to preserve all relevant records and papers.

5. No reimbursement will be made for obligations incurred under said contract in connection with the work hereby terminated subsequent to the date indicated in paragraph 1 of this Notice, except for expenditures made pursuant to the directions contained in this Notice and for the protection of Government property and accounting services in connection with the settlement of the terminated portion of this contract as are required or approved by the Contracting Officer.

6. It is requested that you promptly acknowledge receipt of this Notice on the original and a copy thereof and that they be returned to the Contracting Officer. The second copy is for your files.

_____
(Contracting Officer)

Receipt is acknowledged of the above Notice as of _____ day of _____, 194____.

_____
(Contractor)

By: _____

(c) *Termination for default form.* The form prescribed herein will be used to effect termination of cost-plus-a-fixed-fee construction contracts for default of the contractor:

NOTICE OF TERMINATION FOR THE FAULT OF THE CONTRACTOR

Terminating cost-plus-a-fixed-fee contract No. W____ dated _____ between the United States of America and _____ for services at _____ with any or all amendments thereto.

Name of Contractor _____
Address _____

_____
(Place)

_____
(Date)

GENTLEMEN: 1. Pursuant to the provisions of Article _____, of the above described contract, you are notified that said contract is hereby terminated for your fault as of 11:59 P. M. this date.

(If it is desired to terminate the contract as of a future date, the phrase "as of 11:59 P. M. the_____ day of _____, 194__," should be substituted for the phrase "as of 11:59 P. M. this date.")

2. You shall immediately discontinue all work and the placing of all orders for materials, facilities, and supplies, in connection with the performance of said contract.

(If a future date of termination is provided for under paragraph 1, above, the phrase "on the date specified in paragraph 1, above." should be added at the end of the sentence.)

3. [1] You are directed that all materials, tools, machinery, equipment and appliances which may be owned by you or which are in your possession, for use in connection with the work under said contract, shall be permitted to remain on the site of the work and all options, privileges, and rights, as well as all orders, commitments, and subcontracts, which you have acquired or entered into in connection with the work under said contract, shall remain unmolested and uncancelled until a determination is made as to whether they are to be used by or transferred to the Government in connection with the completion of the work under said contract by the Government or by others.

4. No reimbursement will be made for obligations incurred under said contract subsequent to the date indicated in paragraph 1 of this Notice, except for expenditures made pursuant to the directions contained in this Notice and for the protection of Government property and accounting services in connection with the settlement of this contract as are required or approved by the Contracting Officer.

5. It is requested that you promptly acknowledge receipt of this Notice on the original and a copy thereof and that they be

[1] This paragraph is not applicable to W. D. Contract Form No. 4, since there is no provision therein for taking over such materials, tools, etc. Therefore, paragraph 3 of the form set out in paragraph (a) should be substituted.

returned to the Contracting Officer. The second copy is for your files.

(Contracting Officer)

Receipt is acknowledged of the above Notice as of the _____ day of _____, 194____

(Contractor)

By _____

(d) *Assignment form.* The form prescribed herein shall be used to effect assignments to the Government of subcontracts under cost-plus-a-fixed-fee construction contracts:

ASSIGNMENT TO GOVERNMENT

under Cost-Plus-a-Fixed-Fee Contract No. W _____ eng. _____, dated_____ _____between the United States of America and _____ for _____ services at _____ with any or all amendments thereto.

Whereas, under Article _____ of the contract above described, the Contractor is obligated in the event of termination of such contract to execute and deliver all such papers and take all such steps as the Contracting Officer may require for the purpose of fully vesting in the United States of America, the rights and benefits of the Contractor under such obligations or commitments; and

Whereas, it has been determined by the Contracting Officer that an assignment shall be made by the Contractor to the United States of America of the instrument hereinafter described:

Now, therefore, the Contractor does hereby assign, transfer, and set over to the United States of America as of the date hereof, all of his right, title, and interest in and to the following:

Title and Identification No. of Instrument:
Name and Address of Vendor or Subcontractor:
Amount:
Date:

In witness whereof, The Contractor has executed this Assignment this _____ day of _____, 194____

(Contractor)

By _____

Accepted:
UNITED STATES OF AMERICA,
By _____
Contracting Officer

Partial Payments

§ 815.921 *Supplemental agreement to make payment in trust for subcontractor.* Where, pursuant to § 815.502 (b) it is desired to make a partial payment to a lump sum prime contractor, but on account of and in trust for a specific subcontractor, the following form of supplemental agreement will be used:

Whereas, under date of _____, a contract numbered W _____ ord_____-was entered into between the United States of America, hereinafter referred to as the Government, and (*Insert here name of prime contractor*), a corporation organized and existing under the laws of the State of _____, hereinafter referred to as the Contractor, and

Whereas, notice of termination of said contract has been given pursuant to Article _____ thereof, and

Whereas, said Article provides that the Contracting Officer and the Contractor, by supplemental agreement, after negotiation, may agree on the sum reasonably necessary to compensate the Contractor for certain of his costs, expenditures, liabilities, commitments and work, including reimbursement to the Contractor on account of settlements of certain of its commitments to its subcontractors and persons claiming through them, and

Whereas, said Article further provides that the Government shall promptly make partial payments to the Contractor on account of amounts clearly due by reason of termination under said Article and on account of settlements of obligations or commitments of the Contractor (subject to such conditions as the Contracting Officer may require), and

Whereas, (*Insert here name of subcontractor to whom partial payment is to be made*) is a subcontractor (*hereinafter called "said Subcontractor"*) under said contract, through (*Intermediary*) and (*Intermediary*), under an agreement (*hereinafter called said Subcontract*) between said (*Insert name of said Subcontractor*) and (*Insert name of last intermediary*), and

Whereas, the Contractor hereby represents to the United States that at least the sum of $_____ is clearly and justly due to the Contractor by reason of the termination of said Contract W_____ ord _____ and the parties hereto, other than the United States, hereby represent to the United States, and the Contracting Officer has been determined, that[1] the sum of $_____ is justly due to (*Insert here name of said Subcontractor*) on account of said Subcontract and by reason of its termination, the amount of which liability to said Subcontractor is an obligation or commitment of the Contractor (or is included in the obligations or commitments of the Contractor), and that said sum may properly be paid to (*Insert here name of said Subcontractor*) without prejudice to the determination of[2] any other items arising in connection with said termination of the Contract W_____ ord _____ or in connection with the termination of any subcontract hereunder other than said Subcontract with (*Insert here name of said Subcontractor*), and

Whereas, the Government desires to provide for a partial payment to the Contractor on account of its obligations or commitments within the meaning of said Article _____ of Contract W_____ ord _____[3] on condition (a) that such partial payment shall be for the benefit of (*Insert here name of said Subcontractor*) and (b) that all persons interested in such partial payment shall give their written consent to such payment and execute appropriate releases as hereinafter provided:

Now, therefore, this Supplemental Agreement is entered into this _____ day of _____, and the parties hereto agree as follows:

1. Upon the execution of this Supplemental Agreement by all the parties hereto, and upon the Contractor's submission of a proper voucher therefor, the Government will pay to the Contractor said sum of $_____ for the account of, and in trust for (*Insert here name of said Subcontractor*), and thereupon the Contractor agrees that it will pay said sum of $_____ directly to (*Insert name of said Subcontractor*).

2. [4]In consideration of such payment the parties hereto release each other of any claim against each other which is based upon said Subcontract or arises out of the termination or cancellation of said Subcontract. The parties hereto agree to eliminate any such claim based upon such Subcontract[5] from their claims in connection with or arising out of said termination of Contract W_____ ord _____ and consent to the making of the payment provided for in paragraph 1 hereof.

3. The parties hereto, other than the United States of America, warrant that there are no outstanding set-offs against (*Insert here name of said Subcontractor*) in connection with said Subcontract or against any party hereto, through whom said (*Insert here name of said Subcontractor*) makes claim, which would reduce the amount payable[6] to said (*Insert here name of said Subcontractor*) on account of such Subcontract.

In witness whereof, the parties hereto have executed this Supplemental Agreement as of the day and year first above written.

THE UNITED STATES OF AMERICA,
By _____
(Contracting Officer)

(Contractor)

§ 815.922 *Form of supplemental agreement for partial payments pending final determination of amount payable by Government in connection with termination.*

Supplemental agreement entered into this _____ day of _____ 194____, by the United States of America, hereinafter called "the Government", represented by the contracting officer executing this agreement, and _____, hereinafter called "the Contractor",

Witnesseth that: Whereas, on _____ day of _____, 194____, the parties hereto entered into Contract No. _____, and

Whereas, notice of termination of said contract has been given pursuant to Article _____ thereof, and

Whereas, under the terms of the said Contract, under the First War Powers Act, 1941, and Executive Orders Numbers 9001 and 9112, payments may be made to the contractor in advance of final determination of the amount to which the contractor will be entitled by reason of such termination, and

Whereas, the contractor hereby represents to the Government that at least the sum of $_____ is due the contractor by reason of the termination of said contract and the Government desires to make a payment to the contractor pending the final determination of the amount payable by reason of such termination, and

Whereas, it is deemed that the execution of this agreement will facilitate the prosecution of the war or that the contractor is engaged in a business or operation which is necessary, appropriate or convenient for the prosecution of the war:

The following notes refer to modifications which should be made only where it is desired to make merely a partial payment to the Subcontractor on account of the termination of his Subcontract and to leave the balance of his claim for later determination.

[1] The words "not less than" should be inserted at this point.

[2] Insert at this point the words "the aggregate amount which may be due on account of the termination of said Subcontract or of".

[3] Insert at this point the words "and as a partial payment on account of the amount due by reason of the termination of said Subcontract".

[4] Insert at this point in place of the first sentence of paragraph 2 the following sentence "In consideration of such payment said Subcontractor and the parties hereto, other than the United States, agree that, to the extent of such payment, they severally do release the United States and each of the other parties hereto against whom they severally have claim based upon said Subcontract or the termination thereof, retaining any such claim based upon said Subcontract only to the extent that such claim may be found by the Contracting Officer under Contract W_____ ord _____ to exceed such payment.

[5] Insert at this point the words ", to the extent of such payment,".

[6] Substitute for the word "payable" the words "hereby authorized to be paid".

Article I. Upon the execution of this supplemental agreement by the parties hereto, and upon the contractor's submission of a proper voucher therefor, the Government will pay to the contractor the sum of $_____.

Article II. The payment provided for herein, together with any prior payments received by the contractor in connection with such termination, shall be without prejudice to the right to receive any additional amounts to which the contractor may be entitled as a result of such termination.

Article III. Said payments shall be applied against the amount finally determined to be payable by the Government to the contractor in connection with such termination. If such payments exceed the amount finally determined to be payable to the contractor in connection with such termination, the contractor agrees to repay the excess to the Government on demand together with interest thereon at the rate of 6% per annum from the date of receipt of such excess payment by the contractor to the date of the repayment of such excess. In the event that an excess payment results from credits arising in favor of the Government by reason of the retention or disposition of property by the contractor, the amount of such excess payment shall bear interest at the rate of 6% only from the date when such credits resulted in an excess payment.

In witness whereof, The parties hereto have executed this agreement as of the day and year first above written.

THE UNITED STATES OF AMERICA,
By_____
Title

_____
Contractor
By_____
Title

(a) *Additional provisions for use in supplemental agreement for partial payments when effected through controlled account.* Where partial payments are to be effected through a controlled account substantially the following provisions will be included in the form set forth in § 815.922 and the depositary bank notified of such provisions:

ARTICLE IV. All funds advanced to the contractor as payments hereunder, together with the proceeds of the sale of any property related to the uncompleted portion of the contract, shall be deposited by the Government and the contractor in a special bank account or accounts at a member bank or banks of the Federal Reserve System, or any "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation (Act of July 23, 1935; 49 Stat. 684) as amended (12 U. S. C. 264) separate from the contractor's general or other funds. Such special bank account or accounts shall be so designated as to indicate clearly to the bank their special character and purpose, and the balances in such account or accounts shall be used by the contractor exclusively as a fund for meeting costs incurred in performance on the uncompleted portion of the contract prior to receipt of termination notice or thereafter as directed by the contracting officer. Withdrawals from such special account or accounts shall be subject to the prior written approval of the contracting officer and to countersignature of the contracting officer or his duly authorized representative to the extent that he shall notify the bank that it is required by him. Such countersignature may be of blanket checks to cover a number of approved expenditures. Any balances from time to time in such account or accounts shall secure the repayment of the advances in connection with which the account or accounts are opened, and the Government shall have a lien on such balances to secure the repayment of such advances, which lien shall be superior to the lien of the bank, or any other person, upon such account or accounts, by virtue of assignment to it of the principal contract or otherwise. The contractor hereby authorizes and instructs the bank to transfer, without notice to the contractor, and without liability of any kind or nature for such action, the balance of funds on deposit in such special account at any time to the Government upon the written request of the contracting officer to the bank for such transfer. Upon receipt by the bank of any written directions from the contracting officer or his duly authorized representative, the bank shall act thereon and be under no liability to any party thereto for any action taken in accordance with said written directions. Any instructions or written directions received by the bank through the contracting officer upon War Department stationery and purporting to be signed by or by the direction of the contracting officer, or his duly authorized representative, shall, in so far as the rights, duties and liabilities of the bank are concerned be conclusively deemed to have been properly issued and filed with the bank by the contracting officer or his duly authorized representative.

Supplemental Agreements to Insert Current Termination Article in Contracts

§ 815.926 *Lump sum contracts; supplemental agreement for use where contract contains no provision for the termination for the convenience of the Government or contains a termination article which does not provide for a negotiated settlement of the amount due in respect of the uncompleted portion of the contract.*

This supplemental agreement entered into this _____ day of _____, 194____, by the United States of America, hereinafter called "the Government" represented by_____
(authorized officer)
executing this contract and _____ hereinafter called "the Contractor",

Witnesseth that:

Whereas, the Contractor and the Government have entered into Contract No. W_____ under date of _____, 194____, as amended and supplemented by _____, dated _____, 194____; and

Whereas, it is desirable to amend said contract so that termination thereof for the convenience of the Government and a settlement of the rights of the parties by reason of any such termination may be effected expeditiously, without undue expense, and with a minimum of administrative delay and inconvenience, and

Whereas, pursuant to the First War Powers Act and Executive Order No. 9001, issued pursuant thereto, the Secretary of War acting through his duly delegated officer, has authorized the amendment of existing War Department contracts so as to make adequate provision for termination for the convenience of the Government and for the negotiation of settlements in connection therewith and has found that such amendment will facilitate the prosecution of the war.

Now, therefore, the parties do agree to amend the aforesaid contract and the same is hereby amended by

(Here make such change in the contract as may be necessary to the end that it will contain provisions for termination at the convenience of the Government substantially the same as those set forth in § 803.324 in the case of a lump sum supply contract or, in the case of a lump sum construction contract, as § 803.324 (a) of these Procurement Regulations.)

Final Settlement Agreements

§ 815.931 *Settlement agreement for use where a lump sum supply contract contains a provision for termination for the convenience of the Government substantially in the form contained in § 803.324 and permits settlement by negotiation of amount due with respect to uncompleted portion of the contract.*

This supplemental agreement, entered into pursuant to the First War Powers Act and Executive Order No. 9001 this _____ day of _____, 194____, by the United States of America, hereinafter called "the Government" represented by _____
(authorized officer)
executing this contract and _____ hereinafter called "the Contractor",

Witnesseth that:

Whereas, the Contractor and the Government have entered into Contract No. W _____ under date of _____, 194____, as amended and supplemented by _____, dated _____, 194____; and

Whereas, said contract provides for termination of such contract at the convenience of the Government and for the determination by negotiation of the amount payable on account of the uncompleted portion of the contract and of certain other items; and

Whereas, it is to the advantage of the parties to arrange this negotiated settlement and the interests of the Government are being fully protected thereby; and

Whereas, the Government and Contractor after negotiations have arrived at an agreement as to the sum payable on account of such uncompleted portion of the contract and for other items; and

Whereas, in the light of such agreement, the additional amount payable to the Contractor upon termination pursuant to the provisions of the contract has been found by the Government and the Contractor to be the sum of $_____(x)_____, which sum the Contractor is willing to and does accept in full and complete settlement except as may be otherwise set forth hereinafter of all liabilities and obligations of the Government under the aforesaid contract;

Now, therefore, the parties hereto do mutually agree as follows:

ARTICLE 1. The Contractor shall furnish and deliver, or has previously furnished and delivered, to the Government at the places and times hereinafter stated the following materials and items:

(Insert description of all items including completed and partially completed supplies, spare parts, work in process, materials, fabricated parts, plans, drawings, information and other things which the Contractor is to deliver to the Government.)

ART. 2. Upon delivery of all the materials and items specified in Article 1 above in accordance with the terms of Article 1, the Government, upon presentation by the Contractor of properly certified invoices or vouchers, will pay to the Contractor in addition to the sum of $_____(a)_____ previously paid to the Contractor for its work and services hereunder, the sum of $_____(x)_____ for all its costs, expenditures, liabilities, commitments and work done pursuant to the contract.

Said sum of $_____(x)_____ is made up as follows:

a. Payment in full for completed supplies (including spare parts, drawings, information and other articles and items), called for by the contract, at the contract price therefor, so far as not previously paid: $_____(u)_____

b. Payment in full compensation to the Contractor for the uncompleted portion of

the contract, including without limitation a reasonable allowance for profit for work actually done: $_____(v)_____

c. Payment in full for all expenditures made and costs incurred after the termination notice for the protection of Government property and for such other expenditures and costs as were necessary in connection with the settlement of the contract: $_____(y)_____

ART. 3. The Contractor agrees to accept the said additional sum of $_____(x)_____ in full and complete settlement of all its rights and of all obligations and liabilities of the Government under this aforesaid contract and agrees to release, and does hereby release, the Government from all further liability and obligation under said contract (except as may be otherwise set forth hereinafter) provided that said additional payment is made in accordance with Article 2 hereof.

ART. 4. Upon payment of the additional sum specified in Article 2 hereof, the contract shall terminate and all rights and liabilities of the parties thereto and all obligations of the Government to make further payments or to carry out other undertakings thereunder shall cease forthwith and forever, except: (Omit any of the following which are not applicable.)

(1) All rights of the Government to the recovery of excessive profits pursuant to Sec. 403 of the Sixth Supplemental National Defense Appropriation Act, 1942 (Pub. No. 528, 77th Congress) as amended by Sec. 801 of the Revenue Act of 1942 (Pub. No. 753, 77th Congress) on account of payments made to the Contractor hereunder.[1]

(2) All rights and liabilities of the parties hereto under the articles, if any, in the contract applicable to inventions, patent rights, patent infringements, patent licenses and reproduction rights; and under the articles, if any, in the contract applicable to options (except options to continue or increase the work under the contract), covenants not to complete, covenants of indemnity, and agreements with respect to the future care and disposition by the Contractor of Government-owned facilities remaining in his custody.

(3) All rights of the Government to effect an adjustment of patent royalties under the provisions of Pub. No. 768, 77th Congress.

(4) All rights and liabilities of the respective parties under the articles, if any, of said contract concerning defects which may hereafter appear in any materials or supplies furnished to the Government by the Contractor pursuant to said contract or this supplemental agreement. (Here add additional excepted matters, if any.)

In witness whereof—

§ 815.932 *Settlement agreement for use where a lump sum construction contract contains a provision for termination for the convenience of the Government substantially in the form contained in § 803.324(a).*

This supplemental agreement, entered into pursuant to the First War Powers Act and Executive Order No. 9001, this _____ day of _____, 194____, by the United States of America, hereinafter called "The Government" represented by _____ (authorizing officer) executing this contract and _____ hereinafter called "the Contractor",

Witnesseth that:

Whereas, the Contractor and the Government have entered into Contract No. W _____ under date of _____, 194____, as amended and supplemented by _____, date _____, 194____; and

Whereas, it has been determined that it is in the best interest of the Government to terminate the aforesaid contract; and

Whereas, said contract provides for termination of such contract at the convenience of the Government and for the determination by negotiation of the amount payable on account of the contract; and

Whereas, it is to the advantage of the parties to arrange this negotiated settlement and the interests of the Government are being fully protected thereby; and

Whereas, the Government and Contractor after negotiations have arrived at an agreement as to the sum payable on account of such contract; and

Whereas, in the light of such agreement, the amount payable to the Contractor upon termination pursuant to the provisions of the contract has been found by the Government and the Contractor to be the additional sum of $ _____(x)_____, which sum the Contractor is willing to and does accept in full and complete settlement except as may be otherwise set forth hereinafter of all liabilities and obligations of the Government under the aforesaid contract,

Now, therefore, the parties hereto do mutually agree as follows:

ARTICLE 1. The Contractor shall furnish and deliver or has previously furnished and delivered, to the Government at the places and times hereinafter stated the following materials, supplies, equipment, machinery and machinery tools and items:

(Insert description of all items including all materials, supplies, work in process, facilities, equipment, machinery, tools, plans, drawings, information and other things which the Contractor is to deliver to the Government.)

ART. 2. Upon delivery of all the items specified in Article 1 above in accordance with the terms of Article 1, the Government, upon presentation by the Contractor of properly certified invoices or vouchers, will pay to the Contractor in addition to the sum of $_____(a)_____ previously paid to the Contractor for its work and services hereunder, the sum of $_____(x)_____ for all its costs, expenditures, liabilities, commitments and work done pursuant to the contract, a total sum of $_____(a)_____ plus _____(x)_____.

Said sum of $_____(a)_____ plus _____(x)_____ is made up as follows:

a. Payment in full compensation to the Contractor on account of the settlement of this contract, including without limitation, a reasonable allowance for profit for work actually done; $_____(y)_____.

b. Payment in full for expenditures made and costs incurred after the termination notice for the protection of Government property and for such other expenditures and costs as were necessary in connection with the settlement of the contract: $_____(z)_____.

ART. 3. [Note:—Article 3 and subsequent articles of this form are the same as those similarly numbered found in § 815.931 hereof.]

§ 815.933 *Supplemental agreement for use where a lump sum supply or construction contract contains no article for termination for convenience of the Government and the contractor will not agree to amend the same by inserting the article contained in § 803.324 or 803.324 (a), or where any such contracts do not contain termination for the convenience of the Government articles and a negotiated settlement can be effected.*

SUPPLEMENTAL AGREEMENT

This supplemental agreement entered into this _____ day of _____, 191__, by and between the United States of America, hereinafter called "the Government", represented by the Contracting Officer executing this agreement, and _____ hereinafter called "the Contractor",

Witnesseth that:

Whereas, On the _____ day of _____, 194__, the parties hereto entered into Contract No. _____ for _____

Whereas, The Government desires to terminate said contract for the convenience of the Government and to settle the rights of the parties by reason of such termination;

Whereas, This contract is entered into pursuant to the First War Powers Act, 1941 and Executive Order No. 9001, and

Whereas, It has been determined that the execution of this agreement will facilitate the prosecution of the war:

Now, therefore, The parties do mutually agree as follows:

ARTICLE 1. The Contractor shall furnish and deliver to the Government at the places and times hereinafter stated the following materials, supplies, equipment, machinery, tools, and items:

ART. 2. Upon delivery of all the property specified in Article 1 above in accordance with the terms of Article 1, the Government upon presentation by the Contractor of properly certified invoices or vouchers will pay to the Contractor in addition to the sum of $_____ previously paid to the Contractor for its work and services hereunder, the sum of $_____.

ART. 3. The Contractor agrees to accept the said sum of $_____ in full and complete settlement of all its rights and of all obligations and liabilities of the Government under this aforesaid contract and agrees to release, and does hereby release, the Government from all further liability and obligation under said contract (except as may be otherwise set forth hereinafter) provided that said additional payment is made in accordance with Article 2 hereof.

ART. 4. Upon payment of the additional sum specified in Article 2 hereof, the contract shall terminate and all rights and liabilities of the parties thereto and all obligations of the Government to make further payments or to carry out other undertakings thereunder shall cease forthwith and forever, except:

(1) All rights, and liabilities of the respective parties under the articles, if any, of this contract, applicable to patent infringement and patent license rights which shall continue in full force and effect.

(2) All rights of the Government to effect an adjustment of patent royalties under the provisions of Public Law No. 768, 77th Congress.

(3) All rights and liabilities of the respective parties under the articles, if any, of said contract, concerning defects which may hereafter appear in any supplies and materials furnished the Government pursuant to said contract or of this supplemental agreement which rights and liabilities shall continue in full force and effect.

(4) All rights of the Government to the recovery of excessive profits pursuant to Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942 (Public Law

[1] If the settlement is to be exempted from renegotiation (see § 812.1204 (i)) this paragraph (1) should be omitted entirely.

528, 77th Cong.) as amended by Section 801 of the Revenue Act of 1942 (Public Law 753, 77th Cong.).

In witness whereof, The parties hereto have executed this agreement as of the day and year first above written.

THE UNITED STATES OF AMERICA
By _____
_____
(Official title)
_____
(Contractor)
_____
_____
(Address)

Witnesses:
_____
_____

(Obtain approval and consent of surety if required.)

§ 815.934 *Cost-plus-a-fixed-fee supply contracts.* Substantially the following form will be used, pursuant to § 815.655, for a final settlement agreement in connection with the termination of a cost-plus-a-fixed-fee contract:

This supplemental agreement, entered into this _____ day of _____, 194___ by the United States of America hereinafter called "the Government" represented by _____ executing this contract and _____, hereinafter called, "the Contractor",

Witnesseth that:

Whereas, the Contractor and the Government have entered into Contract No. W ____ _____ under date of _____ _____, 194____, as amended and supplemented by _____, dated_____ _____, 194____; and

Whereas, it has been determined that it is in the best interest of the Government to terminate the aforesaid contract; and

Whereas, said contract provides for its termination at the convenience of the Government; and

Whereas, it has been determined that there is due the Contractor the sum of $_____ (a)_____ as reimbursement for all costs incurred in accordance with the terms of the contract, and the sum of $_____ (b)_____ as payment of the fixed fee in accordance with the terms of the contract, and

Whereas, the Contractor is willing to and does accept such amounts in full and complete settlement of all liabilities and obligations of the Government under said contract, except as may be otherwise set forth hereinafter;

ARTICLE 1. The Contractor shall furnish and deliver, or has previously furnished and delivered, at the places and times stated the Government-owned materials, supplies, equipment, machinery, tools and other articles listed in Schedule A, attached hereto and made a part hereof.[1]

ART. 2. Upon the delivery of all of such articles, and upon the presentation by the Contractor of properly certified invoices or vouchers, the Government will pay to the Contractor the sum of $_____(a)_____ as reimbursement for all costs incurred by the Contractor in accordance with the terms of the contract and not previously reimbursed.

ART. 3. The Government will also, at the same time, and upon the submission by the Contractor of a properly certified invoice or voucher, pay to the Contractor the sum of $_____(b)_____ as payment in full of the remainder of the fixed fee due to the Contractor under said contract as terminated.

[1] If such a schedule has previously been prepared for some other purpose it may be incorporated herein by reference.

ART. 4. Upon payment of the sums specified in Articles 2 and 3 said contract shall terminate and all rights and liabilities of the parties thereto, and all obligations of the Government to make further payments or to carry out other undertakings thereunder shall cease forthwith and forever, except: (Omit any of the following which are not applicable.)

(1) All rights of the Government to the recovery of excessive profits pursuant to Sec. 403 of the Sixth Supplemental National Defense Appropriation Act, 1942 (Pub. No. 528, 77th Congress) as amended by Section 801 of the Revenue Act of 1942 (Pub. No. 753, 77th Congress) on account of payments made to the Contractor hereunder.[2]

(2) All rights and liabilities of the parties hereto under the articles, if any, in the contract applicable to inventions, patent rights, patent infringements, patent licenses and reproduction rights; and under the articles, if any, in the contract applicable to options (except options to continue or increase the work under the contract), covenants not to complete, covenants of indemnity and agreements with respect to the future care and disposition by the Contractor of Government-owned facilities remaining in his custody.

(3) All rights of the Government to effect an adjustment of patent royalties under the provisions of Pub. No. 768, 77th Congress.

(4) All rights and liabilities of the respective parties under the articles, if any, of said contract concerning defects which may hereafter appear in any materials or supplies furnished to the Government by the Contractor pursuant to said contract or this supplemental agreement. (Here add additional excepted matters, if any.)

In witness whereof—

Instructions to Contractors and Subcontractors

§ 815.936 *Lump sum contracts.* The following form of Instructions to Contractors will accompany each Notice of Termination in connection with the termination of a lump sum supply contract (see § 815.912 (a)):

INSTRUCTIONS TO CONTRACTORS IN REGARD TO TERMINATION OF LUMP SUM SUPPLY CONTRACTS

SECTION 1—INTRODUCTION

1. *Necessity for termination.* The constant change in the requirements of our armed forces makes it necessary to terminate certain contracts from time to time. Your contract is among these so that its termination is in no sense to be taken as an indication that the War Department is in any way dissatisfied with your performance.

2. *Termination procedure policy.* It is the intention of the War Department to make a proper adjustment with you in accordance with customary commercial practice and the termination article in your contract. However, since public funds are involved, you must submit adequate accounting data to support your request for an adjustment based on the termination. This must be done before payment can be made. When this accounting data is received, the War Department will cooperate with you in arriving at a speedy and equitable negotiated settlement. To assist in effecting termination settlements, the War Department has prepared Procurement Regulation No. 15 and the Termination Accounting Manual for Fixed-Price Supply Contracts. These documents govern the termination of contracts for the convenience of the Government. A copy of the Accounting Manual is inclosed. A copy of the Procurement Regulation, which is primarily designed for the guidance of Government contracting personnel, may be obtained by application to the Contracting Officer. These instructions, however, summarize the action which you must take.

[2] If the settlement is to be exempted from renegotiation (see § 812.1204 (1)) this paragraph (1) should be omitted entirely.

3. *Necessity for prompt action.* To expedite payment to you, it is imperative that you take action immediately to supply the Statement of Costs, Inventories and other information (see Exhibit 1) requested in these instructions. Inventories should be prepared immediately. The Statement of Costs may be prepared either on the "inventory" basis shown in Exhibit 1, Schedule F, or on the "total cost" basis shown in Exhibit 1, Schedule G. (See Termination Accounting Manual, paragraphs 2102.3 and 2102.4.) If prepared on the "total cost" basis, the statement will nevertheless be supported by adequate inventories and other schedules. The inventory method is preferred where the necessary cost information is reasonably available. There is no occasion for delaying the submission of this statement, pending the disposition of items of inventory, submission of statements of subcontractors' termination charges for approval, or determination of your own charges incurred after termination. It will expedite audit of you submit this statement at the earliest possible moment. It is believed that such information can be furnished within 30 days after receipt of the Notice of Termination. If any parts of your proposal for a negotiated settlement can be presented separately and in advance of the completion of the proposal, this should be done. It is essential that this be done when you request a partial payment, since partial payment will be made on the basis of such partial proposals.

SECTION 2—NOTICE OF TERMINATION

4. *Cessation of work and notification to suppliers.* Immediately upon receipt of the Notice of Termination (with which these instructions are sent), you should take the following steps:

a. On the effective date of the Notice, stop all the work or that portion of the work which the Notice of Termination requires you to stop, and make no further commitments in connection with the contract (or the portion of the contract which the Notice discontinues). However, if, for any reason, you believe it inexpedient to stop any portion of the work as required in the Notice of Termination, you should communicate this information to the Contracting Officer immediately and obtain his instructions. This should be done promptly, by telephone or personal conference, and you should request written confirmation of any variations from instructions given by the Termination Notice.

b. Notify all subcontractors and suppliers that your contract has been terminated and order them to stop all or a part of their work in compliance with the Notice of Termination. Also order them to make no further commitments in connection with their subcontracts. In general, you are in the same position as to your subcontractors as is the Government in relation to you. You should request them to furnish to you promptly inventories and cost statements (see Annexed Exhibits) so as to speed up settlement of their termination charges as much as possible.

c. Notify the Contracting Officer of any pending legal proceedings, or legal proceedings subsequently brought, with respect to any subcontracts or purchase orders related to the terminated contract.

SECTION 3—INVENTORIES

5. *Inventory of materials on hand.* Immediately after stopping work, you should arrange to take an inventory of finished items, material in process, tools and raw materials applicable to the terminated contract, reporting the results in substantially the forms set forth as Schedules A to E of Exhibit 1

attached hereto. Separate statements are to be prepared for *Government-owned* property in your possession. Inventory should include all material (for which costs are to be charged) applicable to the terminated contract and *owned by your company* even if located in plants of your subcontractors; however, in special cases, it may be advisable to have separate inventories. Immediately upon completion of the inventory copies should be submitted to the Contracting Officer.

6. *Necessity for promptness in submission of inventories.* It is expected that these inventories can be prepared and submitted before the remainder of your Statement of Costs. Prompt submission will enable this office to advise you as to the disposition of inventory, and will therefore expedite the entire settlement. The contracting officer may request you to furnish preliminary or partial inventories. You may file partial inventories without such request when such action will assist in (a) the retention or disposal of property by you, or (b) supporting a partial payment requested by you.

7. *Policy of War Department concerning inventory.* It is the policy of the War Department, so far as possible, to dispose of inventories through normal commercial channels. Disposal will ordinarily be handled in one of the following ways:

a. *Materials which can be used by your company or sold to others and as to which you will seek no reimbursement from the Government.* Except as otherwise explicitly directed by the Contracting Officer in the Notice of Termination or in other written communication, you are authorized, without further approval of the Contracting Officer but subject to subparagraph c of this paragraph 7 and to existing regulations of the War Production Board or of other Government Agencies, to retail or sell all materials, title to which has not passed to the United States.

b. *Materials which can be returned to suppliers for full credit.* These items should be noted in the "Recommended Disposal" column as "Returned to Vendor at Cost." No approval from this office is required for this action subject to the same limitations as paragraph 7a, if the amount, of which you will request reimbursement from the Government, will not exceed the freight charges for shipment to you and return to suppliers, plus reasonable packing and handling charges.

c. *Items which can be used by your company or sold to others but not at cost.* It is necessary that the Contracting Officer approve in writing your retention or sale of material at less than cost. (Note to Contracting Officer: In proper cases this provision may be liberalized. See § 815.359). Therefore, when you intend to request the Government to reimburse you for the difference between cost and the receipts from disposal, you must obtain such approval in writing from the Contracting Officer, sending him the following information:

(1) Complete description of material for sale.

(2) Cost of the material as shown in your inventory.

(3) Proposed selling price or price at which you agree to retain it.

(4) Brief statement as to why the material cannot be sold at full value.

d. *Partial inventories.* Authority to retain or dispose of portions of your inventory may be obtained by submitting a partial inventory covering such items. You are urged to submit partial inventories promptly of all items which you are willing to retain or of which you recommend for sale. Such items must be scheduled in detail on the inventory forms as provided in following paragraphs. Show your recommendations in the column "Recommended Disposal" on the inventory schedules.

8. *Organization for inventory taking.* Your inventories should be taken in accordance with the instructions contained in Part II, Chapter 2 of the Termination Accounting Manual.

SECTION 4—PRESENTATION OF STATEMENT OF COSTS

9. *Statement of costs of uncompleted portion of the contract.* As soon as possible after the receipt of the Notice of Termination, you should prepare and submit to the Contracting Officer a statement of your own costs with respect to the uncompleted portion of the contract to the date of termination, in general, in one of the two forms as set forth in Exhibit 1. You will note that these schedules are exclusive of subcontractor's claims and costs incurred by you after termination. Please note that this Statement of Costs is to be certified. (See Exhibit 1, Schedule F or G). All records and papers pertinent to and in support of the statement of your costs should be preserved.

10. *Determination of amount of settlement.* a. *Completed items.* All articles completed, in accordance with the contract, for which you have not previously been paid, are to be charged at the contract unit price.

b. As to *uncompleted items,* settlement will take into account all reasonable material, burden and labor costs properly applicable to such partially completed items in accordance with recognized accounting practice. The basis upon which you should prepare your statements of costs of uncompleted items is set forth in the Termination Accounting Manual, especially pars. 2102 et seq.

c. Indirect charges and administrative expenses properly applicable to the contract when computed and distributed in accordance with recognized accounting practice are normally allowable as termination charges. More specific information on this subject is set forth in Part I, Chapter 3 of the Termination Accounting Manual.

SECTION 5—SUBCONTRACTORS AND VENDORS

11. *Notification of subcontractors and vendors.* No costs will be allowed to you in connection with the settlement which arises from failure on your part effectively to notify subcontractors and vendors of the termination of their subcontracts or purchase orders, within a time which is found by the Contracting Officer to be reasonable under the circumstances.

12. *Statements and other papers to be obtained from subcontractors.* The same type of statements covering inventories and expenses applicable to the termination should be required from your subcontractors and suppliers which the Government requires from you. The extent to which these reports are detailed will of course depend upon the complexity of the subcontract.

13. *Disposal of inventories.* The subcontractor is authorized to retain, return or sell inventory subject to the same restrictions placed upon your company by the provisions of Paragraph 7 unless the Contracting Officer hereafter gives you written permission to approve such dispositions within limits stated by him. (Note to Contracting Officer: See § 815.359 for possible liberalization of these provisions and proper cases and exceptions). Requests for the retention or disposal of items which will directly or indirectly enter into your termination charges against the Government must be submitted to this office for approval.

14. *Statement of costs.* In any case where the subcontractor will request payment of termination charges, the subcontractor should furnish a certified Statement of Costs to you in one of the same general forms which the Government requires you to file in your own behalf. After your review, as described in paragraph 15, the subcontractor's claim should be promptly submitted to this office for approval.

15. *Review of subcontractor's statements.* It is your primary responsibility to review or examine in an appropriate manner all statements and proposals for settlement of charges arising out of the termination submitted to you by your subcontractors and suppliers. The problem faced by you in passing upon the propriety of these proposals is similar to the problem faced by the Government with respect to your statement and proposal. A review or examination by you of each subcontractor's Cost Statement and proposal for settlement is necessary. In this respect, you should make an examination, reasonable under all the circumstances, and you will be held to the standard of scrutiny that a prudent business man would ordinarily employ in the conduct of his own affairs. You will not be required to warrant the accuracy of the facts presented by the subcontractors. A certification that, on the basis of a review or examination which you believe to be adequate, you are of the opinion that the proposed settlement is fair and reasonable and would be made by you if reimbursement by the Government were not involved will suffice. (See Exhibit 2—Schedules E and F for form of certificates by you and your subcontractors.)

SECTION 6—PARTIAL PAYMENTS

16. In order to relieve you, to the greatest extent possible, of financial inconvenience caused by the termination of your contract, it is the policy of the Government to make partial payments to you on account of the amounts owing to you or, through you, to your subcontractors or suppliers by reason of this termination, as rapidly as you make it possible to do so. (See Paragraph 3)

You may request a partial payment at any time after receipt by you of the Notice of Termination. Your request should be supported with sufficient data for the Contracting Officer to find that at least the amount requested is clearly due and owing to you on account of the termination and that there are no offsets to or assignments of the amounts owing to you. A partial payment may be made to you whenever you and the Contracting Officer are in agreement that at least the amount of the proposed partial payment is due and owing to you in connection with the termination. A partial payment will also be made to you whenever you and the Contracting Officer are in agreement that the proposed partial payment is necessary to enable you to make payments to your subcontractor or suppliers in amounts which you and the Contracting Officer agree are clearly owing to them.

SECTION 7—EXPENSES SUBSEQUENT TO TERMINATION

17. *Approval of expenditures.* You should obtain the Contracting Officer's approval of all costs incurred by you after the effective date of the Notice of Termination.

a. For the protection of Government property.

b. Other expenditures in connection with the terminated contracts. (See Paragraph c of the Termination Article in your contract.)

You must take adequate precaution to protect property in your possession to which the Government has or may have an interest.

SECTION 8—NEGOTIATION OF SETTLEMENT

18. After all suppliers' and subcontractors' settlements have been approved and inventories have been disposed of to the greatest extent possible, you will find it advisable to submit a summary of your Statement of Costs and proposal for negotiated settlement and of all accompanying schedules (if these have previously been submitted separately at different times). A proposed form for this summary is illustrated in Exhibit 2. Even if all

your Statements are submitted together, (See Paragraph 9) this form provides a convenient summary for the use of the Contracting Officer. This statement will be a recapitulation of your entire proposal for settlement, and as such will include your settlements with subcontractors, as approved, and expenses incurred subsequent to termination with the approval of the Contracting Officer. After submission of this report, a representative of the Contracting Officer will arrange for final negotiation with you of a settlement of your proposal.

SECTION 9—FURTHER INFORMATION

19. Whenever the termination article in your contract requires the approval of the Contracting Officer, you should, for your records, obtain written confirmation of any such approval or any instructions or rulings given orally.

20. The negotiator actively in charge of the settlement of your contract is:

_____
(Name of Negotiator in Charge)

_____
(Address)

_____
(Telephone) (Extension)

The negotiator is *not* authorized to agree finally to a settlement with you, but will endeavor to obtain answers to any inquiries you may have and will advise you as to procedure.

§ 815.937 *Contractor's Settlement Proposal Forms*—(a) *Standard Form A–1; Contractor's Settlement Proposal; Summary Statement.*

[Actual size 8½" x 14"]

Form No. A-1
Read all instructions before preparing this form

Budget Bureau approval No. 49-R177
Expiration date: 31 July 1944

CONTRACTOR'S SETTLEMENT PROPOSAL

SUMMARY STATEMENT

(Form A-2 or A-3 may be used when total proposal is less than $10,000 before disposal or other credits)

Name of your firm

Address (Street) (City) (State)

If monies payable under the contract have been assigned, show name of assignee:

Check one

☐ This settlement proposal is applicable to a prime contract with the Government.

☐ This settlement proposal is applicable to subcontract or purchase order_____ (identify) with:

*_____

*Insert name and address of contractor from whom you received Notice of Termination.

Effective date of termination	Government contract No.	Government agency	Items contracted for

SUMMARY

			Do not use this column
1. Contractor's own charges—per Schedule B-1 or B-2—See Instruction 3	$_____		
2. Adjustments—Schedule A-1-a—See Instruction 4			
3. Adjusted amount		$_____	
4. Post termination charges—Schedule A-1-b—See Instruction 5			
5. Settlements with subcontractors—Schedule A-1-c—See Instruction 6			
6. Other charges—Schedule A-1-d			
7. Total charges		$_____	
8. Disposal credits—See Instruction 7	$_____		
9. Other credits—Schedule A-1-e—See Instruction 9			
10. Partial payments—Schedule A-1-e			
11. Advance or progress payment—Schedule A-1-e—See Instruction 8			
12. Total credits		$	
13. Net settlement proposal		$	
14. Contract price of finished units not otherwise billed—See Instruction 10	$_____		
15. Disposal credits applicable to finished units			
16. Net charge for finished units			
17. Net settlement proposal including charge for finished units		$_____	

NOTE: The paper on which this form is printed can be used for reproduction by liquid process duplicating machines.

CONTRACTOR'S SETTLEMENT PROPOSAL—Continued

SUMMARY STATEMENT—continued

CERTIFICATE

Own charges.—The undersigned certifies that, to the best of its knowledge and belief, the summary of charges and supporting schedules and explanations have been prepared from the books of account and records of the undersigned in accordance with recognized commercial accounting practices; that they include only those charges allocable to the terminated portion of this contract; that the charges as stated are fair and reasonable; and that they have been prepared with knowledge that they will, or may, be used by contracting officers acting on behalf of the United States as the basis o settlement with the undersigned or with others.

Subcontractors' charges.—The undersigned certifies that it has examined, or caused to be examined, to an extent which it considers adequate in the circumstances, the claims of its immediate suppliers (exclusive of charges arising from termination claims filed against such immediate suppliers by their suppliers) as summarized as item 5, that, in its opinion, the settlements of its immediate supplier's own charges are fair and reasonable, said charges are allocable to the terminated portion of this contract, and said settlements were negotiated in good faith, and are not more favorable to its immediate suppliers than those which the undersigned would make if reimbursement by the Government were not involved. The undersigned certifies that it has no knowledge to doubt the reasonableness of the settlements with more remote suppliers or to doubt that the charges for them are allocable to this contract. The undersigned shall not be deemed to have made any representations with respect to the immediate and more remote suppliers' claims or the settlement thereof other than those expressed in this certificate.

Chief Accounting Officer:

_____
(Signature)

_____
(Title)

_____
(Name of contractor)

By _____
(Signature)

_____
(Title)

_____
(Date)

Schedule A-1-a ADJUSTMENTS IN FORM NO. B-1 OR B-2

Item	Explanation	Amount per "B" form	Revised amount	Increase	Decrease	Do not use this column

Schedule A-1-b POST TERMINATION CHARGES

Item	Explanation	Amount	Do not use this column

W. D., A. G. O. Form No. 242
18 April 1944

CONTRACTOR'S SETTLEMENT PROPOSAL—Continued

Schedule A-1-c SETTLEMENTS WITH SUBCONTRACTORS

Name of subcontractor or date of schedule previously submitted	Item	Total on order at date of termination		Quantity canceled applicable to contract	Amount of actual or proposed settlement	Do not use this column
		Quantity	*Amount, $*			

Schedule A-1-d OTHER CHARGES

Item	Explanation	Amount	Do not use this column

Schedule A-1-e PARTIAL PAYMENTS, ADVANCE OR PROGRESS PAYMENTS AND OTHER CREDITS

Date	Explanation	Amount	Do not use this column

INSTRUCTIONS

1. This Form No. A-1 should be prepared as soon as the contractor can complete his net settlement proposal.
2. Where schedules provided do not provide adequate space, attach schedules in similar form.
3. *Contractor's Own Charges.*—Contractor should attach latest copy of Contractor's Own Charges (Form B-1 or B-2) as filed with the contractor or Government representative who rendered Notice of Termination. "Contractor's Settlement Proposal" copies of inventory schedules showing all disposal credits should also be attached.
4. *Adjustments.*—Schedule A-1-a should be used to explain all adjustments made by contractor to items included in attached Form B-1 or B-2.
5. *Post Termination Charges.*—Should be listed in reasonable detail in Schedule A-1-b with appropriate explanation.
6. *Settlements With Subcontractors.*—This item includes all settlements with subcontractors. Subcontractors' claims may be submitted as soon as they are examined and settlements negotiated. In such cases, the settlements should be listed on a schedule made up with the same headings as shown in Schedule A-1-c. Each such schedule with subcontractors' proposals attached must be accompanied by a certificate as to the examination made by the contractor, and the opinion of the contractor as to the reasonableness of the proposals. The type of certificate to be presented should conform to the applicable portion of the certificate shown on this Form No. A-1. In preparing Schedule A-1-c under such circumstances, it is necessary only to list the totals of schedules previously submitted. Subcontractors' settlements not previously submitted should then be listed in detail to bring the total amount of this schedule (A-1-c) into agreement with the amount listed as item 5 in the summary.
7. *Disposal Credits.*—The amount shown here should represent the total of the individual disposal credits listed on the inventory schedules. Each inventory sheet should be totaled separately and a listing of the page totals should be prepared to show the source of the total (Line 8 of Summary) used on the summary.
8. *Advance Payments.*—Attach copy last report covering advance payments account, if any, bringing account transactions to current date.
9. *Other Credits.*—List all other credits. Where statement is on a total cost basis, any payments made for completed units after the filing of the Form No. B-2 should be listed here.
10. Subcontractors may include on line 14 any amounts applicable to finished units completed at date of termination but not otherwise billed. In that case, the inventory and any applicable disposal credits should be listed on a separate sheet of the C-1 Form with the headings appropriately modified. The total of these disposal credits should be shown on line 15 of the Summary.

General Instructions for preparation of Settlement Proposals and for the use of these forms should be procured from the Government representative or contractor from whom the termination notice was received.

(b) *Standard Form A-2; Contractor's Settlement Proposal; Combination Statement—Inventory Basis.*

[Actual size 8½" x 14"]

Form No. A-2
Read all instructions before preparing this form

Budget Bureau approval No 40-R181
Expiration date: 31 July 1944

CONTRACTOR'S SETTLEMENT PROPOSALS—Continued

COMBINATION STATEMENT—INVENTORY BASIS

(To be used only when total proposal is less than $10,000 before disposal or other credits)

Name of your firm

Address (Street) (City) (State)

If monies payable under the contract have been assigned, show name of assignee:

Check one
- ☐ This settlement proposal is applicable to a prime contract with the Government.
- ☐ This settlement proposal is applicable to subcontract or purchase order ..... (identify) with:

*.....

*Insert name and address of contractor from whom you received Notice of Termination.

Effective date of termination	Government contract No.	Government agency	Items contracted for

SUMMARY

		Amount	Do not use this column
1. Raw materials, purchased parts, and supplies—per Schedule No. A-2-a—See Instruction 3		$	
2. Work in process—per Schedule No. A-2-a—See instruction 3:			
2a. Materials	$		
2b. Labor			
2c. Indirect factory expense			
Total work in process		$	
3. General and administrative expense—See Instruction 4			
4. Other charges—per Schedule No. A-2-b—See Instruction 5			
5. Total		$	
6. Profit, if any (explain calculation in Schedule No. A-2-c)			
7. Total		$	
8. Settlements with subcontractors—per Schedule No. A-2-d			
9. Post termination charges—per Schedule No. A-2-e			
10. Total charges		$	
11. Partial or advance payments—per Schedule No. A-2-f			
12. Settlement proposal before disposal credits		$	
13. Disposal credits—per Schedule No. A-2-a			
14. Net settlement proposal		$	
15. Contract price of finished units not otherwise billed—See Instruction 6	$		
16. Disposal credits applicable to finished units			
17. Net charge for finished units			
18. Net settlement proposal including charge for finished units		$	

NOTE.—The paper on which this form is printed can be used for reproduction by liquid process duplicating machines.

CERTIFICATE

Own charges.—The undersigned certifies that, to the best of its knowledge and belief, the summary of charges and supporting schedules and explanations have been prepared from the books of account and records of the undersigned in accordance with recognized commercial accounting practices; that they include only those charges allocable to the terminated portion of this contract; that the charges as stated are fair and reasonable; and that they have been prepared with knowledge that they will, or may, be used by contracting officers acting on behalf of the United States as the basis of settlement with the undersigned or with others.

Subcontractors' charges.—The undersigned certifies that it has examined, or caused to be examined, to an extent which it considers adequate in the circumstances, the claims of its immediate suppliers (exclusive of charges arising from termination claims filed against such immediate suppliers by their suppliers) as summarized as item 8, that, in its opinion, the settlements of its immediate suppliers' own charges are fair and reasonable, said charges are allocable to the terminated portion of this contract, and said settlements were negotiated in good faith, and are not more favorable to its immediate suppliers than those which the undersigned would make if reimbursement by the Government were not involved. The undersigned certifies that it has no knowledge to doubt the reasonableness of the settlements with more remote suppliers or to doubt that the charges for them are allocable to this contract. The undersigned shall not be deemed to have made any representations with respect to the immediate and more remote suppliers' claims or the settlement thereof other than those expressed in this certificate.

Chief accounting officer:

.....
(Signature)

.....
(Title)

.....
(Name of contractor)

By.....
(Signature)

.....
(Title)

.....
(Date)

CONTRACTOR'S SETTLEMENT PROPOSAL—Continued

Schedule No. A-2-a — INVENTORIES AT DATE OF TERMINATION — Lines 1, 2, and 13 of summary

Description	Quantity	Total cost	Contractor's best offer	Disposal credits	Do not use this column

W. D., A. G. O. Form No. 213
18 April 1944

FINISHED UNIT INFORMATION

		Number of units		Total amount
Total per contract				$
Less: Units shipped and billed			$	
Units to be shipped and billed				
Total billed or to be billed			$	
Units completed but not billed, if any (Line 15 of Summary)				$
Units covered by termination notice				$

INFORMATION REGARDING RENEGOTIATION

Were you renegotiated for last fiscal year? .....
If so, by what Government agency? .....
Were costs included for purposes of renegotiation in that period excluded from the above Summary? .....
If not, explain items not excluded .....

Schedule No. A-2-b — OTHER CHARGES — Line 4 of summary

Item	Explanation	Amount	Do not use this column

Schedule No. A-2-c — PROFIT, IF ANY — Line 6 of summary

Do not use this column

CONTRACTOR'S SETTLEMENT PROPOSAL—Continued

Schedule No. A-2-d — SETTLEMENTS WITH SUBCONTRACTORS — Line 8 of summary

Name of Subcontractor	Item	Total on order at date of termination		Quantity canceled applicable to contract	Amount of actual or proposed settlement	Do not use this column
		Quantity	Amount—$			

Schedule No. A-2-e — POST TERMINATION CHARGES — Line 9 of summary

Item	Explanation	Amount	Do not use this column

Schedule No. A-2-f — PARTIAL OR ADVANCE PAYMENTS — Line 11 of summary

Date	Explanation	Amount	Do not use this column

INSTRUCTIONS

1. This Form No. A-2 is to be prepared by the contractor as soon as cost information required in the summary can be determined.
2. If space provided in these schedules is not sufficient, attach additional sheets, using the same headings.
3. Inventory should be grouped in Schedule No. A-2-a by "Raw Materials, Purchased Parts, and Supplies" and "Work in Process," and separate cost totals should be with amounts shown on Lines 1 and 2 of Summary. Explanations should be attached describing the methods followed in computing costs as shown in Schedule No. A-2-a and in Lines 2a, 2b, and 2c of the Summary.
4. An explanation should be attached as to the basis of allocation and calculation of the amount of general and administrative expense applicable to the inventory.
5. Include in Other Charges (Line 4 of Summary and Schedule A-2-b) all costs not previously included.
6. Subcontractors may include on line 15 any amounts applicable to finished units completed at date of termination but not otherwise billed. In that case, the inventory and any applicable disposal credits should be listed in Schedule A-2-a. The total of these disposal credits should be shown on line 16 of the Summary.

General Instructions for preparation of Settlement Proposals and for the use of these forms should be procured from the Government representative or contractor from whom the Termination Notice was received.

(c) *Standard Form A-3; Contractor's Settlement Proposal; Combination Statement—Total Cost Basis.*

[Actual size 8½" x 14"]

Form No. A-3
Read all instructions before preparing this form

Budget Bureau approval No. 49-R180
Expiration date: 31 July 1944

CONTRACTOR'S SETTLEMENT PROPOSAL

COMBINATION STATEMENT—TOTAL COST BASIS

(To be used only when total proposal is less than $10,000 before disposal or other credits)

Name of Your Firm

Address (Street) (City) (State)

If monies payable under the contract have been assigned, show name of assignee:

Check one

☐ This settlement proposal is applicable to a prime contract with the Government.

☐ This settlement proposal is applicable to subcontract or purchase order ____ (identify with:

*

* Insert name and address of contractor from whom you received Notice of Termination.

Effective date of termination	Government contract No.	Government Agency	Items contracted for

SUMMARY (see instruction 3)

		Do not use this column
1. Direct materials	$	
2. Direct labor		
3. Indirect factory expenses—See Instruction 4		
4. General and administrative expenses—See Instruction 4		
5. Other charges—per Schedule A-3-b—See Instruction 5		
6. Total contractor's own costs	$	
7. Profit, if any (explain calculation in Schedule A-3-c)		
8. Total	$	
9. Less: Total finished units billed or to billed		
10. Net total contractor's own costs	$	
11. Settlements with subcontractors—per Schedule A-3-d		
12. Post termination charges—per Schedule A-3-e		
13. Total charges	$	
14. Less: Partial or advance payments—per Schedule A-3-f		
15. Settlement proposal before disposal credits	$	
16. Disposal credits—per Schedule A-3-d		
17. Net settlement proposal	$	

NOTE.—The paper on which this form is printed can be used for reproduction by liquid process duplicating machines.

CERTIFICATE

Own charges.—The undersigned certifies that, to the best of its knowledge and belief, the summary of charges and supporting schedules and explanations have been prepared from the books of account and records of the undersigned in accordance with recognized commercial accounting practices; that they include only those charges allocable to this contract; that the charges as stated are fair and reasonable; and that they have been prepared with knowledge that they will, or may, be used by contracting officers acting on behalf of the United States as the basis of settlement with the undersigned or with others.

Subcontractors' charges.—The undersigned certifies that it has examined, or caused to be examined, to an extent which it considers adequate in the circumstances, the claims of its immediate suppliers (exclusive of charges arising from termination claims filed against such immediate suppliers by their suppliers) as summarized as item 11, that, in its opinion, the settlements of its immediate suppliers' own charges are fair and reasonable, said charges are allocable to this contract, and said settlements were negotiated in good faith, and are not more favorable to its immediate suppliers than those which the undersigned would make if reimbursement by the Government were not involved. The undersigned certifies that it has no knowledge to doubt the reasonableness of the settlements with more remote suppliers or to doubt that the charges for them are allocable to this contract. The undersigned shall not be deemed to have made any representations with respect to the immediate and more remote suppliers' claims or the settlement thereof other than those expressed in this certificate.

Chief accounting officer

(Signature)

(Title)

(Name of contractor)

By (Name)

(Title) (Date)

CONTRACTOR'S SETTLEMENT PROPOSAL—Continued

Schedule A-3-a — INVENTORIES AT DATE OF TERMINATION — See instruction No. 2

Description	Quantity	Total cost	Contractor's best offer	Disposal credits	Do not use this column

W. D., A. G. O. Form No. 244
18 April 1944

FINISHED UNIT INFORMATION

	Number of units		Total Amount
Total per contract	------		$------
Less: Units shipped and billed	------	$------	
Units to be shipped and billed	------	------	
Total billed or to be billed (Line 9 of Summary)	------	$------	
Units completed but not billed, if any	------	------	$------
Units covered by termination notice	------		$------

INFORMATION REGARDING RENEGOTIATION

Were you renogiated for last fiscal year? ------

If so, by what Government agency?... ------

Were costs and sales included for purposes of renegotiation in that period excluded from the above Summary?. ------

If not, explain items not excluded---- ------

Schedule A-3-b — OTHER CHARGES — Line 5 of summary

Item	Explanation	Amount	Do not use this column

Schedule A-3-c — PROFIT, IF ANY — Line 7 of summary

Do not use this column

CONTRACTOR'S SETTLEMENT PROPOSAL—Continued

Schedule A-3-d — SETTLEMENTS WITH SUBCONTRACTORS — Line 11 of summary

Name of subcontractor	Item	Total on order at date of termination		Quantity canceled applicable to contract	Amount of actual or proposed settlement	Do not use this column
		Quantity	Amount, $			

Schedule A-3-e — POST TERMINATION CHARGES — Line 14 of summary

Item	Explanation	Amount	Do not use this column

Schedule A-3-f — PARTIAL OR ADVANCE PAYMENTS — Line 12 of summary

Date	Explanation	Amount	Do not use this column

INSTRUCTIONS

1. This Form No. A-3 is to be prepared by the contractor as soon as cost information required in the Summary can be determined.

2. If space provided in these schedules is not sufficient, attach additional sheets, using the same headings. Inventory on hand at the date of termination should be grouped in Schedule A-3-a by "Raw Materials, Purchased Parts, and Supplies," and "Work in Process." Costs should be shown to the greatest extent practicable for items included in this inventory listing. Subcontractors may also use this schedule for listing finished units on hand at date of termination not to be billed

3. The costs shown in this Summary are those costs incurred which are applicable to the entire contract. Where costs applicable to the inventory can be determined accurately, the contractor should present his proposal on Form A-2

4. An explanation should be attached as to the bases of allocation and calculation of the amounts of indirect factory expenses (Line 3 of Summary) and general and administrative expense (Line 4 of Summary) applicable to the contract.

5. Include in Other Charges (Line 5 of Summary and Schedule A-3-b) all costs not previously included.

General Instructions for preparation of Settlement Proposals and for the use of these forms should be procured from the Government representative or contractor from whom the Termination Notice was received.

(d) *Standard Form A–4.*

[Actual size 8½" x 11"]

Form No. A–4

Budget Bureau approval No. 49–R189.
Expiration date, 31 July 1944.

CONTRACTOR'S SETTLEMENT PROPOSAL

SHORT FORM TO BE USED ONLY WHEN PROPOSAL IS FOR LESS THAN $500

(Name of your firm)

(Street address)

(City) (State)

If moneys payable under the contract have been assigned, show name of assignee:

Check one

☐ This settlement proposal is applicable to a prime contract with the Government.

☐ This settlement proposal is applicable to subcontract or purchase order (identify) with:

*

*Insert name and address of contractor from whom you received Notice of Termination.

Effective date of termination	Government contract No.	Government agency

SUMMARY OF TERMINATION

Items contracted for	Quantity				Value of order			
	Ordered	Shipped and billed	Shipped but not billed	Canceled	Ordered	Shipped and billed	Shipped but not billed	Canceled

Finished units which have been shipped and billed should *not* be included in the proposed settlement.

PROPOSED SETTLEMENT

(Include only items allocable to the contract and properly to be included in settlement on termination under your contract)

1. Contract price of finished units shipped but not otherwise billed.....$.....
2. Contract price of finished units not shipped (less their fair value).....
3. Proposed settlement for work in process and materials allocable to contract (explain below).....

Total of proposed settlement.....$.....

Explain below how you determined the amounts shown on lines 2 and 3 of the above Proposed Settlement. If there are finished goods on hand which are not to be shipped, show both the contract price of such items and the value at which you are willing to keep them in your inventory. Enter the resulting net cancellation charge on line 2. Explain also how you determined the settlement due you for work in process and materials, making certain that you have reduced your charge by the fair value of materials or work in process which you are retaining. Enter the net cancellation charge for this portion of the work on line 3 of the above Proposed Settlement.

CERTIFICATE

The undersigned certifies that the above Proposed Settlement includes only charges allocable to the terminated portion of this contract, that the charges and credits explained above are fair and reasonable, and that this proposal has been prepared with knowledge that it will, or may be used by contracting officers acting on behalf of the United States as the basis of settlement with the undersigned or others.

Chief Accounting officer:

(Signature)

(Title)

By (Name of contractor)

(Signature)

(Title) (Date)

W. D., A. G. O. Form No. 251
(27 April 1944)

§ 815.938 *Contractor's Own Charges Schedules—(a) Standard Form B–1; Contractor's Own Charges Schedule; Contractor's Own Charges to Date of Termination Applicable to Terminated Portion of Contract—Inventory Basis.*

[Actual size 8½" x 14"]

Form No. B–1
Read all instructions before preparing this form

Budget Bureau approval No. 49–R179
Expiration date: 31 July 1944

CONTRACTOR'S OWN CHARGES SCHEDULE

CONTRACTOR'S OWN CHARGES TO DATE OF TERMINATION APPLICABLE TO TERMINATED PORTION OF CONTRACT—INVENTORY BASIS

Supporting schedule Form A–1 (Line 1)

Name of your firm

Address (Street) (City) (State)

Check one

☐ This schedule is applicable to a prime contract with the Government.

☐ This schedule is applicable to subcontract or purchase order.....* (identify) with:

*

*Insert name and address of contractor from whom you received Notice of Termination.

Effective date of termination	Government contract No.	Government agency	Items contracted for

SUMMARY

	Amount	Do not use this column
1. Raw materials, purchased parts, and supplies—per Inventory Schedule C–1—See Instruction 3	$	
2. Work in process—per Inventory Schedule C–2 and Schedule B–1–a—See Instruction 3		
3. Jigs, tools, dies, fixtures, etc.—per Inventory Schedule C–3—See Instruction 3		
4. General and administrative expenses—per Schedule B–1–b		
5. Other costs—per Schedule B–1–c—See Instruction 4		
6. Total costs	$	
7. Profit, if any—per Schedule B–1–d—See Instruction 5		
8. Total	$	

NOTE: The paper on which this form is printed can be used for reproduction by liquid process duplicating machines.

CERTIFICATE

The undersigned certifies that, to the best of its knowledge and belief, the summary of charges and supporting schedules and explanations have been prepared from the books of account and records of the undersigned in accordance with recognized commercial accounting practices; that they include only those charges allocable to the terminated portion of this contract; that the charges as stated are fair and reasonable; and that they have been prepared with knowledge that they will, or may, be used by contracting officers acting on behalf of the United States as the basis of settlement with the undersigned or with others.

Chief Accounting Officer:

(Signature)

(Title)

(Name of contractor)

By (Signature)

(Title)

(Date)

Schedule No. B–1–a INDIRECT FACTORY EXPENSES IN WORK IN PROCESS

In the space provided on reverse, or on an attached sheet, show in a manner conforming to the contractor's accounting system:

(1) Composition of Indirect Factory Expenses Before Allocation to Inventory. Show beginning and ending date of period used.

(2) Description of Bases Used in Allocating the Above Indirect Factory Expenses to the Inventory.

(3) Calculation, to the extent practicable, of Indirect Factory Expenses Applicable to Inventory in Accordance with Bases Indicated in (2).

CONTRACTOR'S OWN CHARGES SCHEDULE—Continued

Schedule No. B-1-b GENERAL AND ADMINISTRATIVE EXPENSES

In the space provided on reverse, or on an attached sheet, show information relating to General and Administrative Expense of the same type as is required in Schedule B-1-a, above.

FINISHED UNIT INFORMATION	Number of units	Total Amount
Total per contract		$
Less: Units shipped and billed		$
Units to be shipped and billed		
Total billed or to be billed		$
Units completed but not billed, if any (Line 14 of Form A-1)		$
Units covered by termination notice		$

INFORMATION REGARDING RENEGOTIATION	
Were you renegotiated for last fiscal year?	
If so, by what Government agency?	
Were costs included for purposes of renegotiation in that period excluded from the above Summary?	
If not, explain items not excluded	

W. D., A. G. O. Form No. 245
18 April 1944

Schedule No. B-1-c OTHER COSTS

Item	Explanation	Amount	Do not use this column

Schedule No. B-1-d PROFIT, IF ANY

	Do not use this column

Use this space for information required in Schedules B-1-a and B-1-b or for other purposes

INSTRUCTIONS

1. This Form No. B-1 is to be prepared as soon as all cost information on inventory schedules can be completed.
2. When schedules provided are too small, attach other schedules following the same form.
3. Inventories listed on lines 1, 2, and 3 should be supported by the "Contractor's Schedule" copy of inventory schedules. Where cost information was not available at the time "Property Disposition" copies of the inventories were filed, such cost information must be subsequently listed on the "Contractor's Schedule" copy.
4. Include in Other Costs (Line 5 of Summary and Schedule B-1-c) all costs to date of termination applicable to uncompleted portion of contract not previously included. Where costs are included for loss of useful value of production equipment or facilities of the type specified in Section 1 (f) of the Statement of Principles for Determination of Costs Upon Termination of Government Fixed Price Supply Contracts, attach a statement explaining the determination of the charges.
5. In Schedule B-1-d, show the bases and computation of any profit included on line 7 of the summary.

General Instructions for preparation of Settlement Proposals and for the use of these forms should be procured from the Government representative or contractor from whom the Termination Notice was received.

(b) *Standard Form B-2; Contractor's Own Charges Schedule; Contractor's Own Charges to Date of Termination Applicable to Terminated Portion of Contract—Total Cost Basis.*

[Actual size 8½" x 14"]

Form No. B-2
Read all instructions before preparing this form

CONTRACTOR'S OWN CHARGES SCHEDULE
CONTRACTOR'S OWN CHARGES TO DATE OF TERMINATION APPLICABLE TO TERMINATED PORTION OF CONTRACT—TOTAL COST BASIS

Budget Bureau approval No. 40-R178
Expiration date: 31 July 1944

Supporting Schedule Form A-1 (Line 1)

Name of your firm

Address (Street) (City) (State)

Check one
- ☐ This schedule is applicable to a prime contract with the Government.
- ☐ This schedule is applicable to subcontract or purchase order ..... (Identify) with:

.....

*Insert name and address of contractor from whom you received Notice of Termination.

Effective date of termination	Government Contract No.	Government agency	Items contracted for

SUMMARY

	Amount	Do not use this column
1. Direct materials—See Instruction 5	$	
2. Direct labor		
3. Indirect factory expenses—per Schedule B-2-a		
4. General and administrative expenses—per Schedule B-2-b		
5. Other charges—per Schedule B-2-c—See Instruction 3		
6. Total of contractor's own costs	$	
7. Profit, if any—per Schedule B-2-d—See Instruction 4		
8. Total—costs plus profit, if any	$	
9. Less: Total finished units billed or to be billed		
10. Amount of charges	$	

NOTE: The paper on which this form is printed can be used for reproduction by liquid process duplicating machines.

CERTIFICATE

The undersigned certifies that, to the best of its knowledge and belief, the summary of charges and supporting schedules and explanations have been prepared from the books of account and records of the undersigned in accordance with recognized commercial accounting practices; that they include only those charges allocable to this contract; that the charges as stated are fair and reasonable; and that they have been prepared with knowledge that they will, or may, be used by contracting officers acting on behalf of the United States as the basis of settlement with the undersigned or with others.

Chief accounting officer:

(Signature)

(Title)

(Name of contractor)

By (Signature)

(Title)

(Date)

Schedule No. B-2-a INDIRECT FACTORY EXPENSES

In the space provided on reverse, or on an attached sheet, show in a manner conforming to the contractor's accounting system:
(1) Composition of Indirect Factory Expenses Before Allocation to Contract. Show beginning and ending date of period used.
(2) Description of Bases Used in Allocating the Above Indirect Factory Expenses to the Contract.
(3) Calculation, to the Extent Practicable, of Indirect Factory Expenses Applicable to the Contract in Accordance with Bases Indicated in (2).

CONTRACTOR'S OWN CHARGES SCHEDULE—Continued

Schedule No. B-2-b GENERAL AND ADMINISTRATIVE EXPENSES

In the space provided on reverse, or on an attached sheet, show information relating to General and Administrative Expense of the same type as is required in Schedule B-2-a, above.

FINISHED UNIT INFORMATION		Number of Units		Total Amount	INFORMATION REGARDING RENEGOTIATION
Total per contract		------		$----	Were you renegotiated for last fiscal year? ------
Less: Units shipped and billed	------		$-----		If so, by what Government agency? ------
Units to be shipped and billed	____		____		Were costs and sales included for purposes of renegotiation in that period excluded from summary? ------
Total billed or to be billed (Line 9 of Summary)	------		$-----		If not, explain items not excluded ------
Units completed but not billed, if any	____	____	____	$____	----------
Units covered by termination notice				$	----------

W. D., A. G. O. Form No. 246
18 April 1944

Schedule No. B-2-c OTHER CHARGES

Item	Explanation	Column	Do not use this column

Schedule No. B-2-d PROFIT, IF ANY

	Do not use this column

Use this space for information required in Schedules B-2-a and B-2-b or for other purposes

INSTRUCTIONS

1. This Form No. B-2 is to be prepared as soon as information as to total contract cost can be completed.
2. Where schedules provided are too small, attach other schedules following the same form.
3. Include in Other Charges (Line 5 of Summary and Schedule B-2-c) all other charges applicable to the contract not previously included. Where costs are included for loss of useful value of production equipment or facilities of the type specified in Section 1 (f) of the Statement of Principles for Determination of Costs Upon Termination of Government Fixed Price Supply Contracts, attach a statement explaining the determination of the charges.
4. In Schedule No. B-2-d, show the bases and computation of any profit included in line 7 of the summary.
5. While the "Contractor's Own Charges Schedule" copies of the Inventory Schedules C-1, C-2, and C-3 do not constitute the basis for the proposed settlement under the total cost basis, this Form B-2 should be supported by those inventory schedules. In the case of Inventory Schedule C-1, the inventory should be priced. In the case of Inventory Schedules C-2 and C-3, the inventory should be priced to the extent practicable.

General Instructions for preparation of Settlement Proposals and for the use of these forms should be procured from the Government representative or contractor from whom the Termination Notice was received.

§ 815.939 *Inventory Schedules*—(a) *Standard Form C–1; Inventory Schedule; Inventory Applicable to Uncompleted Portion of Terminated Contract—Raw Materials, Purchased Parts, and Supplies.*

Form No. C–1
This inventory schedule is to be used for
☐ Property disposition
☐ Contractor's own charges schedule (Forms B–1 or B–2)
☐ Contractor's settlement proposal (Form A–1)

Budget Bureau approval No. 42–R185.
Expiration date: 31 July 1944.

INVENTORY SCHEDULE

Inventory applicable to uncompleted portion of terminated contract

RAW MATERIALS, PURCHASED PARTS, AND SUPPLIES

Owned by Contractor ☐ Government ☐

Read instructions before preparing this schedule

General instructions for preparation of settlement proposals and for the use of these forms with special instructions for description of inventory should be procured form the Government representative or contractor from whom the Termination Notice was received.

Page _____ of _____ Pages

Name of your firm:	
Address:	
Location of plant:*	
Classification of property on this page:	

Check one
☐ This inventory is applicable to a prime contract with the Government.
☐ This inventory is applicable to Subcontract or Purchase Order _____ (identify), with:
_____
(Name and address of contractor from whom you received notice of termination)

Date of inventory_____ Government contract No._____ Government agency_____

Line No.	Description Furnished same information you would give supplier if you were ordering this material or part, include principal vendor's name and catalog number for parts, where practicable. See special instructions for discription of inventory)	Quantity on hand	Unit (pounds, feet, gallons, etc.)	Estimated weight (total)	Cost		Property disposal information							
					Unit	Total	Recommended disposal	OPA ceiling or market price if practicable	Contractor's offer		Disposal credits		Quantity remaining (col. 3 minus col. 12	This column not to be used by contractor
									Quantity	Amount (total)	Quantity	Amount of proceeds or credits		
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15

W. D., A. G. O. Form No. 247
18 April 1944

[Actual size 8½" x 14"]

NOTE: The paper on which this form is printed can be used for reproduction by liquid process duplicating machines.

INSTRUCTIONS

1. *Preparation of schedule.* The number of copies to be prepared will be specified by the Government representative or contractor from whom the Termination Notice was received. Columns 1 through 11 should be filled in immediately on all copies to the extent practicable without unduly delaying submission of the inventory schedule. Columns 6 and 7 will not be filled in for Government-owned property. The inventory schedules will be used for the following purposes:

Property disposition copies are to be mailed to the Government representative named in the Termination Notice (if you are a prime contractor), or to the contractor from whom you received Notice of Termination (if you are a subcontractor) as soon as the inventory information has been entered.

Contractor's own charges schedule copy is to accompany your charge schedule (Form B–1 or B–2). It will not be necessary to prepare this copy for Government-owned property.

Contractor's settlement proposal copies, one of which is the original, will accompany your Contractor's Settlement proposal (Form A–1). By this time, such inventory as will be disposed of by your firm will have been sold, retained, or otherwise disposed of and the disposal information entered in columns 12 and 13 as provided in the columnar instructions.

Contractor's file copy should be maintained for your records showing the same information as the original.

CERTIFICATE

This is to certify that the inventory described on the face of this schedule consists of items properly allocable to the contract, that the quantities are not in excess of the reasonable quantitative requirements of the terminated portion of the contract, and that the offers indicated in column 11 are fair and reasonable in the opinion of the undersigned.

Individual responsible for compiling inventory data submitted in this form:

_____
(Signature)

_____
(Title)

_____
(Name of contractor or subcontractor)

By _____
(Name)

_____
(Title)

_____
(Date)

COLUMNAR INSTRUCTIONS

Column 1—Line number. Number each entry in sequence. This will facilitate necessary references in case of adjustments, disposal actions, etc.

Column 2—Description. Specific instructions as to the method of listing, and the detail of description will be furnished by the Government representative or contractor from whom the Termination Notice was received.

Columns 6 and 7—Unit and total costs. An explanation of your method of computing costs should be attached to the original and to the copy accompanying your cost statement. This explanation should cover your treatment of transportation and discounts, and should also explain whether "first-in-first-out" or some other method is used.

Column 8—Recommended disposal. Whenever practicable, give your recommendation for disposal of those items you do not wish to retain. Use following code:

D—Sell to distributors.
M—Sell to manufacturers.
P—Public sale on bids.
W—Sell to other war contractors (name on attached statement).
Y—Sell to original vendor.
S—Scrap (reasons to be set forth on attached statement).
X—Other recommended method. (Explain on attached statement referring to proper item number.)

Recommendation should represent your opinion of the method which will move the property with greatest speed consistent with the best interest of the Government as to price and other appropriate factors.

Column 9—Enter OPA ceiling or market price per unit if practicable. If ceiling price is used, indicate by letter "c" before price, thus "c12.50."

Columns 10 and 11—Contractor's offer. Any offer for inventory for an amount less than your cost must be explained on an attached statement. Such explanations should include reference to line number and page number to facilitate identification.

Columns 12 and 13—Disposal credits. Materials retained, returned to supplier, or otherwise disposed of. These credits are to be recorded on the copy of this schedule which is submitted with the Contractor's Settlement Proposal (Form A–1), and on the Contractor's File Copy.

(b) *Standard Form C–2; Inventory Schedule; Inventory Applicable to Uncompleted Portion of Terminated Contract—Work in Process.*

Form No. C-2

Budget Bureau approval No. 49-R186
Expiration date: 31 July 1944.

This inventory schedule is to be used for

☐ Property disposition
☐ Contractor's own charges schedule (Forms B-1 or B-2)
☐ Contractor's settlement proposal (Form A-1)

Page.....of.....Pages

INVENTORY SCHEDULE

Inventory Applicable to Uncompleted Portion of Terminated Contract

WORK IN PROCESS

Owned by contractor ☐ Government ☐

Read Instructions Before Preparing This Schedule

General Instructions for preparation of Settlement Proposals and for the use of these forms with special instructions for description of inventory should be procured from the Government representative or contractor from whom the Termination Notice was received.

Check one
☐ This inventory is applicable to a prime contract with the Government.
☐ This inventory is applicable to Subcontract or Purchase Order.....(identify), with:

.....
(Name and address of contractor from whom you received notice of termination)

Name of your firm:

Address:

Location of Plant:

Classification of property on this page:

Date of inventory..... Goverment contract No..... Government agency.....

Line No.	Description and specification (Show any information that will help a prospective purchaser) (See special instructions for description of inventory)	Quantity on hand	Estimated weight (total)	Cost data				Property disposal information							
				Material	Direct labor	Indirect factory expenses	Total factory cost	Recommended disposal	OPA ceiling or market price if practicable	Contractor's offer		Disposal credits		Quantity remaining (col. 3 minus col. 13)	This column not to be used by contractor
										Quantity	Amount (total)	Quantity	Amount of proceeds or credits		
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16

W. D., A. G. O. Form No. 248
18 April 1944

[Actual size 8½" x 14"]

NOTE: The paper on which this form is printed can be used for reproduction by liquid process duplicating machines.

INSTRUCTIONS

1. *Preparation of schedule.* The number of copies to be prepared will be specified by the Government representative or contractor from whom the Termination Notice was received. Columns 1 through 12 should be filled in immediately on all copies to the extent practicable without unduly delaying submission of the inventory schedule. Columns 5, 6, 7, and 8 will not be filled in for Government-owned property. The inventory schedules will be used for the following purposes:

Property disposition copies are to be mailed to the Government representative named in the Termination Notice (if you are a prime contractor), or to the contractor from whom you received Notice of Termination (if you are a subcontractor) as soon as the inventory information has been entered.

Contractor's own charges schedule copy is to accompany your charge schedule (Form B–1 or B–2). It will not be necessary to prepare this copy for Government-owned property.

Contractor's settlement proposal copies, one of which is the original, will accompany your Contractor's Settlement Proposal (Form A–1). By this time, such inventory as will be disposed of by your firm will have been sold, retained, or otherwise disposed of, and the disposal information entered in columns 13 and 14 as provided in the columnar instructions.

Contractor's file copy should be maintained for your records showing the same information as the original.

CERTIFICATE

This is to certify that the inventory described on the face of this schedule consists of items properly allocable to the contract, that the quantities are not in excess of the reasonable quantitative requirements of the terminated portion of the contract, and that the offers indicated in column 12 are fair and reasonable in the opinion of the undersigned.

Individual responsible for compiling inventory data submitted in this form:

.....
(Signature)

.....
(Title)

.....
(Name of contractor or subcontractor)

By .....
(Name)

.....
(Title)

.....
(Date)

COLUMNAR INSTRUCTIONS

Column 1—Line number. Number each entry in sequence. This will facilitate necessary references in case of adjustments, disposal actions, etc.

Column 2—Description. Specific instructions as to the method of listing, and the detail of description will be furnished by the Government representative or contractor from whom the Termination Notice was received.

Columns 5, 6, 7, and 8—Unit and total costs. These columns should be completed in accordance with the classification of costs indicated. However, where such a procedure is not practicable, items may be grouped for costing purposes conforming to the cost accounting procedures used by the contractor. In all cases an explanation of the contractor's method of computing costs should be attached. When the contractor cannot present the minimum cost data with accuracy and has therefore presented his charges on a total cost basis, the cost data should be completed to the greatest extent practicable.

Column 9—Recommended disposal. Whenever practicable give your recommendation for disposal of those items you do not wish to retain. Use following code:

D—Sell to distributors.
M—Sell to manufacturers.
P—Public sale on bids.
W—Sell to other war contractors (name on attached statement).
V—Sell to original vendor.
S—Scrap (reasons to be set forth on attached statement).
X—Other recommended method. (Explain on attached statement referring to proper item number.)

Recommendations should represent your opinion of the method which will move the property with greatest speed consistent with the best interest of the Government as to price and other appropriate factors.

Column 10—Enter OPA ceiling or market price per unit if practicable. If ceiling price is used, indicate by letter "c" before price, thus "c12.50."

Columns 11 and 12—Contractor's offer. Any offer for inventory for any amount less than your cost must be explained on an attached statement. Such explanations should include reference to line number and page number to facilitate identification.

Columns 13 and 14—Disposal credits. Materials retained or otherwise disposed of. These credits are to be recorded on the copy of this schedule which is submitted with the Contractor's Settlement Proposal (Form A–1), and on the Contractor's File Copy.

(c) *Standard Form C–3; Inventory Schedule; Inventory Applicable to Uncompleted Portion of Terminated Contract—Jigs, Tools, Dies, Fixtures, Etc.*

Form No. C-3

Budget Bureau approval No. 49-R157
Expiration date: 31 July 1944

This inventory schedule is to be used for
☐ Property disposition
☐ Contractor's own charges schedule (Forms B–1 or B–2)
☐ Contractor's settlement proposal (Form A–1)

Page ____ of ____ Pages

Name of your firm:

Address:

Location of plant:

Classification of property on this page:

INVENTORY SCHEDULE

Inventory applicable to uncompleted portion of terminated contract

JIGS, TOOLS, DIES, FIXTURES, ETC.

Owned by contractor ☐ Government ☐

Read Instructions Before Preparing This Schedule

General Instructions for preparation of Settlement Proposals and for the use of these forms with special instructions for description of inventory should be procured from the Government representative or contractor from whom the Termination Notice was received.

Check one
☐ This inventory is applicable to a prime contract with the Government.
☐ This inventory is applicable to Subcontract or Purchase Order _____(identify), with

_____
(Name and address of contractor from whom you received notice of termination)

Date of inventory_____ Government contract No._____ Government agency_____

Line No.	Description: Furnish same information you would give if you were ordering this equipment. Where possible, include vendor's name, catalog number, and serial number (See special instructions for description of inventory)	Quantity on hand	Estimated weight (total)	Cost: Unit cost	Cost: Total cost	Cost applicable to this contract: Amount of cost Applicable	Cost applicable to this contract: Unamortized cost	Property disposal information: Recommended disposal	OPA ceiling or market price if practicable	Contractor's offer: Quantity	Contractor's offer: Amount (total)	Disposal credits: Quantity	Disposal credits: Amount of proceeds or credits	Quantity remaining (col. 3 minus col. 13)	This column not to be used by contractor
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16

W. D., A. G. O. Form No. 249
18 April 1944

[Actual size 8½ x 14"]

NOTE: The paper on which this form is printed can be used for reproduction by liquid process duplicating machines.

INSTRUCTIONS

1. *Preparation of schedule.*—The number of copies to be prepared will be specified by the Government representative or contractor from whom the Termination Notice was received. Columns 1 through 12 should be filled in immediately on all copies to the extent practicable without unduly delaying submission of the inventory schedule. Columns 5, 6, 7, and 8 will not be filled in for Government-owned property. The inventory schedules will be used for the following purposes:

Property disposition copies are to be mailed to the Government representative named in the Termination Notice (if you are a prime contractor), or to the contractor from whom you received Notice of Termination (if you are a subcontractor) as soon as the inventory information has been entered.

Contractor's own charges schedule copy is to accompany your charge schedule (Form B–1 or B–2). It will not be necessary to prepare this copy for Government-owned property.

Contractor's settlement proposal copies, one of which is the original, will accompany your Contractor's Settlement Proposal (Form A–1). By this time, such inventory as will be disposed of by your firm will have been sold, retained, or otherwise disposed of, and the disposal information entered in columns 13 and 14 as provided in the columnar instructions.

Contractor's file copy should be maintained for your records showing the same information as the original.

CERTIFICATE

This is to certify that the inventory described on the face of this schedule consists of items properly allocable to the contract, that the quantities are not in excess of the reasonable quantitative requirements of the terminated portion of the contract, and that the offers indicated in column 12 are fair and reasonable in the opinion of the undersigned.

Individual responsible for compiling inventory data submitted in this form:

_____
(Signature)

_____
(Title)

_____
(Name of contractor or subcontractor)

By _____
(Name)

_____
(Title)

_____
(Date)

COLUMNAR INSTRUCTIONS

Column 1—Line number. Number each entry in sequence. This will facilitate necessary references in case of adjustments, disposal actions, etc.

Column 2—Description. Specific instructions as to the method of listing, and the detail of description will be furnished by the Government representative or contractor from whom the Termination Notice was received.

Columns 5 and 6—Unit and total costs. In these columns show the costs of acquisition or manufacture. An explanation of your method of computing costs should be attached.

Columns 7 and 8—Costs applicable to this contract. An explanation should be attached of the bases used and calculations made as shown in these columns. When columns 6 and 7 show different amounts, the contractor should show the extent to which amounts applicable to other work have been amortized as of the date of termination of this contract.

Column 9—Recommended disposal. Whenever practicable give your recommendation for disposal of those items you do not wish to retain. Use following code:

D—Sell to distributors.
M—Sell to manufacturers.
P—Public sale on bids.
W—Sell to other war contractors (name on attached statement.)
V—Sell to original vendor.
S—Scrap. (Reasons to be set forth on attached statement.)
X—Other recommended method. (Explain on attached statement referring to proper item number.)

Recommendations should represent your opinion of the method which will move the property with greatest speed consistent with the best interest of the Government as to price and other appropriate factors.

Column 10—Enter OPA ceiling or market price per unit if practicable. If ceiling price is used, indicate by letter "c" before price, thus "c12.50."

Columns 11 and 12—Contractor's offer. An offer for property at less than unamortized cost must be explained on an attached statement. Such explanations should include reference to line number and page number to facilitate identification.

Columns 13 and 14—Disposal credits. Where offers made in columns 11 and 12 have resulted in disposals, the credits are to be recorded on the copy of this schedule which is submitted with the Contractor's Settlement Proposal (Form A–1), and on the Contractor's File Copy.

(d) *Special instructions applicable to forms C–1, C–2, and C–3.* Special in-

structions for forms C–1, C–2, and C–3 are as follows:

[Actual size 8½" x 14"]

APPENDIX A—SPECIAL INSTRUCTIONS FOR DESCRIPTION OF INVENTORY UNDER COLUMN 2 OF STANDARD CONTRACT TERMINATION INVENTORY SCHEDULES (FORMS C–1, C–2, AND C–3)

GENERAL INSTRUCTIONS

The inventory schedules provided in Form C–1, C–2, and C–3 are intended to assist contractors and property disposal officers in valuing and disposing of property resulting from contract terminations, as well as for the purpose of arriving at the settlement amount.

It is therefore essential that the inventory be classified in general groupings as outlined in these supplementary instructions. The instructions should be carefully studied before inventory lists are prepared and followed to the extent practicable with each contract termination inventory.

OFFERS BY CONTRACTORS

It will greatly facilitate final settlement if that part of the listed property which the contractor is prepared to purchase is segregated under the various subdivisions of the property lists.

CONDITION OF EQUIPMENT

The condition of equipment listed on Schedule C–3, and of any property listed in Schedule C–1 or C–2 which is other than new and excellent, should be indicated, using the following condition codes:

N—New.
E—Used—reconditioned.
O—Used—usable without repairs.
R—Used—repairs required.
1—Excellent.
2—Good.
3—Fair.
4—Poor.

For salvage show only "X" and no number: X—means Salvage—Obsolete Property (no further value for use as originally intended).

Except in case of salvage, a "letter-number" combination must always be used to describe condition. Examples: N2—New and in good condition; R3—Used, repair required, general condition fair.

CLASSIFICATION OF PROPERTY

Specific instructions as to the classification of property listed on each of the three schedules, C–1, C–2, and C–3 are included in the following paragraphs.

RAW MATERIALS, PURCHASED PARTS, AND SUPPLIES (SCHEDULE C–1)

1. Purchased parts and components identified with a particular assembly may be listed together under the group heading in which the assembly would normally fall, not withstanding the fact that they are standard parts or common components which would otherwise be included under the group headings listed below.

2. With the exception of the above, items should be listed under the following group headings. The group headings should be shown at the top of each group listing. A new page should be started for each group; or, in the case of small inventories, groups may be separated by extra space.

Crude animal and vegetable products, edible.
Crude animal and vegetable products, inedible.
Fibers, vegetable and animal, unmanufactured.
Leather.
Boot and shoe cut stock and findings.
Wood basic materials.
Pulp, paper, and paperboard.
Textile basic manufactures.
Food and beverage basic materials.
Oils, fats, waxes, and derivatives, animal and vegetable.
Petroleum and coal products, except raw materials for chemical industries.
Chemicals.
Paints, varnishes, lacquers, japans, thinners, pigments, driers, fillers, and related products.
Iron and steel, including pigs, ingots, castings and forgings (before machining), plates, sheets, strips, bars, structural shapes, piling, rails, tubular products, wire, and other shapes and forms.
Copper and copper-base alloy basic shapes and forms.
Aluminum and aluminum-base alloy basic shapes and forms.
Magnesium and magnesium-base alloy basic shapes and forms.
Other nonferrous basic shapes and forms.
Fabricated metal basic products, including basic hardware, wire products, insulated wire and cable, stamped, pressed, and perforated metal basic products.
Nonmetallic mineral basic products, including natural stone products, clay products, glass basic products, hydraulic cements, concrete products, gypsum products, pottery basic products, mineral wool basic products, abrasive basic products, asbestos basic products, graphite and carbon products, mica and refractories.
Raw materials not classified above.
Mechanical common components, including engines, pumps, power-transmission equipment, bearings, valves and steam specialties, lubrication equipment (i. e., standard components that can be used in more than one product).
Electrical common components, including motors, controls, switches, wiring devices, lamps (i. e., standard components that can be used in more than one product).
Noncommon components, parts, equipment, and accessories (i. e., components that can be used only in the particular industry in which any given product falls). For example, if the product is motor vehicle, the group heading should read "Motor Vehicle Noncommon Components" and should include automotive engines, tires, etc. If the product is aircraft, the group heading would read "Aircraft Noncommon Components" and should include aircraft hardware, aircraft electrical fittings, etc.).
Containers and closures.
Purchased parts and supplies not classified above.

WORK IN PROCESS (SCHEDULE C–2)

Property should be segregated into groups of similar items; for instance, component parts of a particular subassembly should be grouped together, completed subassemblies should be shown in the same group, partially fabricated items of the same general type should be listed together. Appropriate headings should be used for the different groups so that a prospective buyer may readily locate the type of property in which he is interested. Whenever practicable, the group headings set forth for Schedule C–1 should be used for this purpose.

Parts fabricated by the contractor should be included in the Inventory Schedule C–2 for Work in Process to the extent practicable. Where such parts are not easily segregated by the contractor from similar items of purchased parts, it is permissible to include them with purchased parts in Inventory Schedule C–1 for "Raw Materials, Purchased Parts, and Supplies." The term "Manufactured Parts" is intended to represent completely fabricated units which are identifiable as piece parts or subassemblies and which have been manufactured in the contractor's own plant.

JIGS, TOOLS, DIES, FIXTURES, ETC. (SCHEDULE C–3)

Items should be listed under the following group headings. The group headings should be shown at the top of each group listing. A new page should be started for each group; or, in the case of small inventories, groups may be separated by extra space:

Gages and precision measuring instruments.
Perishable tools.
Jigs, dies, and fixtures.

LARGER ITEMS OF PRODUCTION EQUIPMENT UNDER SCHEDULE C–3

This form should also prove satisfactory for the listing of major items of production equipment for property disposal, particularly Government-furnished production equipment. When used for such purposes, items should be listed under the following group headings (attachments, accessories, and auxiliaries should be included with the major item of equipment to which they pertain):

General-purpose industrial machinery and equipment, including engines and turbines, compressors and pumps, conveyors, cranes, derricks, hoists and winches, industrial trucks, trailers, tractors, and stackers, and fan and blower equipment.
Electrical machinery and apparatus, including rotating equipment, transmission and distribution equipment, motor starters and controllers.
Special industry machinery (machinery for industries requiring specialized machines).
Metal-working machinery, including machine tools, primary and secondary metal forming and cutting machinery and equipment.
Office machines.
Motor vehicles.
Furniture and fixtures.
Miscellaneous machinery and equipment.

NOTE: In order to assist in classifying property as specified above, it is expected that a supplement will be issued at an early date setting forth alphabetically some 1,500 items and types of property frequently encountered in contract terminations, and indicating under which of the classifications specified in these Supplementary Instructions particular property should be listed. The Standard Commodity Classification Number for each item and type will also be indicated.

Inventory Forms

§ 815.946 *Form of order requesting delivery of and transfer of title to property to the Government.* Substantially the following form may be used (see § 815.367) to authorize or direct the delivery of property, and the transfer of title thereto, to the Government:

XYZ CORPORATION,
New York, New York.

GENTLEMEN: Pursuant to paragraph (a) of Article _____ (Termination for the Convenience of the Government) of Contract No. _____, you are hereby authorized and directed *to transfer to the Government title to the property hereinafter mentioned and*[1] to make delivery of the property hereinafter mentioned F. O. B. _____ on or before _____ 194__ consigned to _____ (address) _____:

Material	Your Inventory Page and Item

[1] Italicized words may be omitted if title has already been delivered to the Government.

You will notify the undersigned on making shipment in accordance with this instruction.

JOHN DOE
Major, A. C.
Contracting Officer.

§ 815.947 *Form of approval for sale, return or retention of materials.* The following form may be used to authorize and, with appropriate modifications, to ratify the sale, return or retention of materials or other items, pursuant to § 815.350 (c).

XYZ CORPORATION,
New York, New York.

GENTLEMEN: Pursuant to paragraph (a) of Article ____ ("Termination for the convenience of the Government") of Contract No. _____

you are hereby authorized to { sell to _____ / return to _____ / retain for your own use }

at the prices indicated therefor, the following materials or items, originally procured by you in connection with your work under said contract:

Material	*Unit Price*	*Total Price*
	Grand Total	

The above grand total will be applied in reduction of the amount ultimately agreed upon as due you on account of the termination of said contract.

JOHN DOE,
Major, A. C.
Contracting Officer.

Form With Respect to the Removal of Property From Contractor's Plants Upon Termination

§ 815.950 *Suggested form of receipt.*

The United States of America (government) hereby acknowledges receipt from _____ (contractor) of the property listed _____[1] and claimed by the contractor to be allocable to terminated war contract(s) number(s) _____ and title to which has been tendered by the contractor free and clear of all liens and encumbrances. Title has been accepted by the government in compliance with the contractor's demand that the property be removed from his plant(s) pursuant to Procurement Regulation No. 15. The execution of this receipt is without prejudice to any determination of the allocability of the property to the terminated portion(s) of said contract(s). If it is determined prior to final settlement that any of said property is not so allocable, then the government, in arriving at the amount of the final settlement will take into account either the disposal value of such property at the time of removal or the proceeds realized from the disposal of such property, or will return the property to the contractor at government expense, all at the election of the government; and after final settlement the contractor will have no claim against the government by reason of such property.

Dated _____

_____

§ 815.951 *Contract with war contractor for storage and service.*

Contract No. _____

CONTRACT WITH WAR CONTRACTOR FOR STORAGE AND SERVICE

This Contract entered into pursuant to the First War Powers Act and Executive Order No. 9001 this _____ day of _____, 194__ by and between the United States of America (hereinafter referred to as the Government), represented by the Contracting Officer executing this contract and _____

_____

[1] a corporation organized and existing under the laws of the State of _____

[1] a partnership consisting of _____

_____

[1] an individual trading as a _____

_____

of the city of _____ in the State of _____ (hereinafter called the Contractor); Witnesseth:

Whereas Contract(s) was (were) entered into between the Contractor and the Government numbered as follows: _____; and

Whereas said contract(s) provide(s) for termination of such contract(s) at the convenience (option) of the Government, and the Government has issued notice of termination thereof; and

Whereas the Contractor has submitted to the Government an inventory of property in Schedule "A" attached hereto which it certifies is allocable to the aforementioned terminated contract(s) or has been furnished to the Contractor by the Government in connection therewith and has requested that the Government take and remove said property; and

Whereas the Contractor is willing to store the property for the Government, and the Government has agreed to such storage at the Government's expense;

Now, therefore, in consideration of the mutual promises of the parties hereto, it is agreed as follows:

ARTICLE 1. *Transfer of title.* The Contractor (without prejudice to any right which the Contractor may have to compensation for such property in connection with the termination settlement of said terminated contract(s) does hereby transfer to the Government, free and clear of all liens and encumbrances, title to the property set forth in said Schedule "A", as it may from time to time be amended (hereinafter referred to as the property), which is not already Government-owned; and in furtherance thereof the Contractor agrees to furnish to the Contracting Officer such evidences of ownership and other instruments of transfer as the Contracting Officer may reasonably require; provided, however, that pursuant to Article 7 hereof and except as therein specified otherwise, the Government reserves the right to contest the allocability of any or all of the property to the terminated portion(s) of said contract(s).

ART. 2. *Services.* The Contractor agrees to perform all the services necessary in the handling, storage, and preservation of the property in the quantities and conditions set forth in said Schedule "A" for the consideration of $_____ per month.[2] The property is on the date hereof in the possession of the Contractor in the quantities and conditions set forth in said Schedule "A". With the consent of the parties Schedule "A" may be amended from time to time by the addition of other property. In the event property is so added or deliveries are made pursuant to Article 11 hereof, the compensation to be paid to the Contractor shall be equitably adjusted by mutual agreement of the parties hereto. If the parties fail to agree upon the adjustment to be made, the dispute shall be determined as provided in Article 21 (Disputes) hereof.

ART. 3. *Contract period.* (a) The Contractor agrees to perform the services described in Article 2 hereof beginning on _____, until this contract shall be terminated by either party hereto giving to the other 30 days' previous notice in writing.

(b) Storage charges are per month. Any fraction of a month shall be deemed a full month. A storage month shall extend from a date in one calendar month to, but not including, the same date of the next succeeding calendar month; but if there be no corresponding date in the next succeeding calendar month, it shall extend to and include the last day of the month. When the last day of a final storage month falls on Sunday or a legal holiday, the storage month shall be deemed to expire at midnight on the next succeeding business day.

ART. 4. *Location of storage space.* The property shall be stored at the following premises _____.

ART. 5. *Inspection.* The Government reserves the right to inspect at any time the Contractor's storage space and the property stored hereunder.

ART. 6. *Segregation of property.* All the property shall be kept separate from all other property whether or not such property may, by law or by custom, be considered fungible. This does not require, however, that the property be stored in separate rooms, on different floor levels from other similar property, or in a particular space.

ART. 7. *Allocability.* (a) Except as otherwise specifically provided in this Article, as it may from time to time be amended, or in any other agreement, the Government does not concede, and may contest, the allocability of any of the property to the terminated portion(s) of said contract(s). If it is determined prior to final settlement of the terminated contract(s) that any of the property is not allocable to the terminated portion(s) thereof, then the Government, in arriving at the amount of the final settlement, will take into account either the disposal value of the property at the time of removal or the proceeds realized from the disposal of the property, or will return the property to the contractor at government expense, all at the election of the Government; and after final settlement the contractor will have no claim against the Government by reason of such removal or disposition.

(b) The parties hereto agree that the property identified as below indicated is allocable to the afore-mentioned terminated contract(s):[3]

ART. 8. *Revision of storage charges.* In the event it is determined that all or any part of the property is not allocable to the terminated portion(s) of said contract(s), the amount of consideration set forth in Article 2 hereof shall by mutual agreement of the parties hereto be revised downward retroactively to and including the month in which such property was first stored hereunder. The revised amount of consideration shall continue in effect until a subsequent revision in accordance with the terms of this Article or adjustment pursuant to Article 2 hereof. If the parties fail to agree upon the revision to be made, the dispute shall be determined as provided in Article 21 (Disputes) hereof. Any revised amount of consideration shall be embodied in a supplemental agreement to this contract. If the Contractor has already been paid for the month or months as to which the amount of consideration is revised, the Government shall be entitled to a credit on all payments thereafter due the Contractor for the excess paid; or if so ordered by the Contracting Officer, the Contractor shall immediately refund to the Government the amount of such excess.

ART. 9. *Watchmen or guards—plant protection.* In addition to the requirements for the care of the property contemplated by Ar-

[1] Insert appropriate reference.

[1] Delete all lines which do not apply.

NOTE: Where this contract is entered into with subcontractors, appropriate modifications and additions will be necessary in and to the "Whereas" clauses.

[2] Where practicable storage rates may be computed on a square or cubic foot basis.

[3] Delete if inapplicable.

ticle 14 hereof, the Contractor shall maintain in and about the storage space such adequate plant protective devices and shall employ such watchmen, guards and other personnel as the Contracting Officer may direct in writing, to prevent espionage, sabotage, and other malicious destruction or damage. If, pursuant to the Contracting Officer's written direction the Contractor incurs any additional expenses during the period the property is stored pursuant to this contract, the Contractor shall be paid a reasonable amount therefor. If the parties are unable to agree on an amount, the dispute shall be determined as provided in Article 21 (Disputes) hereof.

ART. 10. *Payments.* The Contractor shall submit monthly to the Contracting Officer a properly certified invoice for all accrued charges under this contract for the preceding storage month. Recognition is given to the fact that the Government fiscal year ends on 30 June. Payment for charges accruing hereunder after that date shall be contingent upon the availability of appropriations therefor.

ART. 11. *Deliveries.* Deliveries of all, or from time to time part, of the property from storage space to the Government at the storage site or to its designated carrier or transfer agent will be accomplished by the Contractor on receipt of a written order from the Government. Plus or minus tolerances of quantities and weights within reasonable limits in accordance with good commercial practice will be accepted. The Contractor shall be paid a reasonable amount for any charges for drayage to the said designated carrier or transfer agent incurred at the direction of the Contracting Officer. In the event that the parties fail to agree upon the reasonable amount to be paid for drayage charges, the dispute shall be determined as provided in Article 21 (Disputes) hereof.

ART. 12. *Waiver of lien.* It is understood and agreed that the Contractor has no warehouseman's lien on the property and will not assert any warehouseman's lien thereon.

ART. 13. *Transfer for administration.* This contract may be transferred by the Government at any time, in whole or in part, to any Government department or governmental agency for administration purposes.

ART. 14. *Liability for care of goods.* The Contractor shall be liable for any loss or injury to the property caused by his failure to exercise such care in regard to it as a reasonably careful owner of similar goods would exercise, but he shall not be liable for any loss or injury to the property which could not have been avoided by the exercise of such care.

ART. 15. *Records of government-owned property.*

---

is designated as the officer to maintain the necessary property records in connection with this contract.

ART. 16. *Federal, state and local taxes.* (a) The consideration provided herein includes all applicable Federal, state and local taxes in effect at the date of this contract, except that it does not include any taxes on the property stored under this contract.

(b) If after the date of this contract the Federal Government or any state or local Government shall impose, remove or change (including any change by the removal by statute of an exemption available to the contractor for the purposes of this contract) any tax or charge upon the transportation of, storage or privilege of storing, the property, which tax or charge must be borne by the Contractor because of a specific contractual obligation or by operation of law; and, if in case of an increase in such an existing tax or the imposition of such a new tax, the Contractor has paid such tax or charge to the Federal Government or to a state or local government, or any other person; or, in case of a decrease or elimination of any such tax, and the Contractor is relieved to that extent; then the consideration named herein will be increased or decreased accordingly, and any amount due to the Contractor as a result of such change will be charged to the Government and entered on vouchers (or invoices) as a separate item: Provided, however, that the Government reserves the right to issue to the Contractor in lieu of such payment a tax exemption certificate or certificates acceptable to the Federal Government or state or local government, as the case may be. The amount of any adjustment pursuant to this paragraph (b) may be determined by a written agreement between the parties hereto. Nothing contained herein shall be construed as requiring the Government to reimburse the Contractor for any Federal, state, or local income taxes, income surtaxes or excess profits taxes or any state or local property taxes, except as provided in paragraph (c) hereof.

(c) If after the date of this contract the Contractor incurs any state or local property tax with respect to the property allocable to the aforementioned terminated contract(s), the consideration will be increased in the manner set out in paragraph (b) hereof.

(d) In the case of any state or local tax or charge which the Contractor contends is chargeable to the Government because of the provisions of this Article, or any other provision of this contract, the Contractor agrees to refrain from paying such tax or charge upon the direction of the Contracting Officer (in which event the Government will save the Contractor harmless from penalties and interest incurred through compliance with the direction of the Contracting Officer not to pay such tax); to take such steps as may be directed by the Government to cause such tax or charge to be paid under protest; to preserve, and, if so directed by the Contracting Officer, to cause to be assigned to the Government any and all rights to the abatement or refund of such tax or charge; if so requested, to permit the Government to prosecute any claim, litigation or proceeding for the refund of such tax in the name of the Contractor, and to furnish to the Government all reasonable assistance and cooperation requested by the Government in any litigation or proceeding for the recovery of such tax or charges.

ART. 17. *Eight-hour law.* (§ 803.346)

ART. 18. *Anti-discrimination.* (§ 803.325)

ART. 19. *Officials not to benefit.* (§ 803.322)

ART. 20. *Covenant against contingent fees.* (§ 803.323)

ART. 21. *Disputes.* (§ 803.326)

ART. 22. *Assignment of rights hereunder.* (§ 803.355)

ART. 23. *Definitions.* (a) The term "Secretary of War" as used herein shall include the Under Secretary of War, and the term "his duly authorized representative" shall mean any person or board authorized by the Secretary of War to act for him other than the Contracting Officer.

(b) Except for the original signing of this contract, and except as otherwise stated herein, the term "Contracting Officer" as used herein shall include his duly appointed successor or his authorized representative, or in the event of transfer pursuant to Article 13 hereof, the person designated as Contracting Officer by the Government department or governmental agency to which this contract is transferred.

ART. 24. *Alterations.* The following changes were made in this contract before it was signed by the parties hereto:

In witness whereof, the parties hereto have executed this contract on the day and year first above written.

THE UNITED STATES OF AMERICA

By _____

_____

(Contracting Officer)

_____

_____

(Contractor)

Witnesses as to signature of the Contractor.

(1) _____

_____

(Address)

(2) _____

_____

(Address)

NOTE: When in the opinion of the Contracting Officer the circumstances so require, special articles may be added to this contract to provide for particular methods of storing, handling or preserving the property. Such articles may specify that certain items or groups of items may be placed in outside storage or should receive special maintenance. It may also be desirable in some cases to specify particular arrangements of the property—for example, between aisles or otherwise in order to permit ready access to, and visible inspection of, each lot of property, in a particular type of stacks so as to protect property or insure maximum use of storage space; or in accordance with necessary safety requirements.

NOTE: Here follows Appendix A consisting of Directive Orders 1 to 6 of the Office of War Mobilization, set forth as paragraphs 15-1000 to 15-1006.2. This material was included for purposes of information only. See 9 F.R. 478, 2251, 5192, 5193, 6135.

[Procurement Reg. 16]

PART 816—PRIORITIES

SUBPART A—INTRODUCTION

Sec.

816.1601 General.

816.1602 War Production Board.

816.1603 Army and Navy Munitions Board.

816.1604 Scope of part.

816.1605 Clearance of instructions.

816.1606 Regulations relating to priorities.

816.1607 Compliance with regulations.

816.1608 Special priority procedures.

SUBPART B—DEFINITIONS

816.1610 Definitions.

SUBPART C—DETERMINATION OF PREFERENCE RATINGS

816.1611 Preference ratings as strategic decisions.

816.1612 Army and Navy Munitions Board Priorities Directive.

816.1613 Overall preference rating structure.

816.1614 Implementation of the ANMB Directive.

816.1615 Compliance.

816.1616 Preference rating structure.

SUBPART D—USE OF PREFERENCE RATING CERTIFICATE, FORM PD-3A

816.1620 Use of Form PD-3A.

816.1621 Cases where PD-3A is not applicable.

816.1622 Supplies of Form PD-3A.

816.1623 Copies of Form PD-3A.

SUBPART E—PREPARATION OF PREFERENCE RATING CERTIFICATE, FORM PD-3A, FOR PRODUCTION CONTRACTS, SPOT PURCHASES, CONSTRUCTION PROJECTS, AND CAPITAL EQUIPMENT

816.1628 Preparation of Preference Rating Certificate, Form PD-3A for Production Contracts, Spot Purchases, Construction Projects, and Capital Equipment.

SUBPART F—RATING PRODUCTION CONTRACTS AND SPOT PURCHASES

816.1631 Definition.
816.1632 Application of ratings to production contracts and spot purchases.
816.1633 Preference ratings assigned to production contracts.
816.1634 Indefinite contracts.

SUBPART G—RATING CAPITAL EQUIPMENT AND MACHINE TOOLS

816.1635 General procedure.
816.1636 Use of Form PC–20.
816.1637 Procedures for securing approval.
816.1638 Validation of certificates.

SUBPART H—RATING CONSTRUCTION PROJECTS

816.1639 General.
816.1640 Command construction.
816.1641 Other construction.
816.1642 Procedures for securing approval.

SUBPART I—MAINTENANCE, REPAIR, AND OPERATING SUPPLIES

816.1648 General procedure.
816.1649 MRO procurement of private contractors.
816.1650 MRO procurement of services.

SUBPART J—PREFERENCE RATINGS FOR CONTRACTS BY OR FOR FOREIGN GOVERNMENTS

Sec.
816.1652 Cash purchases.
816.1653 International Aid requisitions.

SUBPART K—EXTENSION OF PREFERENCE RATINGS

816.1656 Procedure.
816.1657 To what ratings may be extended.
816.1658 Combining ratings.
816.1659 B Product producers.
816.1660 Copies of preference rating extensions.

SUBPART L—RERATING PROCEDURES

816.1665 General.
816.1666 Rerating of prime contracts.
816.1667 Rerating of subcontracts.
816.1668 Rerating of authorized schedules under CMP allotments.
816.1669 Extensions of reratings.
816.1670 General provisions.

SUBPART M—SPECIAL RATING PROCEDURE AND SCHEDULING ASSISTANCE

816.1675 Definition.
816.1676 Considerations preliminary to applying for a special rating.
816.1677 Procedure for applying for a special rating.
816.1678 Advice as to action taken on application.
816.1679 Requests for special scheduling.

SUBPART N—RELATION OF PRIORITIES TO MATERIAL ALLOCATION SYSTEMS

816.1685 Systems for controlling scarce materials.
816.1686 Relationship of ratings to material control systems.
816.1687 Optional procedure under Priorities Regulation No. 11–B.

SUBPART O—SUMMARY OF WPB ORDERS

816.1690 Summary of WPB orders.
816.1691 Appeals from L, M, and R Orders.
816.1692 Index to Orders.

SUBPART P—PREFERENCE RATINGS FOR PROCUREMENT FROM UNIT FUNDS

816.1695 Authority delegated to Special Services Division.
816.1696 Procedure.
816.1697 Accomplishing the PD–3A Certificate and assigning the applicable rating.
816.1698 Out-of-Line rating.
816.1699 Issuance of instructions.

SUBPART A—INTRODUCTION

§ 816.1601 *General.* The priorities system is a vital control in war production. It is the means by which one program is preferred over another program when a conflict in delivery dates develops and the production of one item must be placed before that of another item. In this manner the more urgent need is given precedence over the lesser need.

§ 816.1602 *War Production Board.* Since priorities relate not only to military procurement, but also to indirect military and civilian procurement, the War Production Board has been given the primary authority to prescribe and administer the priorities system and the distribution of materials among competing claimants.

§ 816.1603 *Army and Navy Munitions Board.* The Army and Navy Munitions Board (ANMB), under delegated authority from the War Production Board, coordinates the extension of preference ratings by the Army, Navy, certain government agencies, and foreign governments.

§ 816.1604 *Scope of part.* (a) These instructions do not affect interpretations of the ANMB Priorities Directive or authorizations granted thereunder. They deal principally with procedural phases of priorities and are offered as a guide to military personnel charged with the responsibility of applying the priorities system to military procurement. Since any system of this type must have flexibility, instructions such as these cannot remain static. Therefore, provision is made for the insertion of changes, as they occur, so that the instructions will at all times correctly reflect current conditions.

(b) These instructions replace and supersede Priorities Instructions dated 18 February 1942, and Priority-Allocation Instructions numbered from 1 to 11 inclusive, all of which should be destroyed, but they do not invalidate internal operating procedures and interpretations established by the individual military agencies which are not in conflict with these instructions. Priority-Allocation Instruction No. 12 (Post Exchanges), however, remains in full force and effect.

§ 816.1605 *Clearance of instructions.* It is to be especially noted that letters of interpretation or instruction concerning priorities procedures, for general distribution within technical services, must be submitted to the Production Division, Headquarters, Army Services Forces, for approval. This is necessary in order to avoid any interpretations or instructions which are not in keeping with basic priorities procedures and which tend to depart from uniformity.

§ 816.1606 *Regulations relating to priorities.* Every officer responsible for priorities should study carefully this Regulation and the basic principles of the priorities system as set forth in:

WPB Priorities Regulation No. 1.
WPB Priorities Regulation No. 3.
WPB Priorities Regulation No. 12.
WPB Priorities Regulation No. 18.
CMP Regulation No. 3.
CMP Regulation No. 5.
WPB Directive No. 23.

Copies of the above may be obtained from a War Production Board office.

§ 816.1607 *Compliance with regulations.* The success of any plan or system is dependent upon the extent of cooperation of the various units operating under it. Therefore, it is the policy of the Army to require strict adherence to all regulations, orders; directives, and instructions issued in connection with priorities. Every authenticating official who knowingly issues or causes to be issued a preference rating certificate which is found to be improper or unauthorized, either as to form or substance, will be held strictly accountable for his actions, and the certificate will be subject to revocation.

§ 816.1608 *Special priority procedures.* Special procedures have been established for the assignment of preference ratings for procurement by and for Post Exchanges and Army Specialized Training Program.

SUBPART B—DEFINITIONS

§ 816.1610 *Definitions.* For the purpose of this part definitions set forth below are established:

"Priorities directive." The ANMB Priorities Directive is a determination of relative urgency of military programs and projects.

"Priority" is the degree of precedence given to an order or contract to obtain completion, delivery, or performance on a particular date at the expense, if necessary, of competing contracts or orders of lower priority held by the same supplier or facility.

"Preference rating" is a symbol (AA–1, AA–2, etc.) assigned to a contract, order, award, or letter of intent, to establish the degree of precedence.

"Original preference rating" is the rating assigned by a certificate or WPB preference rating order to delivery of an end item, construction of a project, or use of a facility.

"Extended preference rating" is the rating applied or used by a prime contractor or subcontractor for delivery of components or materials.

"Preference rating certificate" is the instrument by which preference ratings are assigned.

"Emergency or special rating" is a rating higher than that authorized by the ANMB Priorities Directive or WPB orders, and is granted only in special cases of utmost urgency by the ANMB or WPB.

"Prime contract" is a contract or order placed by the Army or Navy, or by an approved foreign government, directly with an individual, firm, or corporation to supply military or naval material, equipment, or facilities.

"Prime contractor" is the individual, firm or corporation with whom the Army or Navy, or an approved foreign government, has placed a prime contract.

"Subcontract" is a contract or order placed with a supplier by an individual, firm, or corporation holding a prime contract or another subcontract for material or services to be incorporated in a prime contract.

"Subcontractor" is the individual, firm, or corporation with whom a prime contractor, or another subcontractor, has placed a purchase order or subcontract for materials or services to be incorporated in a prime contract.

"Authentication" is the execution, evidenced by the signature of the duly authorized official of the contractor, of the authentication statement on Form PD-3A.

"Countersignature" is the validating of a PD-3A preference rating certificate, by the signature of a duly authorized U. S. Government Official.

"Certification" is a representation by the holder of a preference rating, endorsed upon his purchase order, by means of which he extends the rating to his supplier in accordance with the terms of Priorities and CMP Regulations.

"Material" means any commodity, equipment, accessory, part, component, assembly, or product of any kind.

"Material physically incorporated" includes all commodities, accessories, parts, and assemblies, or other products which are physically or chemically incorporated in the end item. Excluded are facilities, machine tools, capital equipment and repair, maintenance, and operating supplies.

"Machine tool" means any non-portable power driven, metal working machine listed in Exhibit A of War Production Board Order E-1-b, with certain exclusions set forth in that order.

"Productive capital equipment" is capital equipment (excluding machine tools) which physically processes or otherwise acts upon or handles materials or items physically incorporated in end products, or which is necessary to operate such equipment, such as cranes, furnaces, chemical tanks, turbines, generators, and machinery.

"Construction capital equipment" is equipment which is physically used in construction of projects or which otherwise acts upon or handles material or items to be physically incorporated in a construction project; such as power shovels and concrete mixers.

"Non-productive or administrative capital equipment" is capital equipment which is necessary for the operation of the administrative side of a manufacturing plant, military installation, or for a construction project, such as office equipment, plant protective equipment, and equipment for the health and well being of employees.

"Expansion" is the creation of new facility capacity by addition to existing equipment or one or more units or the installation of equipment where none existed before.

"Replacement" is a necessary installation of a similar unit of equipment of similar size to take the place of a unit previously installed and which has become useless through wear and tear or accident and which cannot be repaired.

"Training aid or device" is defined as equipment used exclusively and directly for the training of military personnel. This does not include housing, messing, administrative, or other similar operating equipment or supplies or items of individual issue or use. It includes such items as link trainers, bombing trainers, single items of mechanical equipment (or parts thereof) of ships, planes, and ordnance.

"Army, Technical Services, Services, or Military." The terms Army, Technical Services, Services and Military, as used herein, include in all cases the Technical Services, the Army Air Forces and the Service Commands. Attention is called to § 801.108 (d) and (e) which are applicable to this part.

SUBPART C—DETERMINATION OF PREFERENCE RATINGS

§ 816.1611 *Preference ratings as strategic decisions.* The Joint Chiefs of Staff of the Army, Navy, and Air Forces periodically prepare a statement of the strategic urgencies of the various parts of the Military Program. Their decisions are based on their knowledge of the type of munitions needed for the various phases of the war. For example, weapons which can be used against the enemy are more urgent than construction projects in the continental United States.

§ 816.1612 *Army and Navy Munitions Board Priorities Directive.* The strategic decisions of the Joint Chiefs of Staff are converted into industrial preference ratings and are published as the Army and Navy Munitions Board Directive. This document becomes the basis of all preference ratings assigned by the Army, Navy, and agencies under Army and Navy Munitions Board priority jurisdiction. It is a basic instrument universally required for the operation of the military priorities system.

§ 816.1613 *Overall preference rating structure.* The ANMB Priorities Directive is incorporated into the general priorities structure established by the WPB. Consequently, ratings assigned on PD-3A certificates or military CMP allotment forms (where permitted) are directly related to preference ratings assigned under CMP and Priorities Regulations, on PD-1A Forms, and under "P", "L", "M", and "E" orders.

§ 813.1614 *Implementation of the ANMB Directive.* (a) As the ANMB Priorities Directive is a broad policy document, it is necessary to issue detailed instructions to the Services responsible for procurement. Considerable flexibility is allowed the technical services in the implementation of the Priorities Directive. Separate instructions, approved by the Production Division, Headquarters, Army Service Forces are issued from time to time by the respective services of the Army.

(b) In cases where quantitative limitations are imposed in the Priorities Directive, quarterly accounting is required. It is, therefore, customarily necessary for the offices in the field to report the dollar value of ratings assigned in the various preference rating groups under specific accounting instructions. Certain services which have programmed their preference ratings for procurement and have secured advance approval, have been relieved from accounting.

§ 816.1615 *Compliance.* (a) Since preference ratings are based on war strategy, it is imperative to comply strictly with the ratings provided in the Priorities Directive. Failure to comply may easily retard vitally important programs.

(b) Compliance is also important because an incorrect rating may be extended. Extensions average 10 per contract and consequently an incorrect rating may actually result in 11 incorrect ratings. Enforcing compliance with these Instructions and with the ANMB Priorities Directive is the responsibility of the chiefs of technical services. The WPB is responsible for enforcing compliance by industry, and military personnel should report violations to WPB field offices whenever discovered.

§ 816.1616 *Preference rating structure.* (a) The current ANMB Priorities Directive and WPB documents establish the relative urgencies among programs, schedules, profits, and items of procurement as outlined below:

AAA	AA-3
AA-1	AA-4
AA-2	AA-5
AA-2X	

(b) Special means of securing higher-than-routine ratings including AAA are explained in Subpart M of this part, and application should be made through the responsible Service when such assistance is imperative.

SUBPART D—USE OF PREFERENCE RATING CERTIFICATE, FORM PD-3A

§ 816.1620 *Use of Form Pd-3A.* (a) WPB Form PD-3A is used for assigning preference ratings to "military" prime contracts and is issued exclusively by the military organizations.

(b) Form PD-3A also is used to assign preference ratings to military procurement by or for designated foreign governments, both for purchases by the technical services and by the designated foreign governments.

(c) A private contractor's procurement of machine tools and all types of capital equipment may be rated by a PD-3A certificate if the equipment is necessary for the completion of a military prime contract or subcontract. However, unless military purposes will constitute the major use of the equipment, the contractor should apply for a rating to the WPB on a PD-1A or other appropriate form. The PD-1A certificate is the civilian counterpart of the PD-3A certificate.

(d) All correspondence dealing with Form PD-3A should contain reference to the serial number of the certificate and preference rating assigned, also the contract number or purchase order number, as well as the name of the service concerned.

§ 816.1621 *Cases where PD-3A is not applicable.* Where an item is covered by a WPB Limitation Order which specif-

ically states that a special form (other than the PD–3A will be used) the appropriate WPB form should be completed. Before issuing a PD–3A certificate for capital equipment, it is the responsibility of the purchasing and contracting officer or countersigning official to ascertain whether or not the equipment being procured is subject to any of the "L" or "M" order provisions, also to determine whether or not a PD–3A certificate may be used. WPB orders are described in Subpart O. A list of WPB Orders and Forms is available in a printed publication entitled "Priorities" which may be obtained from the War Production Board, Publications Section, Washington, D. C., and which is published monthly.

§ 816.1622 *Supplies of Form PD–3A.* Supplies of Form PD–3A should be obtained from the nearest WPB Regional or District Office.

§ 816.1623 *Copies of Form PD–3A.* The countersigning officer's copy of Form PD–3A is considered the official file copy and must be retained for six months after the completion of the contract covered. The copy marked for the Army and Navy Munitions Board may be destroyed and the War Production Board copy is required only for certificates requiring approval under Directive No. 23, explained in Subpart G of this part. Copies designated for the chief of service should be promptly dispatched.

SUBPART E—PREPARATION OF PREFERENCE RATING CERTIFICATE, FORM PD–3A, FOR PRODUCTION CONTRACTS, SPOT PURCHASES, CONSTRUCTION PROJECTS, AND CAPITAL EQUIPMENT

§ 816.1628 *Preparation of Preference Rating Certificate, Form PD–3A, for production contracts, spot purchases, construction projects, and capital equipment.* The various sections of the PD–3A certificate should be completed as follows:

(a) *Government Contract No.* The complete number of the contract or purchase order for the items covered by the certificate should be given in this space. Orders placed under Treasury Procurement Schedules must include not only the order number, but the number of the TPS contract as well. Where the PD–3A is issued to cover items in a "Letter of Intent" the date of such letter, and adequate identification symbol of such letter, shall be placed in this subpart. If the space provided is not sufficient for giving information about the "Letter of Intent", a footnote should be indicated and the complete information added at the bottom of the certificate.

(b) *Issued To.* The name of the "prime contractor" with whom the Army or Navy contract was placed is inserted here. When a PD–3A is issued for capital equipment being purchased by a military prime or subcontractor the name of the purchaser of the equipment is shown.

(c) *Address.* The address must be that one of the company where the PD–3A Form will be filed and where it can be inspected, if known, otherwise the principal office of the company.

(d) *Government Agency Placing Contract.* This section must show the name and address of the Technical Service which issued the related prime contract, purchase order, or "Letter of Intent."

(e) *Required Delivery Date.* The required delivery date must be shown as indicated by the contract involved. The delivery date must be a date subsequent to the date the preference rating certificate is issued. A preference rating certificate which does not show an actual required delivery date is not valid and shall not be honored. Such terms as "at once", "as soon as possible", "immediately", etc., are not adequate. A firm shall not accept as valid a certificate which does not carry a specific required delivery date.

(f) *Quantity Each Shipment, Dollar Value Each Shipment.* The quantity and dollar value of each shipment required by the contract should be shown in sufficient detail to provide proper control.

(g) *Description.* (1) A sufficient description of the items called for in the prime contract should be made to identify the type of material being procured or service to be performed. When the certificate assigns a rating to the construction project it should be clearly described, and the machine tools and capital equipment to be installed should be itemized wherever possible. A contractor is authorized to extend a preference rating covering a construction project only for construction capital equipment specifically listed on the PD–3A certificate or on purchase orders issued subsequently when duly approved.

(2) Wherever the contract is a secret or confidential document and the inclusion of such information in the PD–3A certificate can be considered as divulging secret or confidential information, the term, "Special" should be used in the columns calling for quantity, value, and description in lieu of such information. This procedure will make unnecessary marking the certificate "Secret" or "Confidential" and will eliminate special handling and safekeeping. However, it is considered that in most instances the secret or confidential nature of a contract is in the specifications of the items called for and not in the fact that any one firm is manufacturing any specified quantity of a particular item for any particular delivery. Since the preference rating certificate will be the property only of government officials and the prime contractor, it is felt that the above procedure is adequate in most cases.

(h) *Authentication.* The authentication is designed to make Form PD–3A applicable to authorized purchases of machine tools and capital equipment, in addition to its primary purpose of rating a prime contract. When used in connection with a prime contract, this certification merely states that the information shown on the PD–3A Form is correct as it relates to the prime contract which it covers. The issuing Government Official should countersign the certificate and forward the original to the contractor except in the case of machine tools and capital equipment. The contractor, by executing the authentication, will indicate his acceptance of the rating assigned before he commences extension of the rating covered by the certificate. Only the original copy of the certificate need be manually signed. The copies should carry the typed or stamped name and address of the Government official and the date on which the countersignature was made.

(i) *Preference Rating.* The issuing Government Official will indicate herein the preference rating applicable to the contract as determined by the current Priorities Directive.

(j) *ANMB Code or Authority.* This section should make reference to the specific instrument authorizing the rating being assigned, if covered by special authority.

(k) *Urgency Standing No.* Where the certificate covers machine tools the applicable urgency standing number, if any, should be stated.

SUBPART F—RATING PRODUCTION CONTRACTS AND SPOT PURCHASES

§ 816.1631 *Definition.* All contracts which are not specifically covered in Priorities Instructions on; Construction; Capital Equipment and Machine Tools; Maintenance, Repair, and Operating Supplies; are classified for priority purposes as Production Contracts or Spot Purchases.

§ 816.1632 *Application of ratings to production contracts and spot purchases.* Ratings are applied to Production Contracts and Spot Purchases in the following ways:

(a) CMP "A" products may be rated on PD–3A certificates or on CPM allotment forms. The rating is applicable to the authorized production schedule and may be used by the contractor to secure materials (except controlled materials) and "B" products physically incorporated in the end item and necessary to execute the authorized production.

(b) CMP "B" products and all other products except "A" products, and noncontrolled materials, are rated on PD–3A certificates. Ratings assigned to nonclassified products may be used by the contractor to secure materials and products physically incorporated in the end item and necessary to carry out the production required by the contract except that manufacturers operating under Priorities Regulation 11–B may only extend the rating received from the War Production Board. A "B" product producer must extend the ratings assigned on the allotment form by which he receives materials and may not extend his customer's rating.

§ 816.1633 *Preference ratings assigned to production contracts.* Preference ratings assigned to production contracts may not be extended to secure capital equipment.

§ 816.1634 *Indefinite contracts.* Since Priorities Regulation No. 1 states that preference ratings may be assigned only to contracts bearing definite delivery dates preference ratings may not be assigned to long term contracts issued by the Army which are indeterminate as to

amount or estimated as to delivery and under which deliveries are made subject to purchase orders issued subsequently by the using activity. Preference rating certificates should be issued by the ordering officer when placing specific amounts under such contracts. In the event that this restriction results or threatens to result in undue delay in performance of a contract, application for special assistance may be made to the Production Division, Headquarters, Army Service Forces, through the chief of the technical service covered.

SUBPART G—RATING CAPITAL EQUIPMENT AND MACHINE TOOLS

§ 816.1635 *General procedure.* Army Procurement Officers are responsible for assigning preference ratings to capital equipment and machine tools purchased by the Services or by military contractors. Current military policies require careful consideration of each equipment purchase, and officers are responsible for determining that capital equipment is actually necessary and that other facilities are not available. In addition, War Production Board Directive No. 23 requires approval by WPB field offices of priority actions involving capital equipment and machine tools with specific exceptions listed below:

(a) Where the capital equipment or machine tools are to be incorporated in command construction, as defined in War Production Board Directive No. 23. This exception is limited to equipment and tools for incorporation at the time of construction and does not include subsequent replacements, repairs, or additional equipment for command construction.

(b) Where the total value of the items rated by the instrument does not exceed $500.

(c) Where the instrument is countersigned outside the forty-eight states, District of Columbia and the Dominion of Canada.

(d) In the case of emergency purchases under the circumstances specified in Directive No. 23, paragraph (d) (3).

(e) Where the equipment or tools are for use on board ship, including floating dry docks, or for use outside the forty-eight states, and the District of Columbia for military purposes. The term "Military Purposes" includes all equipment or tools furnished to military organizations for use by military personnel of any nation.

(f) Where the capital equipment is for military operations. This would include all organizational and operational equipment for use in military establishments or by military personnel. It does not include machine tools, except machine tools to be installed in mobile equipment.

(g) Administrative capital equipment.

(h) Other cases excepted by the War Production Board. This exception may be used to cover purchases classified for purposes of military security.

§ 816.1636 *Use of Form PC–20.* Where WPB approval is required, the original and three (3) copies of Form PD–3A and one copy of PC–20 for each specific type of Capital Equipment or Machine Tool will be forwarded to the WPB Field Office. Form PC–20 is not required for administrative capital equipment nor where productive equipment is to be incorporated in a project which has been approved by War Production Board or the Army on a PD–3A or WPB–617 Form on which the equipment involved was specifically listed.

§ 816.1637 *Procedures for securing approval.* Various procedures are in operation for the review and approval of applications for assigning preference ratings to capital equipment and machine tools. Since these procedures are integrated with the administrative controls of the services, special instructions will apply to the routing, and to the military and WPB approval arrangements.

§ 816.1638 *Validation of certificates.* On all preference rating certificates coming within the scope of Directive No. 23, the statement, "Approved for Issuance", signed by the appropriate WPB official, must appear. Or, where such approval statement does not appear, the following statement may be placed on the instrument by the Army representative: "Under the terms of Directive 23, this instrument is valid without WPB approval indorsement". Cases where the approval of the War Production Board need not appear on the document include those cases covered by the specified exceptions, those cases where WPB is limited to, but has failed to take action within ten days, and those cases where the WPB has approved the transaction on a document other than the original. These provisions are applicable where contracts or purchase orders bearing a delegation of authority indorsement are used in lieu of PD–3A certificates.

SUBPART H—RATING CONSTRUCTION PROJECTS

§ 816.1639 *General.* War Production Board Directive No. 23 requires that construction projects, except command construction and certain specified exceptions, may be rated only by the War Production Board. Command construction may be rated on Form PD–3A Preference Rating Certificates by Army contracting officers.

§ 816.1640 *Command construction.* Command construction may be rated on PD–3A certificates by the Army contracting and procurement officers in the field. These certificates do not require the approval of the Army and Navy Munitions Board or of the War Production Board.

(a) Command construction, as defined in Directive No. 23, consists of projects ordered built by either the Chief of Staff, U. S. Army, or the Chief of Naval Operations, U. S. Navy, viz.: air fields; military housing; alien housing; facilities for the repair of finished items of munitions; overseas or theater of operations construction; seacoast fortifications; ports and depots; camouflage and other passive defense projects (whether or not owned and operated by the Army or Navy); emergency flood control projects having a value of less than $100,000; military hospitals; maneuver, training and staging areas and proving grounds.

§ 816.1641 *Other construction.* (a) In addition to using PD–3A certificates for command construction, the Corps of Engineers may issue PD–3A certificates, under delegated authority, for all construction supervised by the Corps of Engineers which is owned, leased, or operated by the War Department.

(b) Construction other than that included in the above, may be assigned preference ratings only by the War Production Board. Applications for preference ratings should be submitted on Form WPB–617. If the application covers a project of less than $25,000 it may be rated by a War Production Board field office.

(c) Application for amendments not exceeding $10,000 to outstanding P–19–h certificates that were issued by the Army and Navy Munitions Board, will be processed by the Army and Navy Munitions Board. Applications on Form PD–200b (WPB–1548) for such amendments will not be submitted to the War Production Board, but will be submitted through military channels to the Army and Navy Munitions Board.

(d) A PD–3A certificate for command construction or a WPB–617 Form for other construction projects, may include the capital equipment and machine tools for the project and the rating may be extended to such tools or equipment where they are specifically listed on the form. The urgency standing number of all machine tools so included should be indicated where applicable.

(e) Applications for preference ratings for construction projects must be prepared in accordance with the requirements of the ANMB List of Prohibited Items for Construction dated 8 November 1943.

§ 816.1642 *Procedures for securing approval.* Various procedures are in operation for the review and approval of applications assigning preference ratings to construction projects. Since these procedures are integrated with the administrative controls of the services, special instructions issued by the service concerned will apply to the routing, and to the military and WPB approval arrangements.

SUBPART I—MAINTENANCE, REPAIR, AND OPERATING SUPPLIES

§ 816.1648 *MRO Procurement by the Army.* (a) Maintenance, repair, and operating supply items, referred to as MRO, including capital additions not exceeding $500 in value, may be assigned preference ratings by following a simplified procedure which is based on CMP Regulations 5 and 7. A preference rating may be assigned by placing on the purchase order or contract for maintenance, repair, and operating supply items, the preference rating, identification symbol, and certification statement, as follows:

AA-1-W-MRO. The use of the preference rating or symbol on this order by the undersigned as a procuring Claimant Agency is authorized under applicable CMP Regulations.

This method of rating purchases may not be used in connection with regularly programmed MRO items which are those

included in the Army Supply Program and which are rated by the PD–3A procedure.

(b) The quantity limitations of paragraph f of CMP Regulation 5 are not applicable to purchases of MRO by the Army.

(c) Priorities Regulation No. 3 of the War Production Board includes a list of items to which preference ratings may not be assigned by use of the certification statement of CMP Regulation No. 5 shown above. If it is necessary to assign a rating to an item on List B of Priorities Regulation No. 3, a PD–3A certificate and an AA–1 rating as specified in the ANMB Priorities Directive may be used.

§ 816.1649 *MRO Procurement by private contractors.* All private contractors, whether they are prime contractors or subcontractors, are governed exclusively by CMP Regulation 5 in their procurement of MRO. A service may not issue a preference rating certificate to a private contractor for MRO of the private contractor.

SUBPART J—PREFERENCE RATINGS FOR CONTRACTS BY OR FOR FOREIGN GOVERNMENTS

§ 816.1652 *Cash purchases.* The Army and Navy Munitions Board is responsible for assigning priority ratings on preference rating certificate, Form PD–3A, to prime contracts of foreign governments covering items being procured by cash purchase for the direct use of the military forces of such foreign governments.

§ 816.1653 *International Aid Requisitions.* The technical services are responsible for assigning ratings on preference rating certificate, Form PD–3A, to prime contracts placed by the Technical Services as procuring agencies pursuant to approved International Aid Requisitions filed with the War Department.

SUBPART K—EXTENSION OF PREFERENCE RATINGS

§ 816.1656 *Procedure.* (a) Preference ratings, irrespective of the manner of their original acquisition or assignment, are applied or extended by indorsing on a purchase order an appropriate certification.

(b) Where, under the provisions of CMP Regulation No. 3 or CMP Regulation No. 1, the purchase order must bear an allotment number or symbol, the certification prescribed in CMP Regulation No. 3 will be used. In all other cases, except those noted in the following paragraph, the certification set forth in Priorities Regulation No. 3 will be used. CMP Regulation No. 7 provides a standard certification which may be used in place of either of the two certifications mentioned above.

(c) Certain orders of the War Production Board in the "P" series require that a special certification or preference rating be used with respect to the extension of preference ratings to specified products or materials. Also Priorities Regulation No. 9 prescribes special requirements with respect to the application of preference ratings to certain items for export. The provisions of these orders must be complied with.

§ 816.1657 *To what ratings may be extended.* (a) Ratings may be extended to: (1) Materials and parts which will be physically incorporated into material to be delivered, including commodities which are normally consumed or converted into scrap or by-products in the course of processing. (2) Material and parts necessary to restore inventory to a practical working minimum level to the extent that deliveries from it pursuant to the rating have been made.

(b) Ratings may also be extended for the use of facilities or for repair work under the circumstances prescribed in Priorities Regulation No. 3.

§ 816.1658 *Combining ratings.* (a) Any person who has received the same preference rating by different preference rating certificates or orders, or extensions, may combine these ratings and extend them to a single delivery on a single properly certified purchase order. Preference ratings of different grades whether received by the same or different preference rating certificates or orders, or extensions, may also be extended on a single purchase order. The amount of material to which each rating is extended must be shown separately or if the material involved is of such type that the supplier can determine the effect of the extension of the rating on his own production and delivery schedules, the amount may be shown on a percentage basis.

(b) Each rating extended in combination may apply to no greater quantity of materials than if the ratings were extended by a separate instrument. However, ratings of different grades may be combined and the rating of the lowest grade extended to the total.

§ 816.1659 *B Product producers.* B Product producers may not extend the ratings received with orders but must use the ratings assigned on their allotment forms.

§ 816.1660 *Copies of preference rating extensions.* Copies of purchase orders used to extend preference ratings need not be sent to the army offices involved nor to the War Production Board.

SUBPART L—RERATING PROCEDURES

§ 816.1665 *General.* (a) Priorities Regulation No. 12 covers the rerating of contracts and purchase orders. Reratings may be made upward or downward and include any change from one category to another. For example, a contract changed from AA–2X to AA–1, or from AA–1 to AA–2X comes within the scope of this regulation. Extensions may be made of upward reratings for delivery of material which will itself be delivered on a rerated delivery or physically incorporated into material to be so delivered, including material consumed or converted into scrap or by-products as the result of processing. Also reratings may be extended for material necessary to bring inventory up to a practicable working minimum whenever, as a result of delivery on the rerating, the inventory has been impaired below that minimum.

(b) When contracts are rerated downward, extensions of the new rating must be made to all uncompleted deliveries under the original contract. This must be done within five business days following the date the downward rerating is received.

§ 816.1666 *Rerating of price contracts.* Contracting procurement and inspecting officials may rerate prime contracts for supply items and construction projects only upon specific instructions from the office of the chief of the technical service. Form PDL–2102 shall be used exclusively for this purpose, including prime contracts under the jurisdiction of the Army Air Forces. "A" products may be rerated on allotment forms.

§ 816.1667 *Rerating of subcontracts.* (a) Prime contractors and subcontractors may rerate subcontracts or portions thereof either by Form PD–4Y, or by furnishing the supplier with a duplicate purchase order carrying the appropriate indorsement for the new rating as provided in Priorities Regulation No. 3, or by letter or telegram, listing the specific purchase orders, original ratings and new ratings. If the latter course is followed, such letter or telegram should be filed with the original purchase orders. The rerating shall cover only the undelivered quantities of materials specifically raised to new levels by means of the rerating certificates PDL–2102, PD–4Y, telegram, letter, or new purchase order received by the prime or subcontractor.

(b) PD–4Y is reproducible and samples may be obtained at WPB field offices. No duplicate copies of PD–4Y certificates issued by contractors are required by WPB.

§ 816.1668 *Rerating of authorized schedules under CMP allotments.* As to those "A products where no allotment is being made at the time, the rerating will be accomplished by a letter substantially in the following form: "The authorized schedule carrying allotment number ____, as shown on the (advance) allotment previously sent to you, is hereby rerated and assigned the following preference rating."

§ 816.1669 *Extensions of reratings.* A rerating of a delivery may not be extended to anything to which the original rating could not be extended such as materials for plant improvement, expansion or constructions, to machine tools or other capital equipment.

§ 816.1670 *General provisions.* (a) No person is required by reason of rerating, to terminate or interrupt a production schedule if such termination or interruption would mean a substantial loss in production: *Provided,* That rescheduling may not be delayed for more than forty days after such rerating is received.

(b) No person shall, by reason of a rerating, divert material specially produced for an order bearing a rating higher than A–2 and deliver the same under the higher rerated order if such material is completed at the time the rerating is received or is scheduled for completion within fifteen days thereafter, unless such diversion is specifically

directed by the War Production Board, or unless the new rating is AAA.

(c) Single forms of PDL–2102, or PD–4Y may be used to rerate deliveries to be made under different contracts with the same contractor and may specify different new ratings for separate deliveries to be made under the same contract.

(d) Reratings are retroactive to the effective date of the original rating.

(e) It must be emphasized that PDL–2102 and PD–4Y are not certificates covering original ratings. They are not to be used to acquire new or additional deliveries.

SUBPART M—SPECIAL RATING PROCEDURE AND SCHEDULING ASSISTANCE

§ 816.1675 *Definition.* (a) A special rating is AAA or any rating which is higher than the rating authorized in the current ANMB Priorities Directive. This higher rating is assigned only by the Recording Secretary of the WPB or by delegated authority under certain circumstances.

(b) A special rating is not to be assigned under any circumstances by contracting, procurement, and inspecting officials. Such officials should not instruct suppliers to rearrange production or delivery schedules in anticipation of the receipt of the actual special rating authorization.

§ 816.1676 *Considerations preliminary to applying for a special rating.* (a) If a special rating is granted, delay will occur in the production of some other essential items which have actually been rated as more essential by high strategic authorities. Such a sacrifice should be requested only when the interruption is small and does not entail a lengthy delay to the items which will be displaced. In many cases special rating does more than merely divert a like amount from some other project. This is because the disruption of the manufacturing schedule may drastically cut the production of the entire plant.

(b) The choke point or bottleneck should be located. Only the most directly affected contract need be investigated. It should be determined whether the inability of the supplier to deliver with the present rating is because of higher rated orders on his own books or is due to delay in securing materials or components from sub-suppliers. A special rating should only be sought for the particular items causing the delay and only for the quantity of the item necessary to alleviate the situation.

(c) Accurate, complete and up to the minute information must be furnished with respect to the orders which will be set back and the amount of delay of those orders, if the authorization is granted. In cases where order boards of suppliers are extremely complicated or consist of large numbers of small items, the maximum time lost by the displacement may be acceptable where the subject request is minute in comparison with the capacity of the industry to produce. It is essential that one of the following be clearly established:

(1) Whose orders, what programs, what items, will be delayed and to what extent?

(2) No orders be delayed over _____ days or _____ man hours.

(3) In cases of standard production items the ratio of the quantity requested to the total daily or weekly production may be given.

(d) A showing must be made that the specifications do or do not provide for approved alternates, and if they do, that all possible sources for the approved substitutes have been exhausted, with a statement of the sources contacted. For specifications on a performance basis, a similar showing must be made.

§ 816.1677 *Procedure for applying for a special rating.* (a) When it is necessary to apply for a special rating, the following procedure is applicable: All applications except those by contractors of the Army Air Forces covering "A" or "B" Products, and all other products, should be made through the office of the chief of the technical service. The application should be accompanied by WPB Form SR–1 (12–11–42) in triplicate and such additional copies as may be required by services. All information and data requested by the form should be supplied. Attention is directed to paragraphs 3, 5, 6, 8, and 9 of the form, the answers to which must be definite. The paragraph headed, "Basic Cause of Need for Rating," in addition to other causes, should show specifically the amount of delay, both in time and quantity, which will occur if the special rating is not authorized. The office of the chief of the technical service should show specifically that the granting of the special rating is necessary in order to meet the requirements in both time and quantity of the Army program involved.

(b) In the case of applications filed by contractors in the Air Programs of the Army Air Forces, the following procedure shall apply: The contractor shall fill out an ASU–16 Report of Critical Shortage. This report will then be authenticated by the AAF resident representative concerned. The report is then sent to the Army Air Forces District Procurement Office in the District in which the contractor is situated. If the shortage cannot be relieved in the District Office, the papers are forwarded to the Aircraft Scheduling Unit or to the Office of the Assistant Chief of Air Staff, M. M. & D., depending on the nature of the item. The SR–1 Form above referred to is filled out as set forth in the preceding paragraph and filed with the Special Rating Branch through the Army Air Forces Washington Office.

§ 816.1678 *Advice as to action taken on application.* (a) If, after investigation, it is decided to assign the special rating, the WPB will send a telegram in the name of the Recording Secretary to the applicant named in paragraph 1 of the SR–1 Form. This telegram will authorize the application of the special rating only to the quantities of items specified in the telegram. The applicant should be instructed to immediately extend the rating upon receipt to this supplier. Telegrams will also be sent to the supplier in cases where it appears that the war effort can be expedited by such action but in all such cases these telegrams will be addressed to the individual who is shown as fully cognizant of the facts involved.

(b) In all cases the sponsoring technical service will be advised of the action taken upon the application for special rating by an appropriate indorsement to the transmittal communication. If the application is approved a copy of the WPB telegram granting the special rating will be inclosed with the indorsement. If the application is denied or other action taken rather than authorizing the requested special rating, a complete explanation for such action will be set forth in the indorsement. The technical service will promptly notify the applicant of the action taken upon an application when the special rating is not authorized in order that any suggested action may be followed and reconsideration requested if further details can be submitted which would warrant further consideration by the Special Rating Section.

§ 816.1679 *Requests for special scheduling.* (a) Requests for scheduling assistance for items covered by General Scheduling Order M–293 or other scheduling orders which are not available on their present production schedule to meet the requirement in either time or quantity for Army Supply Program may be submitted to the WPB through the interested technical service.

(b) These applications for scheduling assistance may be submitted on the above mentioned SR–1 Form in the same manner as requests for special ratings and will be considered by the Special Rating Section to determine the urgency of the requirements.

SUBPART N—RELATION OF PRIORITIES TO MATERIAL ALLOCATION SYSTEMS

§ 816.1685. *Systems for controlling scarce materials.* (a) Systems controlling the distribution of scarce materials, like preference ratings, are an essential part of the general scheme of effecting precedence. The most important of the procedures for controlling the distribution of materials is the Controlled Materials Plan. Only a brief review of that plan can be given in this subpart and interested officers are referred to the War Production Board CMP Regulations and the instructions on CMP issued by Army Service Forces.

(b) The Controlled Materials Plan is a system for the distribution of three common denominator materials—steel, copper, and aluminum. The available supply of these materials is divided among the Claimant Agencies (Army Service Forces, Navy, Civilian Requirements, etc.) quarterly and is allotted to manufacturers by one of two methods: All products containing controlled materials are divided into two classifications. "A" and "B" Products. "B" Products are listed in the official War Production Board "B" Product List. All products containing controlled materials not

found on the official "B" Product List are "A" Products. Materials are distributed for the manufacture of "A" Products in the following manner: The manufacturer upon receiving a contract for the production of "A" Products, customarily submits an application for an allotment of the controlled materials necessary to complete the contract. The procuring agency which placed the contract makes the manufacturer an allotment of controlled materials which are necesary based on the application and an analysis of a bill of material contents. In like manner, the prime contractor in placing subcontracts for "A" Product components, passes on to his subcontractor a sufficient portion of the allotment he has received to enable his subcontractors to complete their components.

(c) A manufacturer of "B" Products files with the appropriate WPB Industry Division quarterly an application for an allotment of materials necessary for the manufacture of "B" Products by the applicant during the quarter. An allotment is made to the manufacturer by the Industry Division on a CMPL–150 Form. The "B" Product manufacturer would pass on a portion of this allotment to his suppliers of "A" Product components in the same manner as a prime contractor producing "A" Products. Allotments are not made by the purchaser to manufacturers of "B" Products whether the "B" Products are end items or components of other "A" or "B" Products.

(d) A similar procedure of direct allotment is provided for construction projects and there are special procedures for certain products in which one Claimant Agency has a predominant interest, for small warehouse purchases, and for small orders. The procedure for obtaining MRO under CMP has been referred to in subpart I of this part and is covered by CMP Regulation No. 5.

(e) A preference rating is always assigned to the authorized production schedule for an "A" Product. An "A" Product manufacturer may receive his preference rating on the allotment form or on a PD-3A certificate. This preference rating is extendible by the "A" Product manufacturer to his suppliers for all materials and components necessary to carry out the authorized production schedule, except the controlled materials.

(f) The "B" Product manufacturer shows upon his CMP-4B application the preference ratings applicable to the contracts for which he is requesting an allotment of materials. He receives his preference rating or ratings on the CMPL–150 Form and these preference ratings may be extended to his suppliers. Ordinarily the preference rating assigned to the "B" Product manufacturer on the CMPL–150 Form will conform to the pattern of the ratings of the contracts held by the manufacturer. The ratings received by the B Product manufacturer from his customers may not be extended (except AAA) but the "B" Product manufacturer in making deliveries to his customers must make these deliveries in accordance with the ratings received from the customers.

§ 816.1686 *Relationship of ratings to material control systems.* (a) The effect of a preference rating with respect to contracts for "A" Products is modified by the Controlled Materials Plan to the extent that a lower rated order for an "A" Product once accepted by the manufacturer may not be displaced by a higher rated order (except AAA) subsequently placed. That is, a manufacturer may not accept a contract rated lower than AAA if deliveries on the contract would prevent him from making scheduled deliveries on a rated contract for "A" Products previously accepted by the manufacturer.

(b) Orders for controlled materials are accepted by producers of controlled materials in the order in which they are presented. Preference ratings are not applicable to such orders and are disregarded in scheduling the production and delivery of controlled materials. Controlled materials are obtainable only if orders are accompanied by allotment symbols indicating that they are part of an allotment made by an authorized agency in the manner above described.

(c) Although CMP modifies the effect of preference ratings upon the production and delivery of "A" Products and controlled materials, it does not otherwise alter the operation of the preference rating system. For example, even under CMP, preference ratings control the production and delivery of "B" Products, of products unclassified as "A" or "B" Products, and of non-controlled materials. All procuring agencies and manufacturers, including "A" Product manufacturers, are dependent upon their preference ratings to obtain these products and materials.

§ 816.1687 *Optional procedure under Priorities Regulation No. 11–B.* An optional procedure for distributing non-controlled materials has been established by WPB Priorities Regulation No. 11–B. This regulation provides that a manufacturer of products unclassified as either "A" or "B" Products may make application to the appropriate Industry Division of the WPB on a PD-870 Form for a preference rating for specified quantities of non-controlled materials. The authorization to the manufacturer is accompanied by preference ratings which are extendible by the manufacturer to his suppliers. A manufacturer operating under Priorities Regulation No. 11–B may not extend the ratings he receives from his customers. However, the rating received with his allotment will conform to the ratings of the contracts held by him if above certain base ratings.

SUBPART O—SUMMARY OF WPB ORDERS

§ 816.1690 *Summary of WPB orders.* (a) P-Orders are Preference Rating Orders. "Blanket" Preference Rating Orders are used to avoid paperwork by assigning ratings which may be used for more than one delivery to obtain a variety of materials not specified in the assignment of the rating. A "P" Order saves time which would be required to assign hundreds of identical ratings on individual application forms (such as PD–1A or PD–3A), when it has been determined that a certain end-use should be assigned a specific rating without restriction.

(b) P-Orders are of two general types. The "open-end" type which assigns a rating to deliveries of all material required for the production of a named end-product. There is no restriction on the quantity of material which may be obtained by use of the rating and, as a rule, any person whose operations fit into the rated category may use the rating. This type of order is seldom issued. The "pre-audit" type of P-Order gives closer control. It also assigns a blanket rating, but the rating may be used only to obtain the quantity and types of material specifically authorized after proper periodic application to the War Production Board, as set forth in the P-Order.

(c) L-Orders are Limitation Orders, and like P-Orders, are economic controls which control end-product output. Unlike P-Orders (which promote production of needed end-products), the L-Orders restrict or prohibit the manufacture of less needed end-products. The most typical L-Order is a horizontal cut which limits each manufacturer of the regulated product to a certain percentage of his production during a base period (usually a pre-war year). An L-Order may prohibit or regulate manufacture, sale, purchase, delivery, acceptance of delivery, etc. L-Orders were used to stop the production and regulate the sale of automobiles, refrigerators, etc. Other L-Orders provide standardization and simplification practices, providing that certain end-products (e. g., bicycles) may be produced only in accordance with specifications set forth in the L-Order.

(d) M-Orders are material orders. They govern the distribution or use of raw materials, e. g., copper, iron and steel, lumber, paper, etc. One type of M-Order is the "Conservation Order" which provides, for example, that copper or steel may not be used in certain listed end-products. Other M-Orders are called "General Preference Orders". These exercise a great variety of controls and are difficult to classify. The following are the most usual provisions found in M-Orders: (1) A general inventory restriction and a rule that war orders must be filled first; (2) a rule that certain listed uses shall have preference in obtaining the regulated material; (3) a rule that all purchase orders must be filed with WPB and the distribution of the material held subject to close check, with perhaps the establishment of a "kitty" or reserve pool; (4) a requirement that suppliers must report their potential supply to WPB and users report their prospective demands, permitting WPB to compare the total supply with the demand; (5) a complete allocation order, providing that no person shall deliver or take delivery of the restricted material except as specifically authorized by the War Production Board.

(e) E-Orders are Equipment Orders. They are similar in principle to the M-Orders but are used to regulate the distribution of certain vital manufacturing equipment, such as machine tools.

(f) T-Orders are Transportation Orders. This type of order regulates ship-

ments of certain listed end-products, by tank cars and tank trucks. Its purpose is to prevent unnecessary cross-hauling.

(g) U-Orders are Utilities Orders. They perform the same functions as P-Orders, L-Orders, and M-Orders, in the field of "utilities," electric power, gas, water, steam, telephone, and telegraph.

(h) R-Orders are Rubber Orders and regulate the use of rubber.

(i) S-Orders are Suspension Orders. They impose specific penalties for violations of WPB orders and regulations. They may be used to stop or limit the business operations of a concern which has failed to comply with regulations issued in the interest of the war effort.

§ 816.1691 *Appeals from L, M, and R-Orders.* Relief from the restrictions of these orders may be obtained in individual cases by (a) specific WPB authorization, or (b) by appeals to WPB. The applicable L, M, and R-Orders state which or both methods may be used. Where under the second method the applicant takes an appeal to WPB involving items or material being procured to or for the account of the Army, such appeal is referred to the Army and Navy Munitions Board for a recommendation as to its military essentiality before final action is taken by WPB. The appeal is placed with WPB not by the technical service, but by the processor of the restricted material or producer of the prohibited item. To assure appropriate military review of such appeals and support, where necessary, it is important that the applicant identify the appeal as involving military procurement. In the case of a prime or subcontractor, the military prime contract involved should be identified by the appropriate symbols of the contract, Letter of Intent, or purchase order to indicate the military end item.

§ 816.1692 *Index to orders.* All WPB orders are indexed in the monthly publication, "Products and Priorities", obtainable from the War Production Board Publications Section, Washington, D. C.

SUBPART P—PREFERENCE RATINGS FOR PROCUREMENT FROM UNIT FUNDS

§ 816.1695 *Authority delegated to Special Services Division.* Authority has been granted to the Special Service Division, Headquarters, Army Service Forces, to administer, control, and redelegate to field officers authority to issue Preference Rating Certificates, War Production Board Form PD-3A, and assign thereon the applicable rating for the procurement of items being purchased with unit or similar funds.

§ 816.1696 *Procedure.* (a) Unit or similar funds are denied in AR 210-50.

(b) Preference Rating Certificates, War Production Board Form PD-3A, may be issued by field Purchasing and Contracting Officers or Special Service Officers for purchases totaling $500.00 or less without prior approval. Purchases must not be split to avoid prior approval.

(c) Before issuance of Preference Rating Certificates, War Production Board Form PD-3A, the following must be clearly established:

(1) The Commanding Officer will state in writing that the items sought are immediately necessary.

(2) The Post Quartermaster will certify that the items are not available from Quartermaster depots or supply stocks.

(d) The statements referred to in paragraph (c) above will be attached to the issuing officers' copy of Preference Rating Certificates, War Production Board Form PD-3A, and remain on file for a period of not less than six months after completion of the transaction.

(1) In instances where an item is covered by a War Production Board Limitation Order which specifically states that a form other the PD-3A will be used, the appropriate War Production Board Form must be completed and forwarded to Priorities Liaison Officer, Fiscal Branch, Special Service Division, Headquarters, Army Service Forces, which officer in turn will analyze the application and expedite its consideration by the War Production Board.

(2) The duplicate copy of all Preference Rating Certificates issued under the above authority will be forwarded to the Priorities Liaison Officer, Fiscal Branch, Special Service Division, Headquarters, Army Service Forces.

(e) On purchases involving more than $500.00 the PD-3A certificate will be accomplished in quintuplicate and all copies will be forwarded to the Priorities Liaison Officer, Fiscal Branch, Special Service Division, Headquarters, Army Service Forces, accompanied by the statements referred to above for further consideration. Preference Rating Certificates, War Production Board Form PD-3A, should be procured from the local War Production Board Office.

§ 816.1697 *Accomplishing the PD-3A Certificate and assigning the applicable rating.* The issuing officer will be responsible for the proper accomplishment of all PD-3A certificates. The issuing officer will:

(a) Place the Contract Number, Purchase Order Number, or Requisition Number in the space provided for on the form.

(b) Insert the name of the supplier in the space "Issued to."

(c) The address of the office of the supplier where original copy of PD-3A certificate will be filed.

(d) Insert "War Department", and Station in section headed Government Agency Placing Contract.

(e) Insert actual required delivery date in applicable column, such terms as "30 days", "60 days", "At Once", et cetera are not sufficient.

(f) Insert quantity and dollar value, (which may be an estimated amount if actual value is not known) and description in applicable spaces provided for on form.

(g) For purchases amounting to less than $500.00 the issuing officer will manually countersign the PD-3A certificate and insert thereunder the name of the Post or Station and the date the certificate was actually issued.

(h) On purchases amounting to more than $500.00 the certificate will not be countersigned in the field.

(i) Insert Preference Rating "AA-3" in space provided for. In no instance may a rating higher than AA-3 be assigned on Preference Rating Certificate, War Production Form PD-3A by field issuing officers.

(j) Insert in A.N.M.B. Code No. or Authority, "1st Ind. A.N.M.B. 3-30-43, JSL".

§ 816.1698 *Out-of-Line rating.* Any request for a rating higher than AA-3 required to effect delivery for purchases from unit or similar funds must be processed as follows:

(a) The certificate will be accomplished as set forth in § 816.1697, and (after countersignature as prescribed) actually tendered to the supplier. Should the supplier state he cannot make delivery on the assigned rating, have this statement confirmed by the complete accomplishment of Form SR-1, in triplicate.

(b) Form SR-1, in triplicate, obtainable from the local office of the War Production Board, should be forwarded by the issuing officer to the Special Ratings Section, Production Service Branch, Production Division, Headquarters, Army Service Forces. Information copy should be forwarded simultaneously to Priorities-Liaison Officer, Fiscal Branch, Special Service Division, Headquarters, Army Service Forces.

§ 816.1699 *Issuance of instructions.* All instructions dealing with Priorities or implementations of instructions relating to priorities on purchases from unit or similar funds must be cleared with the Priorities-Liaison Officer, Fiscal Branch, Special Service Division, Headquarters, Army Service Forces before release.

[F. R. Doc. 44-9346; Filed, June 27, 1944; 10:18 a. m.]