PART I

FEDERAL REGISTER

VOLUME 10 NUMBER 168

Washington, Saturday, August 25, 1945

Regulations

TITLE 7—AGRICULTURE

Chapter XI—War Food Distribution Orders

[WFO 42, Amdt. 18]

PART 1460—FATS AND OILS

EMERGENCY QUOTAS

War Food Order No. 42, as amended (9 F.R. 12075; 10 F.R. 2679, 3315, 5060, 7961, 8685), is further amended by adding immediately after paragraph (b) (3) the following new paragraphs:

(4) In addition to the quota established under paragraph (b) (1) hereof, any manufacturer may, during the calendar quarter July 1 to September 30, 1945, use fats and oils in the manufacture of edible fat or oil products other than margarine in an amount not exceeding 2 percent of the average amount of fats and oils used in such class of products during the corresponding calendar quarters of the base period. Such additional usage shall constitute an emergency quota and may be used only under the following conditions:

(i) Any manufacturer who has facilities for the manufacture of shortening shall use such emergency quota only for the manufacture of shortening which shall be packaged in containers of not over 4 pounds;

(ii) Any manufacturer who does not have facilities for the manufacture of shortening may use such emergency quota for the manufacture of liquid oil which shall be packaged in containers of not over one gallon;

(iii) Shortening or liquid oil produced as a result of such emergency quota shall be distributed, during the calendar quarter July 1 to September 30, 1945, in those areas designated as "emergency areas" by the Office of Price Administration, Washington, D. C.;

(iv) Normal or usual deliveries, into such "emergency areas", of shortening or liquid oil chargeable to regular quota usage under paragraph (b) (1) hereof shall not be reduced;

(v) Such emergency quota shall not be considered as part of the regular quota established under paragraph (b) (1) hereof, and any unused portion of such emergency quota shall not be carried over to the fourth calendar quarter of 1945.

The delivery of shortening or liquid oil by any manufacturer in violation of any condition set forth in this paragraph shall be charged against the regular quota established under paragraph (b) (1) hereof.

This order shall become effective at 12:01 a. m., e. w. t., July 1, 1945. With respect to violations, rights accrued, liabilities incurred, or appeals taken, prior to said date, under War Food Order No. 42, as amended, all provisions of said order shall be deemed to remain in full force for the purpose of sustaining any proper suit, action, or other proceeding with respect to any such violation, right, liability, or appeal.

(E.O. 9280, 7 F.R. 10179; E.O. 9577, 10 F.R. 8087)

Issued this 21st day of August 1945.

[SEAL] CLINTON P. ANDERSON,
Secretary of Agriculture.

[F. R. Doc. 45-15511; Filed, Aug. 21, 1945; 3:31 p. m.]

[War Food Orders, Amdts.]

AMENDMENTS TO WAR FOOD ORDERS

This order amends the following War Food Orders and all orders issued under

(Continued on p. 10421)

This issue is in two parts, the second of which consists of the War Department Procurement Regulations together with the War and Navy Department Joint Termination Regulation, as amended by Change 50, August 10, 1945. Because of its unusual size, Part II will be distributed during the week of August 26.

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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 25, 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.

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NOTICE

1944 Supplement

Book 1 of the 1944 Supplement to the Code of Federal Regulations, containing Titles 1–10, including Presidential documents in full text, is now available from the Superintendent of Documents, Government Printing Office, at $3.00 per copy.

A limited sales stock of the Cumulative Supplement and the 1943 Supplement is still available as previously announced.

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1. By deleting the definition of "Director" or "Chief of AAA" wherever the same appears and substituting in lieu thereof the following: "'Assistant Administrator' means the Assistant Administrator, in charge of regulatory matters, Production and Marketing Administration, United States Department of Agriculture."

2. By deleting the phrase "Director," "Director of Marketing Services," "Director of Supply," "Director of Basic Commodities, Commodity Credit Corporation," "Director of the Office of Materials and Facilities," "Director of Transportation," "Chief" or "Chief, Agricultural Adjustment Agency" wherever the same appears and substituting in lieu thereof the following: "Assistant Administrator."

All orders and delegations heretofore issued by the Director or Acting Director of Marketing Services, the Director or Acting Director of Supply, the Director or Acting Director of Basic Commodities, Commodity Credit Corporation, the Director or Acting Director of the Office of Materials and Facilities, the Director or Acting Director of Transportation, or the Chief or Acting Chief of the Agricultural Adjustment Agency, pursuant to authority contained in the above enumerated orders shall remain in full force and effect until expressly modified, amended, suspended, superseded, or terminated.

This order shall become effective at 12:01 a. m., E. w. t., August 20, 1945.

(E.O. 9280, 7 F.R. 10179; E.O. 9577, 10 F.R. 8087)

Issued this 23d day of August 1945.

[SEAL] CLINTON P. ANDERSON,
Secretary of Agriculture.

[F. R. Doc. 45-15739; Filed, Aug. 23, 1945; 3:13 p. m.]

[WFO 22-8, Amdt. 5]

PART 1425—CANNED AND PROCESSED FOODS

CANNED FRUITS, AND CANNED FRUIT JUICES, REQUIRED TO BE SET ASIDE DURING 1945

War Food Order No. 22-8, as amended (10 F.R. 1257, 7522, 7608, 8198, 9705), is hereby further amended by deleting Table 1 attached thereto and inserting, in lieu thereof, Table 1 attached hereto.

The provisions of this amendment shall become effective at 12:01 a. m., e. w. t., August 24, 1945. With respect to violations, rights accrued, liabilities incurred, or appeals taken under said War Food Order No. 22-8, as amended, prior to the effective time of the provisions hereof, the provisions of the said War Food Order No. 22-8, as amended, in effect prior to the effective time of the provisions hereof shall be deemed to continue in full force and effect for the purpose of sustaining any proper suit, action, or other proceeding with regard to any such violation, right, liability, or appeal.

(E.O. 9280, 7 F.R. 10179; E.O. 9322, 8 F.R. 3807; E.O. 9334, 8 F.R. 5423; E.O. 9392, 8 F.R. 14783; E.O. 9577, 10 F.R. 8087; WFO No. 22, as amended, 8 F.R. 2243, 6397; 9 F.R. 4321, 4319, 9584; 10 F.R. 103, 126)

Issued this 23d day of August 1945.

[SEAL] C. W. KITCHEN,
Assistant Administrator, Production and Marketing Administration.

TABLE I—CANNED FRUITS AND CANNED FRUIT JUICES

A	B	C	D	E	F	G
Product	Percentage of base pack	Type, style, variety (sequence does not denote preference)	Grade preference: First	Second	Third	Can size
Apples	54	Heavy Pack	Standard	Fancy		10.
Applesauce	24		Fancy	Standard		10-2.
Apricots	45	Halved, unpeeled	Choice	Standard (fancy not desired).	Pie or water pack	10-2½.
Berries [1]	62		Water Pack	(2)		10.
Blueberries	85		Water Pack	(2)		10.
Figs	48	Kadota	Choice	Fancy	Standard	10-2½.
Fruit cocktail	18		Top choice [3]	Fancy		10-2½.
Peaches	21	Yellow clingstone halved or sliced	Choice	Top std. [4]		10-2½.
		Yellow freestone, halved or sliced	Choice	Fancy		10-2½.
Pears	51	Bartlett, halved	Choice	Top std. [4]	Fancy	10-2½.
Pineapple	42	Sliced, crushed, chunks, tidbits (except cocktail tidbits).	Fancy	Choice	Standard	10-2½-2.
Pineapple juice	20		Fancy			10-3 cyl.-2.

[1] Blackberries, boysenberries, loganberries, youngberries only. Percentage applies to the combined pack of the four varieties.
[2] Syrup pack not desired.
[3] Not below 15 points for absence of defects. Not below 15 points for character, with a total minimum not below 89 points as defined in terms of U. S. grades.
[4] Top Standard means 70-74 inclusive as defined in terms of U. S. grades.

[F. R. Doc. 45-15740; Filed, Aug. 23, 1945; 3:15 p. m.]

[WFO 22-9, Amdt. 5]

PART 1425—CANNED AND PROCESSED FOODS

CANNED VEGETABLES, AND CANNED VEGETABLE JUICES, REQUIRED TO BE SET ASIDE DURING 1945

War Food Order No. 22-9, as amended (10 F.R. 1260, 5761, 7155, 8199, 9706), is hereby further amended by deleting Table 1 attached thereto and inserting, in lieu thereof, Table 1 attached hereto.

The provisions of this amendment shall become effective at 12:01 a. m., e. w. t., August 24, 1945. With respect to violations, rights accrued, liabilities incurred, or appeals taken under said War Food Order No. 22-9, as amended, prior to the effective time of the provisions hereof, the provisions of the said War Food Order No. 22-9, as amended, in effect prior to the effective time of the provisions hereof shall be deemed to continue in full force and effect for the purpose of sustaining any proper suit, action, or other proceeding with regard to any such violation, right, liability, or appeal.

(E.O. 9280, 7 F.R. 10179; E.O. 9322, 8 F.R. 3807; E.O. 9334, 8 F.R. 5423; E.O. 9392, 8 F.R. 14783; E.O. 9577, 10 F.R. 8087; WFO No. 22, as amended, 8 F.R. 2243, 6397; 9 F.R. 4321, 4319, 9584; 10 F.R. 103, 126)

Issued this 23d day of August 1945.

[SEAL] C. W. KITCHEN,
Assistant Administrator, Production and Marketing Administration.

TABLE I—CANNED VEGETABLES AND CANNED VEGETABLE JUICES

A	B	C	D	E	F	G
Product	Percentage of base pack	Type style variety (sequence does not denote preference)	Grade preferences			Can size
			First	Second	Third	
Asparagus	65	All green or culturally bleached	Fancy cut	Fancy spear		10-2½-2.
Beans, lima	0	Fresh	Extra std.	Top std.[1]	Fancy	10-2.
Beans, snap	28	Green, cut; wax cut	Extra std.	Top std.[1]	Fancy	10-2½-2.
Beets	27	Cut, quartered, diced, sliced	Fancy	Top std.[2]		10-2½-2.
Carrots	44	Diced	Fancy	Top std.[2]		10-2½-2.
Corn, sweet[3]	19	White, yellow, cream style, whole kernel.	Fancy	Extra std.	Top std.[1]	10-2-12 oz.
Peas	18	Alaska 3, 4 sieve; sweet 3-sieve and larger, ungraded.	Extra std.	Top std.[1]	Fancy	10-2.
Potatoes, sweet	36	Whole pieces and mashed	Std.			2½-2.
Pumpkin or squash	26		Fancy	Top std.[2]		2½.
Sauerkraut	24		Fancy	Top std.[2]		10-2½.
Spinach	47		Fancy	Top std.[2]		10-2½-2.
Tomatoes	36		Extra std.	Top std.[1]	Fancy	10-2½-2.
Tomato catsup	12		Fancy 29-33% solids	Fancy 33% solids or over	Fancy 25-29% solids	10-3 cyl. 2½-2; 14 oz. glass or larger.
Tomato juice	0		Fancy			10-3 cyl.-2.
Tomato puree	0					
Tomato paste	22		Fancy			10-2½-2-6 oz.

[1] Top standard means 70-74 inclusive as defined in terms of U. S. grades.
[2] Top standard means 80-84 inclusive as defined in terms of U. S. grades.
[3] Full inside enamel cans required. Number 10 cans to be used for whole kernel only.

[F. R. Doc. 45-15741; Filed, Aug. 23, 1945; 3:15 p. m.]

TITLE 29—LABOR

Chapter VI—National War Labor Board

PART 803—GENERAL ORDERS

MISCELLANEOUS REVOCATIONS

The National War Labor Board hereby repeals the following general orders:

General Orders Nos. 1, 1A, 2, 3, 11, 26 and 31 (§§ 803.1, 803.1a, 803.2, 803.11, 803.26 and 803.31).

Approved: August 20, 1945.

(Act of October 2, 1942, C 578, 56 Stat. 765, Pub. Law 729, 77th Cong.; E.O. 9250 Oct. 2, 1942, 7 F.R. 7871; as amended by E.O. 9381, Sept. 25, 1943, 8 F.R. 13083; E.O. 9599, Aug. 18, 1945)

FRED E. DESMOND,
Acting Executive Director.

[F. R. Doc. 45-15755; Filed, Aug. 23, 1945; 5:04 p.m.]

PART 803—GENERAL ORDERS

ADJUSTMENTS IN WAGE RATES OF INDIVIDUAL EMPLOYEES

The National War Labor Board hereby amends the first paragraph of General Order No. 5 to read as follows:

§ 803.5 *Adjustments in wage rates of individual employees.* 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, or incident to an established wage rate schedule covering the work assignments of employees and are made as a result of:

(Act of Oct. 2, 1942, C 578, 56 Stat. 765, Pub. Law 729, 77th Cong.; E.O. 9250, Oct. 2, 1942, 7 F.R. 7871; as amended by E.O. 9381, Sept. 25, 1943, 8 F.R. 13083; E.O. 9599, Aug. 18, 1945)

Adopted: August 20, 1945.

FRED E. DESMOND,
Acting Executive Director.

[F. R. Doc. 45-15756; Filed, Aug. 23, 1945; 5:04 p.m.]

PART 803—GENERAL ORDERS

APPROVAL OF INCREASES IN COMPLIANCE WITH FAIR LABOR STANDARDS ACT

The National War Labor Board hereby amends General Order No. 7 to read as follows:

§ 803.7 *Approval of increases in compliance with Fair Labor Standards Act.* 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 and orders are made or promulgated after April 8, 1943, increases directed thereby which would result in a wage or salary rate in excess of the rate which the War Labor Board establishes as a minimum wage rate by § 803.30, may not be made without the approval of the Board except as provided in § 803.40.

(Act of Oct. 2, 1942, C 578, 56 Stat. 765, Pub. Law 729, 77th Cong.; E. O. 9250, Oct. 2, 1942, 7 F.R. 7871; as amended by E.O. 9381, Sept. 25, 1943, 8 F.R. 13083; E.O. 9599, Aug. 18, 1945)

Adopted: August 20, 1945.

FRED E. DESMOND,
Acting Executive Director.

[F. R. Doc. 45-15757; Filed, Aug. 23, 1945; 5:05 p. m.]

PART 803—GENERAL ORDERS

JURISDICTION OF BOARD OVER CERTAIN SALARIES

The National War Labor Board hereby amends the first paragraph of Title III of General Order No. 9 to read as follows:

§ 803.9 *Jurisdiction of Board over salaries not in excess of $5,000 per annum.* Salary adjustments may be made in salary rates of individual employees over which the Board has jurisdiction without approval of the Board, if they are incident to the application of the terms of a salary agreement or incident to an established salary rate schedule and are made as a result of:

(Act of Oct. 2, 1942, C 578, 56 Stat. 765, Pub. Law 729, 77th Cong.; E.O. 9250, Oct. 2, 1942, 7 F.R. 7871; as amended by E.O. 9381, Sept. 25, 1943, 8 F.R. 13083; E.O. 9599, Aug. 18, 1945)

Adopted: August 20, 1945.

FRED E. DESMOND,
Acting Executive Director.

[F. R. Doc. 45-15758; Filed, Aug. 23, 1945; 5:04 p. m.]

PART 803—GENERAL ORDERS

BONUS PAYMENTS NOT SUBJECT TO APPROVAL BY BOARD

The National War Labor Board hereby amends General Order No. 10 to read as follows:

§ 803.10 *Bonus payments not subject to approval by Board.* The payment to employees, whose wage or salary adjustments are subject to the jurisdiction of the National War Labor Board, of a bonus or gift may be made without the approval of the National War Labor Board, *Provided,* That such payments will not be used in whole or in part as the basis for seeking an increase in price ceilings or for resisting otherwise justifiable reductions in price ceilings, or, in the case of products or services being furnished under contract with a Federal procurement agency, will not increase the cost to the United States.

(Act of Oct. 2, 1942, C 578, 56 Stat. 765, Pub. Law 729, 77th Cong.; E.O. 9250, Oct. 2, 1942, 7 F.R. 7871; as amended by E.O. 9381, Sept. 25, 1943, 8 F.R. 13083; E.O. 9599, Aug. 18, 1945)

Adopted: August 20, 1945.

FRED E. DESMOND,
Acting Executive Director.

[F. R. Doc. 45-15759; Filed, Aug. 23, 1945; 5:04 p. m.]

PART 803—GENERAL ORDERS

BONUS PAYMENTS TO EMPLOYEES ENTERING ARMED FORCES

The National War Labor Board hereby amends General Order No. 10-A to read as follows:

§ 803.10a *Bonus payments to employees entering armed forces.* 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; *Provided,* That such payments will not be used in whole or in part as the basis for seeking an increase in price ceilings or for resisting otherwise justifiable reductions in price ceilings, or, in the case of products or services being furnished under contract with a Federal procurement agency, will not increase the cost to the United States.

(Act of Oct. 2, 1942, C 578, 56 Stat. 765, Pub. Law 729, 77th Cong.; E.O. 9250, Oct. 2, 1942, 7 F.R. 7871; as amended by E.O. 9381, Sept. 25, 1943, 8 F.R. 13083; E.O. 9599, Aug. 18, 1945)

Adopted: August 20, 1945.

FRED E. DESMOND,
Acting Executive Director.

[F. R. Doc. 45-15760; Filed, Aug. 23, 1945; 5:05 p. m.]

PART 803—GENERAL ORDERS

ADJUSTMENTS EQUALIZING WAGES OF MALES AND FEMALES; APPROVAL NOT REQUIRED

The National War Labor Board hereby amends General Order No. 16 to read as follows:

§ 803.16 *Adjustments equalizing wages of males and females; approval not required.* Increases 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 increases 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 such increases will not be used in whole or in part as the basis for seeking an increase in price ceilings, or for resisting otherwise justifiable reductions in price ceilings, or, in the case of products or services being furnished under contract with a Federal procurement agency, will not increase the cost to the United States.

(Act of Oct. 2, 1942, C 578, 56 Stat. 765, Pub. Law 729, 77th Cong.; E.O. 9250, Oct. 2, 1942, 7 F.R. 7871; as amended by E.O. 9381, Sept. 25, 1943, 8 F.R. 13083; E.O. 9599, Aug. 18, 1945)

Adopted: August 20, 1945.

FRED E. DESMOND,
Acting Executive Director.

[F. R. Doc. 45-15761; Filed, Aug. 23, 1945; 5:05 p. m.]

PART 803—GENERAL ORDERS

ESCALATOR CLAUSE

The National War Labor Board hereby repeals the General Order No. 22 adopted December 8, 1942, and substitutes the following General Order No. 22 to read as follows:

§ 803.22 *Escalator clause.* 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 increase in wage or salary rates, shall be enforced without the approval of the National War Labor Board if such increase will be used, in whole or in part, as the basis for seeking an increase in price ceilings or for resisting otherwise justifiable reductions in price ceilings, or, in the case of products or services being furnished under contract with a Federal procurement agency, will increase the cost to the United States.

(Act of Oct. 2, 1942, C. 578, 56 Stat. 765, Pub. Law 729, 77th Cong.; E.O. 9250, Oct. 2, 1942, 7 F.R. 7871; as amended by E.O. 9381, Sept. 25, 1943, 8 F.R. 13083; E.O. 9599, Aug. 18, 1945)

Adopted by Board, August 20, 1945.

FRED E. DESMOND,
Acting Executive Director.

[F. R. Doc. 45-15762; Filed, Aug. 23, 1945; 5:05 p. m.]

PART 803—GENERAL ORDERS

TERRITORIAL WAR LABOR BOARD FOR HAWAII

The National War Labor Board hereby amends section (a) (4) of General Order No. 36 to read as follows:

§ 803.36 *Territorial War Labor Board for Hawaii.* (a) * * *

(4) In acting hereunder on wage or salary adjustments, the Territorial War Labor Board for Hawaii shall comply with the terms of Executive Order 9250, dated October 3, 1942, Executive Order 9328, dated April 8, 1943, the Supplementary Directive of May 12, 1943, Executive Order 9599 of August 18, 1945, and all other Executive orders and regulations issued thereunder. The Territorial War Labor Board may make such recommendations as to appropriate policies to govern wage and salary adjustments as are adopted to the special circumstances obtaining in the Territory. Such recommendations shall be consistent with the act of October 2, 1942. They shall be submitted for consideration of the National War Labor Board which will transmit to the Director of Economic Stabilization those recommendations deemed by it advisable and necessary.

(Act of Oct. 2, 1942, C 578, 56 Stat, 765, Pub. Law 729, 77th Cong.; E.O. 9250, Oct. 2, 1942, 7 F.R. 7871; as amended by E.O. 9381, Sept. 25, 1943, 8 F.R. 13083; E.O. 9599, Aug. 18, 1945)

Adopted: August 20, 1945.

FRED E. DESMOND,
Acting Executive Director.

[F. R. Doc. 45-15763; Filed, Aug. 23, 1945; 5:04 p. m.]

PART 803—GENERAL ORDERS

AUTHORIZATION TO WAR DEPARTMENT TO PASS ON WAGE AND SALARY ADJUSTMENTS OF CIVILIAN EMPLOYEES IN HAWAII

The National War Labor Board hereby amends the first paragraph of General Order No. 37 to read as follows:

§ 803.37 *Authorization to the War Department to pass on wage and salary adjustments of civilian employees in Hawaii.* The National War Labor Board hereby supplements General Order No. 36 by delegating to the Secretary of War, or to such agency as he may designate, subject to final review by the National War Labor Board, the authority to establish wage or salary schedules for civilian employees of the War Department in the various government-owned, government-operated installations located in the Territory of Hawaii, in accordance with the provisions of the act of Congress of October 2, 1942, Executive Order 9250 dated October 3, 1942, Executive Order 9328 dated April 8, 1943, the Supplementary Directive of May 12, 1943, Executive Order 9599 of August 18, 1945 and all other Executive orders and regulations issued thereunder, subject to the following limitations:

(Act of Oct. 2, 1942, C 578, 56 Stat. 765, Pub. Law 729, 77th Cong.; E.O. 9250, Oct. 2, 1942, 7 F.R. 7871; as amended by E.O. 9381, Sept. 25, 1943, 8 F.R. 13083; E.O. 9599, Aug. 18, 1945)

Adopted: August 20, 1945.

FRED E. DESMOND,
Acting Executive Director.

[F. R. Doc. 45-15764; Filed, Aug. 23, 1945; 5:05 p. m.]

PART 803—GENERAL ORDERS

WAGE INCREASES NOT INVOLVING PRICE CEILINGS OR PRODUCTION COSTS

The National War Labor Board has adopted the following general order:

§ 803.40 *Wage increases not involving price ceilings or production costs.* (a) Employers may, through collective bargaining with duly certified or recognized representatives of the employees involved, or, if there is no such representative, by voluntary action, make wage or salary increases without the necessity of obtaining approval therefor, upon the condition that such increases will not be used in whole or in part as the basis for seeking an increase in price ceilings or for resisting otherwise justifiable reductions in price ceilings, or, in the case of products or services being furnished under contract with a Federal procurement agency, will not increase the cost to the United States.

(b) The provisions of paragraph (a) above shall be effective as of August 18, 1945, but this shall not preclude the selection by the party or parties of any earlier date as the effective date of the wage or salary increase. The provisions of this general order shall not, however, operate as an approval of any wage or salary increase put into effect before August 18, 1945, and prior to receipt of any approval required by the Stabilization Act of October 2, 1942, or the orders or regulations issued thereunder.

(c) Wage or salary increases referred to in paragraph (a) above may be made notwithstanding any previous denial or modification of an application for approval thereof by the National War Labor Board or its agencies.

(Act of Oct. 2, 1942, C 578, 56 Stat. 765, Pub. Law 729, 77th Cong.; E.O. 9250, Oct. 2, 1942, 7 F.R. 7871, as amended by E.O. 9381, Sept. 25, 1943, 8 F.R. 13083; E.O. 9599, Aug. 18, 1945)

Adopted: August 20, 1945.

FRED E. DESMOND,
Acting Executive Director.

[F. R. Doc. 45-15765; Filed, Aug. 23, 1945; 5:05 p. m.]

PART 803—GENERAL ORDERS

WAGE PROCEDURES FOR BUILDING AND CONSTRUCTION INDUSTRY

The National War Labor Board has adopted the following general order:

§ 803.41 *Wage procedures for building and construction industry.* The provisions of General Order No. 41 shall not apply to employers and employees in the building and construction industry who are, subject to the jurisdiction of the Wage Adjustment Board as provided for in General Order No. 13.

Applications for the increase or decrease of wage rates in the building and construction industry, whether resulting from collective bargaining or otherwise, shall continue to be submitted to the Wage Adjustment Board for approval, as heretofore required, regardless of whether any increase will be used in whole or in part as a basis for seeking an increase in price ceilings or for resisting otherwise justifiable reductions in price ceilings or for increasing the costs to the United States.

The Wage Adjustment Board for the building and construction industry, in addition to authority vested in it by General Order No. 13, is authorized pursuant to Executive Order 9599 to approve such increase as may be necessary to correct maladjustments or inequities which would interfere with the effective transition to a peacetime economy.

This general order shall be effective as of August 18, 1945 and shall remain in effect for a period of 90 days thereafter or until further notice.

(Act of Oct. 2, 1942, C 578, 56 Stat. 765 Pub. Law 729, 77th Cong.; E.O. 9250, Oct. 2, 1942, 7 F.R. 7871; as amended by E.O. 9381, Sept. 25, 1943, 8 F.R. 13083; E.O. 9599, Aug. 18, 1945)

Adopted by Board Aug. 22, 1945.

FRED E. DESMOND,
Acting Executive Director.

[F. R. Doc. 45-15766; Filed, Aug. 23, 1945; 5:05 p. m.]

Chapter IX—Agriculture Department (Agricultural Labor)

[Supp. 69]

PART 1102—SALARIES AND WAGES OF AGRICULTURAL LABOR IN THE STATE OF CALIFORNIA

WORKERS ENGAGED IN PICKING PRUNES IN SANTA CLARA AND SAN BENITO COUNTIES, STATE OF CALIFORNIA.

§ 1102.28 *Workers engaged in picking of prunes in Santa Clara and San Benito Counties, State of California.* Pursuant to 4001.7 of the regulations of the Economic Stabilization Director relating to salaries and wages issued August 28, 1943, as amended (8 F.R. 11960, 12139, 16702; 9 F.R. 6035, 14547; 10 F.R. 9478, 9628) and to the regulations of the War Food Administrator issued March 23, 1945 (10 F.R. 3177) entitled "Specific Wage Ceiling Regulations" and based upon a certification of the California USDA Wage Board that a majority of the producers of prunes in the area affected participating in hearings conducted for such purposes have requested the intervention of the Secretary of Agriculture, and based upon relevant facts submitted by the California USDA Wage Board and obtained from other sources, it is hereby determined that:

(a) *Areas, crops and classes of workers.* Persons engaged in picking of prunes in Santa Clara and San Benito Counties, State of California, are agricultural labor as defined in § 4001.1 (1) of the regulations of the Economic Stabilization Director issued on August 28, 1943, as amended (8 F.R. 11960, 12139, 16702; 9 F.R. 6035, 14547; 10 F.R. 9478, 9628).

(b) *Definitions.* When used in this section:

(1) The term "picking" means picking prunes from the ground including the shaking of the prune trees.

(2) The term "Area I" means all that area in Santa Clara County north of the town of Coyote.

(3) The term "Area II" means all that area in Santa Clara County south of the town of Coyote and all of San Benito County.

(c) *Maximum wage rates for picking prunes.* (1) For picking prunes in Area I—$10 per ton.

(2) For picking prunes in Area II—$9 per ton.

(d) *Administration.* The California USDA Wage Board, located at 2181 Bancroft Way, Berkeley 4, California, will have charge of the administration of this section in accordance with the provisions of the specific wage ceiling regulations issued by the War Food Administrator on March 23, 1945 (10 F.R. 3177).

(e) *Applicability of specific wage ceiling regulations.* This section shall be deemed to be a part of the specific wage ceiling regulations issued by the War Food Administrator on March 23, 1945 (10 F.R. 3177) and the provisions of such regulations shall be applicable to this section and any violation of this section shall constitute a violation of such specific wage ceiling regulations.

Effective date. This section shall become effective at 12:01 a. m., Pacific war time, August 25, 1945.

(56 Stat. 765 (1942), 50 U.S.C. App. 961 et seq., (Supp. IV); 57 Stat. 63 (1943); 50 U.S.C. 964 (Supp. IV); 58 Stat. 632 (1944); Pub. Law 108, 79th Cong., E.O. 9250, 7 F.R. 7871; E.O. 9328, 8 F.R. 4681; E.O. 9577, 10 F.R. 8087; regulations of the Economic Stabilization Director, 8 F.R. 11960, 12139, 16702, 9 F.R. 6035, 14547, 10 F.R. 9478, 9628; regulations of the War Food Administrator, 9 F.R. 655, 12117, 12611, 10 F.R. 7609, 9581; 9 F.R. 831, 12807, 14206, 10 F.R. 3177)

Issued this 23d day of August 1945.

WILSON R. BUIE,
Director of Labor,
U. S. Department of Agriculture.

[F. R. Doc. 45-15771; Filed, Aug. 24, 1945; 11:16 a. m.]

TITLE 32—NATIONAL DEFENSE

Chapter VIII—Foreign Economic Administration

Subchapter B—Export Control

[Amdt. 82]

PART 801—GENERAL REGULATIONS

PROHIBITED EXPORTATIONS; MISCELLANEOUS COMMODITIES

Section 801.2 *Prohibited exportations* is hereby amended in the following particulars:

The group and country designation in the column headed "Gen. Lic. Country Group" and the dollar value limits in the columns headed "GLV Dollar Value Limits" and G-Post Dollar Value Limits" set opposite each of the commodities listed below are hereby amended to read as follows:

Dept. of Comm. schedule B No.	Commodity	Gen. lic. country group	GLV dollar value limits country groups		G-post dollar value limits
			K	G+4	
	OTHER INEDIBLE ANIMALS AND ANIMAL PRODUCTS				
099908	Fish essence and fish for bait	K	100	25	25
	FODDERS AND FEEDS				
119000	Cull beans	None	1	1	1
119000	Cull peas	None	100	25	25
	VEGETABLES AND PREPARATIONS				
120110	Beans, dry ripe	None	1	1	1
	OTHER NONMETALLIC MINERALS, INCLUDING PRECIOUS				
540600	Grindstones	K & M	100	25	25
541108	Artificial abrasives, crude and in grains	K & M	100	25	25
541200	Wheels of artificial abrasives	K & M	100	25	25
541300	Abrasive paper and cloth	K & M	100	25	25
541300	Abrasive cloth belts	K & M	100	25	25
541500	Other abrasive paper and cloth	K & M	100	25	25
541600	Other artificial abrasives, hones and whetstones (report artificial abrasives, crude and in grains in 541108, wheels of artificial abrasives in 541200, steel wool in 541300, and abrasive paper and cloth in 541500)	K & M	100	25	25
	STEEL MILL PRODUCTS				
604300	Tanks unlined storage, pressure, 30 cu. ft. and over	K & M	100	25	25
	IRON AND STEEL MANUFACTURES				
620315	Tanks lined steel gas storage, pressure, 30 cu. ft. and over	K & M	100	25	25
620333	Air bag siphons and air pressure tanks, unlined	K & M	100	25	25
620333	Elevator doors and fronts	K & M	100	25	25
	BRASS AND BRONZE MANUFACTURES				
647033	Elevator doors	K & M	100	25	25
	ELECTRICAL MACHINERY AND APPARATUS				
702710	Rotating converters under 500 kilowatts:				
702710	For automotive use, 35 and less than 500	None	100	25	25
702710	For 35 mm. motion picture projection equipment	K & M	100	25	25
702710	For other motion picture projection equipment	K & M	100	25	25
702710	Other	K & M	100	25	25
702720	Rotating converters, 500 kilowatts and larger:				
702720	For automotive use	None	100	25	25
702720	Other	K & M	100	25	25
703020	Electrical indicating instruments:				
703020	Dynamometers, automotive chassis	None	1	1	1
703020	Dynamometers, steam turbine	None	1	1	1
703020	Dynamometers, other	K & M	100	25	25
703020	Other electric indicating instruments, n. c. s.	None	1	1	1
703520	Electrical testing apparatus and parts, n. c. s.:				
703520	Armature growlers, automotive vehicle testing type	None	1	1	1
703520	Dynamometers, automotive chassis	None	1	1	1
703520	Dynamometers, steam turbine	None	1	1	1
703520	Dynamometers, other	K & M	100	25	25
703520	Oscilloscopes, parts for	None	100	25	25
703520	Synchroscopes, parts for	None	100	25	25
703520	Other testing apparatus and parts, n. c. s.	None	1	1	1
707400	Glue heaters and pots	None	350	25	25
707400	Soldering machines and parts	K & M	100	25	25
707400	Solder pots, over 10 lbs.	K & M	100	25	25
707610	X-ray tubes	None	350	25	25
707650	Bins, X-ray film loading	K & M	100	25	25
707650	Cabinets, including cassette transfer	K & M	100	25	25
707650	Chests, X-ray film	K & M	100	25	25
707650	Cones, X-ray	K & M	100	25	25
707650	Filters, X-ray	K & M	100	25	25
707650	Screens, X-ray fluoroscopic	K & M	100	25	25
707650	Other X-ray apparatus and parts, n. c. s.	None	100	25	25
707690	Electric therapeutic apparatus and parts, n. c. s.	None	350	25	25
709908	Magnets, lifting	K & M	100	25	25

Dept. of Comm. schedule B No.	Commodity	Gen. lic. country group	GLV dollar value limits country groups		G-post dollar value limits
			K	G+4	
	ENGINES, TURBINES AND PARTS, N. E. S.				
713500	Condensers, heaters, accessories and parts:				
713500	Barometric steam condensers, ejector jet surface and accessories for steam engines and boilers	None	100	25	25
713500	Other condensers, heaters, accessories and parts for steam engines	K & M	100	25	25
	CONSTRUCTION AND CONVEYING MACHINERY				
720200	Excavator parts and accessories:				
720200	Repair parts	K & M	100	25	25
720200	Other excavator parts and accessories	None	100	25	25
720500	Dredging machinery and parts:				
720500	Dredging machinery and parts, mining	None	100	25	25
720500	Repair parts for other dredging machinery	K & M	100	25	25
720500	Other dredging machinery and parts	None	100	25	25
722800	Other road machinery and parts:				
722800	Blades and bits as repair parts for earth and rock drilling, grader and snow plow	K & M	100	25	25
722800	Points, chisel, for paving breakers, as repair parts	K & M	100	25	25
722800	Repair parts for other road machinery	K & M	100	25	25
722800	Other road machinery and parts	None	100	25	25
723100	Construction equipment and parts, n. c. s.:				
723100	Columns, rock drilling, as repair parts	K	100	25	25
723100	Earth drills and parts for digging holes for posts	None	100	25	25
723100	Stopers	None	100	25	25
723100	Repair parts for construction equipment, n. c. s.	K & M	100	25	25
723100	Other construction equipment and parts, n. c. s.	None	100	25	25
724100	Hoists, bell furnace, skip	K & M	100	25	25
729100	Repair parts for conveying equipment (not including repair parts for elevators)	K & M	100	25	25
729100	Other conveying equipment and parts (not including crane, hoists and winches, elevators or bucket, chain or roll conveyors)	None	100	25	25
	MINING, WELL AND PUMPING MACHINERY				
732000	Repair parts for other well-drilling apparatus (not including repair parts for petroleum well and refining equipment)	K & M	100	25	25
732000	Other well-drilling apparatus and parts (not including petroleum well and refining equipment)	None	100	25	25
735700	Deep-well turbine pumps, industrial	K & M	100	25	25
735800	Reciprocating steam pumps, industrial	K & M	100	25	25
736000	Pumps and parts, n. c. s.:				
736000	Oil-field pumps	None	100	25	25
736000	Concrete-handling and other contractor's pumps	None	100	25	25
736000	Irrigation and other farm pumps	None	100	25	25
736000	Industrial pumps	None	100	25	25
736000	Repair parts for concrete-handling contractor's and construction pumps, n. c. s.	K & M	100	25	25
736000	Other pumps and parts, n. c. s.	None	100	25	25
	OTHER INDUSTRIAL MACHINERY				
740400	Stationary air compressors, capacity not over 25 cu. ft.:				
740400	Garage type, less than 10 H. P.	K & M	100	25	25
740400	Other	None	100	25	25
774008	Industrial indicating, recording or controlling instruments and apparatus, n. c. s.:				
774008	Dynamometers, automotive chassis	None	1	1	1
774008	Dynamometers, steam turbine	None	1	1	1
774008	Dynamometers, other	K & M	100	25	25
774008	Other industrial indicating, recording or controlling instruments and apparatus	None	1	1	1
777008	Anodizing equipment and parts	K & M	100	25	25
777008	Electroplating equipment and parts	K & M	100	25	25
	OFFICE APPLIANCES				
777000	Typewriters, standard, new	K & M	100	25	25
777200	Typewriters, portable, new	K & M	100	25	25
777410	Typewriters, rebuilt	K & M	100	25	25
777420	Typewriters, other (including used)	K & M	100	25	25
777500	Typewriter parts for assembly (except ribbon spools)	K & M	100	25	25

Dept. of Comm. schedule B No.	Commodity	Gen. lic. country group	GLV dollar value limits country groups		G-post dollar value limits
			K	G+4	
	OFFICE APPLIANCES—continued				
777900	Parts for assembly of office appliances, n. e. s. (not including parts for assembly of date stamping machines; file punches; linatimes; numbering machines; automatic ticket punches; automatic ticket registers, not coin operated; and typographic numbering machines)	K & M	100	25	25
	AGRICULTURAL MACHINERY AND IMPLEMENTS				
788901	Repair parts for tracklaying tractors	K & M	100	25	25
	AUTOMOBILES, PARTS, ACCESSORIES AND SERVICE EQUIPMENT				
792700	Chains, automobile and truck tire	K	100	25	25
	CHEMICAL SPECIALTIES				
823803	Alkanolamine	K & M	100	25	25
	INDUSTRIAL CHEMICALS				
837098	Sodium metasilicate	None	25	25	25
839100	Methyl chloride gas	K & M	100	25	25
	PHOTOGRAPHIC AND PROJECTION GOODS				
914000	Film driers and processing units, X-ray	K & M	100	25	25
914000	Film driers and processing unit parts	K & M	100	25	25
914000	Hangers, developing, X-ray	K & M	100	25	25
914000	Hangers, film, X-ray	K & M	100	25	25
914000	Hangers, X-ray, parts for	K & M	100	25	25
914000	Intensifying screens, X-ray	K & M	100	25	25
914000	Intensifying screen parts, X-ray	K & M	100	25	25
914000	Tanks, developing, X-ray	K & M	100	25	25
914000	Tanks, developing, X-ray, parts for	K & M	100	25	25
914000	Other photographic apparatus and supplies	K & M	100	25	None
	SCIENTIFIC AND PROFESSIONAL INSTRUMENTS, APPARATUS AND SUPPLIES				
914300	Lenses, optical	K & M	100	25	25
915600	Sterilizers	K & M	100	25	25
919098	Dynamometers, automobile chassis	None	25	25	None
919098	Dynamometers, steam turbine	None	25	25	None
919098	Dynamometers, other	K & M	100	25	25
	MISCELLANEOUS COMMODITIES, N. E. S.				
984100	Mechanical refrigerators, commercial	K	100	25	25
984200	Ice refrigerators, commercial, not including mechanical	K & M	100	25	25
984000	Soda fountains, refrigerated	K & M	100	25	25

Shipments of any of the above commodities removed from general license or whose GLV dollar value limits have been reduced, which were on dock, on lighter, laden aboard an exporting carrier, or in transit to a port of exit pursuant to an actual order for export prior to the effective date of this amendment may be exported under the previous general license provisions. Shipments of such commodities moving to a vessel subsequent to the effective date of this amendment pursuant to Office of Defense Transportation permits issued prior to such date may also be exported under the previous general license provisions. Shipments of any of the above commodities whose G-Post dollar value limits have been reduced and which were mailed prior to the effective date of this amendment may also be exported under the G-Post general license provisions previously in effect.

This amendment shall become effective immediately upon publication except that with respect to commodities removed from general license or whose GLV or G-Post dollar value limits have been reduced, it shall become effective on August 30, 1945.

(Sec. 6, 54 Stat. 714; Pub. Law 75, 77th Cong.; Pub. Law 638, 77th Cong.; Pub. Law 397, 78th Cong.; Pub. Law 99, 79th Cong.; E.O. 8900, 6 F.R. 4795; E.O. 9361, 8 F.R. 9861; Order No. 1, 8 F.R. 9938; E.O. 9380, 8 F.R. 13081; Delegation of Authority No. 20, 8 F.R. 16235; Delegation of Authority No. 21, 8 F.R. 16320).

Dated: August 20, 1945.

WALTER FREEDMAN, *Director, Requirements and Supply Branch, Bureau of Supplies.*

[F. R. Doc. 45-15736; Filed, Aug. 23, 1945; 1:32 p. m.]

[Amdt. 83]

PART 809—BLANKET LICENSE "BLT"

Part 809 *Blanket License "BLT"* is hereby amended to read as follows:

Sec.
809.1 Definitions.
809.2 General provisions.
809.3 Clearance for export.
809.4 Records.

AUTHORITY: §§ 809.1 to 809.4, inclusive, issued under sec. 6, 54 Stat. 714; Pub. Law 75, 77th Cong.; Pub. Law 638, 77th Cong.; Pub. Law 397, 78th Cong.; Pub. Law 99, 79th Cong.; E.O. 8900, 6 F.R. 4795; E.O. 9361, 8 F.R. 9861; Order No. 1, 8 F.R. 9938; E.O. 9380, 8 F.R. 13081; Delegation of Authority No. 20, 8 F.R. 16235; Delegation of Authority No. 21, 8 F.R. 16320.

§ 809.1 *Definitions.* When used in this part:

(a) "Blanket license" shall mean a document issued by the Foreign Economic Administration authorizing the exportation by the licensee of the commodities described in such document to two or more consignees or purchasers in a single country.

§ 809.2 *General provisions.* (a) Applications for blanket licenses shall be made on the form or forms and in the manner and only for such commodities prescribed by the Foreign Economic Administration.

(b) When an application for blanket license is submitted, permission to export to one or more of the consignees and purchasers named may be refused by blocking out the name of the consignee and purchaser with respect to whom the application has been denied. In such case the license shall be valid only for shipments to the remaining approved consignees and purchasers.

(c) When duly validated or approved by the Foreign Economic Administration, a blanket license authorizes the exportation to any of the consignees and purchasers named therein, or in a list attached and made a part thereof, the commodity or commodities therein described, provided that the aggregate quantity of all exports under such license to the consignees and purchasers named therein, or in a list made a part thereof, does not exceed the total quantity for which the license has been granted. Such exportation shall be permitted notwithstanding any conflicting provisions in the terms, conditions or provisions of the form on which the application for a blanket license has been made. In any case where an Import Recommendation issued by a designated government agency of the country of destination is required as a condition to the issuance of an export license for a particular commodity to a designated consignee, such commodity may not be exported to such consignee under a blanket license in quantities in excess of the amount approved for such consignee in said Import Recommendation.

(d) Insofar as consistent with the provisions of this part, all of the provisions of Part 804 of this subchapter shall apply equally to applications filed for blanket licenses and blanket licenses issued under the provisions of this Part.

(e) In determining whether any commodity is included within the blanket license procedure, the description of the commodity and not the applicable Schedule B number shall govern.

(f) The blanket license procedure shall apply only to exportations to destinations in general license country Group V or country Group K, as set forth in § 802.3 (a) of this subchapter.

§ 809.3 *Clearance for export.* (a) The provisions of § 801.7 of this subchapter requiring the presentation of an original license or other document when presenting commodities for export, shall not apply to shipments authorized for export pursuant to a blanket license, except that exportation of the following commodities may be cleared for exportation only upon presentation to collectors of customs and postmasters of the original blanket license:

Commodity and Schedule B No.

Cotton semimanufactures and cotton manufactures: 301110 thru 301500, 301600, 301800,

302300 thru 312900, 314000, 316000, 317100 thru 318100, 318700 thru 318900.

Wool and manufactures: 360903 thru 368998.

Rayon, nylon and other synthetic textiles: 383007, 384008 thru 384015, 384200 thru 385770.

All commodities classified under the processing code "FOOD" in a current issue of the Comprehensive Export Schedule issued by the Foreign Economic Administration.

(b) In lieu of the presentation of an original blanket license for clearance of the exportation with the United States Collector of Customs or the United States Postmaster, except for commodities listed in paragraph (a) of this section, the exporter may present a Shipper's Export Declaration bearing the following certification:

The undersigned certifies that the commodities described herein are being exported under the provisions of BLT (Blanket) License No. _____, approved by FEA _____ _____ (date of validation).

_____
(Signed)

(c) A person exporting any commodity pursuant to a blanket license shall enter the symbol "BLT" and the number of the license on each Shipper's Export Declaration filed with the United States Collector of Customs at the port of exit or with the United States Postmaster at the place of mailing at the time of each exportation under each license.

§ 809.4 *Records.* When clearance of a shipment, other than one containing any of the commodities listed in 809.3 (a), has been made in accordance with the provisions of § 809.3 (b), the holder of the license authorizing such shipment shall endorse on the back of the license in the space reserved for entries by Collectors of Customs and Postmasters the following information:

1. Quantity _____
2. Description _____
3. Value _____
4. Consignee (this shall be placed in the space labeled "name of vessel if export is made by water").
5. Port of exit or post office of mailing.
6. Date (this date shall be the date of filing of the Shipper's Export Declaration).
7. Initials of the endorsing official.

Such license shall be held available for inspection at any time by the Foreign Economic Administration. Upon completion of shipment against such blanket license, or upon the expiration of the validity of the license, such license with the endorsements thereon as provided in this paragraph and with attachments, if any, shall be returned to the Foreign Economic Administration.

This amendment shall become effective immediately upon publication.

Dated: August 18, 1945.

S. H. LEBENSBURGER,
Director,
Requirements and Supply Branch,
Bureau of Supplies.

[F. R. Doc. 45-15737; Filed, Aug. 23, 1945; 1:32 p. m.]

Chapter IX—War Production Board

AUTHORITY: Regulations in this chapter, unless otherwise noted at the end of documents affected, issued under sec. 2 (a), 54 Stat. 676, as amended by 55 Stat. 236, 58 Stat. 177, 58 Stat. 827; E.O. 9024, 7 F.R. 329; E.O. 9040, 7 F.R. 527; E.O. 9125, 7 F.R. 2719; W.P.B. Reg. 1 as amended Dec. 31, 1943, 9 F.R. 64.

PART 944—REGULATIONS APPLICABLE TO THE OPERATION OF THE PRIORITIES SYSTEM

[PR 3, Interpretation 12, as Amended Aug. 24, 1945]

RECORDS OF EXPORTERS

The following amended interpretation is issued with respect to Priorities Regulation 3:

Paragraph (g) (5) of Priorities Regulation No. 3 requires each person who applies or extends a rating to keep all documents including preference rating orders and certificates which authorize him to apply or extend the rating at his regular place of business. The Foreign Economic Administration and its predecessors, the Board of Economic Warfare and the Office of Economic Warfare, have assigned preference ratings to exporters for export by endorsing appropriate legends upon export licenses. The original of every export license, however, is required by other government regulations to be surrendered to export officials at the time of shipment. Consequently, persons who receive their assignments of preference ratings on export licenses are not in a position to retain the original of the export licence and thus are not required to do so by paragraph (g) (5) except only in those cases where other government regulations do not require the surrender to the government of the documents referred to. However, such persons must keep any copies of the export licences which are returned to them for their files.

Issued the 24th day of August 1945.

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

[F. R. Doc. 45-15788; Filed, Aug. 24, 1945; 11:32 a. m.]

PART 944—REGULATIONS APPLICABLE TO THE OPERATION OF THE PRIORITIES SYSTEM

[Priorities Reg. 25, Revocation]

SPOT AUTHORIZATIONS FOR PRODUCTION

Section 944.46 *Priorities Regulation 25* is hereby revoked. This revocation does not affect any liabilities incurred for violation of the regulation or of actions taken by the War Production Board under the regulation. All production restrictions in orders listed in Direction 1 to Priorities Regulation 25 have been revoked. Any person may produce products formerly subject to this regulation without restriction in amount.

Issued this 24th day of August 1945.

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

[F. R. Doc. 45-15787; Filed, Aug. 24, 1945; 11:32 a. m.]

PART 944—REGULATIONS APPLICABLE TO THE OPERATION OF THE PRIORITIES SYSTEM

[Priorities Reg. 31, Amdt. 2]

BLANKET REVOCATION OF CERTAIN WPB ORDERS

Section 944.52, *Priorities Regulation 31,* is amended in the following respects:

By adding the following orders to the list of orders revoked:

LIST OF ORDERS REVOKED AND EFFECTIVE DATE OF REVOCATION

BUILDING MATERIALS

Sec. 3234.26, L-303 Metal Insect Screen Cloth, August 23, 1945.

CORKS, ASBESTOS AND FIBROUS GLASS

Sec. 3301.1, M-8-a Cork, August 23, 1945.
Sec. 3301.16, M-283 Asbestos Textiles, August 31, 1945.

PAPER

Sec. 3270.27, L-281 Grocers and Variety Bags, August 23, 1945.
Sec. 3231.91, L-279 Paper Shipping Sacks, August 23, 1945.
Sec. 3270.23, L-304 Specialty Bags (Paper), August 23, 1945.

Issued this 23d day of August 1945.

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

[F. R. Doc. 45-15660; Filed, Aug. 23, 1945; 11:17 a. m.]

PART 944—REGULATIONS APPLICABLE TO THE OPERATION OF THE PRIORITIES SYSTEM

[Priorities Reg. 31, Amdt. 3]

BLANKET REVOCATION OF CERTAIN WPB ORDERS

Section 944.52, Priorities Regulation 31, is amended in the following respects:

1. By changing the effective date of revocation of § 3293.1067, Schedule 67 to M-300 (Phthalic Anhydride) from September 30, 1945, to August 31, 1945.

2. By changing the effective date of revocation of § 3293.1088, Schedule 88 to M-300 (Bismuth Chemicals) from September 30, 1945 to August 31, 1945.

3. By adding to the list of orders revoked the following orders:

LIST OF ORDERS REVOKED AND EFFECTIVE DATE OF REVOCATION

CHEMICALS

Section 3293.1033 Sch. 8 to M-300 Hide Glue, Extracted Bone Glue and Green Bone Glue, August 31, 1945.
Section 3293.1048 Sch. 48 to M-300 Pyrethrum, September 30, 1945.
Section 3293.1049 Sch. 49 to M-300 Rotenone, September 30, 1945.
Section 3293.1053 Sch. 53 to M-300 Penicillin, August 31, 1945.
Section 3293.1062 Sch. 62 to M-300 Primary Chromium Chemicals, September 30, 1945.
Section 3293.1079 Sch. 79 to M-300 Synthetic Ammonia, September 30, 1945.
Section 3293.1080 Sch. 80 to M-300 Nitrogen Compounds, September 30, 1945.
Section 3293.1086 Sch. 86 to M-300 Natural Resins, September 30, 1945.

Section 3293.1097 Sch. 97 to M-300 Chlorate Chemicals, August 31, 1945.

Section 3293.1098 Sch. 98 to M-300 Potash, September 30, 1945.

LUMBER

Section 3285.31 M-186 Aircraft Grades of Sitka Spruce Logs and Lumber, September 30, 1945.

Section 3285.131 M-386 Aircraft Grades of Noble Fir Logs and Lumber, September 30, 1945.

PAPER

Section 3281.64 M-241-a Conservation of Paper and Paperboard, August 24, 1945.

PETROLEUM

Section 1167.1 L-86 Liquefied Petroleum Gas Equipment, August 24, 1945.

PRINTING AND PUBLISHING

Section 3133.35 L-177 Wall Paper, August 24, 1945.

Section 3133.9 L-241 Commercial Printing and Duplicating, August 24, 1945.

Section 3133.15 L-244 Magazines and Periodicals, August 24, 1945.

Section 3133.17 L-245 Books and Booklets, August 24, 1945.

Section 3133.20 L-289 Greeting Cards and Illustrated Post Cards, August 24, 1945.

Section 3133.40 L-294 Displays, August 24, 1945.

Section 3133.50 L-340 Governmental Commercial Printing and Duplicating, August 24, 1945.

STEEL

Section 1103.11 M-292 Coke, August 24, 1945.

Issued this 24th day of August 1945.

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

[F. R. Doc. 45-15788; Filed, Aug. 24, 1945; 11:32 a. m.]

PART 3133—PRINTING AND PUBLISHING

[Limitation Order L-240, Direction 3, as amended, August 24, 1945]

NEWSPAPERS: EXCEPTION TO DEFINITION OF "INVENTORY"

Section 3133.6 *General Limitation Order L-240, Direction No. 3* is hereby amended to read as follows:

The term "inventory" does not include print paper in transit which is shipped via the single track railroad line between Chemault and Klamath Falls, Oregon, to publishers of newspapers in California, Oregon, Nevada, and Texas who customarily receive print paper from mills in Oregon, Washington, and British Columbia.

Issued this 24th day of August 1945.

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

[F. R. Doc. 45-15781; Filed, Aug. 24, 1945; 11:32 a. m.]

PART 3270—CONTAINERS

[Conservation Order M-115, Revocation of Direction 2]

SECOND QUARTER 1945 LEAD QUOTAS

Direction 2 to Conservation Order M-115 is revoked. This revocation does not affect any liabilities incurred for a violation of the direction or of actions taken by the War Production Board under the direction.

Issued this 24th day of August 1945.

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

[F. R. Doc. 45-15783; Filed, Aug. 24, 1945; 11:33 a. m.]

PART 3290—TEXTILE, CLOTHING AND LEATHER

[Conservation Order M-328B, Schedule E as Amended Aug. 24, 1945]

SPECIAL PROGRAMS FOR KNITTED FABRICS FOR CIVILIAN ITEMS

§ 3290.120e *Schedule E to Order M-328B*—(a) *Explanation.* This schedule states the special rules in addition to those set forth in Order M-328B for manufacturers of civilian knitted items manufactured from or incorporating knitted fabric to get an AA-3 preference rating for knitted fabric to make the items listed in this schedule.

(b) *Definitions.* For the purpose of this schedule:

(1) "Knitted fabric" means a fabric produced by a machine knitting process.

(2) "Woolen knitted fabric" means any knitted fabric incorporating 25% or more by weight of new, reprocessed or reused wool fiber, the wool content yarns of which are spun on the woolen system.

(c) *Special requirements for obtaining priorities assistance.* (1) Four copies of Form WPB-3732 (revised) should be filed in accordance with the rules stated in paragraph (c) of Order M-328B.

(2) A base period manufacturer who files form WPB-3732 (revised) for the third calendar quarter of 1945 by July 21, 1945, may, as soon as he files his application, apply an AA-3 rating for the purchase of knitted fabric for delivery in that quarter for incorporation into the items for which application is made. He may do so only for an item he made in the base period and only for 20% of the yardage of knitted fabric applied for with respect to any item. Knitted fabric purchased under this provision shall be deducted by the manufacturer from the total quantity for which priorities assistance is ultimately granted on Form WPB-3732 (revised). If the applicant does not ultimately receive a grant of the entire quantity thus rated, he shall, upon notification of his grant by the War Production Board, immediately cancel orders for any undelivered quantities which are in excess of his grant.

(3) In making application on Form WPB-3732 (revised), each base period manufacturer must apply with respect to each item for which application is made, as follows:

(i) He must apply for fabric for each price of the item at which he produced it in the base period, unless the facilities utilized for the production of the item at a particular price in the base period are devoted to production on orders received from Government Procurement Agencies or have been sold or otherwise disposed of. When such facilities are no longer available, the applicant must explain it in the "Remarks" section of Form WPB-3732 (revised).

(ii) The quantity of an item for which application is made at each price shall be in the same proportion to the total quantity of the item applied for as the quantity produced at each similar price in the base period was to his total production of the item in the base period. For example, if an applicant made in the base period 300 dozen girls' coats, of which 100 dozen (or ⅓) were priced at $10.50 each, 100 dozen (or ⅓) at $12.75 each, and 100 dozen (or ⅓) at $15.75 each, and he wishes to apply for girls' coats under this Program, ⅓ of whatever total quantity he applies for must be at each of these base period prices. To base period prices may be added any increase subsequently granted by the Office of Price Administration.

(iii) The whole or any part of an application for an item may be shifted from a higher to a lower price than required under the above rule, but not from a lower to a higher price, unless the weighted average price of the total number of units applied for is at or below the weighted average price of the total number of units of that item delivered in the base period.

(iv) In reporting production by price on Form WPB-3732 (revised), items sold as seconds or as close-outs shall be reported under the prices it was intended they would be sold when produced.

(v) Items in this schedule not included in the category of Office of Price Administration Supplementary Order 108 are exempt from the provisions of this paragraph (c) (3).

(4) Persons applying for priorities assistance on Form WPB-3732 (revised) under this schedule may apply on Form WPB-2842 for cotton fabrics needed for incorporation into linings, facings, stays, tapes and sewing thread, and on Form WPB-541 for rayon and wool components of the items listed in this schedule. The applications should be filed with the Textile, Clothing and Leather Bureau, War Production Board, Washington 25, D. C. Applications may not be for any quantity greater than the amounts required to be incorporated into the quantity of items for which priorities assistance is requested.

(5) Manufacturers who did not produce in the base period the items applied for on Form WPB-3732 (revised) may not use any preference ratings under this schedule until the War Production Board has assigned them a quota on that form.

(d) *General Provisions.* (1) The rating assigned under this schedule may be used only to get the particular knitted fabrics shown in the knitted fabric column of the preference rating schedule to make the item specified. In addition the producer of the knitted fabric may extend the rating for the purchase of the quantities of yarn required to be incorporated into the knitted fabric sold by him on rated orders authorized by this schedule. Such ratings shall be extended as provided in Priorities Regulation 3 and Order M-328.

(2) A person other than a base period manufacturer must show, in the "Remarks" section of Form WPB-3732 (revised) for each size range of each item for which application is made, the size assortments per dozen which he proposes to produce. If his application is granted, he shall produce the item in the assortment of sizes stated on his application unless the War Production Board specifies a different assortment.

(3) No manufacturer shall purchase or accept delivery of knitted fabric to make any item for which a rating for that fabric is assigned to him under this schedule, unless he uses that rating. The provisions of this paragraph do not apply to purchases for direct or ultimate delivery to or for incorporation into any product for ultimate delivery to the United States Army or Navy, the Maritime Commission or the War Shipping Administration.

(e) *This schedule expires September 30, 1945.* Schedule E to Order M-328B shall expire on September 30, 1945, as it has been superseded for the fourth quarter of 1945 by Schedule K to Order M-328B. Any person who has filed an application on Form WPB-3732 under Schedule E for that quarter should refile again under Schedule K in accordance with the instructions for filing Form WPB-3732 under that schedule.

Issued this 24th day of August 1945.

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

PREFERENCE RATING SCHEDULE NO. 1—PRODUCTION OF ITEMS MADE OF OR INCORPORATING KNITTED FABRICS

Item No.	Item column	Size (or equivalent trade designation)	Knitted fabric column
1	Coats, women's, misses' and juniors.	9 to 17.... 10 to 20. 36 to 44. 46 and up.	Woolen knitted fabric.
2	Coats, teen age, girls'.	10 to 16...	Woolen knitted fabric.
3	Coats, girls'.....	7 to 14....	Woolen knitted fabric.
4	Coats, children's.....	3 to 6x....	Woolen knitted fabric.
5	Coats, toddlers'.....	1 to 4.....	Woolen knitted fabric.
6	Coats, infants'.....	.....	Woolen knitted fabric.
7	Coats, boys' finger-tip.	10 to 20... 12 to 24.	Woolen knitted fabric.
8	Men's overcoats, ulster and double breasted.	34 and up.	Woolen knitted fabric.
9	Overcoats, men's basic model.	34 and up.	Woolen knitted fabric.

[F. R. Doc. 45-15784; Filed, Aug. 24, 1945; 11:33 a. m.]

PART 3292—AUTOMOTIVE VEHICLES, PARTS AND EQUIPMENT

[General Limitation Order L-2-g, as Amended Aug. 24, 1945]

The fulfillment of requirements for the defense of the United States has created a shortage in the supply of certain materials entering into the production of passenger automobiles 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.

§ 3292.36 *General Limitation Order L-2-g*—(a) *Definitions.* As used in this order.

(1) "Automobile" means any self-propelled vehicle designed for the purpose of carrying passengers, or the chassis therefor, with a seating capacity of not more than ten. The term "automobile" includes station wagons, taxicabs, ambulances and hearses.

(2) "Person" means any individual, partnership, association, business trust, corporation, or any organized group of persons, whether incorporated or not.

(3) "Producer" means any person regularly established in the business of manufacturing automobiles.

NOTE: Paragraphs (b), (c), (d), (e) and (f), formerly (c) (1), (g), (h), (i) and (j), redesignated Aug. 24, 1945.

(b) *Prohibition on spare tires for new automobiles.* No producer shall equip any automobile with more than four new tires, nor shall any producer or any other person sell, ship or deliver any automobile equipped with more than four new tires.

(c) *Applicability of War Production Board 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.

(d) *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.

(e) *Reports.* Producers shall file such reports as may be required from time to time by the War Production Board.

(f) *Communications.* All reports required to be filed under this order, and all communications concerning this order, shall, unless otherwise directed, be addressed to: Automotive Division, War Production Board, Washington 25, D. C., Ref: Order L-2-g.

(g) *Duration of this order.* This order, L-2-g as amended will remain in effect until the Office of Price Administration amends Ration Order 1-A, to control the equipment of new automobiles with spare tires, at which time a revocation of this order will be issued.

Issued this 24th day of August 1945.

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

[F. R. Doc. 45-15779; Filed, Aug. 24, 1945; 11:32 a. m.]

PART 3292—AUTOMOTIVE VEHICLES, PARTS AND EQUIPMENT

[L-2-g, Revocation of Interpretation 1]

Interpretation 1 of L-2-g is hereby revoked.

Issued this 24th day of August 1945.

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

[F. R. Doc. 45-15780; Filed, Aug. 24, 1945; 11:32 a. m.]

PART 3294—IRON AND STEEL PRODUCTION

[General Preference Order M-21, as Amended Aug. 24, 1945]

IRON AND STEEL INCLUDING FERRO ALLOYS AND ASSOCIATED MATERIALS

§ 3294.71 *General Preference Order M-21*—(a) *Purpose and scope.* This is the basic order covering the production and distribution of steel and iron products (including alloy iron and alloy steel) listed in the attached Schedule I, pig iron, iron and steel scrap, ferro-alloys and metallic and non-metallic materials (including coke) used in the metallurgy of iron and steel, and non-ferrous products of the elements listed in the attached Schedule II. Schedule II lists the metallic and non-metallic elements, the ores and chemical compounds thereof, including scrap and secondary materials, and the ferro-alloys which are covered by this order.

(b) *Definitions.* For the purpose of this order: (1) "Steel" means carbon steel (including wrought iron), and alloy steel in the forms and shapes listed in Schedule I of this order. The term includes material sorted or salvaged from steel scrap and sold for other than remelting purposes except those uses specified in the definition of scrap. The term also includes all types of rejected or second-quality material and shearings, except:

(i) When sold as scrap for remelting; or,

(ii) When sold as scrap to a scrap dealer for sorting, processing, or, salvaging, or for resale for remelting or other permitted uses of scrap.

(2) "Alloy steel" means any steel (including stainless steel) containing any one or more of the following elements in the following amounts:

Manganese, maximum of range in excess of 1.65%
Silicon, maximum of range in excess of 0.60%
Copper, maximum of range in excess of 0.60%
Aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, vanadium, zirconium, or any other alloying elements in any amount specified or known to have been added to obtain a desired alloying effect.

(3) "Alloy iron" means any iron containing any one or more of the following elements in the following amounts:

Manganese, maximum of range in excess of 1.65%
Silicon, maximum of range in excess of 5.00%
Copper, maximum of range in excess of 0.60%
Aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, vanadium, zirconium, or any other alloying element in any amount specified or known to have been added to obtain a desired alloying effect.

(4) "Stainless steel" means heat and corrosion resisting steel containing 4% or more of chromium either with or without nickel, molybdenum, or other elements.

(5) "Iron products" means all gray and malleable iron castings (rough as cast) except pipe and pipe fittings.

The material terms defined above do not include material which has been in use or service.

(6) "Pig iron" means iron produced by smelting iron ore in a blast furnace, and containing less than 6% of silicon.

(7) "Ferro alloys" means the metallic elements, their ores and the chemical compounds thereof, usually introduced into the melt of iron and steel for the purpose of obtaining definite properties. The term includes the elements, the ores, and the chemical compounds listed in Schedule II of this order.

(8) "Scrap" means all ferrous materials, either alloyed or unalloyed, of which iron or steel is a principal component, which are the waste of industrial fabrication or objects that have been discarded on account of obsolescence, failure or other reasons, and which are not otherwise defined in this order. The principal use of scrap is remelting. Scrap obtained from used materials may be utilized for remelting, rerolling or forging. Scrap may also be used for copper precipitation, lead burning, gas cleaning, or other chemical processes. Any material which has not been in use or service and which is salvaged from sorting or processing shall not be considered scrap if sold or used for other than the above mentioned purposes. "Alloy scrap" means scrap generated from or composed of any of the alloy irons or alloy steels defined in paragraphs (b) (2), (b) (3), and (b) (4).

"Producer" (in the case of iron and steel scrap) means any person who produces scrap in the conduct of a business or other enterprise.

"Dealer" and/or "broker" (in the case of iron and steel scrap) means any person who, as principal or as agent, buys and sells scrap in the regular course of his business.

"Consumer" (in the case of iron and steel scrap) means any person who melts or uses scrap for any of the purposes mentioned above in this paragraph (b).

(9) "Producer" (in the case of iron or steel) means any person who produces iron products or steel as defined herein.

(10) "Distributor" means any person (including a warehouse, jobber, dealer, retailer, or scrap dealer) who is engaged in the business of receiving steel into one or more warehouse stocks regularly maintained by him for sale or resale in the form received, or after performing such operations as cutting to length, shearing to size, torch cutting or burning to shape, sorting and grading, pipe threading, or corrugating or otherwise forming sheets for roofing and siding; but a person who, in connection with any sale, bends, punches or performs any fabricating operation designed to prepare steel for final use or assembly, shall not be deemed a distributor with respect to such sale.

(11) "Delivery" includes deliveries received on consignment.

(c) [Deleted Aug. 24, 1945.]

(d) *Special provisions pertaining to iron and steel scrap.* Delivery of scrap to, or acceptance of such delivery by a consumer is hereby authorized without regard to the restrictions set forth in Section 944.14 of Priorities Regulation No. 1.

(e) *Appeals.* Any appeals from this order must be made by letter referring to the particular provisions appealed from and stating fully the grounds for the appeal. In emergency cases, appeals may be made by telegraph.

(f) *Special directions.* (1) The War Production Board may from time to time issue directions to any person or persons as to the type, description, amount, source, or destination of steel, alloy iron, or iron products, coke, pig iron, or scrap (including segregation of scrap) to be produced, processed, delivered, distributed, or acquired by such person or persons.

(2) The War Production Board may from time to time issue directions as to facilities and materials to be used in production, and as to any alloying element, issue directions specifying the quantities and proportions which may be used in alloy iron and alloy steel (including stainless steel), and whether and in what proportion any such element is to be an ore, a metal, a ferro-alloy, reclaimed metal, scrap, a chemical compound, or any other material containing such element.

(3) The War Production Board may make such changes in any melting schedule as it may deem appropriate, and may from time to time issue supplementary directions with regard to melting of alloy iron or alloy steel (including stainless steel).

(4) The War Production Board may from time to time issue directions to any person or persons as to the type, description, amount, source, or destination of any of the items listed in Schedule II, to be produced, processed, delivered, distributed, or acquired by such person or persons.

(g) *Reports.* All persons covered by this order shall file with the War Production Board, Washington, D. C., Reference: M-21, reports at such times and on such forms as may from time to time be prescribed, subject to the approval of the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

(h) *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 priorities control and may be deprived of priorities assistance.

(i) *Communications.* All communications concerning this order shall, unless otherwise directed, be addressed to Steel Division, War Production Board, Washington 25, D. C., Reference: M-21.

Issued this 24th day of August 1945.

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

SCHEDULE I

Steel:
Bars, Cold-Finished.
Bars, Hot-Rolled or Forged.
Ingots, Billets, Blooms, Slabs, Die Blocks, Tube Rounds, Sheet Bars, Tin Bar, and Skelp.
Pipe, including Threaded Couplings of the type normally supplied for Threaded Pipe.
Plates, all Plates (including Rolled Armored Plate in the form and shape to which it is rolled by the Steel Mill and prior to any subsequent fabrication), and including Nickel Clad and Stainless Clad.
Rail and Track Accessories.
Sheet and Strip.
Steel Castings (rough as cast).
Steel Forgings (rough as forged).
Structural Shapes and Piling.
Tinplate, Terneplate, and Tin Mill Black Plate.
Tubing.
Wheels, Tires, and Axles.
Wire Rods, Wire and Wire Products.
Iron products:
Gray Iron Castings (rough as cast).
Malleable Iron Castings (rough as cast).

SCHEDULE II—ALLOYING ELEMENTS AND COMPOUNDS THEREOF, FERRO-ALLOYS AND NON-FERROUS METAL ALLOYS

Chromium—In any of the following forms:
Chemical combinations containing chromium as an essential and recognizable component.
Chrome briquettes.
Chromium in combination with other elements in semi-manufactured or manufactured form, commercially suitable for use in the manufacture of steel or for other metallurgical purposes.
Chromium in elemental form.
Chromium ores and concentrates.
Chromium refractory materials.
Chromium refractories.
Chromium scrap and secondary material.
Chrom-X.
Ferro-Chromium.
Cobalt—In any of the following forms:
Belgian Congo Crudes.
Cobalt Alloys.
Cobalt concentrates.
Cobalt, metal.
Cobalt oxide, commercial.
Cobalt salts.
Cobalt scrap and secondary material.
Ferro-Cobalt.
Ferro-Alloys—Not included in other groups listed herein:
Ferro-boron.
Ferro-carbo.
Ferro-carbon-titanium.
Ferro-columbium.
Ferro-phosphorus.
Ferro-titanium.
Ferro-zirconium.
Titanium carbide.
Manganese—In any of the following forms:
Ferro-Manganese.
Ferro-Manganese-Silicon.
Manganese, metal.
Manganese ores and concentrates.
Silico-Manganese.

Molybdenum—In any of the following forms:
Calcium Molybdate.
Ferro-Molybdenum.
Molybdenum, metal.
Molybdenum ores and concentrates.
Molybdenum oxide.
Molybdenum scrap and secondary material.
Molybdenum silicide.
Molybdenum sulphide.
Nickel—In any of the following forms:
Ferro-Nickels.
Monel metals.
Nickel alloys.
Nickel carbonates.
Nickel concentrates (commercially recoverable).
Nickel matte of any description.
Nickel oxides.
Nickel residues (commercially recoverable).
Nickel salts.
Nickel solutions (commercially recoverable).
Primary metallic nickel, either alloyed or unalloyed.
Speiss (commercially recoverable).
"Secondary nickel" including any nickel or alloy containing nickel prepared by any process of melting or otherwise treating nickel scrap for reuse as a raw material.
"Nickel scrap" including all materials, ferrous and non-ferrous containing 1% or more of nickel by weight, which are the by-product or waste of industrial operations, or which have been discarded on account of obsolescence, failure, or other reason, excluding scrap consisting of any alloy, the principal ingredient of which, by either weight or volume, is metallic aluminum or consisting of any alloy in which the percentage of copper metal by weight equals or exceeds 40% of all the metals and scrap of iron and steel alloys defined in this order.
Silicon—In any of the following forms:
Ferro-Silicon.
Ferro-Silicon-Aluminum.
Ferro-Silicon-Zirconium.
Silicon, metal.
Silicon-Zirconium.
Silvery pig iron.
Sil-X.
Tungsten—In any of the following forms:
Ferro-Tungsten.
Tungsten metal.
Tungsten ores and concentrates.
Tungsten oxide.
Tungsten powder.
Vanadium—In any of the following forms:
Commercial Vanadium pentoxide.
Ferro-Vanadium.
Vanadium ores and concentrates.

[F. R. Doc. 45-15782; Filed, Aug. 24, 1945; 11:32 a. m.]

Chapter XI—Office of Price Administration

PART 1360—MOTOR VEHICLES AND MOTOR VEHICLE EQUIPMENT

[RO 2A,[1] Revocation]

PASSENGER AUTOMOBILE RATIONING REGULATIONS FOR TERRITORIES AND POSSESSIONS OF U. S.

A rationale accompanying this revocation order, issued simultaneously herewith, has been filed with the Division of the Federal Register.

Ration Order 2A (§§ 1360.310 to 1360.442, inclusive) is hereby revoked, except that any violations which occurred or rights or liabilities which arose before the effective date of this order of revocation shall be governed by the order in effect at the time the violation occurred or the rights or liabilities arose.

This order of revocation shall become effective August 23, 1945.

Issued this 23d day of August 1945.

CHESTER BOWLES,
Administrator.

[F. R. Doc. 45-15746; Filed, Aug. 23, 1945; 4:51 p. m.]

PART 1315—RUBBER AND PRODUCTS AND MATERIALS OF WHICH RUBBER IS A COMPONENT

[MPR 132, Amdt. 10]

RUBBER FOOTWEAR

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

Maximum Price Regulation No. 132 is amended in the following respects:

1. The title of the regulation is amended to read as follows: "Rubber footwear."

2. Section 1315.61 is amended to read as follows:

§ 1315.61 *Explanation of and coverage of the regulation*—(a) *Commodities and sales covered.* This regulation establishes maximum prices for all sales in the United States of rubber footwear by the manufacturer thereof. When used in this regulation, rubber footwear means footwear containing rubber and made with a vulcanized construction.

(b) *Relationship to other regulations.* This regulation supersedes the General Maximum Price Regulation and any other regulation issued by the Office of Price Administration as to transactions covered by this regulation.

(c) *War orders.* This regulation does not apply to sales of rubber footwear pursuant to contracts with any war procurement agency of the United States government, or with any person who contracts to sell the purchased rubber footwear to any war procurement agency of the United States government.

(d) *Sales for export.* The maximum price at which a manufacturer may make any export sales of any rubber footwear subject to this regulation shall be determined in accordance with the provisions of the Second Revised Maximum Export Price Regulation or any revisions thereto. When used in this section the phrase "export sales" has the meaning given to it by section 11 (a) of the Second Revised Maximum Export Price Regulation.

3. Section 1315.61b is amended to read as follows:

§ 1315.61b *Prohibition against dealing in rubber footwear above maximum prices.* Regardless of any contract, agreement, lease or other obligation, no manufacturer shall sell or deliver rubber footwear subject to this regulation and no person shall, in the course of trade or business, buy or receive rubber footwear subject to this regulation from the manufacturer thereof at prices higher than the maximum prices established under this regulation, and no person shall agree or solicit or attempt to do any of the foregoing.

4. Section 1315.65a is amended to read as follows:

§ 1315.65a *Maximum prices for rubber footwear that cannot be priced under any other section of the regulation*—(a) *Maximum prices.* The manufacturer's maximum price for sales of any rubber footwear covered by this regulation which cannot be priced under any other section of the regulation shall be a price in line with the level of maximum prices established by this regulation specifically authorized by order of the Office of Price Administration.

(b) *Method of establishing maximum prices.* A manufacturer seeking to establish a maximum price for any footwear to be priced under this section shall file an application with the Office of Price Administration, Washington, D. C., before offering to sell such footwear. This application shall contain: (1) a description in detail of the rubber footwear to be priced; (2) detailed data as to physical properties of the footwear; (3) samples of the footwear; (4) a statement of the reasons why the footwear must be priced under this section of the regulation; (5) a unit cost analysis of the footwear including direct labor costs, direct material costs, factory overhead costs and selling and administrative costs; (6) the proposed maximum price for each class of purchaser and the terms of sale including cash discount terms, quantity discounts and freight allowances; (7) the method by which that price was determined; (8) a statement of the reasons why he believes that the proposed maximum price is in line with the level of prices established by the regulation.

(c) *Authorization of maximum prices.* After receipt of this application, the Office of Price Administration will establish by order a maximum price or a method of determining the maximum price for the rubber footwear for which application is made. The applicant shall not receive payment for any footwear priced under this section until an order establishing its maximum price has been issued by the Office of Price Administration establishing its maximum price. The Office of Price Administration may at any time adjust a maximum price (not to apply retroactively) authorized under this section so as to make it consistent with the level of maximum prices otherwise established by this regulation.

5. Section 1315.68 (a) (7) is amended to read as follows:

(7) "Rubber footwear" means footwear containing rubber and made with a vulcanized construction.

6. In § 1315.70 (a) (1) a new subdivision designated (iv) is added to read as follows:

(iv) *Maximum prices for government rejected rubber footwear.* Rubber foot-

[1] 7 F.R. 1542, 1647, 1756, 2103, 2242, 2305, 2903, 3097, 3482, 4343, 5484, 6049, 6082, 6424, 6601, 6775, 6964, 7149, 8808, 8895, 9316, 10228; 8 F.R. 28, 363, 1138, 1365.

wear that has been produced for the use of the United States or any agency thereof and that has been rejected as not meeting the purchaser's standards and that otherwise meets the requirements for pricing under one of the subdivisions (i), (ii) or (iii) above, shall be priced under the appropriate subdivision.

7. Paragraph (b) of § 1315.70 is amended to read as follows:

(b) *Manufacturers' maximum prices for waterproof rubber footwear produced after February 10, 1942, which is not covered by paragraph (a).* Manufacturers' maximum prices for waterproof rubber footwear produced after February 10, 1942, which is not covered by paragraph (a) or by § 1315.74 shall be established under § 1315.65a of this regulation.

8. Subparagraph (1) of § 1315.73 (a) is amended to read as follows:

(1) This paragraph is applicable to canvas rubber footwear named in Table II but only if such footwear is produced after December 14, 1943, and if it does not fall below the manufacturer's specifications filed with the Rubber Price Branch of the Office of Price Administration before December 31, 1943. Canvas rubber footwear that has been produced for the use of the United States Government or any agency thereof and that has been rejected as not meeting the purchaser's standards shall be priced under this paragraph if it otherwise meets the requirements for pricing under this paragraph.

9. Paragraph (b) of § 1315.73 is amended to read as follows:

(b) *Manufacturers' maximum prices for canvas rubber footwear that is not covered by paragraph (a).* Manufacturers' maximum prices for canvas rubber footwear that is not covered by paragraph (a) above or by § 1315.74 shall be established under § 1315.65a of this regulation.

10. A new section designated 1315.74 is added to read as follows:

§ 1315.74 *Manufacturers' maximum prices for rubber footwear seconds*—(a) *Applicability.* This section applies to rubber footwear which is of the same type as the firsts and the government rejected footwear that are priced under any other section of this regulation (including firsts priced by specific authorization of the Office of Price Administration under § 1315.65a), but which does not equal the requirements of the footwear thus priced.

(b) *Maximum prices for seconds.* The manufacturer's maximum prices for any of the footwear described in paragraph (a) above shall be the maximum prices for the firsts for each class of purchaser as established under this regulation less all discounts, allowances, and differentials for each class of purchaser that the manufacturer had in effect in pricing similar seconds on December 3, 1941. If these discounts, allowances and differentials are such that the manufacturer on December 3, 1941, sold similar seconds at prices that exceeded 90 percent of the net selling price of the firsts (excluding cash discounts) or if the manufacturer had no discounts, allowances, or differentials in effect for seconds on that date, the maximum prices for seconds shall be 90 percent of the maximum prices of the firsts (excluding cash discounts).

11. A new section designated § 1315.75 is added to read as follows:

§ 1315.75 *Notifications of price charged.* Every manufacturer shall give each person purchasing rubber footwear an invoice showing the date of the transaction and the price charged for each type and brand and grade of rubber footwear sold that has been priced under this regulation. The invoice shall bear the notation "seconds" in addition to the other identifying information in all cases where "seconds" are sold. If the commodity sold is one which is priced under § 1315.65a, the invoice shall identify the item by using the same designation for it that appears in the order under which it is priced.

This amendment shall become effective August 29, 1945.

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

Issued this 24th day of August 1945.

CHESTER BOWLES,
Administrator.

[F. R. Doc. 45-15790; Filed, Aug. 24, 1945; 11:49 a. m.]

PART 1315—RUBBER AND PRODUCTS AND MATERIALS OF WHICH RUBBER IS A COMPONENT

[RMPR 229, Amdt. 2]

RETAIL AND WHOLESALE PRICES FOR RUBBER FOOTWEAR

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

Revised Maximum Price Regulation 229 is amended in the following respects:

1. The title of the regulation is changed to read as follows: "Retail and wholesale prices for rubber footwear."

2. The introductory paragraph of section 1 is amended to read as follows:

SECTION 1. *What this regulation does.* This regulation establishes maximum prices for all sales at retail and at wholesale of rubber footwear. However, this regulation does not apply to sales or deliveries of rubber footwear on war orders which must be priced under Maximum Price Regulation 403. When used in this regulation, the term:

3. Paragraph (a) of section 1 is amended to read as follows:

(a) "Rubber footwear" means footwear containing rubber and made with a vulcanized construction.

4. Section 5 is amended to read as follows:

SEC. 5. *Maximum prices for sales at retail of rubber footwear*—(a) *Maximum prices for sales at retail of domestically produced rubber footwear listed in Appendices A and B*—(1) *Applicability.* This paragraph applies to rubber footwear listed in Appendices A and B that is produced in the continental United States.

(2) *Method of determining the maximum retail price for each type and brand of rubber footwear listed in Appendices A and B.* The seller's maximum price for sales of each type and brand of domestically produced rubber footwear of a type that is described in Appendix A or Appendix B, shall be the maximum price set forth in Appendix A or Appendix B for that type of rubber footwear for the appropriate price class determined under subparagraph (3).

(3) *How the seller determines and redetermines the appropriate price class.* The seller shall determine and redetermine the appropriate price class for each type and brand of such rubber footwear he sells, as follows:

(i) If the seller sold the type and brand of rubber footwear being priced between September 29, 1942, and February 23, 1944, inclusive, that type and brand of footwear shall be placed in the same price class as it was under section 1315.1703 of Maximum Price Regulation 229 on February 23, 1944. The seller shall redetermine the appropriate price class where such redetermination is required by subdivision (iii) below.

(ii) If the seller did not sell the type and brand of rubber footwear being priced between September 29, 1942, and February 23, 1944, inclusive, the appropriate price class shall be determined by reference to the tables set forth in Appendix A for waterproof rubber footwear, and Appendix B for canvas rubber footwear. The seller shall compare the net price at which he purchased the rubber footwear he is pricing after February 23, 1944, with the range of net prices set forth in those tables for that type and brand of footwear. The range of net prices into which the net price which he paid falls, shall determine the appropriate price class.

(iii) The retailer must redetermine the appropriate price class by reference to the tables set forth in Appendix A or Appendix B if at any time subsequent to February 23, 1944, he purchases a type and brand of footwear in sufficiently large quantities so that the net price he pays is (a) lower than the net purchase price set forth for it in the appropriate Appendix (Appendix A or Appendix B) for the class in which it has been placed under subdivision (i) above, or (b) lower than the net purchase price used in determining the appropriate price class under subdivision (ii) above for that type and brand of rubber footwear, or (c) lower than the net purchase price used in redetermining its maximum price under this subdivision (iii).

(iv) A type and brand of rubber footwear whose price class has at any time been determined or redetermined under subdivision (i), (ii), or (iii) above, may not at any time thereafter be reclassified into a higher retail price class.

(v) *Meaning of the "net price" at which the seller purchased the rubber*

footwear he is pricing. The "net price" at which the seller purchased the type and brand of rubber footwear he is pricing, means the lowest price, without cash discount, at which he purchased that type and brand after February 23, 1944 (or the list price, less all discounts, except cash discounts). Manufacturers' "seconds" clearly marked as such, shall not be considered as establishing the net price for a type and brand of rubber footwear "firsts".

(b) *Maximum prices for sales at retail of rubber footwear imported into the United States that is of a type listed in Appendix A or Appendix B and that at least equals the quality of the domestically produced footwear listed in Appendices A and B*—(1) *Maximum prices for sales at retail of such footwear that is imported into the United States by the retailer.* A retailer who wishes to establish his maximum prices for sales at retail for any rubber footwear produced outside of the continental United States and imported into the continental United States by the retailer, which is of a type listed in Appendix A or Appendix B and which at least equals the quality of the domestically produced rubber footwear listed in Appendices A and B, shall apply to the tables set forth in Appendix A for waterproof rubber footwear and Appendix B for canvas rubber footwear, the net purchase price of the footwear he is pricing in the manner provided by section 5 (a) (3) (ii). The net purchase price that shall be applied to the tables shall be the retailer's total landed costs. The range of net prices into which the net price he has paid falls, shall determine the proposed maximum price class for the footwear being priced. The retailer shall file a report with the Office of Price Administration, Washington, D. C., giving all of the information required for a report filed under section 6a (a). If, within fifteen days after the mailing of the report, the Office of Price Administration does not request further information or does not issue an order establishing a different maximum price than that proposed by the retailer, or does not object to the proposed maximum price, then (fifteen days after the mailing of the report) the retailer's proposed maximum price shall be his maximum price. The Office of Price Administration may at any time, by order, revise any maximum price established under this section so as to make it consistent with the level of maximum prices otherwise established under the regulation. The redetermination of maximum price provisions of section 5 shall be applicable to any footwear prices established under this subparagraph except that the net price that shall be used in redetermining the maximum price for the imported footwear shall be the total landed costs.

(2) *Maximum prices for sales at retail of such footwear that is imported into the United States by a wholesaler.* The maximum prices for sales at retail of imported rubber footwear which is purchased by the retailer from a wholesaler who has imported the footwear into the United States, and which is of a type listed in Appendix A or Appendix B, and which at least equals the quality of the domestically produced rubber footwear listed in Appendix A or Appendix B shall be determined (and redetermined) in the manner and in accordance with the method of pricing set forth in section 5 for sales at retail of domestically produced rubber footwear. The retailer's net purchase price that shall be applied to the tables set forth in Appendix A or Appendix B in determining the retailer's maximum price shall not exceed the wholesaler's net maximum price (excluding cash discounts) for sales to the retailer.

(c) *Maximum retail prices for seconds.* The maximum price for sales at retail of rubber footwear seconds, shall be the price derived by dividing the retailer's "net purchase price" (not exceeding the maximum price for sales to the retailer) by .65. A retailer's maximum price for "seconds" may not equal or exceed his maximum price for the "firsts". "Net price" shall have the meaning given it in section 5 (a) (3) (v).

(d) *Discounts.* The seller shall deduct from his maximum prices, as found under paragraphs (a), (b), and (c), all discounts, allowances, and other deductions that he had in effect to different classes of purchasers during the period July 1 and October 25, 1941.

5. Section 5a is deleted.

6. Section 6 is amended to read as follows:

SEC. 6. *Maximum prices for sales at wholesale of rubber footwear*—(a) *Maximum prices for sales at wholesale of domestically produced rubber footwear listed in Appendix A or Appendix B*—(1) *Maximum prices for sales of such footwear by wholesalers who sold rubber footwear between April 1 and October 25, 1941.* The maximum prices for sales of domestically produced rubber footwear wear listed in Appendix A or Appendix B by wholesalers who sold rubber footwear between April 1 and October 25, 1941, shall be the price stated in Appendix A or Appendix B for sales at wholesale, less all discounts, allowances, and other deductions that the wholesaler had in effect to different classes of purchasers during the period April 1 and October 25, 1941.

(2) *Maximum prices for sales of such footwear by wholesalers who did not sell rubber footwear between April 1 and October 25, 1941.* The maximum prices for sales of such rubber footwear by a seller who did not sell rubber footwear at wholesale during the period April 1 and October 25, 1941, shall be the prices stated in Appendix A or Appendix B for sales at wholesale, less the discounts, allowances, and other deductions consistent with those otherwise established under the regulation that shall be established for a wholesaler by written authorization of the Office of Price Administration. A wholesaler whose discounts, allowances, and other deductions must be determined under this paragraph shall file an application with the Office of Price Administration, Washington, D. C., giving the following information: (i) a detailed description of his proposed cash discounts, freight, quantity and other allowances, and other deductions; and (ii) the reasons why he believes the proposed discounts, allowances and other deductions are consistent with those otherwise established under the regulation.

After receipt of the application, the Office of Price Administration shall by written authorization establish the discounts, allowances, and other deductions that shall be applicable to the applicant's sales at wholesale of rubber footwear. The wholesaler shall not sell or deliver or receive payment for any rubber footwear until he has applied for and received from the Office of Price Administration, a written authorization establishing his discounts, allowances, and other deductions.

(b) *Maximum prices for sales at wholesale of imported rubber footwear that is of a type listed in Appendix A or Appendix B and that at least equals the quality of the domestically produced rubber footwear listed in Appendix A or Appendix B*—(1) *Maximum prices for sales by a wholesaler who imports such footwear into the United States*—(i) *Proposed maximum prices.* A wholesaler who wishes to establish maximum prices for his sales at wholesale of rubber footwear which is manufactured outside of the continental United States and imported into the United States by the wholesaler and which is of a type listed in Appendix A or Appendix B and which at least equals the quality of the domestically produced rubber footwear listed in those Appendices shall determine his proposed maximum price as follows:

The proposed maximum price shall be the price listed in Appendix A or Appendix B for sales at wholesale for the type of domestically produced footwear he is pricing, less the discounts, allowance, and other deductions that are applicable to the wholesaler's sales of the domestically produced footwear listed in these Appendices.

(ii) *Reports.* The wholesaler shall file a report with the Office of Price Administration, Washington, D. C., giving all of the information required for a report filed under section 6a (a). If, within fifteen days after the mailing of the report, the Office of Price Administration does not request further information, or does not issue an order establishing a different maximum price than that proposed by the wholesaler, or does not object to the proposed maximum price, then (fifteen days after the mailing of the report) the wholesaler's proposed maximum price shall be his maximum price.

(iii) *Revision of maximum prices.* The Office of Price Administration may at any time, by order, revise any proposed maximum price or any maximum price established under this section so as to make it consistent with the level of maximum prices otherwise established under the regulation. The Office of Price Administration may, by written order, adjust the maximum price of any footwear established under this section after application by the wholesaler giving the information required for reports under section 6a (a) if, in the opinion of the Administrator, it is necessary and desirable to do so to secure importation of needed rubber footwear and if such

adjusted maximum price will not result in higher prices for sales to the consumer than the general level of maximum prices for such sales otherwise established under the regulation.

(2) *Maximum prices for sales of such footwear by the wholesaler who does not import it into the continental United States but purchases it from a wholesaler-importer whose maximum prices for sales at wholesale are established by subparagraph (1).* The maximum prices for the footwear described in subparagraph (1) (i) by a wholesaler who does not import it into the United States but who purchases it from a wholesaler-importer who has established maximum prices for his (wholesaler-importer's) sales to wholesalers under subparagraph (1) above, shall be determined in the manner and in accordance with the method of pricing set forth in section 6 (a) for sales at wholesale of domestically produced rubber footwear, unless an order issued under subparagraph (1) (iii) above establishes maximum prices for such resales by the wholesaler who purchases from the wholesaler-importer.

(c) *Maximum prices for sales at wholesale of rubber footwear seconds.* The maximum prices for sales at wholesale of rubber footwear seconds shall be the wholesaler's maximum prices for the firsts, less all discounts, allowances, and differentials for each class of purchaser that the wholesaler had in effect in pricing seconds during the period April 1 and October 25, 1941. If these discounts, allowances, and differentials are such that the wholesaler during this period sold or offered for sale seconds at prices that exceeded 90 percent of the net selling price of the firsts (excluding cash discounts) to a class of purchaser, or if the wholesaler had no discounts, allowances, or differentials in effect for seconds on that date, the maximum prices for seconds shall be 90 percent of the maximum prices for the firsts (excluding cash discounts). The invoices covering sales of seconds shall bear the notation "seconds" in all cases where seconds are sold.

7. Section 6a is amended to read as follows:

SEC. 6a. *Maximum prices for sales at wholesale and at retail of rubber footwear that cannot be priced under other sections of this regulation.* The maximum prices for sales at wholesale or at retail of rubber footwear that cannot be priced under any other section of this regulation shall be a price in line with the level of maximum prices established by this regulation specifically authorized by written order of the Office of Price Administration.

(a) *Method of establishing maximum prices.* A seller seeking to establish a maximum price for any footwear to be priced under this section shall file an application with the Office of Price Administration, Washington, D. C., before offering to sell such footwear. This application shall contain: (1), a description in detail of the rubber footwear to be priced; (2), a sample of the footwear; (3), a statement of the reasons why the footwear must be priced under this section of the regulation; (4), a statement as to whether applicant sold rubber footwear at wholesale during the period April 1 and October 25, 1941; (5), the cost of the footwear to be priced, and the name and address of the supplier (for imported rubber footwear, the name and address of his supplier and an itemized breakdown of total landed costs should also be given); (6), the proposed maximum price for each class of purchaser and the cash discount, freight, and quantity allowance, and other discounts and allowances applicable to each class of purchaser; (7), the method by which that price was determined; and (8), a statement of the reasons why he believes the proposed maximum price is in line with the level of prices established by the regulation.

(b) *Approval of maximum prices.* After receipt of the application, the Office of Price Administration will establish in writing a maximum price or a method of determining the maximum prices for the footwear for which application is made. Applicant shall not sell or offer for sale any footwear to be priced under this section until an order establishing his maximum price has been issued by the Office of Price Administration. The Office of Price Administration may at any time revise any maximum price (not to apply retroactively) established under this section so as to make it consistent with the level of maximum prices otherwise established by this regulation.

8. Section 18 (a) is amended by adding thereto the following: "The continental United States" means the forty-eight states of the United States and the District of Columbia. "Domestically produced footwear" means footwear manufactured in any of the forty-eight states of the United States or in the District of Columbia.

9. The heading of Appendix A is amended to read as follows: "APPENDIX A: *Table of maximum prices per pair of certain waterproof footwear.*[1 2 3]"

10. Footnote 1 of Appendix A is amended to read as follows:

[1] The domestically produced rubber footwear priced at the wholesale and retail levels is the footwear that is priced at the manufacturer's level by §§ 1315.70 (a) and 1315.71 of Maximum Price Regulation 132 and that meets the requirements for pricing under one of those sections.

11. Two new footnotes designated 2 and 3 are added to Appendix A to read as follows:

[2] The maximum prices for sales at wholesale and retail of imported waterproof rubber footwear are established under sections 5 (b) and 6 (b) of this regulation and by specific authorization of the Office of Price Administration under section 6a.

[3] Customary allowances and discounts must be deducted from these wholesale and retail prices.

12. The heading of Appendix B is amended to read as follows: "APPENDIX B: *Table of maximum prices per pair of certain canvas-topped rubber-soled footwear of vulcanized construction.*[1 2 3]"

13. Footnote 1 of Appendix B is amended to read as follows:

[1] The domestically produced rubber footwear priced at the wholesale and retail levels is the footwear that is priced at the manufacturer's level by § 1315.73 (a) of Maximum Price Regulation 132 and that meets the requirements for pricing under that section.

14. Footnote 2 of Appendix B is amended to read as follows:

[2] The maximum prices for sales at wholesale and retail of imported waterproof rubber footwear are established under sections 5 (b) and 6 (b) of this regulation and by specific authorization of the Office of Price Administration under section 6a.

15. Footnote 3 is added to read as follows:

[3] Customary allowances and discounts must be deducted from these wholesale and retail prices.

This amendment shall become effective August 29, 1945.

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

Issued this 24th day of August 1945.

CHESTER BOWLES,
Administrator.

[F. R. Doc. 45-15792; Filed, Aug. 24, 1945; 11:49 a. m.]

PART 1340—FUEL

[MPR 88, Amdt. 31]

FUEL OIL, GASOLINE AND LIQUEFIED PETROLEUM GAS

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

Maximum Price Regulation No. 88 is amended in the following respects:

1. Section 2.2 (a) is added to read as follows:

(a) *In certain tank wagon areas—Maximum tank wagon prices of P. S. 100 and P. S. 200 fuel oil.* Within the reference seller's free delivery limits in the tank wagon areas (Arizona) listed below maximum tank wagon prices (in cents per gallon) for P. S. 100 and P. S. 200 fuel oil, also known as stove oil, shall be as follows:

Tank wagon area	For deliveries of less than 40 gallons		For deliveries of 40 gallons or more	
	P. S. 100	P. S. 200	P. S. 100	P. S. 200
Douglas	---	9.25	---	8.25
Fairbanks	10.5	---	10	---
Ft. Huachuca	10.5	---	10	---
Ray	12	12	10	10
Tombstone	10.5	---	10	---

In any of the above tank wagon areas at any point outside the free delivery limits a seller may add the increase for the particular point specified in the reference seller's pamphlet of its October 14, 1941, posted tank wagon prices.

2. Section 2.4 (b) (1) is amended to read as follows:

(b) *Los Angeles and San Francisco Bay Areas*—(1) *On sales to the United States Armed Forces, Foreign Economic Administration and Federal agencies making purchases under T. P. S. contracts.*[1] (i) *F. o. b. tanker terminals in the Los Angeles Area.* In the Los Angeles Area[2] maximum prices for the products listed below shall be as follows:

Products	Loaded into tankers[3]	Loaded into barges[3]	Loaded into tank cars and tank truck and trailers	Loaded into buyer's drums[3]
Kerosene[4]	5.50	5.625	5.75	6.50
Diesel fuel (U. S. specification 2-102-C Grade C)	4.45	------	------	------

[1] When a purchaser of the class specified herein buys loaded into tankers and the seller must use trucks, truck and trailers or cars to move the product from his refinery or terminal to the loading point at which the sale is made, his maximum price shall be the sum of his truck and trailer f. o. b. refinery or terminal price, whichever is applicable, plus the actual transportation cost from his refinery or terminal to the loading point.
[2] For single lot deliveries under 6,500 gallons add ½ of a cent per gallon.
[3] Prices cover only the product and the unloading, filling, stencilling and reloading of drums into transportation facilities.
[4] Includes all grades of solvent extracted or acid-treated kerosene.

(ii) *F. o. b. tanker terminals in the San Francisco Bay Area.* In the San Francisco Bay Area maximum prices for the products listed below shall be as follows:

Products	Loaded into tankers[1]	Loaded into barges[2]	Loaded into tank cars and tank truck and trailers	Loaded into buyer's drums[3]
Kerosene[4]	5.625	5.75	5.875	6.625
Diesel fuel, U. S. Specification (2-102-C Grade C)	4.575	------	------	------

[1] When a purchaser of the class specified herein buys loaded into tankers and the seller must use trucks, truck and trailers or cars to move the product from his refinery or terminal to the loading point at which the sale is made, his maximum price shall be the sum of his truck and trailer f. o. b. refinery or terminal price, whichever is applicable, plus the actual transportation cost from his refinery or terminal to the loading point.
[2] For single lot deliveries under 6,500 gallons add ½ of a cent per gallon.
[3] Prices cover only the product and the unloading, filling, stencilling and reloading of drums into transportation facilities.
[4] Includes all grades of solvent extracted or acid-treated kerosene.

3. Section 2.4 (c) is amended as follows:

In the table of prices the following tank wagon area is added to the list of tank wagon areas, and the following prices applicable as indicated to the added tank wagon area are added in the order indicated to the respective columns of prices.

Tank wagon area	For deliveries of less than 75 gallons	For deliveries of 75 gallons or more
	Cents	*Cents*
La Jolla	8	7

4. Section 2.4 (e) is added to read as follows:

(e) *In certain tank wagon areas—Maximum tank wagon prices of P. S. 100 and P. S. 200 fuel oil.* Within the reference seller's free delivery limits in the tank wagon areas listed below maximum tank wagon prices (in cents per gallon) for P. S. 100 and P. S. 200 fuel oil, shall be as follows:

Tank wagon area	For deliveries of less than 75 gallons		For deliveries of 75 gallons or more	
	P. S. 100	P. S. 200	P. S. 100	P. S. 200
Alder Point	------	10.75	------	8.75
Blocksburg	------	10.25	------	8.25
Bolinas	9.5	------	7.5	------
Colfax	10.0	9.0	8.0	7.0
Dutch Flat	10.0	9.0	8.0	7.0
Ft. Seward	------	10.25	------	8.25
Olema	9.5	------	7.5	------
Pt. Reyes	9.5	------	7.5	------
Raisin City	9.0	9.0	7.0	7.0
Ruth	------	12.25	------	10.25
San Rafael	9.0	8.5	8.0	7.5
South Fork	------	9.75	------	7.75
Trona	10.0	------	9.0	------
Zenia	------	12.25	------	10.25

5. Section 2.4 (f) is added to read as follows:

(f) *Jamesburg and Tassajara Hot Springs Circuit Points.* In that part of the Monterey tank wagon area designated as Jamesburg and Tassajara Hot Springs (California), the maximum tank wagon prices for P. S. 100 fuel oil, also known as stove oil, and P. S. 200 fuel oil also known as diesel oil shall be as follows:

Tank wagon area	P. S. 100	P. S. 200
Jamesburg	8.75	7.75
Tassajara Hot Springs	10.75	9.75

6. Section 2.35 (a) is added to read as follows:

(a) *Portland Area.* In the Portland Area[5] maximum prices for the products listed below shall be as follows:

(1) *F. o. b. tanker terminals*—(i) *On sales to the United States Armed Forces, Foreign Economic Administration and Federal Agencies making purchases under T. P. S. contracts.*[6]

Products	Loaded into tankers[1]	Loaded into barges[2]	Loaded into tank cars and tank truck and trailers (cents per gallon)	Loaded into buyer's drums[3]
Kerosene[4]	6.50	6.625	6.75	7.50
Diesel fuel (U. S. Specification 2-102-C Grade C)	5.05	------	------	------

[1] When a purchaser of the class specified herein buys loaded into tankers and the seller must use trucks, truck and trailers or cars to move the product from his refinery or terminal to the loading point at which the sale is made, his maximum price shall be the sum of his truck and trailer f. o. b. refinery or terminal price, whichever is applicable, plus the actual transportation cost from his refinery or terminal to the loading point.
[2] For single lot deliveries under 6,500 gallons add ½ of a cent per gallon.
[3] Prices cover only the product and the unloading, filling, stencilling and reloading of drums into transportation facilities.
[4] Includes all grades of solvent extracted or acid-treated kerosene.

7. Section 2.45 (b) is added to read as follows:

(b) *Seattle Area.* In the Seattle Area[5] maximum prices for the products listed below shall be as follows:

(1) *F. o. b. tanker terminals*—(i) *On sales to the United States Armed Forces, Foreign Economic Administration and Federal Agencies making purchases under T. P. S. contracts.*[6]

Products	Loaded into tankers[1]	Loaded into barges[2]	Loaded into tank cars and tank truck and trailers (cents per gallon)	Loaded into buyer's drums[3]
Kerosene[4]	6.50	6.625	6.75	7.50
Diesel fuel (U. S. Specification 2-102-C Grade C)	5.05	------	------	------

[1] When a purchaser of the class specified herein buys loaded into tankers and the seller must use trucks, truck and trailers or cars to move the product from his refinery or terminal to the loading point at which the sale is made, his maximum price shall be the sum of his truck and trailer f. o. b. refinery or terminal price, whichever is applicable, plus the actual transportation cost from his refinery or terminal to the loading point.
[2] For single lot deliveries under 6,500 gallons add ½ of a cent per gallon.
[3] Prices cover only the product and the unloading, filling, stencilling and reloading of drums into transportation facilities.
[4] Includes all grades of solvent extracted or acid-treated kerosene.

8. Section 3.4 (b) is amended as follows:

a. Footnote 1 to section 3.4 (b) is amended by adding the following sentence:

Where an owner or operator of a refinery has established a maximum price pursuant to this footnote such maximum price may be used by other sellers and shall be subject to the special price provisions for certain sellers set forth in sections 3.2 and 3.3.

b. Footnote 4 to section 3.4 (b) is amended by adding the following paragraph:

[1] Maximum prices to other Federal agencies shall be established by application under section 8.3.
[2] Los Angeles Area comprises Orange and Los Angeles Counties.
[5] Tanker terminals at Linnton, Willbridge, Portland, Oregon, and Vancouver, Washington, are within the Portland Area.
[6] Maximum prices to other Federal agencies shall be established by application under section 8.3.
[5] Tanker terminals at Point Wells, Edmonds, Seattle, and Tacoma, Washington, are within the Seattle Area.

The Administrator may establish by order in writing for a refiner located in Price Area K a different maximum price at his refinery than that set forth above, and such maximum price may be used by other sellers on shipments from the same shipping point and shall be subject to the special pricing provisions of certain sellers set forth in sections 3.2 and 3.3.

9. Section 4.35 (a) is amended by adding a footnote reference number 8 following the words "Portland Area" and by adding a footnote number 8 to read as follows:

[8] Tanker terminals at Linnton, Willbridge, Portland, Oregon and Vancouver, Washington are within the Portland Area.

10. Section 4.45 (a) is amended by adding a footnote reference number 8 following the words "Seattle Area" and by adding a footnote number 8 to read as follows:

[8] Tanker terminals at Point Wells, Edmonds, Seattle, and Tacoma, Washington are within the Seattle Area.

11. Section 5.1 (e) (6) is added to read as follows:

(6) *Aviation gasoline*—(i) *Delivered-at-destination tank car prices.* The maximum delivered-at-destination tank car prices [6] (exclusive of any applicable taxes incident to the sale but not the transportation of such product) to the classes of purchasers named below, for aviation gasoline of a particular grade delivered in tank cars or transport trucks, shall be the amount set forth below for the particular class of purchaser and grade of product, plus the applicable rail rate of transportation as of October 1, 1941 from Tulsa, Oklahoma, to the particular destination: *Provided*, That the maximum price of an eligible marketer shall be .125¢ per gallon higher than the ceilings established for other sellers.

Aviation gasoline: grade—	To Class 1[1] purchasers	To Class 2[2] purchasers (cents per gallon)	To Class 3[3] purchasers
62–65 octane ASTM (unleaded)	7.375	7.50	7.75
73 octane ASTM (leaded)	7.625	7.75	8.00
80 octane ASTM (leaded)	7.875	8.25	8.50

[1] Class 1 purchasers are refiners, the United States Government or any agency thereof.
[2] Class 2 purchasers are resellers (except airport dealers) not included in Class 1.
[3] Class 3 purchasers are airport dealers and consumers not included in Class 1.

(ii) *Maximum tank wagon prices and related drum prices.* The maximum tank wagon price to dealers in a particular tank wagon area for Grade [7] 73 aviation gasoline, shall be the reference tank wagon seller's normal dealer price for regular grade automotive gasoline for such tank wagon area on October 1, 1941, plus 3.3¢ [8] per gallon. This maximum price is also designated as the "key price" and the maximum tank wagon or related drum [9] prices in a particular tank wagon area for the grades of aviation gasoline by classes of purchaser and levels of sale listed below, shall be the "key price" for the same tank wagon area plus or minus the applicable cents per gallon differential set forth in the following table:

Class of purchaser	Grade 62 or 65		Grade 73		Grade 80	
	Tank wagon	Drum	Tank wagon	Drum	Tank wagon	Drum
Dealer	−1	+2	(1)	+3	+1	+4
Consumer [2]	+1	+4	+2	+5	+3	+6

[1] Key price.
[2] *Discount Provision.* A consumer purchasing a total of 1000 gallons or over at the tank wagon level of aviation gasolines of these grades within a calendar month shall receive a discount below the applicable maximum price of 2¢ per gallon. The full price may be charged during the calendar month in which the deliveries are made, but if the purchaser becomes eligible for the discount, it shall be paid to him within 30 days after the end of the calendar month in which the deliveries were made.

(iii) *Maximum drum prices at certain levels of sale.* The maximum drum prices either delivered-at-destination or f. o. b. shipping point, for the aviation gasolines listed in (i) above, for carload deliveries by rail (or substitutes therefor) on sales to consumers; and for either carload or less carload deliveries by rail (or substitutes therefor) on sales to resellers other than dealers, shall be a maximum price established pursuant to section 8.3.

(iv) *Upon written authorization.* Upon application in writing and for good cause shown a seller at the tank wagon level, other than a refiner, may be authorized by order in writing of the Price Administrator or his duly authorized representative, to determine his maximum tank wagon or drum prices on the basis of prices his records show he charged in the base period.

12. Section 7.2 is amended by adding "Territory of Hawaii" at the bottom of the column entitled "For any point in the State of" and by adding "Standard Oil Company of California" to the Column entitled "reference tank wagon sellers."

13. Section 7.5 (a) is amended by deleting the word "and" between the states "Oregon and Washington", inserting a comma in lieu thereof and adding "and the territory of Hawaii" immediately following "Washington."

14. Section 7.5 (c) is revoked.

This amendment shall become effective August 29, 1945.

Issued this 24th day of August 1945.

CHESTER BOWLES,
Administrator.

[F. R. Doc. 45–15789; Filed, Aug. 24, 1945; 11:50 a. m.]

[6] In the lower peninsula of the State of Michigan the maximum delivered-at-destination tank car prices to Class 2 purchasers shall be the lower of the following: The price determined above for a particular grade, or for 62–65 octane, the dealer tank wagon ceiling for grade 62 or 65 less 2.75¢ per gallon; for 73 octane, the dealer tank wagon ceiling for grade 73, less 3.5¢ per gallon; for 80 octane, the dealer tank wagon ceiling; for grade 80 less 4.0¢ per gallon.

[7] Grade refers to a gasoline meeting the prevailing industry and consumer specifications for aviation gasoline which is sold for use in aircraft engines or for special testing purposes and which has an ASTM octane number not lower than the designated grade number under which the particular grade is sold.

[8] Except that 3.8¢ per gallon shall be added in lieu of 3.3¢ per gallon in the Chicago area where the reference tank wagon seller's normal dealer tank wagon price for regular grade automotive gasoline was 9.9¢ per gallon on October 1, 1941; and except in the lower peninsula of the State of Michigan where 4.8¢ per gallon shall be added in lieu of 3.3¢ per gallon; and except in the State of Indiana where 3.7¢ per gallon shall be added in lieu of 3.3¢ per gallon.

[9] Applies to all drum sales except those for which ceilings shall be established as directed in (iii) below.

PART 1390—MACHINERY AND TRANSPORTATION EQUIPMENT

[RMPR 136, Amdt. 10]

MACHINES, PARTS AND INDUSTRIAL EQUIPMENT

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.

Revised Maximum Price Regulation 136 is amended in the following respects:

1. Section 2 (a) (17) is added to read as follows:

(17) Porcelain covered steel table tops.

2. In section 9 (a) the last sentence is amended by inserting, after the first word, the phrase: ". . , until, but not after October 23, 1945, . ."

3. Section 9 (d) is amended to read as follows:

(d) *"In-line" limitations.* The OPA may disapprove any maximum price determined under this section because it is not in line with the maximum prices fixed by this regulation for comparable products. The following tests shall apply in determining whether a price is "in line," or a product is comparable:

(1) Whether the price is "in line" with prices charged by the applicant for similar commodities in his own line of products;

(2) Whether standards of construction; design or performance have been promulgated by a Government Agency authorized thereto (e. g.: Bureau of Standards, Interstate Commerce Commission, etc.), or agencies representative of the industry (e. g.: National Board of Fire Underwriters, American Society of Mechanical Engineers, etc.), or have otherwise been established or accepted by the industry;

(3) Whether the industry, irrespective of (2), produces commodities which are similar or identical, to the extent that in the absence of a brand name or mark the product of one maker could not be distinguished from another's;

(4) Without reference to (2) or (3), whether the standards of performance claimed by the applicant conform sub-

stantially with performance claims of other manufacturers;

(5) Whether the commodity is basically the same as commodities produced by other manufacturers, but differs only in minor respects; in this event, consideration may be given to the variation in cost represented by the difference in design of the commodity to be priced and the nearest comparable commodity.

4. In section 10 (b) (3), the last sentence is amended by inserting, after the first word, the phrase: ". . ., until, but not after October 23, 1945, . . ."

5. Section 9 (e) is added to read as follows:

(e) *"In-line pricing."* Notwithstanding any other provision of this section, the manufacturer who does not have the information required by Form OPA No. 694–2167 may propose a maximum price for a product which is in line with the maximum prices established under this regulation for similar or comparable products. In such case, the manufacturer may submit to the Office of Price Administration, Washington 25, D. C. evidence pursuant to the criteria set forth in paragraph (d) above, instead of the report on Form OPA No. 694–2167. After receipt of the report, the Office of Price Administration may (1) approve the proposed maximum price, (2) disapprove the maximum price, (3) establish a different maximum price determined under this section, or (4) establish or give temporary approval to a maximum price and require the filing of the information required in Form OPA No. 694–2167 by order. If the Office of Price Administration fails to act within thirty days after the receipt of the report (or any verification of the facts stated in the report that may be requested), the proposed maximum price shall be deemed to be approved.

6. In section 12 (b), in the second sentence of subparagraph (1), the word "lessor" is amended to read "lessee".

7. The second sentence of section 10 (c) (3) is amended to read as follows:

"The manufacturer may add the amount of overtime premium which he expects to pay to the maximum price, except where he is figuring a maximum list price."

This amendment shall become effective August 24, 1945.

Issued this 24th day of August 1945.

CHESTER BOWLES,
Administrator.

[F. R. Doc. 45–15791; Filed, Aug. 24, 1945; 11:50 a. m.]

PART 1418—TERRITORIES AND POSSESSIONS

[RMPR 373,[1] Amdt 23]

FRUITS AND VEGETABLES IN HAWAII

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

Section 21 is amended in the following respects:

1. The table under paragraph (c) (1) is amended by changing the prices of three items to read as follows:

	Wholesale maximum prices	Retail maximum prices
		Per lb.
Garlic	$9.33 per lb.	$9.45
Onions, dry, red and yellow, (new crop).	$3.65 per 50 lb. bag	.10
Potatoes, white, size A, large.	$5.30 per 100 lb. bag	.07½

2. The table under paragraph (d) (1) is amended by changing the wholesale price of "Lemons: all sizes" from $7.85 per box to $7.60 per box and the retail price from $0.15 per lb. to $0.14½ per lb.

This amendment shall become effective as of August 3, 1945.

Issued this 24th day of August 1945.

CHESTER BOWLES,
Administrator.

[F. R. Doc. 45–15793; Filed, Aug. 24, 1945; 11:50 a. m.]

PART 1418—TERRITORIES AND POSSESSIONS

[RMPR 395,[1] Corr. to Amdt. 6]

SOUPS IN VIRGIN ISLANDS

Amendment 6 to Revised Maximum Price Regulation 373 is corrected as follows:

Section 49 (b) Table XXXIX is corrected by changing the "Unit" size of all "Campbell Soup" items from 10½ oz. tins to 10½ or 11 oz. tins.

This correction shall be effective August 13, 1945.

Issued this 24th day of August 1945.

CHESTER BOWLES,
Administrator.

[F. R. Doc. 45–15794; Filed, Aug. 24, 1945; 11:50 a. m.]

Chapter XVIII—Office of Economic Stabilization

[Directive 76]

PART 4003—SUPPORT PRICES; SUBSIDIES

1945 CROP RICE

The Secretary of Agriculture has, by letter dated August 10, 1945, recommended my approval of a loan and purchase program with respect to rice of the 1945 crop to be carried out by Commodity Credit Corporation. Loans are to be made available on rough rice under the program at 90 per centum of the parity price as of July 1, 1945. An offer is to be made to purchase rough rice at the loan rate, and milled rice at comparable rates. The loan and purchase program is more fully described in the copy of the memorandum from the Director, Office of Basic Commodities, enclosed with the Secretary of Agriculture's letter.

Pursuant to the authority vested in me as Economic Stabilization Director, I hereby authorize and direct the Secretary of Agriculture to carry out the 1945 rice loan and purchase program described in the Secretary of Agriculture's letter and the memorandum enclosed therewith.

(E. O. 9250 and E.O. 9328, 3 CFR, Cum. Supp. pp. 1213, 1267; E.O. 9599, 10 F.R. 10155)

Issued and effective this 23d day of August, 1945.

WILLIAM H. DAVIS,
Economic Stabilization Director.

[F. R. Doc. 45–15763; Filed, Aug. 24, 1945; 10:18 a. m.]

[Directive 77]

PART 4003—SUPPORT PRICES; SUBSIDIES

PURCHASE OF 1945 LOAN WHEAT BY COMMODITY CREDIT CORPORATION

The Secretary of Agriculture having submitted certain information and, by his letter and enclosure of July 26, 1945 having recommended adoption of a program pursuant to which Commodity Credit Corporation would purchase wheat upon which Commodity Credit Corporation loans are outstanding on April 1, 1946, for farm-stored wheat in all areas and for warehouse-stored wheat in the Southwest, and on May 1, 1946 for warehouse-stored wheat in other areas, such purchases to be made at a price equal to the loan value of wheat plus 15 cents per bushel but not more than the ceiling price;

I hereby find that this program, more fully set out in the Secretary of Agriculture's letter and enclosure, is necessary to accomplish, with respect to wheat, the objective of section 3 of the Stabilization Act of 1942, as amended by the Stabilization Act of 1944, and extended by the Act of June 30, 1945 (Public Law 103, 79th Congress).

Accordingly, pursuant to the authority vested in me as Economic Stabilization Director, I hereby approve and direct the Department of Agriculture to carry out, through the Commodity Credit Corporation, the program described in the Secretary of Agriculture's letter and the memorandum enclosed therewith.

(E.O. 9250 and E.O. 9328, 3 CFR, Cum. Supp. pp. 1213, 1267; E.O. 9599, 10 F.R. 10155)

Issued and effective this 23d day of August, 1945.

WILLIAM H. DAVIS,
Economic Stabilization Director.

[F. R. Doc. 45–15763; Filed, Aug. 24, 1945; 10:18 a. m.]

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[1] 10 F.R. 6646, 7407, 7794, 7799, 8020, 8069, 8371, 8979, 9273, 9274, 9275, 9466, 9540, 9620, 9618, 9882, 9928.

[1] 10 F.R. 5941, 6946, 7799, 8069, 8393, 9227, 9225.

TITLE 34—NAVY

Chapter I—Department of the Navy

PART 25—CONTRACT SETTLEMENT ACT

AMENDMENT OF JOINT TERMINATION REGULATION

CROSS REFERENCE: For amendments and additions to the Joint Termination Regulation issued by the Secretary of War and Secretary of the Navy and filed with the Division of the Federal Register, November 4, 1944 (9 F. R. 13316), as amended (10 F. R. 5171), see Title 10, Chapter VIII, Subchapter C—Termination of Contracts, appearing in Part II of this issue.

TITLE 36—PARKS AND FORESTS

Chapter I—National Park Service

PART 20—SPECIAL REGULATIONS

BIG BEND NATIONAL PARK; FISHING

Part 20, Chapter I, Title 36, Code of Federal Regulations, is amended by adding a new § 20.52 to read as follows:

§ 20.52 *Big Bend National Park*—(a) *Fishing; closed waters.* All springs and ponds, and all waters within Santa Elena, Mariscal, and Boquillas Canyons, are closed to fishing.

(b) *Fishing; method.* (1) Fishing with rod and line, or with set lines, is permitted. Each person fishing may use two set lines with not more than two hooks attached to each such line.

(2) Fishing with trot lines is prohibited.

(3) Fishing from boats is prohibited.

(c) *Fishing; limit of catch.* The limit of catch per person per day shall be 20 pounds of fish and 1 fish.

(39 Stat. 535; 16 U.S.C. 3)

Issued this 20th day of August 1945.

[SEAL] OSCAR L. CHAPMAN,
Assistant Secretary of the Interior.

[F. R. Doc. 45-15767; Filed, Aug. 24, 1945; 9:40 a. m.]

TITLE 41—PUBLIC CONTRACTS

Chapter II—Division of Public Contracts

PART 201—PROCEDURE FOR STIPULATION OF CONDITIONS IN GOVERNMENT PURCHASE CONTRACTS

EMPLOYMENT OF FEMALE PERSONS UNDER 18 YEARS OF AGE

Revocation of exemption from provisions of the Walsh-Healey Public Contracts Act to permit the employment of female persons under 18 years of age in any industry.

Whereas, an exemption dated April 21, 1942 (7 F.R. 3003), and amended November 11, 1942 (7 F.R. 9399), was granted under section 6 of the Walsh-Healey Public Contracts Act (49 Stat. 2036, 41 U.S.C. Supp. III, 35), permitting, until further ordered, the award of contracts to contractors in any industry without inclusion in such contracts as required by section 1 (d) of the act the representation and stipulation:

That no * * * female person under 18 years of age * * * will be employed by the contractor in the manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in such contract;

Provided however, That employment conditions enumerated in each order are complied with by any contractor seeking to come within the exemption; and

Whereas, the Secretary of Labor, by order dated June 30, 1945 (10 F.R. 8866) revoked said exemption orders of April 21, 1942, and November 11, 1942, but permitted the continued employment after October 1, 1945, of female persons under 18 years of age who on October 1, 1945, were employed in performance of a contract subject to the Walsh-Healey Public Contracts Act; and

Whereas, modifications to the above-named exemption order were granted from time to time to individual plants upon a showing of need therefor; and

Whereas, it appears that justice and the public interest no longer will be served by the continued employment of female persons under 18 years of age in performance of contracts subject to the Walsh-Healey Public Contracts Act.

Now, therefore, pursuant to the powers vested in me by section 6 of the Walsh-Healey Public Contracts Act (49 Stat. 2036; 41 U.S.C. 35), I do hereby amend the order of the Secretary of Labor dated June 30, 1945, and order that the exemptions dated April 21, 1942, and November 11, 1942, permitting the award of contracts to contractors in any industry without the inclusion in such contracts of the representations and stipulations of section 1 (d) of the act with respect to the employment of girls between the ages of 16 and 18 years are hereby revoked, and after the effective date of this order female persons under 18 years of age may not be employed in performance of contracts subject to the act and; *It is further ordered,* That all modifications of the aforesaid exemptions are hereby revoked, except as hereinafter provided; *Provided, however,* That this supplemental revocation order shall not apply to the employment of 16 and 17-year old girls in the performance of contracts awarded on or prior to the effective date of this order; *Provided, further,* That where 16 and 17-year old girls are employed in the performance of contracts awarded on or prior to the effective date of this order, such authorized employment shall be subject to all of the conditions of the Exemption Order of April 21, 1942 (7 F.R. 3003), as amended November 11, 1942 (7 F.R. 9399), except where a modification of such order has been granted.

This order shall become effective 10 days after publication in the FEDERAL REGISTER.

Dated: August 24, 1945.

L. B. SCHWELLENBACH,
Secretary of Labor.

[F. R. Doc. 45-15770; Filed, Aug. 24, 1945; 11:08 a. m.]

TITLE 49—TRANSPORTATION AND RAILROADS

Chapter II—Office of Defense Transportation

[Gen. Order ODT 9A, Revocation]

PART 502—DIRECTION OF TRAFFIC MOVEMENT

MOVEMENT OF COAL ON GREAT LAKES

Pursuant to Executive Order 8989, as amended, General Order ODT 9A, §§ 502.5 to 502.10, inclusive (8 F.R. 6381), is hereby revoked effective August 24, 1945.

(E.O. 8989, as amended, 6 F.R. 6725, 8 F.R. 14183)

Issued at Washington, D. C., this 23d day of August, 1945.

J. M. JOHNSON,
Director,
Office of Defense Transportation.

[F. R. Doc. 45-15742; Filed, Aug. 23, 1945; 3:36 p. m.]

[Gen. Order ODT 42, Revocation]

PART 502—DIRECTION OF TRAFFIC MOVEMENT

TRANSPORTATION OF ANCHOR CHAIN WITHIN THE SWITCHING LIMITS OF PORTLAND, OREG., PROHIBITED

Pursuant to Executive Order 8989, as amended, General Order ODT 42, §§ 502.190 to 502.192, inclusive (8 F.R. 12909), is hereby revoked effective August 24, 1945.

(E.O. 8989, as amended, 6 F.R. 6725, 8 F.R. 14183)

Issued at Washington, D. C., this 23d day of August, 1945.

J. M. JOHNSON,
Director,
Office of Defense Transportation.

[F. R. Doc. 45-15743; Filed, Aug. 23, 1945; 3:36 p. m.]

Notices

TREASURY DEPARTMENT.

Office of the Secretary.

[T. D. 51300]

TRADING WITH THE ENEMY ACT; COMMUNICATIONS

AMENDMENT OF ADMINISTRATION PROCEDURE

AUGUST 17, 1945.

Amendment of procedure for administering the duties imposed upon the Secretary of the Treasury by articles XI and XIII of the Executive Order 2729-A, dated October 12, 1917, under the Trading with the Enemy Act of October 6, 1917.

The President having directed that the Office of Censorship cease the censorship of international communications as of August 15, 1945, and the Director of Censorship, by reason of such direction, hav-

ing notified the Secretary of the Treasury that that office on and after August 15, 1945, will be unable to exercise the functions in accordance with the designation prescribed by Treasury Decision 50536 of December 24, 1941, pursuant to notice given by the Secretary of the Treasury to the Office of Censorship by letter dated August 17, 1945, the designation of the Office of Censorship to act as the agency of the Secretary of the Treasury relative to licensing of communications intended for or to be delivered to an enemy or an ally of an enemy under Treasury Decision 50536 is revoked. Such functions, heretofore exercised by the Office of Censorship, shall be exercised by the Treasury Department.

[SEAL] FRED M. VINSON,
Secretary of the Treasury.

[F. R. Doc. 45-15738; Filed, Aug. 23, 1945; 1:52 p. m.]

DEPARTMENT OF LABOR.

Wage and Hour Division.

LEARNER EMPLOYMENT CERTIFICATES

ISSUANCE TO VARIOUS INDUSTRIES

Notice is hereby given that special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rate applicable under section 6 of the act have been issued to the firms hereinafter mentioned under section 14 of the act, Part 522 of the regulations issued thereunder (August 16, 1940, 5 F.R. 2862, and as amended June 25, 1942, 7 F.R. 4725), and the determinations, orders and/or regulations hereinafter mentioned. The names and addresses of the firms to which certificates were issued, industry, products, number of learners, and effective and expiration dates of the certificates are as follows:

Single Pants, Shirts and Allied Garments, Women's Apparel, Sportswear, Rainwear, Robes and Leather and Sheep-Lined Garments Divisions of the Apparel Industry, Learner Regulations, July 20, 1942 (7 F.R. 4724), as amended by Administrative Order March 13, 1943 (8 F.R. 3079), and Administrative Order, June 7, 1943 (8 F.R. 7890).

Assembly Dress Company, 247 South Main Street, Pittston, Pennsylvania; ladies' and children's dresses; 10 percent (T); effective August 10, 1945, expiring August 9, 1946.

A. Oestreicher, New Grove and Gilligan Streets, Wilkes-Barre, Pennsylvania; infant and children's wear; 10 percent (T); effective August 14, 1945, expiring August 13, 1946.

Onyx Blouse Co., Inc., 474 North Centre Street, Pottsville, Pennsylvania; dress shirts, collars, etc., boys' and men's shirts and blouses; 10 learners (T); effective August 19, 1945, expiring August 18, 1946.

Onyx Blouse Co., Inc., Long Avenue, Orwigsburg, Pennsylvania; dress shirts, collars, etc., boys' shirts and blouses; 10 learners (T); effective August 19, 1945, expiring August 18, 1946.

Onyx Blouse Co., Inc., Valley Street, New Philadelphia, Pennsylvania; dress shirts, collars, etc., boys' shirts and blouses; 10 learners (T); effective August 19, 1945, expiring August 18, 1946.

Knitted Wear Learner Regulations, October 10, 1940 (5 F.R. 3982), as amended by Administrative Order, March 13, 1943 (8 F.R. 3079).

Francis Fabrics, Valdese, North Carolina; polo and basque shirts; 10 learners (E); effective August 14, 1945, expiring March 13, 1946.

Hosiery Learner Regulations, September 4, 1940 (5 F.R. 3530), as amended by Administrative Order March 13, 1943 (8 F.R. 3079).

Terry Hosiery Company, 600 S. Hamilton Street, High Point, North Carolina; seamless hosiery; 5 learners (T); effective August 14, 1945, expiring August 13, 1946.

Independent Telephone Learner Regulations, July 17, 1944 (9 F.R. 7125).

Commerce Telephone Company, Commerce, Georgia (T); effective August 11, 1945, expiring August 10, 1946.

Consolidated Telephone Company, Moultrie, Georgia (T); effective August 19, 1945, expiring August 18, 1946.

Ellinwood Telephone Exchange, Ellinwood, Kansas (AT); effective August 21, 1945, expiring February 20, 1946.

Gulf States Telephone Company, Commerce, Texas (T); effective August 18, 1945, expiring August 17, 1946.

Gulf States Telephone Company, Cooper, Texas (T); effective August 18, 1945, expiring August 17, 1946.

Gulf States Telephone Company, Gatesville, Texas (T); effective August 18, 1945, expiring August 17, 1946.

Gulf States Telephone Company, Kaufman, Texas (T); effective August 18, 1945, expiring August 17, 1946.

Gulf States Telephone Company, Overton, Texas (T); effective August 18, 1945, expiring August 17, 1946.

Gulf States Telephone Company, Stephenville, Texas (T); effective August 18, 1945, expiring August 17, 1946.

Gulf States Telephone Company, Athens, Texas (T); effective August 18, 1945, expiring August 17, 1946.

Primghar Telephone Company, Primghar, Iowa (T); effective August 13, 1945, expiring August 12, 1946.

Siloam Springs Telephone Company, Siloam Springs, Arkansas (T); effective August 15, 1945, expiring August 14, 1946.

United Telephone Company, Butler, Missouri (T); effective August 15, 1945, expiring August 14, 1946.

United Telephone Company, California, Missouri (T); effective August 15, 1945, expiring August 14, 1946.

United Telephone Company, Cole Camp, Missouri (T); effective August 15, 1945, expiring August 14, 1946.

United Telephone Company, Fairfax, Missouri (T); effective August 15, 1945, expiring August 14, 1946.

United Telephone Company, Hermann, Missouri (T); effective August 15, 1945, expiring August 14, 1946.

Textile Learner Regulations, May 16, 1941 (6 F.R. 2446) as amended by Administrative Order March 13, 1943 (8 F.R. 3079).

Indiana Cotton Mills, Cannelton, Indiana; sheetings, drill and duck (cotton); 3 percent (T); effective August 18, 1945, expiring August 17, 1946.

Cigar Industry Learner Regulations, April 22, 1944 (9 F.R. 4330)

General Cigar Company, Inc., 5th and Hickory Streets, Mt. Carmel, Pennsylvania; cigars; 21 learners (AT); hand cigar making for a learning period of 960 hours at 30 cents per hour for the first 480 hours, and 35 cents per hour for remaining 480 hours; effective August 14, 1945, expiring February 13, 1946.

General Cigar Company, Inc., 7th and Poplar Streets, Benton, Kentucky; cigars; 10 percent (T); cigar machine operating for a learning period of 320 hours at 30 cents per hour; cigar packing for a learning period of 320 hours at 30 cents per hour; machine stripping for a learning period of 100 hours at 30 cents per hour; effective August 22, 1945, expiring February 21, 1946.

Regulations, Part 522—Regulations Applicable to the Employment of Learners (supra).

Caribe Diamond Works, Santurce, Puerto Rico; Scouring; 2 learners; scouring not less than 20 cents an hour for the first 520 hours; not less than 27 cents an hour for the second 520 hours; and for every hour thereafter not less than the minimum established by any applicable wage order that may be in effect at the time of the termination of the learning period; effective July 21, 1945, expiring six months from July 21, 1945.

The employment of learners under these certificates is limited to the terms and conditions therein contained and is subject to the provisions of the applicable determinations, orders and/or regulations cited above. These certificates have been issued upon the employers' representations that experienced workers for the learner occupations are not available for employment and that they are actually in need of learners at subminimum rates in order to prevent curtailment of opportunities for employment. The certificates may be cancelled in the manner provided in the regulations and as indicated in the certificates. Any person aggrieved by the issuance of any of these certificates may seek a review or reconsideration thereof within fifteen days after publication of this notice in the FEDERAL REGISTER pursuant to the provisions of regulations, Part 522.

Signed at New York, New York, this 20th day of August 1945.

ISABEL FERGUSON,
Authorized Representative of the Administrator.

[F. R. Doc. 45-15772; Filed, Aug. 24, 1945; 11:17 a. m.]

FEDERAL POWER COMMISSION.

[Docket No. G-580]

NATURAL GAS INVESTIGATION

ORDER FIXING DATES OF HEARINGS

AUGUST 21, 1945.

The Commission orders that:

(A) Public hearings herein be held commencing on September 18, 1945, at 10:00 a. m., in Kansas City, Missouri, in the City Council Room of the City Hall, 11th and Oak Streets;

(B) Public hearings be held in Oklahoma City, Oklahoma, commencing on October 9, 1945, at 10:00 a. m., in Room 609, County Court House Building;

(C) Public hearings be held in New Orleans, Louisiana, commencing on October 30, 1945, at 10:00 a. m., in Room 245, Post Office Building;

(D) Public hearings be held in Dallas, Texas, commencing on November 27, 1945, at 10:00 a. m., at a specific place to be announced subsequently.

By the Commission.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 45-15724; Filed, Aug. 23, 1945; 1:04 p. m.]

[Docket No. G-588]

UNITED FUEL GAS CO. ET AL.

ORDER FIXING DATE OF HEARING

AUGUST 21, 1945.

In the Matter of United Fuel Gas Company, Central Kentucky Natural Gas Company, Cincinnati Gas Transportation Company, Huntington Development and Gas Company, Point Pleasant Natural Gas Company and Warfield Natural Gas Company.

Upon consideration of the application, as amended, filed on March 1, 1945, by United Fuel Gas Company ("Applicant") for a certificate of public convenience and necessity pursuant to Section 7 of the Natural Gas Act, as amended, to authorize United Fuel Gas Company to acquire and operate all of the facilities, subject to the jurisdiction of the Commission, of the following companies: Central Kentucky Natural Gas Company, Cincinnati Gas Transportation Company, Huntington Development and Gas Company, Point Pleasant Natural Gas Company, and Warfield Natural Gas Company.

The Commission orders that:

(A) A public hearing be held commencing on September 19, 1945, at 10:00 a. m. (e. w. t.) in the Hearing Room of the Federal Power Commission, 1800 Pennsylvania Avenue NW., Washington, D. C., respecting the matters involved and the issues presented in this proceeding.

(B) Interested State commissions may participate in said hearing as provided in § 67.4 of the provisional rules of practice and regulations under the Natural Gas Act.

By the Commission.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 45-15725; Filed, Aug. 23, 1945; 1:04 p. m.]

[Docket No. IT-5519]

BONNEVILLE PROJECT, COLUMBIA RIVER, OREG.-WASH.

ORDER CANCELLING HEARING

AUGUST 22, 1945.

It appears that:

(a) The Administrator of the Bonneville Power Project filed with the Commission for confirmation and approval, pursuant to the provisions of the Bonneville Act (50 Stat. 731), as amended, certain proposed rate schedules, proposed modifications of the general rate schedule provisions, and proposed revised Administrative interpretations entitled "Principles and Procedures To Be Followed in the Calculation of Computed Demand." Pacific Power & Light Company, Northwestern Electric Company, The Washington Water Power Company, Mountain States Power Company and Puget Sound Power & Light Company filed protests and complaints with respect to these filings by the Administrator of the Bonneville Project.

(b) On July 6, 1945, the Commission ordered a hearing be held in Spokane, Washington, on July 24, 1945, subsequently postponed to August 27, 1945, for the purpose of affording the above-named complainants, the Bonneville Power Administrator, and other interested parties an opportunity to present testimony and information relevant to the Commission's consideration of the proposed rate schedules to the extent that they modify existing schedules; the proposed modifications of the general rate schedule provisions, and the proposed revised Administrative interpretation entitled "Principles and Procedures To Be Followed in the Calculation of Computed Demand."

(c) On August 2, 1945, Pacific Power & Light Company, Northwestern Electric Company and The Washington Water Power Company by telegram notified the Commission that they would not attend the hearing. Puget Sound Power & Light Company and Mountain States Power Company on August 3 and August 7, 1945, respectively, by telegrams, advised the Commission that they would present no evidence at the hearing. On August 8, 1945, William A. Dittmer, Acting Bonneville Power Administrator, advised the Commission by telegram that inasmuch as all of the complainants have indicated that they will present no evidence at the hearing scheduled to be heard in Spokane, the hearing appears unnecessary.

(d) No other persons have requested an opportunity to present testimony or information at the hearing.

The Commission finds that: It is appropriate that the hearing be cancelled.

The Commission orders that: The hearing in this matter set for August 27, 1945, at 10:00 a. m. (P. w. t.) in Room 338, Federal Power Office Building, Spokane, Washington, be and it is hereby cancelled.

By the Commission.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 45-15726; Filed, Aug. 23, 1945; 1:04 p. m.]

[Docket No. G-652]

TENNESSEE GAS AND TRANSMISSION CO.

NOTICE OF APPLICATION

AUGUST 23, 1945.

Notice is hereby given that on August 17, 1945, Tennessee Gas and Transmission Company (Applicant) a Tennessee Corporation having its principal place of business at Houston, Texas, filed with the Federal Power Commission an application for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, as amended, to authorize the construction and operation of approximately 2,380 feet of 8-inch O. D. pipeline extending in a southerly direction from Applicant's main line valve No. 20 located in Section 80, A. D. Boyd Survey, Harris County, Texas, to a point of connection with the 10-inch Katy-Satsuma pipeline of United Gas Pipe Line Company.

The application recites the filing with the Commission of letters dated July 19 and July 23, 1945, respectively, requesting temporary authorization to construct and operate the above-described facilities for the purpose of obtaining up to 50,000 mcf of natural gas per day from the Katy field by means of the facilities of United Gas Pipe Line Company. Arrangements for the supply of such gas were made between The Chicago Corporation, Applicant's supplier, and United Gas Pipe Line Company.

Applicant claims that the proposed facilities are required by reason of an order of the Railroad Commission of Texas dated July 16, 1945, which order, it is asserted, seriously interferes with the continuance of deliveries of gas to Applicant from the Stratton-Agua Dulce field, which at the present time is Applicant's sole source of gas supply.

The Commission by letter of July 27, 1945, granted Applicant temporary authorization to construct and operate the proposed facilities, pending the filing of the within application, which authorization was granted without prejudice to further Commission action and upon the condition that Applicant file with the Commission weekly statements showing the daily quantities of gas delivered to Applicant through the proposed facilities.

Applicant does not propose to render any additional services by reason of the construction and operation of the facilities. Such facilities will also provide an emergency connection in order to assure maintenance of adequate service to existing customers.

The estimated total over-all capital cost of the facilities is $7,290.00.

According to the application, no additional revenue will be received by applicant and no change in its rates is contemplated.

The War Production Board supported Applicant's application for temporary authorization in order to assure the continuance of adequate service of natural gas in the Appalachian area.

While it is not the purpose of Applicant to obtain gas from the Katy field through the proposed facilities on a continuous basis, it is claimed that the facilities provide a connection for future use in the event it should again become necessary to utilize the Katy field for emergency purposes.

Any person desiring to be heard or to make any protest with reference to said application should, on or before the 10th day of September, 1945, file with the Federal Power Commission, Washington 25, D. C., a petition or protest in accordance with the Commission's provisional rules of practice and regulations under the Natural Gas Act.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 45-15777; Filed, Aug. 24, 1945; 11:30 a. m.]

INTERSTATE COMMERCE COMMISSION.

[S. O. 70-A, Special Permit 1031]

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, Mo.-Kans., August 18, 1945, by J. C. Sewell Produce Company, of cars PFE 91982 and PFE 14949, potatoes, on the Union Pacific Railroad, to M. W. Frissell, Chicago, Illinois. (R. I. and Milwaukee, respectively).

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 20th day of August 1945.

V. C. CLINGER,
Director,
Bureau of Service.

[F. R. Doc. 45-15773; Filed, Aug. 24, 1945; 11:25 a. m.]

[2d Rev. S. O. 300, Special Permit 41]

REFRIGERATION OF POTATOES FROM GREENPORT, LONG ISLAND, N. Y.

Pursuant to the authority vested in me by paragraph (e) of the first ordering paragraph of Second Revised Service Order No. 300 (10 F.R. 6802), permission is granted for any common carrier by railroad subject to the Interstate Commerce Act:

To disregard the provisions of Second Revised Service Order No. 300 insofar as it applies to the furnishing of standard refrigeration on car FGE 44591, potatoes, shipped August 18, 1945, by F. H. Vahlsing, Inc., from Greenport, L. I., N. Y., consigned to Margaret Ann Stores, Tampa, Florida. (LI-PRR-RF&P-SAL).

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 20th day of August 1945.

V. C. CLINGER,
Director,
Bureau of Service.

[F. R. Doc. 45-15774; Filed, Aug. 24, 1945; 11:25 a. m.]

[Rev. S. O. 345, Special Permit 5]

REFRIGERATION OF POTATOES FROM CHICAGO, ILL., AND GIBBON, NEBR.

Pursuant to the authority vested in me by paragraph (g) of the first ordering paragraph of Revised Service Order No 345 (10 F.R. 10034), permission is granted for any common carrier by railroad subject to the Interstate Commerce Act:

To disregard the provisions of Revised Service Order No. 345 insofar as it applies to the furnishing of standard refrigeration on car FGE 51325 from Chicago, Illinois, August 20, 1945, (I. C.-N. C. & St. L.), on car ART 18652 from Gibbon, Nebraska, August 18, 1945 (U. P.-C. B. & Q.-I. C.), and on PFE 92131 from Gibbon, Nebraska, August 18, 1945, (U. P.-I. C.-N. C. & St. L.), all potatoes consigned to Plowaty Bergart Company, Atlanta, Georgia, to be reconsigned there to Roger McVeigh, Port Everglades, Florida. (AB & C-ACL-FEC), for export.

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 20th day of August 1945.

V. C. CLINGER,
Director,
Bureau of Service.

[F. R. Doc. 45-15775; Filed, Aug. 24, 1945; 11:25 a. m.]

[Rev. S. O. 346, 2d Amended Gen. Permit]

ICING OR REICING OF GREEN CORN OR PEAS

Pursuant to the authority vested in me by paragraph (f) of the first ordering paragraph of Service Order No. 346 (10 F.R. 10035), permission is granted for any common carrier by railroad subject to the Interstate Commerce Act:

To disregard the provisions of paragraph (b) of Revised Service Order No. 346 insofar as it applies to the initial bunker icing or reicing in transit in bunkers of cars loaded with green corn or peas.

This general permit shall become effective at 12:01 a. m., August 21, 1945, and shall apply only to cars billed on or after that time. This general permit shall expire at 11:59 p. m., September 20, 1945.

The waybills shall show reference to this general permit.

A copy of this general 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 20th day of August 1945.

V. C. CLINGER,
Director, Bureau of Service.

[F. R. Doc. 45-15776; Filed, Aug. 24, 1945; 11:25 a. m.]

OFFICE OF DEFENSE TRANSPORTATION.

[Notice and Order of Termination 25]

WILBER TRANSFER CO.

POSSESSION, CONTROL AND OPERATION OF MOTOR CARRIERS

Pursuant to Executive Order 9462 (9 F.R. 10071), I hereby determine that possession and control of the motor carrier transportation system of Fern R. Wilber, doing business as Wilber Transfer Company by the United States is no longer necessary for the successful prosecution of the war, and it is hereby ordered, that:

1. *Termination of possession and control.* Possession and control by the United States of the motor carrier transportation system of Fern R. Wilber, doing business as Wilber Transfer Company, 116 12th Street, N. W., Rochester, Minnesota, including all real and personal property and other assets of said motor carrier, taken and assumed pursuant to Executive Order 9462 and the Notice and Order of the Director of the Office of Defense Transportation issued August 11, 1944, is hereby terminated and relinquished as of 12:01 o'clock a. m., August 24, 1945. No further action shall be required to effect the termination of Government control and relinquishment of possession hereby ordered.

2. *Communications.* Communications concerning this order should be addressed to the Office of Defense Transportation, Washington 25, D. C., and should refer to "Notice and Order of Termination No. 25".

Issued at Washington, D. C., this 23d day of August 1945.

J. M. JOHNSON,
Director,
Office of Defense Transportation.

[F. R. Doc. 45-15727; Filed, Aug. 23, 1945; 1:07 p. m.]

[Notice and Order of Termination 26]

WITTE TRANSPORTATION CO.

POSSESSION, CONTROL AND OPERATION OF MOTOR CARRIERS

Pursuant to Executive Order 9462 (9 F.R. 10071), I hereby determine that possession and control of the motor carrier transportation system of Witte Trans-

portation Company by the United States is no longer necessary for the successful prosecution of the war, and it is hereby ordered, that:

1. *Termination of possession and control.* Possession and control by the United States of the motor carrier transportation system of Witte Transportation Company, 2324 University Avenue, St. Paul, Minnesota, including all real and personal property and other assets of said motor carrier, taken and assumed pursuant to Executive Order 9462 and the Notice and Order of the Director of the Office of Defense Transportation issued August 11, 1944, is hereby terminated and relinquished as of 12:01 o'clock a. m., August 24, 1945. No further action shall be required to effect the termination of Government control and relinquishment of possession hereby ordered.

2. *Communications.* Communications concerning this order should be addressed to the Office of Defense Transportation, Washington 25, D. C., and should refer to "Notice and Order of Termination No. 26".

Issued at Washington, D. C., this 23d day of August 1945.

J. M. JOHNSON,
Director,
Office of Defense Transportation.

[F. R. Doc. 45-15728; Filed, Aug. 23, 1945; 1:07 p.m.]

[Notice and Order of Termination 27]

ACE LINES, INC.

POSSESSION, CONTROL AND OPERATION OF MOTOR CARRIERS

Pursuant to Executive Order 9462 (9 F.R. 10071), I hereby determine that possession and control of the motor carrier transportation system of Ace Lines, Inc. by the United States is no longer necessary for the successful prosecution of the war, and it is hereby ordered, that:

1. *Termination of possession and control.* Possession and control by the United States of the motor carrier transportation system of Ace Lines, Inc., Fargo, North Dakota, including all real and personal property and other assets of said motor carrier, taken and assumed pursuant to Executive Order 9462 and the Notice and Order of the Director of the Office of Defense Transportation issued August 11, 1944, is hereby terminated and relinquished as of 12:01 o'clock a. m., August 24, 1945. No further action shall be required to effect the termination of Government control and relinquishment of possession hereby ordered.

2. *Communications.* Communications concerning this order should be addressed to the Office of Defense Transportation, Washington 25, D. C., and should refer to "Notice and Order of Termination No. 27."

Issued at Washington, D. C., this 23d day of August 1945.

J. M. JOHNSON,
Director,
Office of Defense Transportation.

[F. R. Doc. 45-15729; Filed, Aug. 23, 1945; 1:07 p. m.]

[Notice and Order of Termination 28]

CERTIFIED MOTOR TRANSPORT

POSSESSION, CONTROL AND OPERATION OF MOTOR CARRIERS

Pursuant to Executive Order 9462 (9 F.R. 10071), I hereby determine that possession and control of the motor carrier transportation system of Ralph D. Holt, doing business as Certified Motor Transport by the United States is no longer necessary for the successful prosecution of the war, and it is hereby ordered, that:

1 *Termination of possession and control.* Possession and control by the United States of the motor carrier transportation system of Ralph D. Holt, doing business as Certified Motor Transport, 954 Hersey Street, St. Paul, Minnesota, including all real and personal property and other assets of said motor carrier, taken and assumed pursuant to Executive Order 9462 and the Notice and Order of the Director of the Office of Defense Transportation issued August 11, 1944, is hereby terminated and relinquished as of 12:01 o'clock a. m., August 24, 1945. No further action shall be required to effect the termination of Government control and relinquishment of possession hereby ordered.

2. *Communications.* Communications concerning this order should be addressed to the Office of Defense Transportation, Washington 25, D. C., and should refer to "Notice and Order of Termination No. 28."

Issued at Washington, D. C., this 23d day of August 1945.

J. M. JOHNSON,
Director,
Office of Defense Transportation.

[F. R. Doc. 45-15730; Filed, Aug. 23, 1945; 1:07 p. m.]

[Notice and Order of Termination 29]

MERCURY MOTOR FREIGHT LINES, INC.

POSSESSION, CONTROL AND OPERATION OF MOTOR CARRIERS

Pursuant to Executive Order 9462 (9 F.R. 10071), I hereby determine that possession and control of the motor carrier transportation system of Mercury Motor Freight Lines, Inc. by the United States is no longer necessary for the successful prosecution of the war, and it is hereby ordered, that:

1. *Termination of possession and control.* Possession and control by the United States of the motor carrier transportation system of Mercury Motor Freight Lines, Inc., 954 Hersey, St. Paul, Minnesota, including all real and personal property and other assets of said motor carrier, taken and assumed pursuant to Executive Order 9462 and the Notice and Order of the Director of the Office of Defense Transportation issued August 11, 1944, is hereby terminated and relinquished as of 12:01 o'clock a. m., August 24, 1945. No further action shall be required to effect the termination of Government control and relinquishment of possession hereby ordered.

2. *Communications.* Communications concerning this order should be addressed to the Office of Defense Transportation, Washington 25, D. C., and should refer to "Notice and Order of Termination No. 29."

Issued at Washington, D. C., this 23d day of August 1945.

J. M. JOHNSON,
Director,
Office of Defense Transportation.

[F. R. Doc. 45-15731; Filed, Aug. 23, 1945; 1:08 p. m.]

[Notice and Order of Termination 30]

SMITH TRANSIT CO.

POSSESSION, CONTROL AND OPERATION OF MOTOR CARRIERS

Pursuant to Executive Order 9462 (9 F.R. 10071), I hereby determine that possession and control of the motor carrier transportation system of Ralph D. Holt, doing business as Smith Transit Co. by the United States is no longer necessary for the successful prosecution of the war, and it is hereby ordered, that:

1. *Termination of possession and control.* Possession and control by the United States of the motor carrier transportation system of Ralph D. Holt, doing business as Smith Transit Co., 954 Hersey Street, St. Paul, Minnesota, including all real and personal property and other assets of said motor carrier, taken and assumed pursuant to Executive Order 9462 and the Notice and Order of the Director of the Office of Defense Transportation issued August 11, 1944, is hereby terminated and relinquished as of 12:01 o'clock a. m., August 24, 1945. No further action shall be required to effect the termination of Government control and relinquishment of possession hereby ordered.

2. *Communications.* Communications concerning this order should be addressed to the Office of Defense Transportation, Washington 25, D. C., and should refer to "Notice and Order of Termination No. 30."

Issued at Washington, D. C., this 23d day of August 1945.

J. M. JOHNSON,
Director,
Office of Defense Transportation.

[F. R. Doc. 45-15732; Filed, Aug. 23, 1945; 1:08 p. m.]

[Notice and Order of Termination 31]

BYERS TRANSPORTATION CO., INC.

POSSESSION, CONTROL AND OPERATION OF MOTOR CARRIERS

Pursuant to Executive Order 9462 (9 F.R. 10071), I hereby determine that possession and control of the motor carrier transportation system of Byers Transportation Company, Inc. by the United States is no longer necessary for the successful prosecution of the war, and it is hereby ordered, that:

1. *Termination of possession and control.* Possession and control by the

United States of the motor carrier transportation system of Byers Transportation Company, Inc., 2505 Broadway, Kansas City, Missouri, including all real and personal property and other assets of said motor carrier, taken and assumed pursuant to Executive Order 9462 and the Notice and Order of the Director of the Office of Defense Transportation issued August 11, 1944, is hereby terminated and relinquished as of 12:01 o'clock a. m., August 24, 1945. No further action shall be required to effect the termination of Government control and relinquishment of possession hereby ordered.

2. *Communications.* Communications concerning this order should be addressed to the Office of Defense Transportation, Washington 25, D. C., and should refer to "Notice and Order of Termination No. 31."

Issued at Washington, D. C., this 23d day of August 1945.

J. M. JOHNSON,
Director,
Office of Defense Transportation.

[F. R. Doc. 45-15733; Filed, Aug. 23, 1945; 1:08 p. m.]

[Notice and Order of Termination 32]

DENVER CHICAGO TRUCKING CO., INC.

POSSESSION, CONTROL AND OPERATION OF MOTOR CARRIERS

Pursuant to Executive Order 9462 (9 F.R. 10071), I hereby determine that possession and control of the motor carrier transportation system of Denver Chicago Trucking Company, Inc., by the United States is no longer necessary for the successful prosecution of the war, and it is hereby ordered, that:

1. *Termination of possession and control.* Possession and control by the United States of the motor carrier transportation system of Denver Chicago Trucking Company, Inc., 2501 Blake Street, Denver, Colorado, including all real and personal property and other assets of said motor carrier, taken and assumed pursuant to Executive Order 9462 and the Notice and Order of the Director of the Office of Defense Transportation issued August 11, 1944, is hereby terminated and relinquished as of 12:01 o'clock a. m., August 24, 1945. No further action shall be required to effect the termination of Government control and relinquishment of possession hereby ordered.

2. *Communications.* Communications concerning this order should be addressed to the Office of Defense Transportation, Washington 25, D. C., and should refer to "Notice and Order of Termination No. 32."

Issued at Washington, D. C., this 23d day of August 1945.

J. M. JOHNSON,
Director,
Office of Defense Transportation.

[F. R. Doc. 45-15734; Filed, Aug. 23, 1945; 1:08 p. m.]

[Notice and Order of Termination 33]

WERNER TRANSPORTATION CO.

POSSESSION, CONTROL AND OPERATION OF MOTOR CARRIERS

Pursuant to Executive Order 9462 (9 F.R. 10071), I hereby determine that possession and control of the motor carrier transportation system of Werner Transportation Company by the United States is no longer necessary for the successful prosecution of the war, and it is hereby ordered, that:

1. *Termination of possession and control.* Possession and control by the United States of the motor carrier transportation system of Werner Transportation Company, 2601 32d Avenue, South, Minneapolis, Minnesota, including all real and personal property and other assets of said motor carrier, taken and assumed pursuant to Executive Order 9462 and the Notice and Order of the Director of the Office of Defense Transportation issued August 11, 1944, is hereby terminated and relinquished as of 12:01 o'clock a. m., August 24, 1945. No further action shall be required to effect the termination of Government control and relinquishment of possession hereby ordered.

2. *Communications.* Communications concerning this order should be addressed to the Office of Defense Transportation, Washington 25, D. C., and should refer to "Notice and Order of Termination No. 33."

Issued at Washington, D. C., this 23d day of August 1945.

J. M. JOHNSON,
Director,
Office of Defense Transportation.

[F. R. Doc. 45-15735; Filed, Aug. 23, 1945; 1:03 p. m.]

OFFICE OF PRICE ADMINISTRATION.

[Rev. Supp. Order 99,[1] Order 13]

UTICA KNITTING CO.

ADJUSTMENT OF MAXIMUM PRICES

For the reasons set forth in an opinion issued simultaneously herewith and pursuant to Revised Supplementary Order 99 and § 1372.101 (c) of Maximum Price Regulation 210, it is ordered:

(a) *Ceiling prices for sales by Utica Knitting Company.* (1) On and after August 22, 1945, Utica Knitting Company, Utica, New York, may sell and deliver, and any person may buy and receive from it, the following designated fall and winter knitted underwear manufactured by Utica Knitting Company, at prices not in excess of the following adjusted ceiling prices:

Style No.	Description	Adjusted ceiling price (per dozen)
P12	Men's peeler union suit made of 14/1 carded cotton yarn, rib knit, net weight 12 pounds per dozen (based on size 42 LSA), regular sizes 36-46	Net
	LSA: Long sleeve, ankle length	$9.85
	SSA: Short sleeve, ankle length	9.24
E12	Men's ecru union suit made of 14/1 carded cotton yarn, rib knit, dyed, net weight 12 pounds per dozen (based on size 42 LSA), regular sizes 36-46 in white and random:	
	LSA: Long sleeve, ankle length	10.14
	SSA: Short sleeve, ankle length	9.62
E14	Men's union suit made of 12/1 carded cotton yarn, rib knit, dyed, net weight 14 pounds per dozen (based on size 42 LSA), regular sizes 36-46, also white and random.	
	LSA: Long sleeve, ankle length	11.65
	SSA: Short sleeve, ankle length	10.44
E16	Men's union suit made of 10/1 carded cotton yarn, rib knit, dyed, net weight 16 pounds per dozen (based on size 42 LSA), regular sizes 36-46, also in white and random.	
	LSA: Long sleeve, ankle length	11.93
	SSA: Short sleeve, ankle length	11.23
AM	Boy's ecru union suit, made of 16/1 carded cotton yarn, rib knit, dyed, net weight 8½ pounds per dozen (based on size 24 LSA), sizes 24-34, also in white and ecru:	
	LSA: Long sleeve, ankle length	7.20
	SSK: Short sleeve, knee length	6.45
AL/1	Boy's union suit made of 16/1 carded cotton yarn, rib knit, dyed, net weight 7 pounds per dozen (based on size 24 LSA), sizes 24-34, also in white and random:	
	LSA: Long sleeve, ankle length	6.47
	SSK: Short sleeve, knee length	5.83
9LBU	Boy's ecru union suit made of 14/1 carded cotton yarn, rib knit, dyed, net weight 10 pounds per dozen (based on size 24 LSA), sizes 24-34:	
	LSA: Long sleeve, ankle length	7.82
	SSK: Short sleeve, knee length	6.93¼
2/1 shirt	Men's ecru shirt made of 14/1 carded cotton yarn, rib knit, dyed, net weight 8 pounds per dozen (based on size 42), regular sizes 34-46, also white and random.	6.70
2/1 drawer	Men's ecru drawers made of 14/1 carded cotton yarn, net weight 8 pounds per dozen (based on size 42), rib knit, dyed, regular sizes 30-44 extra sizes 46-50.	6.12
3/1 shirt	Men's ecru shirt made of 10/1 carded cotton yarn, net weight 10 pounds per dozen (based on size 42), rib knit, dyed, regular sizes 34-46, also in white and random.	7.41
3/1 drawers	Men's ecru drawers made of 10/1 carded cotton yarn, rib knit, dyed, net weight 8 pounds per dozen (based on size 42), regular sizes 30-44.	6.63
C07U LSA	Men's random fleece union suit made of 1½ pounds 10/1, 7 pounds 20/1, 7½ pounds 12 GR/1 carded cotton yarn, net weight 14 pounds per dozen (based on size 42), long sleeve, ankle length, sizes 30-46.	[1] 11.73
6UG LSA	Men's random union suit, made of 3/14 carded cotton yarn, net weight 14 pounds per dozen (based on size 42 LSA), sizes 36-46.	
	LSA: long sleeve, ankle length	[1] 11.70
	SSA: short sleeve, ankle length	[1] 10.87
5BU/G LSA	Boys' union suit made of 16/1 carded cotton yarn, net weight 10 pounds per dozen (based on size 24), sizes 24-34, long sleeve, ankle length, rib knit.	[1] 8.25

[1] Less 2 percent 30 days or net 60 days.

[1] 10 F.R. 6796, 8657.

(2) The adjusted ceiling prices set forth in paragraph (1) above are subject to all allowances, price differentials and other trade practices, including practices related to shipping and the payment of shipping charges and premiums for extra sizes, customarily used by Utica Knitting Company during the period from July 15, 1941 to February 10, 1942, both inclusive, on deliveries of comparable types of fall and winter knitted underwear.

(b) *Ceiling prices for sales at wholesale.* (1) On and after August 22, 1945, the ceiling price for a sale at wholesale of any of the garments enumerated in paragraph (a) of this order, shipped to the seller by Utica Knitting Company on and after that date, shall be determined in the following manner:

(i) The wholesaler shall first find his cost base for the garment being priced from the following table:

Style No.	Cost base (per dozen)	
	Regular sizes	Extra sizes
P12 LSA	$9.00	$10.25
P12 SSA	8.87½	10.12½
E12 LSA	8.50	9.75
E12 SSA	8.37½	9.62½
E14 LSA	9.37½	10.37½
E14 SSA	9.25	10.50
E16 LSA	10.00	11.25
E16 SSA	9.87½	11.12½
AM LSA	5.87½	
AM SSK	5.62½	
AL/1 LSA	5.25	
AL/1 SSK	5.00	
91BU LSA	6.25	
91BU SSK	6.00	
2/1 shirt	5.65	6.40
2/1 drawer	5.65	6.40
3/1 shirt	6.30	7.05
3/1 drawer	6.30	7.05
607U LSA	10.75	12.25
6U/G LSA	10.25	11.75
6U/G SSA	10.00	11.50
5BU/GLSA	7.50	

(ii) The wholesaler will then apply to the "cost base" for the garment being priced his "initial percentage markup" determined in accordance with the appropriate rule set forth in subparagraph (3) of § 1372.102 (b) of Maximum Price Regulation 210.

(iii) The wholesaler will then add to the amount found in (ii) immediately above the sum specified below for the style of garment being priced. The resulting figure is the wholesaler's new ceiling price per dozen for the style of garment being priced.

Style number:	*Amount of adjustment (per dozen)*
P12 LSA	$0.64½
P12 SSA	.35
E12 LSA	1.23
E12 SSA	.93
E14 LSA	1.26
E14 SSA	.89
E16 LSA	1.45
E16 SSA	1.05
AM LSA	1.01
AM SSK	.63
AL/1 LSA	.91½
AL/1 SSK	.62
91BU LSA	1.18
91BU SSK	.74
2/1 shirt	.79
2/1 drawer	.35
3/1 shirt	.83
3/1 drawer	.28½
607U LSA	.73½
6U/G LSA	.94
6U/G SSA	.65
5BU/G LSA	.58½

(2) The ceiling prices established for sales at wholesale in this paragraph (b) are subject to all discounts, allowances, price differentials and other trade practices customarily used by the wholesaler during 1942 on deliveries of comparable types of fall and winter knitted underwear.

(c) *Statement which Utica Knitting Company must send to wholesalers.* (1) On and after August 22, 1945, Utica Knitting Company shall transmit to each wholesaler to whom it makes delivery, on and after that date, of any of the garments listed in paragraph (a) of this order, the following statement:

STATEMENT TO WHOLESALERS OF ADJUSTED CEILING PRICES

The OPA has adjusted our ceiling prices on certain knitted underwear garments pursuant to the provisions of Order No. 13, issued under Revised Supplementary Order 99. In Column A below you will find our adjusted ceiling prices for these garments.

Under this order the OPA has established the method by which you, as a wholesaler, are to determine your ceiling prices for these garments.

You are required by the OPA to determine your ceiling prices for the specified styles by the following method: You first find the "cost base" for the garment being priced from Column B of the following table. You then apply to this "cost base" your "initial percentage markup" (determined in accordance with the appropriate rule set forth in subparagraph (3) of § 1372.102 (b) of Maximum Price Regulation 210). You then find your new ceiling price by adding to the amount thus determined, the amount specified in Column C below for the particular style of garment being priced.

Style No.	Column A	Column B		Column C
	Utica's adjusted ceiling price (regular sizes) (per dozen)	"Cost base" to which wholesaler applies "initial percentage markups" (per dozen)		Amount of adjustment which wholesaler may add (per dozen)
		Regular sizes	Extra sizes	
P12 LSA	$9.86	$9.00	$10.25	$0.64½
P12 SSA	9.34	8.87½	10.12½	.35
E12 LSA	10.14	8.50	9.75	1.23
E12 SSA	9.62	8.37½	9.62½	.93
E14 LSA	11.05	9.37½	10.37½	1.26
E14 SSA	10.44	9.25	10.50	.89
E16 LSA	11.93	10.00	11.25	1.45
E16 SSA	11.28	9.87½	11.12½	1.05
AM LSA	7.20	5.87½		1.01
AM SSK	6.46	5.62½		.63
AL/1 LSA	6.47	5.25		.91½
AL/1 SSK	5.83	5.00		.62
91BU LSA	7.82	6.25		1.18
91BU SSK	6.98½	6.00		.74
2/1 shirt	6.70	5.65	6.40	.79
2/1 drawer	6.12	5.65	6.40	.35
3/1 shirt	7.41	6.30	7.05	.83
3/1 drawer	6.68	6.30	7.05	.28½
607U LSA	11.73	10.75	12.25	.73½
6U/G LSA	11.50	10.25	11.75	.94
6U/G SSA	10.87	10.00	11.50	.65
5BU/G LSA	8.28	7.50		.58½

Please note that, as a wholesaler, you are required by the OPA to transmit to each retailer to whom you deliver any of the garments listed above on or after August 22, 1945, a "Wholesaler's Statement to Retailers of OPA Adjustment Charge" in the following form, properly filled in by you with the information applicable to the particular garments being delivered by you to the retailer. You are required to complete this statement as follows: In Column A you shall list the ceiling prices of the particular styles being shipped which were in effect for you under MPR 210 prior to the date of this order. In Column B you shall list the new ceiling prices which you determine in accordance with the method indicated in this statement to you. In Column C you shall list the difference between the amounts in Column A and Column B below for the respective styles. This notice, when properly completed by you is to be transmitted with, or annexed to, the invoice, billing or other statement of price accompanying every shipment made by you to your retail customers of the styles shipped to you by us.

WHOLESALER'S STATEMENT TO RETAILERS OF OPA ADJUSTMENT CHARGES

The OPA, pursuant to Order No. 13 issued under Revised Supplementary Order 99, has permitted us to adjust our ceiling prices on the following garments sold and delivered by us to you on or after August 22, 1945.

Style No.	Column A		Column B		Column C	
	Our old ceiling price (per dozen)		Our new ceiling price (per dozen)		Our OPA adjustment (difference between old and new ceiling price) (per dozen)	
	Regular sizes	Extra sizes	Regular sizes	Extra sizes	Regular sizes	Extra sizes
P12 LSA						
P12 SSA						
E12 LSA						
E12 SSA						
E14 LSA						
E14 SSA						
E16 LSA						
E16 SSA						
AM LSA						
AM SSK						
AL/1 LSA						
AL/1 SSK						
91BU LSA						
91BU SSK						
2/1 shirt						
2/1 drawer						
3/1 shirt						
3/1 drawer						
607U LSA						
6U/G LSA						
6U/G SSA						
5BU/G LSA						

Please note that the OPA has ruled that you must price these garments in accordance with Maximum Price Regulation 580 or Maximum Price Regulation 210 (whichever regulation governs your sales of the garments listed above). In determining your ceiling prices for these garments OPA has ruled that you must use as your "net cost" under MPR 580, or your "cost base" under MPR 210, the amount set forth in Column A above. You may not, in any case, include the amount of the OPA adjustment charge set forth in Column C above in determining your ceiling prices for these garments under either of those regulations.

(2) The statement required to be sent by Utica Knitting Company to its wholesalers, as provided in this paragraph (c) and containing the information applicable to the styles of garments included in the particular shipment shall be transmitted with, or annexed to, the invoice, billing or other statement of price accompanying every shipment made by Utica Knitting Company of any of the garments listed in paragraph (a) of this order. This statement, with respect to any garment for which Utica Knitting Company is permitted an adjustment of its ceiling price under this order shall be sent by Utica Knitting Company in lieu of the statement required under § 1389.304 (as amended) of Maximum Price Regulation 221.

(d) *Statement which wholesalers must send to their retailers.* Any seller at wholesale, purchasing any of the garments listed in paragraph (a) of this order from Utica Knitting Company on or after August 22, 1945, shall transmit to each of its own customers, at the time of the delivery by it of any of these garments on or after August 22, 1945, the form of "Wholesaler's Statement to Retailers of OPA Adjustment Charge" contained in the "Statement to Wholesalers of OPA Adjustment Charge" required to be sent to its wholesalers by Utica Knitting Company under paragraph (c) above. This "Wholesaler's Statement to Retailers of OPA Adjustment Charge" shall contain the information applicable to the styles of garments included in the particular shipment and shall be transmitted with, or annexed to the invoice, billing or other statement of price accompanying every shipment made by the wholesaler after August 22, 1945 of any of the garments covered by this order. Each seller at wholesale shall complete this "Wholesaler's Statement to Retailers of OPA Adjustment Charge" as follows: In Column A he shall list the ceiling prices in effect for sales by him under Maximum Price Regulation 210 prior to this order. In Column B he shall list his new ceiling prices for the garments, determined in accordange with paragraph (b) of this order. In Column C he shall list the differences between the amounts in Column A and Column B for the respective styles.

(e) *Statement which Utica Knitting Company must send to retailers.* (1) On and after August 22, 1945, Utica Knitting Company shall transmit to each retailer to whom it makes delivery of any of the garments listed in paragraph (a) of this order, the following statement:

STATEMENT TO RETAILERS OF OPA ADJUSTMENT CHARGES

The Office of Price Administration has permitted us to add the adjustment charges set forth below to our ceiling prices on the following garments:

Style	Column A: Old ceiling price (per dozen)		Column B: OPA adjustment charges under MPR 221 and RSO 3 (per dozen)	Column C: Amount of adjustment which retailer may add to his ceiling price (per garment)
	Regular sizes	Extra sizes		
P12 LSA	$9.00	$10.25	$0.86	
P12 SSA	8.87½	10.12½	.46½	
E12 LSA	8.50	9.75	1.64	$0.03½
E12 SSA	8.37½	9.62½	1.24½	
E14 LSA	9.37½	10.37½	1.67½	.02
E14 SSA	9.25	10.50	1.19	
E16 LSA	10.00	11.25	1.93	.04
E16SSA	9.87½	11.12½	1.40½	
AMLSA	5.87½		1.32½	.4½
AM SSK	5.62½		.83½	
AL/1 LSA	5.25		1.22	.04½
AL/1 SSK	5.00		.83	
91BU LSA	6.25		1.57	.07
91BU SSK	6.00		.98½	
2/1 shirt	5.65	6.40	1.05	.02
2/1 drawer	5.65	6.40	.47	
3/1 shirt	6.30	7.05	1.11	.01
3/1 drawer	6.30	7.05	.38	
697U LSA	10.75	12.25	.93	
6U/G LSA	10.25	11.75	1.25	
6U/G SSA	10.00	11.50	.87	
5BU/G LSA	7.50		.78	

Please note that the OPA requires you to price these garments in accordance with Maximum Price Regulation 580 or Maximum Price Regulation 210 (whichever regulation governs your sales of the garments listed in this notice). In determining your ceiling prices for these garments OPA has ruled that you must use as your "net cost" under MPR 580, or your "cost base" under MPR 210, the "old ceiling price" stated in Column A above for the garment being priced and you may not include the OPA adjustment charges set forth in Column B above in computing your ceiling prices for these garments under either of these regulations.

The OPA has ruled, however, that after you have properly determined your ceiling price under MPR 580 or MPR 210 in the foregoing manner, you may then add to your ceiling price so computed the amount of the adjustment set forth for the garment in Column C of the above table.

(2) The statement required to be sent to its retailers by Utica Knitting Company, as provided in this paragraph (e), and containing the information applicable to the styles of garments included in the particular shipment, shall be transmitted with, or annexed to the invoice, billing or other statement of price accompanying every shipment made by Utica Knitting Company of any of the garments listed in paragraph (a) of this order. This statement, with respect to any garment for which Utica Knitting Company is permitted an adjustment of its ceiling price under this order shall be sent by Utica Knitting Company in lieu of the statement required under § 1389.304 (as amended) of Maximum Price Regulation 221.

(f) *Garments to which the provisions of this order shall apply.* This order shall apply only to those garments of the styles enumerated in paragraph (a) which are shipped by Utica Knitting Company on or after August 22, 1945, and before November 1, 1945.

(g) This order may be revoked or amended by the Price Administrator at any time.

This order shall become effective August 22, 1945.

Issued this 22d day of August 1945.

CHESTER BOWLES,
Administrator.

[F. R. Doc. 45-16594; Filed, Aug. 22, 1945; 4:44 p. m.]

[Supp. Order 94, Rev. Order 67]

UNITED STATES DEPARTMENT OF COMMERCE, ET AL.

SPECIAL MAXIMUM PRICES FOR CERTAIN VITRIFIED CHINAWARE

Order 67 under Supplementary Order 94 is redesignated Revised Order 67 and is revised and amended to read as follows:

For the reasons set forth in an opinion issued simultaneously herewith and filed with the Division of the Federal Register, and in accordance with Section 11 of Supplementary Order 94 it is ordered:

(a) *What this order does.* This order establishes maximum prices at which new and used vitrified chinaware hereinafter described may be sold and delivered by the United States Department of Commerce and by any subsequent reseller.

(b) *Maximum prices.* (1) Maximum prices per unit for the new vitrified chinaware, with or without insignia or decoration in heavy (thickware), medium and hotel weights more particularly described herein shall be:

(i) For sales by the Department of Commerce to dealers, the prices set forth in Column I.

(ii) For sales by the Department of Commerce to a State, municipality, county and township, for use but not for resale by the purchaser, the prices set forth in Column I.

(iii) For sales by the Department of Commerce to retailers, the prices set forth in Column II.

(iv) For sales by all persons other than the Department of Commerce to industrial or institutional users and retailers, the prices set forth in Column III.

(v) For all sales by retailers, the prices set forth in Column IV.

Item	Description (all sizes subject to the tolerances set forth in Federal Standard Stock Catalog, section IV, Part 5, Federal Specification for Chinaware, Vitrified, M-C-301a, April 21, 1943	I	II	III	IV
Boat	Gravy or Sauce, 11 oz	$0.25	$0.47	$0.50	$0.91
	Sauce 13 oz	.63	.71	.76	1.38
Bowl	1½ pt	.21	.28	.30	.55
	Salad 6"	.15	.20	.22	.40
	Salad 9" to 9½"	.64	.85	.92	1.67
	Soup 8¾"	.17	.23	.24	.44
	Sugar 5 oz. with cover	.29	.37	.39	.53
	Sugar 17 oz. with cover	.30	.40	.43	.78
Casserole	With handles, round 8", with cover	1.35	1.80	1.94	3.53
Cover	Cake 6½"	.25	.33	.36	.65
Cup	Bouillon, 2 handles, 7½ oz	.18	.24	.26	.47
	After dinner, with handle, 3½ oz	.09	.12	.13	.24
	Coffee, with handle, 6½ oz	.17	.23	.24	.44
	Coffee, with handle, 10½ oz	.15	.20	.22	.40
	Coffee, without handle, 13 oz	.15	.20	.22	.40
	Coffee, with handle, 8 oz	.16	.21	.23	.42
Mug	Tea, Boston, 7½ oz	.13	.17	.19	.35
Cup	Egg, double, 4 oz	.14	.19	.20	.36
	Egg or Custard, 6½ oz	.12	.16	.17	.31
Baker	2½" x 5⅛"	.11	.15	.16	.29
	5" x 8¼"	.13	.17	.19	.35
	5" x 7½"	.18	.24	.26	.47
	8" x 10"	.27	.49	.53	.96
	11¾"	.57	.76	.82	1.49
Dish	Butter Individual, 3¼"-3½"	.035	.042½	.05	.09
	Butter, cover and drain, 6¼" to 6½"	.64	.85	.92	1.67
	Fruit, 5⅛" to 5⅜"	.08	.11	.12	.22
	Oatmeal, 6" to 6½"	.15	.20	.22	.40
	Pickle or Celery, 7½"	.23	.37	.40	.73
	Pickle or Celery, 9¼"	.43	.57	.62	1.13
Plate	Bread and butter, 6¼"-6⅞"	.09	.12	.13	.24
	Dessert or salad, 7⅛"-7¼"	.11	.15	.16	.29

Item	Description (all sizes subject to the tolerances set forth in Federal Standard Stock Catalog, section IV, Part 5, Federal Specification for Chinaware, Vitrified, M-C-301a, April 21, 1943	I	II	III	IV
Plate—Continued	Dinner, 8"	$0.16	$0.21	$0.23	$0.42
	Dinner, 8½"-9"	.18	.24	.26	.47
	Dinner, 9¾"	.21	.28	.30	.55
	Dinner, 3 compartment, 10"	.53	.71	.76	1.38
	Dinner, 3 compartment, 11"	.71	.95	1.02	1.85
	Soup, 7"	.12	.16	.17	.31
	Soup, 9"	.19	.25	.27	.49
Platter	3" x 6¼"	.11	.15	.16	.29
	4" x 7"	.13	.17	.19	.35
	6" x 9⅛"	.20	.27	.29	.53
	8" x 11¼"	.28	.37	.40	.73
	10" x 13¾"	.41	.55	.59	1.07
	12" x 15⅛"	.71	.95	1.02	1.85
	14" x 17½"	1.13	1.51	1.62	2.93
Pitcher	Cream with handle, 1½ oz	.10	.13	.14	.25
	Cream without handle, 1¾ oz	.09	.12	.13	.24
	Cream with handle, 4½ oz	.14	.19	.20	.36
	With handle, 5½ oz	.20	.27	.29	.53
	With handle, ¾ pt	.32	.43	.46	.84
	With handle, 1¼ pt. to 1½ pt	.43	.57	.62	1.13
	Hall boy, with handle, 2¾ pt	.50	.67	.72	1.31
	Hall boy, with handle, 3½ pt. to 4½ pt	.85	1.13	1.22	2.22
	Hall boy, with handle, 6 pt	1.42	1.89	2.04	3.71
	Hall boy, with handle, 8 pt	1.95	2.60	2.80	5.09
Pot	Coffee, Individual, 12 oz	.60	.80	.86	1.56
	Mustard, covered without handle, 4 oz	.17	.23	.24	.44
	Mustard, covered without handle, 6½ oz	.21	.28	.30	.55
Saucer	Coffee, A. D., 4⅞"	.06	.08	.09	.16
	Coffee, 7"	.09	.12	.13	.24
	Fruit, 5⅜"	.08	.11	.12	.22
	Fruit, 5½"	.09	.12	.13	.24
	Tea, Regular, 6"	.08	.11	.12	.22
	Tea, Reinforced well, 5¾"	.08	.11	.12	.22
	Tea, wide foot, 6⅛"	.08	.11	.12	.22
	Tea (Thick), 6¼"	.08	.11	.12	.22
Stand	Match, Round Hooded, 6½"	.46	.61	.66	1.20
Tray	Pin oblong, 5¼"	.17	.23	.24	.44
Tub	Ice, 9¼ pt	1.43	1.91	2.05	3.73

(2) Maximum prices for used vitrified chinaware described herein, if the article is not chipped and has the serviceability of a new article, shall be 75% of the above maximum prices.

(3) Maximum prices for new and used vitrified chinaware, if the article is chipped or does not have the serviceability of a new article, shall be 25% of the above maximum prices.

(4) All the aforesaid maximum prices, except in the case of sales at retail, are f. o. b. shipping point.

(c) *Discounts.* Every seller shall continue to maintain his customary discounts for cash.

(d) *Notification.* Any person who sells the chinaware described in paragraph (b) to a retailer shall furnish the retailer with an invoice of sale setting forth the maximum prices for sales at retail, and stating that the retailer is required by this order to conspicuously display at the place where the chinaware is offered for sale a suitable sign which plainly states the retail ceiling prices.

(e) *Tagging.* Any person who sells the chinaware described in paragraph (b) at retail shall conspicuously display at the place where it is offered for sale a suitable sign which plainly states the retail ceiling prices.

(f) *Relation to other regulations and orders.* This order with respect to the commodities it covers supersedes any other regulation or order previously issued by the Office of Price Administration.

(g) *Definitions.* (1) "Retailer" means any person who sells to a user or ultimate consumer, except industrial or institutional users.

(2) "Dealer" means any person who sells to purchasers for resale and to industrial and institutional users.

(h) *Revocation and amendment.* This order may be revoked or amended at any time.

This order shall become effective August 25, 1945.

Issued this 24th day of August 1945.

CHESTER BOWLES,
Administrator.

[F. R. Doc. 45-15821; Filed, Aug. 24, 1945; 11:57 a. m.]

[Supp. Order 94, Order 76]

UNITED STATES DEPARTMENT OF COMMERCE, ET AL.

SPECIAL MAXIMUM PRICES FOR SADDLES

For the reasons set forth in an opinion issued simultaneously herewith and filed with the Division of the Federal Register, and in accordance with section 11 of Supplementary Order 94, it is ordered:

(a) *What this order does.* This order establishes special maximum prices at which new and used Army McClellan saddles may be sold and delivered by the United States Department of Commerce and by any subsequent reseller.

(b) *Maximum prices*—(1) *New saddles.* Maximum prices per new Army McClellan saddle shall be:

(i) Commerce's price to manufacturer, f. o. b. shipping point: $7.10.

(ii) Commerce's price to wholesaler, f. o. b. shipping point: $8.00.

(iii) Commerce's price to retailer, f. o. b. shipping point: $12.00.

(iv) Wholesaler's price to retailer, f. o. b. shipping point: $12.00 plus actual freight paid by the wholesaler from Commerce's point of shipment.

(v) Price for all sales at retail—$20.00 plus actual freight paid by the retailer from his supplier's point of shipment.

(2) *New shop or shelf worn saddles.* The maximum price for a new shop or shelf worn Army McClellan saddle, which is a saddle that has never been used on an animal, shall be 75% of the appropriate maximum price set forth in paragraph (b) (1) herein, *Provided,* That

(i) No part is missing which is necessary to make it fully useful for its intended purpose without further repair.

(ii) The saddle is free from rips and tears, and in all respects has the serviceability equal to but not the appearance of a new saddle.

(3) *Used saddles and new shop or shelf worn saddles not covered by paragraph (b) (2).* The maximum price for a used Army McClellan saddle, which is a saddle that has been used on an animal, and for a new shop or shelf worn saddle not covered by paragraph (b) (2) herein shall be 50% of the appropriate maximum price set forth in paragraph (b) (1) herein.

(c) *Discounts.* Every seller shall continue to maintain his customary discounts for cash.

(d) *Notification.* Any person who sells the aforesaid Army McClellan saddles to a retailer shall furnish the retailer with an invoice of sale setting forth the retailer's maximum price for each saddle, and stating that the retailer is required by this order to attach to each saddle before sale a tag or label stating the appropriate retail ceiling price.

(e) *Tagging.* Any person who sells the aforesaid Army McClellan saddles at retail shall attach to each saddle before sale a tag or label which plainly states the appropriate retail ceiling price.

(f) *Relation to other regulations and orders.* This order with respect to the commodity it covers supersedes any other regulation or order previously issued by the Office of Price Administration.

(g) *Definitions.* (1) "Retailer" means any person who normally sells to ultimate consumers.

(2) "Wholesaler" means any person who normally sells to resellers.

(h) *Revocation and amendment.* This order may be revoked or amended at any time.

This order shall become effective August 25, 1945.

Issued this 24th day of August 1945.

CHESTER BOWLES,
Administrator.

[F. R. Doc. 45-15822; Filed, Aug. 24, 1945; 11:57 a. m.]

[RMPR 436, Amdt. 6 to Order 37]

CRUDE PETROLEUM AND NATURAL AND PETROLEUM GAS

ADJUSTMENT OF MAXIMUM PRICES

An opinion accompanying this amendment, issued simultaneously herewith, has been filed with the Division of the Federal Register.

Paragraph (a) of Order No. 37 to Revised Maximum Price Regulation No. 436 is amended in the following respects:

1. The following pools with the designated increases are hereby added thereto:

Pool, County, and State	*Amount of increase per 42-gallon barrel*
Nick Springs (Travis Peak), Union, Arkansas	$0.24
Maunie South, White, Illinois	.20
Graber, McPherson, Kansas	.25
Russell North, Russell, Kansas	.35
Wherry, Rice, Kansas	.25
Temple, Clare, Michigan	.02
Benson, Eddy, New Mexico	.09
Dora, Seminole, Oklahoma	.35
Loco, Stephens, Oklahoma	.25
Macomb South, Pottawatomie, Oklahoma	.35
Palacine, Stephens, Oklahoma	.20
Wellston North, Lincoln, Oklahoma	.35
Hull-Silk-Sikes-Caddo, Archer, Texas	.25
Iatan-North, Howard, Texas	.15
Loving, Stephens, Texas	.25
Olson, Crockett, Texas	.17
Smyer, Hockley, Texas	.20
Vincent (4000'–5500'), Howard, Texas	.25
Half-Moon, Park, Wyoming	.35
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Pitchfork, Park, Wyoming	.34
Shoshone, Park, Wyoming	.35

2. The Allen (Shallow) Pool Pontotoc County, Oklahoma, is hereby redesignated to read "Allen (0'–2,000') Pontotoc County, Oklahoma.

This amendment shall become effective as of August 1, 1945.

Issued this 24th day of August 1945.

CHESTER BOWLES,
Administrator.

[F. R. Doc. 45–15819; Filed, Aug. 24, 1945; 11:57 a. m.]

Regional and District Office Orders.

LIST OF COMMUNITY CEILING PRICE ORDERS

The following orders under Rev. General Order 51 were filed with the Division of the Federal Register August 17, 1945.

REGION I

Providence Order 4–F, Amendment 7, covering fresh fruits and vegetables in certain areas in Rhode Island. Filed 9:33 a. m.

REGION II

Binghamton Order 2–F, Amendment 44, covering fresh fruits and vegetables in certain counties in New York. Filed 9:34 a. m.

Scranton Order 4–F, Amendment 35, covering fresh fruits and vegetables in certain counties in Pennsylvania. Filed 9:34 a. m.

REGION III

Charleston Order 7–F, Amendment 25, covering fresh fruits and vegetables in certain areas in West Virginia. Filed 9:34 a. m.

Charleston Order 9–F, Amendment 25, covering fresh fruits and vegetables in certain areas in West Virginia. Filed 9:35 a. m.

Charleston Order 10–F, Amendment 25, covering fresh fruits and vegetables in certain areas in West Virginia. Filed 9:35 a. m.

Charleston Order 11–F, Amendment 25, covering fresh fruits and vegetables in Jefferson and Morgan Counties, West Virginia. Filed 9:35 a. m.

Charleston Order 15–F, Amendment 22, covering fresh fruits and vegetables in certain counties in West Virginia. Filed 9:35 a. m.

Charleston Order 16–F, Amendment 21, covering fresh fruits and vegetables in certain counties in West Virginia. Filed 9:36 a. m.

Charleston Order 17–F, Amendment 21, covering fresh fruits and vegetables in certain counties in West Virginia. Filed 9:36 a. m.

Cleveland Order F–1, Amendment 52, covering fresh fruits and vegetables in Cuyahoga County, Ohio. Filed 9:36 a. m.

Cleveland Order 2–C, Amendment 6, covering poultry in certain counties in Ohio. Filed 9:32 a. m.

Cleveland Order 3–F, Amendment 52, covering fresh fruits and vegetables in Mahoning and Trumbull Counties, Ohio. Filed 9:32 a. m.

Cleveland Order 4–F, Amendment 52, covering fresh fruits and vegetables in Stark and Summit Counties, Ohio. Filed 9:32 a. m.

REGION IV

Birmingham Order 4–F, Amendment 16, covering fresh fruits and vegetables in certain counties in the Birmingham Area. Filed 9:33 a. m.

Charlotte Order 3–F, Amendment 30, covering fresh fruits and vegetables in certain counties in North Carolina. Filed 9:33 a. m.

Jacksonville Order 9–F, Amendment 35, covering fresh fruits and vegetables in Jacksonville, Florida. Filed 9:31 a. m.

Jacksonville Order 11–F, Amendment 17, covering fresh fruits and vegetables in certain areas in Florida. Filed 9:31 a. m.

Memphis Order 6–F, Amendment 43, covering fresh fruits and vegetables in the city and county of Memphis and Shelby, Tennessee. Filed 9:31 a. m.

Atlanta Order 6–F, Amendment 46, covering fresh fruits and vegetables in the Atlanta-Decatur Area. Filed 9:32 a. m.

Atlanta Order 7–F, Amendment 15, covering fresh fruits and vegetables in certain areas in Georgia. Filed 9:32 a. m.

Atlanta Order 8–F, Amendment 15, covering fresh fruits and vegetables in certain areas in Georgia. Filed 9:32 a. m.

Atlanta Order 9–F, Amendment 18, covering fresh fruits and vegetables in Phenix City, Alabama, and Bibb and Muscogee Counties, Georgia. Filed 9:32 a. m.

Montgomery Order 20–F, Amendment 37, covering fresh fruits and vegetables in Mobile County, Alabama. Filed 9:29 a. m.

Montgomery Order 21–F, Amendment 42, covering fresh fruits and vegetables in Montgomery County, Alabama. Filed 9:29 a. m.

Montgomery Order 22–F, Amendment 43, covering fresh fruits and vegetables in Houston County, Alabama. Filed 9:29 a. m.

Montgomery Order 24–F, Amendment 40, covering fresh fruits and vegetables in Dallas County, Alabama. Filed 9:29 a. m.

Savannah Order (Adopting) 7–F, Amendment 43, covering fresh fruits and vegetables in certain areas in Georgia. Filed 9:30 a. m.

REGION V

Dallas District Order 2–C, Amendment 5, covering poultry. Filed 9:30 a. m.

Houston District Order 1–O, Amendment 3, covering eggs in certain counties in Texas. Filed 9:31 a. 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. 45–15747; Filed, Aug. 23, 1945; 4:52 p. m.]

SECURITIES AND EXCHANGE COMMISSION.

[File No. 70–1121]

THE NORTH AMERICAN CO.

ORDER PERMITTING DECLARATION TO BECOME EFFECTIVE

At a regular session of the Securities and Exchange Commission, held at its office in the City of Philadelphia, Pa., on the 21st day of August 1945.

The North American Company, a registered holding company, has filed a declaration pursuant to the applicable provisions of the Public Utility Holding Company Act of 1935 and the General Rules and Regulations promulgated thereunder, regarding a proposal to pay on October 1, 1945, a dividend to its holders of common stock of record on September 4, 1945, payable in the common stock of Pacific Gas and Electric Company having a par value of $25 per share owned by The North American Company, at a rate of one share of such stock of Pacific Gas and Electric Company on each one hundred shares of the outstanding common stock of The North American Company. In lieu of certificates for fractions of shares of stock of Pacific Gas and Electric Company, cash will be paid at the rate of 41 cents for each 1/100th of a share of such stock of Pacific Gas and Electric Company, this rate being based on the approximate market price of $41.00 per share as of August 2, 1945, the date the proposed dividend was declared.

Said declaration having been filed on the 3d day of August 1945, and notice of filing having been duly given in the manner and form prescribed by Rule U-23 under said act and the Commission not having received a request for a hearing with respect to said declaration within the period specified in such notice, or otherwise, and not having ordered a hearing thereon; and

The North American Company having requested that the Commission issue its order on or before August 25, 1945; and

The Commission finding that the requirements of section 12 (d) and Rules U-43 and U-44 are satisfied, that no adverse findings are necessary thereunder, and that action upon said declaration should be accelerated, and the Commission deeming it appropriate in the public interest and in the interest of investors and consumers to permit said declaration to become effective;

It is hereby ordered, Pursuant to said Rule U-23 and the applicable provisions of said act and subject to the terms and conditions prescribed in Rule U-24 that said declaration be and the same is hereby permitted to become effective forthwith.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F. R. Doc. 45–15712; Filed, Aug. 23, 1945; 12:21 p. m.]

PART II

FEDERAL REGISTER

VOLUME 10 NUMBER 168

Washington, Saturday, August 25, 1945

Regulations

TITLE 10—ARMY: WAR DEPARTMENT

Chapter VIII—Supplies and Equipment

PROCUREMENT REGULATIONS AND JOINT TERMINATION REGULATION

The following regulations in Parts 801 to 849 of this chapter comprise the complete War Department Procurement Regulations, 5 September 1942, together with the War and Navy Department Joint Termination Regulation, 20 April 1945, as amended by changes subsequent to those dates, including Change 50 dated 10 August 1945.

In Subchapters A and C the numbers to the right of the decimal point correspond to the paragraph numbers in the original regulations. In Subchapter B the first portion of the paragraph numbers in the original regulations—"7–"—has been omitted. With this exception the numbers to the right of the decimal point correspond to the paragraph numbers in the original regulations.

[SEAL] EDWARD F. WITSELL,
Brigadier General,
Acting The Adjutant General,
War Department.

W. JOHN KENNEY,
Vice Chief,
Office of Procurement and Material,
Navy Department.

AUTHORITY: Parts 801 to 849, inclusive, issued under sec. 5a, National Defense Act, as amended, 41 Stat. 764, 54 Stat. 1225, 10 U.S.C. 1193–1195; the First War Powers Act, 1941, 55 Stat. 838, 50 U.S.C. Supp., 601–622; and the Contract Settlement Act of 1944, 58 Stat. 649.

Subchapter A—Procurement

[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 other regulations, 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 of 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 regulations.* Prior to July 1, 1942, it was the practice of the War Department to publish procurement regulations in the form of Army Regulations, War Department Procurement Circulars, and otherwise. As of July 1, 1942, the present numbered series of procurement regulations was issued to replace all other procurement regulations in effect as of that date. As changes in or additions to these regulations become necessary, they are currently effected by the publication of revisions.

(Continued on next page)

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§ 801.102 *Rescission of Army Regulations.* The following Army Regulations have been rescinded:

AR 5-50	AR 5-160	AR 5-240	AR 5-320
AR 5-100	AR 5-200	AR 5-260	AR 5-340
AR 5-140	AR 5-220	AR 5-300	AR 5-360

§ 801.103 *Rescission of other regulations, instructions and directives.* (a) Effective July 1, 1942, all War Department Procurement Circulars not theretofore rescinded, and the temporary series of procurement regulations with numbers followed by "T", have been rescinded.

(b) All regulations, instructions and directives inconsistent with these procurement regulations as originally issued under date of July 1, 1942, or with any revision thereof, shall be deemed rescinded as of July 1, 1942, or as of the date of such revision, as the case may be.

SUBPART B—DISTRIBUTION OF PROCUREMENT REGULATIONS

§ 801.106 *Distribution of procurement regulations.*

§ 801.106-1 *Distribution to military establishments of complete sets of procurement regulations and of revisions to complete sets.* (a) Complete sets of procurement regulations and of revisions to complete sets are distributed by Legal Branch, Office, Director of Matériel, Headquarters, Army Service Forces, Room 5C-659, The Pentagon, Washington 25, D. C.

(b) All communications pertaining to the distribution of complete sets of procurement regulations and of revisions to complete sets, 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;

(6) Requests that mailings of revisions be discontinued; should be addressed and forwarded directly to the address mentioned in paragraph (a) of this section.

(c) Any request for complete sets should specifically indicate whether or not any addition or other change is to be made in the mailing list for future revisions.

(d) 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.

(e) Any request which involves an increase in the number of copies of complete sets being maintained at an installation, or an increase in the number of copies of revisions to be forwarded to an installation, should be accompanied by information concerning the need for the increase.

(f) 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.

(g) Except as indicated in § 801.106-2, no distribution is made of any individual procurement regulation in separate form.

§ 801.106-2 *Distribution to military establishments of Procurement Regulation No. 7 and Joint Termination Regulation (PR 15 in separate form).* (a) Procument Regulation No. 7 and the Joint Termination Regulation (PR 15) are included in complete sets of Procurement Regulations and in revisions to complete sets. Section 801.106-1 relates to distribution of complete sets and revisions to complete sets. In addition, Procurement Regulation No. 7 and the Joint Termination Regulation (PR 15) and changes thereto, in separate form, are available to military establishments as indicated in paragraphs (b) and (c) of this section.

(b) Procurement Regulation No. 7 and changes thereto, in separate loose-leaf form, are distributed through Adjutant General Depots and, in case of the Army Air Forces, through ATSC District Offices and Headquarters, Air Technical Service Command, Wright Field, Dayton, Ohio. Requisitions for Procurement Regulation No. 7 and changes thereto, in separate form, should be addressed and forwarded to the appropriate distribution office and not to the address mentioned in § 801.106-1 (a).

(c) The Joint Termination Regulation (PR 15) and changes thereto, in separate loose-leaf form, are distributed through the Readjustment Distribution Center, Federal Office Building, 6th Floor, 90 Church Street, New York 7, New York. Requests for the Joint Termination Regulation and changes thereto, in separate form, should be addressed and forwarded to that office and not to the address mentioned in § 801.106-1 (a).

(d) When requesting Procurement Regulation No. 7 or the Joint Termination Regulation (PR 15), in separate form, the requesting installation should specify whether or not any addition or other change is to be made in the mailing list for the receipt of future changes to such regulations.

§ 801.106-3 *Availability of procurement regulations to private concerns.* (a) The complete procurement regulations, and the changes made by each revision, are reprinted in the FEDERAL REGISTER, which is available, at a nominal charge, from the Superintendent of Documents, Washington 25, D. C. The filing sheet of each revision to complete sets of procurement regulations lists the particular issues of the FEDERAL REGISTER in which such reprinting has taken place. In addition, the complete procurement regulations, or in certain cases particular procurement regulations, are also reprinted in certain commercial services.

(b) The Joint Termination Regulation (PR 15) and changes thereto, in separate loose-leaf form, are available in limited quantities, free of charge, to war contractors and allied organizations from the Joint Termination Regulation Distribution Center, Room 633, 90 Church Street, New York 7, New York. A mailing list is maintained by that office for the forwarding of future changes.

(c) Procurement Regulation No. 7 and changes thereto, in separate loose-leaf form, are available on a subscription basis, at a nominal charge, from the Superintendent of Documents, Washington 25, D. C. A mailing list is maintained by that office for the forwarding of future changes.

SUBPART C—APPLICABILITY OF REGULATIONS

§ 801.107 *Authority with respect to procurement.*

§ 801.107-1 *Basic statute.* Section 5a of the National Defense Act, as amended by section 2 of the act of December 16, 1940, provides in part as follows:

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. (10 U.S.C. 1193; M.L. 1939, sec. 897)

By the terms of the act of December 15, 1944 (Public Law 488, 78th Congress) the above-quoted provision will remain in force until six months after the termination of the present war or until such earlier date as Congress or the President may designate.

§ 801.107-2 *Delegations from the Secretary of War to the Under Secretary of War.* (a) 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.

(b) 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.

(c) 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.

§ 801.107-3 *Responsibilities of the Under Secretary of War fixed by AR 5-5.* Although Army Regulation 5-5 was rescinded as of July 1, 1942, and not reissued until April 2, 1945, the portion of that regulation relating to the responsibilities of The Assistant Secretary of War (now the Under Secretary of War), as in effect just prior to its rescission, 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 1b (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, R. L., 1939).

(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.

c. 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.

The foregoing provisions of this section were confirmed by paragraph 2d of Army Regulation 5-5, as reissued on April 2, 1945.

§ 801.107-4 *Orders, directives, regulations, and instructions relating to procurement policy, organization or procedure.* Under date of September 16, 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 superseded memorandum was formerly set forth in this section].

ROBERT P. PATTERSON,
Under Secretary of War.

§ 801.107-5 *Delegations from the Under Secretary of War*—(a) *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 29, 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, develop-

ment 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.

(b) *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.

§ 801.107–6 *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 pursuant 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.

§ 801.107–7 *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.

§ 801.107–8 *Delegation of authority to Legal Assistant to Director of Matériel and to Chief, Legal Branch to approve contract forms.* Under date of November 12, 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.

§ 801.107–9 *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 § 801.107–5, and by the Special Representative of the Under Secretary of War of the authority delegated to him, as set forth in § 807.107–7. 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. Authority conferred upon any of the chiefs of the technical services under any paragraph of these procurement regulations may be exercised by the chiefs of the technical services, respectively, by redelegation or otherwise, through such officer or officers or civilian official or officials of the War Department as may be designated by them or by any person authorized by them to make such designation, with such powers of delegation or successive redelegation as they may deem appropriate; subject, however, to any provisions in the particular section of this chapter,

(a) Forbidding the assignment or delegation of the authority mentioned in such section, or

(b) Imposing limitations upon the assignment, delegation or exercise of such authority.

The exercise prior to the date of these regulations of any such authority by any such officer or officers or civilian official or officials of the War Department is hereby ratified and confirmed in all respects.

§ 801.107–10 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.*

§ 801.108–1 *Preliminary definitions.* (a) The term "procurement activities", as used in § 801.108–2, 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.

(b) The term "Army agencies", as used in § 801.108–2, includes all personnel of the Army, except as indicated in § 801.108–6. In particular, it includes the agencies referred to in §§ 801.108–4 and 801.108–5.

(c) The term "appropriated funds", as used in § 801.108–2, 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.

§ 801.108–2 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 § 801.108–1, 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.

§ 801.108–3 *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".

§ 801.108–4 *Army Air Forces.* (a) 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.

(b) 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.

(c) 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 Division, Assistant Chief of Air Staff, Matériel and Services.

§ 801.108–5 *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 sections 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, except as provided in § 803.318c–2, 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 section see § 801.108–3.

§ 801.108–6 *Procurement, contracting, termination and renegotiation authority of commanding officers outside continental United States.* (a) In general, each commanding officer in charge of United States armed forces outside the continental United States and its territories and possessions, including Alaska, who is responsible direct to the War Department, in connection with the procurement of supplies and facilities which he may deem necessary or appropriate to facilitate the prosecution of the war and to accomplish the mission confided in him or to protect the health, safety and welfare of the forces under his command, may disregard the provisions of the procurement regulations, Army Regulations and other regulations, circulars, or instructions, and 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. 330, War Department, 1944, as amended by section IV, Circular No. 53, War Department, 1945.

(b) Likewise, in general, 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 is responsible direct to the War Department, in connection with the procurement of supplies and facilities which he may deem necessary or appropriate to facilitate the prosecution of the war and to accomplish the mission confided in him, or to protect the health, safety and welfare of the forces under his command, may disregard the provisions of the procurement regulations, Army Regulations or other War Department regulations, restrictions, circulars or instructions, and if he finds that to do so would facilitate the prosecution of the war, may disregard any provisions of law relating to procurement: *Provided, however,* That he is not authorized to disregard any of the provisions of (1) Title II of the First War Powers Act, 1941, (2) the restrictive provisions contained in Executive Order No. 9001 or (3) except where express authority to take such action is given in a particular case, any law approved after 18 December 1941. This matter is more fully set forth in section II of Circular No. 330, War Department, 1944, as amended by section IV, Circular No. 53, War Department, 1945.

(c) Each commanding officer referred to in paragraph (a) or (b) above is authorized to exercise, within the limit of his command, subject to any applicable regulations or instructions of the Director of Contract Settlement, or of the War Department, any authority and discretion granted to the War Department under the Contract Settlement Act of 1944. The chiefs of the several technical services, subject to any such applicable regulations or instructions, are also authorized by Subchapter C, to exercise with respect to any contracts or class of contracts being administered under their direction, and made or performed outside of the continental limits of the United States or in Alaska, any such authority and discretion granted by that Act. The procedures applicable to the termination of contracts set out in Subchapter C are not applicable outside the continental United States or in Alaska, but may furnish useful suggestions as to procedures appropriately to be followed in such areas. This matter is more fully treated in section III of Circular No. 330, War Department, 1944.

(d) Authority and discretion under the Renegotiation Act of 1943 and under the Renegotiation Act of 1942 have been delegated to each commanding officer in charge of United States armed forces in Alaska or outside the continental United States, who is responsible direct to the War Department, as more fully set forth in section IV, Circular No. 330, War Department, 1944.

§ 801.108–7 *Procurement within the United States for armed forces abroad.* It is to be noted that the provisions of Circular No. 330, War Department, 1944, referred to in § 801.108–6 have no application to procurement within the United States for armed forces abroad.

SUBPART D—MISCELLANEOUS PROHIBITIONS

§ 801.109 *Prohibition against voluntary service.*

§ 801.109–1 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.*

§ 801.110–1 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.

§ 801.110–2 Whenever troop labor has been used:

(a) Authority therefore will be given in writing.

(b) A report enumerating in detail the service rendered will be forwarded to the Commanding General, Army Service Forces, Attention of Industrial Personnel Division.

(c) 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.*

§ 801.111–1 *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.

§ 801.111–2 *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:

(a) 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.

(b) 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 paragraph (c) below.

(c) 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.

(d) In an opinion (JAG 231.27) 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.

§ 801.111–3 *Regulations supplementary to basic statute.* The following regulations supplementary to the statute set forth in § 801.111–1 are prescribed:

(a) 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.

(b) 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 paragraph (b) above. In particularly meritorious cases where because of the unusual training, experience or other qualifications of the officer or employee, the chief of a technical service finds that the application of the regulations contained in such paragraph would be a serious obstacle to the service in performing its mission, a request for an exemption may be forwarded to the Director, Purchases Division, Headquarters, Army Service Forces. Such requests shall be held to a minimum and when made shall 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 § 801.111–1 or from paragraph (a) of this section.

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 Department, 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 fur-

ther 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.*

§ 801.116–1 Except as specifically otherwise provided in § 801.116–2, 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.

§ 801.116–2 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

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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.*

§ 802.203–1 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.

§ 802.203–2 The term "negotiated purchases" includes all purchases made by negotiation as so defined. (See § 802.241).

§ 802.204 *Contracting authority.*

§ 802.204–1 *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).

§ 802.204–2 *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.

§ 802.204–3 *Authority conferred.* Title I of Executive Order No. 9001 confers authority on the War Department under The First War Powers Act, 1941, as follows:

(a) 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 § 801.107–9.

(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) "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."

(d) "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.)

§ 802.204–4 *Restrictions on powers.* Title II of Executive Order No. 9001, 3 CFR Cum. Supp., prescribes the following regulations for the exercise of the authority thereby conferred.

(a) "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, 3 CFR 1943 Supp. See Subpart I of this part.)

(b) 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.)

(c) 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 to 803.390–7.)

(d) 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 to 803.321–4.)

(e) 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 (see § 811.1181).

(f) The cost-plus-a-percentage-of-cost system of contracting shall not be used.

(g) 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.

(h) 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.)

§ 802.204–5 *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 § 801.107–5 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 dis-

cusses 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.*

§ 802.220–1 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 subpart states the policies to be followed and the factors to be considered in placing contracts, in selecting contractors, in scheduling deliveries and in revising delivery schedules.

§ 802.220–2 *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 Subchapter C of this chapter.

§ 802.221 *Purchase of used or second-hand materials.*

§ 802.221–1 *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 (a) they are suitable in quality and design for the particular purpose involved, and (b) 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.

§ 802.221–2 *Execution.* 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 § 802.221–2, and will place responsibility upon a designated member of his staff for requiring compliance with that policy to the greatest extent practicable.

§ 802.221–3 *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.

§ 802.221–4 *Purchases from disposal agencies.* (See §§ 806.613 to 806.613–8.)

§ 802.222 *Time for placing contracts and scheduling deliveries.*

§ 802.222–1 *General policies.* (a) 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 (1) to restricting contract commitments to the practicable minimum both as to time and quantity, and (2) 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 charges are to be avoided.

(b) The scheduling 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 up 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.

§ 802.222–2 *Suggested methods for minimizing contract commitments or increasing flexibility of production rates.* In succeeding sections, 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.

§ 802.222–3 *Avoiding excessive "lead time"*—(a) *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.

(b) *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.

§ 802.222–4 *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.

§ 802.222–5 *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.

§ 802.222–6 *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.

§ 802.222–7 *Use of "Letter of Commitment" for controlled materials or critical components.* (a) 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.

(b) 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.

(c) 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.

(d) 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 and 803.303a–1 which deal 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 section, 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.

§ 802.222–8 *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.

§ 802.222–9 *Illustrative contract provisions.* Two sets of contract provisions are here reproduced, exemplifying certain of the techniques discussed above.

(a) *"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.

(b) *"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 Contracting 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.

§ 802.222–10 *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 this chapter (see especially §§ 803.306 to 803.306–4), the technical services are urged to devise and employ contract provisions and procedures along the lines discussed in §§ 802.222 to 802.223.

§ 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 and Reconversion, by the War Production Board (see Directive No. 2, as amended, February 10, 1945; 10 F.R. 1731), 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.

§ 802.223–1 *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 § 802.222–1, the objective is to insure delivery in time to avoid delays in the war program, but to avoid creation of unnecessary inventories.

§ 802.223–2 *War Manpower Commission labor areas.* 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 in which acute labor shortages exist, or are anticipated which will endanger essential production.

Group II: Areas in which labor shortages exist which may endanger essential production, or areas which are approaching a balanced demand-supply situation.

Group III: Areas in which labor supply substantially balances demand for essential production or a moderate labor surplus currently exists or is anticipated.

Group IV: Areas in which a substantial labor surplus exists or is expected to develop.

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.

§ 802.223–3 *Production urgency committees.* There have been established in labor shortage areas certain committees termed Production Urgency Committees, with authority among other things to approve the placement of contracts in Group I labor areas as indicated in § 802.223–4a.

§ 802.223–4 *Policy and procedures as to placing contracts in labor shortage*

areas. §§ 802.223–4a through 802.223–5 set forth the policy and procedures in connection with the placement of contracts and contract supplements in labor shortage areas. The terms "contracts" and "contract supplements" as used in such sections include informal, as well as formal, commitments.

§ 802.223–4a *Group I areas*—(a) *Contracts permitted to be placed in Group I areas.* Placement of contracts in Group I areas is to be avoided so far as possible. Subject to the requirements of paragraphs (c) and (d), the only contracts or contract supplements which may be placed in a Group I area are those:

(1) Which cannot be placed elsewhere with adequate assurance of obtaining satisfactory performance and timely deliveries;

(2) Which, in the considered judgment of the chief of the technical service concerned or of his authorized representative, it is impracticable to place elsewhere;

(3) Which are placed, pursuant to § 802.224, with originating manufacturers for newly developed articles; or

(4) Which are placed with a contractor currently employing less than 100 wage earners and which will not increase employment in the contractor's plant above 100 wage earners.

(b) *Contracts not requiring clearance of Production Urgency Committees.* A contract or contract supplement of the character referred to in paragraph (a) may be placed in a Group I area without clearance of a Production Urgency Committee if the contract or contract supplement will not increase employment in the contractor's plant above the ceiling currently established by the War Manpower Commission; or, if a contractor currently employs less than 100 wage earners, will not increase employment in the contractor's plant above 100 wage earners: *Provided, however,* That the reporting procedure prescribed in paragraph (c) is to be followed in all cases when applicable.

(c) *Reporting of intended placement of contracts not requiring clearance with Production Urgency Committees.* Before placement of an unclassified contract or contract supplement having a total value of $100,000 or more, which pursuant to paragraph (b) does not require clearance of the appropriate Production Urgency Committee, the reporting requirements of this paragraph (c) will be followed. Four copies of War Production Board Form GA–861, duly completed, and having endorsed thereon the proposed contract number and the legend "Critical production—information only—no increase in labor over the ceiling currently established by the War Manpower Commission" will be transmitted to the appropriate Production Urgency Committee. These reports will be transmitted through the Army representative on the Committee, or in the case of the Army Air Forces through the Army Air Forces representative on the Committee, at least 7 days before placement of the contract or contract supplement, unless this will unduly delay production, in which case the report will be transmitted as far in advance of placement as is practicable.

(d) *Contracts requiring clearance of Production Urgency Committees.* No contract or contract supplement, of any value, which will increase employment in the contractor's plant above the ceiling established by the War Manpower Commission, may be placed in a Group I area without prior clearance of the appropriate Production Urgency Committee; except that contracts or contract supplements with a contractor currently employing less than 100 wage earners and which will not increase employment in the contractor's plant above 100 wage earners need not be so cleared. Applications for clearance of the Committee will be made to the Committee for the area in which are located the facilities of the contractor at which the work, or a major part of the work, will be done. Applications for clearance may seek approval of a single contract or of an entire program.

§ 802.223–4b *Group II areas.* The only contracts or contract supplements which may be placed in a Group II area are:

(a) Continuation contracts (or contract supplements having the same effect as continuation contracts) which will not increase employment in the contractor's plant above the ceiling currently established by the War Manpower Commission;

(b) New contracts which cannot be placed in a Group III, IV or unclassified area with adequate assurance of performance and timely deliveries;

(c) Contracts or contract supplements which, in the considered judgment of the chief of the technical service concerned or of his authorized representative, it is impracticable to place in a Group III, IV or unclassified area;

(d) Contracts placed, pursuant to § 802.224, with originating manufacturers for newly developed articles; or

(e) Contracts or contract supplements with a contractor currently employing less than 100 wage earners and which will not increase employment in the contractor's plant above 100 wage earners.

§ 802.223–5 *Policy with respect to placing of contracts in Group III, Group IV and unclassified labor areas.* There are no restrictions upon the placement of contracts in a Group III, IV or unclassified area. 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.

§ 802.223–6 *Subcontracting in labor shortage areas.* (a) Prime contractors holding the bulk of the War Department contracts have received a request from the Under Secretary of War to apply principles similar to those described in §§ 802.223–4 and 802.223–5, 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.

(b) 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 § 802.225–7 (b). It is hereby determined that supplemental agreements entered into for this purpose will facilitate the prosecution of the war.

(c) Many prime contractors are regularly receiving the monthly classification 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.

§ 802.223–7 *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:

(a) *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.

(b) *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.

(c) *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.

(d) *New facilities.* Avoidance, so far as possible, of the creation of additional new (as distinguished from existing) machinery, equipment or facilities.

(e) *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.

(f) *More than one source of supply.* Placement of contracts 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. This standard need not be adhered to if the chief of the technical service concerned shall determine (1) that such placement is impracticable or (2) that, although such placement is practicable, (i) the plant protection arrangements of the source selected are in his judgment entirely satisfactory, (ii) the source has adequate capacity for all foreseeable needs and (iii) adequate information with regard to the costs of operation of the source and the prices of comparable items are and will be available to ensure that an adequate and efficient analysis may be made of the prices to be charged to the Government for such item. In this connection, consideration will be given to the relative needs of the source selected and of proposed secondary sources for facilities and equipment to perform the contract.

No one of the six objectives stated in this section 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.

§ 802.223–8 *Price*—(a) *With respect to labor areas (Prime Contracts).* To effectuate the policy with respect to avoiding the placement of prime contracts in critical labor areas, the technical services are authorized and directed to pay a premium price up to 15 per cent higher than the lowest of the prices bid by bidders located in Group I and Group II labor areas in any case where payment of such a premium price is necessary to avoid placing the particular prime contract in a Group I or Group II labor area.

(b) *With respect to small business concerns (Prime Contracts).* To effectuate the policy with respect to the placement of prime contracts with small concerns, the technical services are authorized and directed to pay a premium price up to 15 percent higher than the average price at which the purchase can be made by the contracting office from suitable large concerns (over 500 wage earners), regardless of the labor area or areas in which such large concerns are located, in any case where payment of such a premium price is necessary to place a prime contract with a small concern.

(c) *With respect to other policies.* The technical services are authorized and directed to pay higher prices than would otherwise be required to whatever extent such action is necessary to carry out the other policies expressed in §§ 802.223–1 to 802.223–7, inclusive, including the policies with respect to (1) avoiding placement of subcontracts in critical labor areas and (2) placement of subcontracts with small concerns.

(d) If, in the opinion of the chief of a technical service, a premium higher than 15 per cent should be paid in a particular case to achieve the purposes referred to in paragraphs (a) and (b) of this section, the proposed prime contract, with supporting data, will be submitted to the Director, Purchases Division, for approval.

(e) When a determination has been made that a contract will be placed at a premium price, such contract will be so placed with due regard for other War Department pricing policies.

(f) When the policies expressed in §§ 802.223–1 to 802.223–7, inclusive, 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 initial orders for a new article should be placed with the manufacturer who developed it. Unless the chief of the technical service concerned determines such placement is not necessary (see § 802.223–7 (f)) effort should be made to place enough of the volume with other qualified producers to develop at least one other experienced source; when possible 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.*

§ 802.225–1 *Smaller War Plants Act.* (a) 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.

(b) 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.

(c) 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.

(d) 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.

§ 802.225–2 *General policy.* (a) 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 §§ 802.225–3 to 802.225–9 is established in order to assist the smaller plants to participate to the greatest practicable extent in War Department contracts.

(b) 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 §§ 802.225 to 802.225–9. 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.

§ 802.225–3 *Designations by, and representatives of, SWPC.* (a) To date no certifications as referred to in § 802.225–1 (c) 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.

(b) 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 § 802.225–6.

(c) 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 § 802.225–5.

§ 802.225–4 *Basic program.* (a) 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:

(1) 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.

(2) 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.

(3) 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).

(4) 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.

(b) 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.

§ 802.225–5 *Action at the office issuing procurement directives.* Opportunity will be afforded the SWPC Procurement Specialist at the office issuing procurement directives (a) 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 (b) 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 § 802.225–6 (a). 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.

§ 802.225–6 *Action at the contracting office.* (a) 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 § 802.225–5 (b)):

(1) Whether a particular procurement is suitable for manufacture by small concerns.

(2) The minimum portions of procurements found suitable under (1) which the contracting office will endeavor to place with designees of SWPC in compliance with §§ 802.223–1 to 802.223–8.

(3) In cases found suitable under (1) and (2), 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.

(4) While emergency procurements are normally excluded under § 802.225–4 (a) (1) 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.

(b) Other action to be taken by the contracting office includes:

(1) 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.

(2) 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.

(3) Small concerns designated by SWPC in accordance with (a) (3) 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.

(4) On the date established under (a) (3) 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.

(5) 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 (a) (3) 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.

(6) Negotiation and placement of awards will be governed by the factors enumerated in §§ 802.223–1 to 802.223–8. 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 §§ 802.225–1 to 802.225–9 shall detract from that consideration. In considering the factor referred to in § 802.223–7 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.

(7) The SWPC copy of the abstract or information indicated in (5) will be noted as to awards made and signed by the contracting office.

(c) In the event the SWPC Procurement Specialist does not agree with the position taken by a contracting officer on the points enumerated in (a) and (b), 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.

§ 802.225–7 *Encouraging subcontracting to small concerns.* (a) 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.

(b) 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 § 802.225–7 (b) and (c).

(c) The procedures described in paragraph (b) above will be applied to subcontracts where it appears to be practicable to get a subcontractor to spread his load among more subcontractors.

§ 802.225–8 *Limitations*—(a) *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 §§ 802.223–1 to 802.223–8, 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.

(b) *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.

§ 802.225–9 *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.

§ 802.225a *Policies for the protection of manufacturers of materials and components.* The Procurement Policy Board of the War Production Board has adopted the following policies for the protection of manufacturers of materials and components:

(a) Manufacturers and suppliers of certain materials and components (including certain B products as defined in the Controlled Materials Plan) used in war production have been obligated to carry stocks of such materials, finished components and work in process and to enter into commitments for work and supplies for the manufacture of such materials and components, in excess of requirements under firm orders of such components actually placed with them by their war production customers.

(b) Without such inventory and commitments and without manufacture in anticipation of firm orders, the manufacturers in question would not be in a position to meet promptly the purchase orders which are placed with them by war producers, frequently on short notice or on a short-term basis. These manufacturers are thus faced with a continuing large volume of short-term war production orders requiring the maintenance of an inventory of materials, completed components and work in process, but without the protection of a back-log of legal commitments from customers necessary to cover the production cycle involved. In the event of mass termination, such manufacturers would be unable to collect costs under existing termination procedures, except to the extent that they hold orders for such materials and components.

(c) In view of the administrative difficulties involved in direct dealings with the manufacturers of materials and components, the policy is to afford protection to such manufacturers of materials and components in the following manner:

(1) Such manufacturers will look for protection to the war contractors and subcontractors with whom they deal by requiring from them adequate placement of advance orders.

(2) Prime war contractors and their subcontractors requiring use of such materials and components should place advance orders with their respective subcontractors and suppliers, from time to time (but within the total quantitative requirements of the particular contracts), sufficient to protect such subcontractors and suppliers throughout the cycle of production required to produce such materials and components.

(3) In carrying out this policy it is important to avoid the unreasonable accumulation of excess inventories either by the manufacturers of such materials and components or by the war contractors and subcontractors to whom such manufacturers sell these materials and components. Accordingly, war contractors and subcontractors should carefully schedule production and deliveries under such advance orders and require the manufacturers of such materials and components to adhere reasonably to the schedules so arranged in accordance with sound production planning. However, in the event of the termination of such advance orders, inventories of such materials, components or work in process reasonably acquired for the performance of such orders should be taken into account and paid for in the termination settlement of such orders.

(4) So far as possible, advance orders placed for such materials and components should contain the approved subcontract termination article for use in fixed price orders or subcontracts. The inclusion of this provision is intended to provide fair compensation to the manufacturer of the materials and components in the event of termination, but the absence of this provision will not operate to deprive such manufacturers of fair compensation in the event of termination of orders placed with them.

§ 802.226 *Debarred bidders.*

§ 802.226–1 *Persons disqualified.* Contracts will not be placed with persons who are on any of the following lists of debarred bidders.

(a) List of bidders debarred from bidding on War Department contracts by reason of violations of the Walsh-Healey Act. (See § 809.916 and following.)

(b) List of bidders debarred from bidding on War Department contracts by reason of violations of the Davis-Bacon Act. (See § 809.910 and following.)

(c) War Department confidential list of bidders to whom awards will not be made.

(d) 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.)

§ 802.226–2 *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.

§ 802.226–3 *Procedures for placing bidders on confidential list*—(a) *Authority.* The Adjutant General will place a bidder upon the confidential list of bidders to whom awards will not be made (1) 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 (2) 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.

(b) *Notice.* If such action has not already been taken, the Director, Purchases Division, will send to the bidder by registered mail, a notice stating (1) 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, (2) 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 (3) 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 paragraph.

(c) *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 (1) the complete file, including any statement filed by the bidder, together with the direction to place the bidder's name on this list, and (2) drafts of notices of the action taken to be sent by The Adjutant General to the bidder, the technical services and the Comptroller General.

§ 802.228 *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 (June 29, 1943).

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.

§ 802.230–1 *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.

§ 802.230–2 *Profit control.* In spending public money the War Department has the duty to see that its purchases are made at fair prices. In addition, pursuant to the Renegotiation Act, the War Department is charged with the responsibility for eliminating excessive profits on renegotiable business of contractors assigned to it for renegotiation. In many cases, skillful and careful negotiation of contracts will prevent excessive profits from accruing and make their renegotiation unnecessary.

§ 802.230–3 *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 § 811.1132–2.)

§ 802.231 *General policy.*

§ 802.231–1 *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).

§ 802.231–2 *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 § 802.223–8. 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 §§ 802.223–1 to 802.223–7.) 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.*

§ 802.232–1 *Disadvantages.* Fixed-fee contracts have the following disadvantages:

(a) The fixed-fee contract does not encourage efficiency to the same extent as the closely priced 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.

(b) Such contracts require uneconomical use of 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.

(c) The financial pressures which usually restrain a fixed price contractor in competing for labor and accumulating inventories do not apply to the same extent to the fixed-fee contractor.

§ 802.232–2 *Use forbidden: exceptions.* For the foregoing reasons supply contracts will not be made on a cost-plus-a-fixed-fee basis. Pending the conversion of one or more cost-plus-a-fixed-fee supply contracts in the course of performance in the contractor's plant to a fixed price basis pursuant to instructions from the Under Secretary of War, it may be necessary to use the cost-plus-a-fixed-fee form for the placement of further orders to be filled from the plant. While the cost-plus-a-fixed-fee form may be used for contracts which in substance provide for the payment of a management fee for the operation of Government-owned facilities, contracts of a service character such as modification center and airline contracts, research, experimental and development contracts, and contracts for first production quantities of articles not previously produced, such contracts will be placed on a fixed price basis whenever, in the judgment of the chief of the technical service, it is practicable to do so. Utilization of the price adjustment articles authorized by §§ 803.375 and 803.376 should aid materially in negotiating a fixed price for research and development work.

§ 802.232–3 *Conditions on use.* In the exceptional situations where the cost-plus-a-fixed-fee form is permitted by § 802.232–2 to be used for a supply contract, the following conditions will be met:

(a) 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.

(b) Contracts for first production quantities of articles not previously produced will include a provision for conversion as soon as practicable to a fixed price basis (see article set forth in § 803.341–3). Whenever feasible a similar provision will be included in research, experimental, and developmental contracts.

(c) The article for statutory renegotiation of the fixed-fee will be included when required by § 812.1208 (a).

(d) In no case will the fixed-fee exceed the statutory maximum of 7% for supply contracts.

§ 802.232–4 *Construction contracts.* Whenever feasible, construction contracts will be made on a fixed price rather than a fixed-fee basis.

§ 802.232a *Time and material or labor-hour contracts.* The buying of articles or services on the basis of (a) direct labor at specified hourly rates, which rates are intended to include wages, overhead and profit, and (b) 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 (1) engineering and design services in connection with production of supplies, (2) the engineering, design and manufacture of dies, jigs, fixtures, gauges and special machine tools, (3) repair work of various kinds, and (4) outside work on regular production in emergency cases.

§ 802.232a–1 *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.

§ 802.232a–2 *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.

§ 802.232a–3 *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:

(a) *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.

(b) *Hourly rate.* Separate rates should be specified for (1) engineering and design, and (2) 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.

(c) *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.

(d) *Overtime.* In order to prevent excessive overtime and double time a provision having substantially the effect of one of the following should be employed:

(1) 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.)

(2) 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.

(3) 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.

(e) *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.

(f) *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.

(g) *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.

(h) *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.

(i) *Excessive use of unskilled labor.* The vendor may be required to covenant that employees used on the work will on the average be as efficient as the average for the departments of his plant concerned.

§ 802.232a–4 *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.

§ 802.232a–5 *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.

§ 802.232a–6 *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.*

§ 802.233–1 *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.

§ 802.233–2 *Limitations.* Under war conditions, however, the ordinary fixed price contract is not practicable for certain types of cases:

(a) 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.

(b) 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.

§ 802.233–3 *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:

(a) Termination articles.
(b) Financing provisions.
(c) Price revision articles.
(d) 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 and 803.324–1.) These provisions reduce to the minimum any hardships on contractors resulting from necessary adjustments and reductions in the supply program.

§ 802.234a *Protection against loss from early termination.* 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 (a) partial payments, (b) advance payments, and (c) guaranteed loans. The principles and purposes governing the use of these financing methods are discussed in §§ 803.319 to 803.321–14, 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 810 of this chapter. Finally, the right to assign government contracts as security for financing is dealt with in §§ 803.390 to 803.390–7.

§ 802.236 *Price revision articles.* One means of adapting fixed price contracts to wartime conditions so as to achieve the basic objectives stated in § 802.230 is through the use of price revision articles. They are designed as a vehicle to protect contractors against the risks and hazards resulting from performing contracts in a war economy and in return for that protection, to enable contractors to agree to close prices. War Department policies with respect to price revision, the articles themselves, and the rules for their use and administration are set out in Part 803 of this chapter, particularly in §§ 803.370 to 803.777–4, inclusive, of Subpart H thereof. That part should be consulted before any price revision article is used or considered for use in any contract.

§ 802.236a *Escalation.* Except as and to the extent specifically provided in §§ 802.236–4, 802.236–5 and 802.236–6, of this subpart, the use in War Department contracts of articles or provisions for escalation of any kind is not authorized. The term "escalation" as used herein means any kind of automatic, self-operating or nonnegotiated price revision, whether based on indexes of any character contractors' costs, OPA maximum prices, or any other standard. The term does not include negotiated price revision under the standard articles therefor set out in §§ 803.370 to 803.777–4, inclusive, of this chapter.

§ 802.236b *Incentive contracts.* An article providing for price redetermination upon completion of the contract, with specified rates of sharing in cost savings below and extra costs above a target price, appears in § 803.379–5 of this chapter. An explanation and an illustration of the operation of the article and the conditions for its use are set out in §§ 803.378–1 to 803.378–4, inclusive.

§ 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.*

§ 802.238–1 *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.

§ 802.238–2 *Reconversion and storage.* (a) 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.

(b) 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.

§ 802.238–3 *Extraordinary risks incident to wartime operations.* In connection with both fixed price and cost-plus-a-fixed-fee contracts, the Government, pursuant to the First War Powers Act and Executive Order 9001 (see Op. J.A.G., SPJGC 1944/10016, September 5, 1944; conclusions concurred in by the Attorney General September 5, 1944), may assume particular extraordinary risks and hazards incident to war-time operations to which the contractor may be exposed, by agreeing to indemnify the contractor against loss or liability arising out of such risks and hazards. In cost-plus-a-fixed-fee contracts various contracting forms presently in use provide for such indemnification and no special approval by the Director, Purchases Division, Headquarters, Army Service Forces, for the use of these forms is required. In fixed price contracts such indemnification will be given only in rare cases and upon a clear showing of necessity. In any such fixed price contract (a) all contingencies and allowances for such risks and hazards will be excluded from the contract price and (b) such an indemnity agreement will be included only with the prior written approval of the Director, Purchases Division, Headquarters, Army Service Forces. In requesting such approval, a full statement will be submitted as to (1) the extent of the potential liability under the indemnity agreement, (2) any proposed contract maximum and minimum limits on the extent of such liability or other conditions affecting such liability, (3) the appropriated funds presently available to satisfy such liability and (4) the facts and reasons justifying such an indemnity agreement in the particular case rather than requiring the contractor to resort to insurance.

§ 802.239 *Subsidy prohibited.* None of the funds appropriated in the Military Appropriation Act, 1945 (Pub. Law 374, 78th Congress) shall be used for the payment of any subsidy on agricultural or other products. (See Section 1 of Pub. Law 374, 78th Congress, under subtitle "Subsistence of the Army".)

SUBPART D—NEGOTIATION OF CONTRACTS

§ 802.240 *Method of contracting.*

§ 802.240–1 *By negotiation.* Except as provided in § 802.240–2, 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, 3 CFR Cum. Supp., 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 § 802.204–1).

§ 802.240–2 *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.

§ 802.240–3 *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.*

§ 802.241–1 *General rule.* Subject to specific provisions of the regulations in this subpart, 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 under the authority of the First War Powers Act, 1941.

§ 802.241–2 *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.*

§ 802.243–1 *Value of standard proposal forms.* The use of contractors' proposals is an important method of obtaining information upon which to base a sound judgment in making awards of contracts. These proposals are particularly valuable when presented on standardized proposal forms, since a uniform method of statement facilitates comparison of all proposals received and their evaluation in the light of the principles set forth in Subpart B of this part and in ASF Manual M601.

§ 802.243–2 *Standard procurement forms prescribed for use in certain cases.*

§ 802.243–2a *When used*—(a) *Standard Procurement Form No. 3.* Whenever, in the opinion of the technical service involved, detailed cost or price information should be obtained from bidders as an aid to the adequate negotiation of contracts for supplies (excluding construction), it will employ Standard Procurement Form No. 3 and related forms (WD AGO Form 293, Mar. 1, 1945; WD AGO Form 293–1, February 1, 1945 or July 12, 1944; and WD AGO Form 293–2, March 1, 1945, referred to in § 813.1327. Within the scope of the foregoing rule, each technical service may prescribe more precisely the size and types of procurements in which Standard Procurement Form No. 3 is to be used.

(a) *Standard Procurement Form No. 4.* In simple procurements of supplies (excluding construction) 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), the information to be obtained from bidders may ordinarily be confined substantially to the quotation of prices. Whenever the technical service desires to obtain this limited information in the form of a written proposal, it will employ either (1) W. D. Contract Form No. 5 (§ 813.1317d), if that form of contract is otherwise suitable, or (2) Standard Procurement Form No. 4 (WD AGO Form 298), referred to in § 813.1327, followed by the execution of a suitable contract form.

§ 802.243–2b *Detailed instructions to procurement offices as to use of Form No. 3 and related forms*—(a) *Flexibility.* One important feature of Standard Procurement Form No. 3 is that it has considerable internal flexibility. The procurement office is required by the terms of the form to select and specify (within established limits), the data which the bidder is expected to furnish. Thus, the procurement office has latitude to accommodate the form to the necessities of particular procurements; for example, it may relieve the bidder of the task of compiling information which is not pertinent to the procurement or which is already known to the procurement office.

(b) *In general.* (1) Whenever feasible a preliminary survey will be made, by telephone or otherwise, to determine the prospective contractors to whom an award might be made. In this way, contractors not likely to make acceptable proposals may be eliminated without be-

ing required to expend the time and effort necessary to fill out Standard Procurement Form No. 3. Care should be taken, however, not to eliminate or exclude contractors whose proposals might possibly be acceptable, and not to act inconsistently with the policy of the Smaller War Plants Corporation. (See § 802.225).

(2) It is of the utmost importance that no contractor be asked to complete any portion of Standard Procurement Form No. 3 requiring information which will not be pertinent or useful in properly effecting the particular procurement, or which is already on file with the procurement office. This principle of selectivity will be applied to each contractor, so that in a particular procurement all of the bidders need not necessarily be asked to furnish the same information. The exclusion of such irrelevant and duplicative data is made possible by the flexible character of the form. A proper use of this feature of the form will relieve contractors of the burden of gathering and filling in unnecessary information. At the same time it will help to expedite procurements by making it possible for contractors to fill out and return their proposals more promptly. If, however, portions of the form omitted in the original request call for information which is subsequently deemed pertinent, that information may be requested by sending to the contractor additional copies of the form with an indication in the box on page 1 of the additional portions of the form to be completed.

(3) The procurement office and the contractor may, of course, make arrangements for the contractor to submit some part or parts of the information called for by the form by means of periodic reports or some other mutually satisfactory method. Such an arrangement may expedite and improve dealings with the contractor. Information so submitted should meet the substance of the requirements of the form.

(4) Although deviations from or additions to the form are not permitted without approval of higher authority (see § 802.243–3 where necessary the information obtained through use of the form may be clarified or amplified through correspondence or personal negotiation.

(5) The information submitted in or with Standard Procurement Form No. 3 will be used as a basis of negotiations with the prospective contractor, in accordnace with Part 802 and ASF Manual M 601 and any other instructions that may be in force from time to time.

(6) If a prospective contractor requests that he be notified upon rejection of his proposal, the procurement office will give such notice.

(c) *Instructions as to page 1 of Form No. 3.* (1) In the upper left-hand corner of page 1 of Standard Procurement Form No. 3, insert in the appropriate blanks the date, the request number (if any), the name and address of the procurement office, the name and address of the contractor, the preference rating to be assigned and (on the line entitled "Subject") the name or a brief description of the item or items as to which a proposal is sought.

(2) The box in the upper right-hand corner of page 1 should contain a list of all the titles of the Contractor's Proposal, or the portions of such titles which the contractor is requested to fill out or answer. It is at this point that the flexibility of the form, which has been discussed above, comes into actual operation. Care and sound judgment must be exercised in selecting the titles, or portions thereof, to be included in the box. The selection should be made only after a review has been made of the information already on hand in the procurement office, and after consideration has been given to the need for further information necessary to effect the procurement in accordance with War Department policies. In filling out the box, list only the title if all the sections thereof are to be completed; otherwise the sections themselves should be specified in the box. If the request for proposal relates to more than one kind of item, specify in the box, by item number or otherwise, the items for which cost breakdowns are to be submitted under either or both of Titles V and IX.

(3) A reference to the contract form number or some other brief description of the form of proposed contract (which may be stated in the alternative if the procurement office is uncertain as to which form of contract is to be used) should be inserted in the first blank in paragraph 1 on page 1. Mandatory clauses need not be specified. Any optional contract clauses which the procurement office desires to include in the contract should be appropriately referred to and identified in the blank space provided at the end of paragraph 1 on page 1. Such of the optional clauses as the procurement office requires to be included in the contract should be stated first and preceded by the words "No Deviation"; such of the optional clauses as the procurement office merely suggests for inclusion should be set forth in a second group and preceded by the words "Optional with Contractor". It may be desirable in some cases to attach a copy of the contract form or of the clauses.

(4) Insert in the blanks in paragraph 4 on page 1 the number of copies of the form to be completed and returned and the date for the return of the Contractor's Proposal. The date specified should give the contractor a reasonable time in which to complete and return the proposal but should be no longer than is necessary in the circumstances.

(5) The inclosures should be indicated in the lower left-hand corner, and the name of the procurement office and the signature and title of its representative should be entered on the blank lines in the lower right-hand corner, of page 1.

(d) *Instructions as to remainder of Form No. 3, and as to related forms.* (1) It should be noted that certain portions of the form following the heading "Contractor's Proposal" are required to be filled in by the procurement office. In filling out those portions and in determining the portions of the forms to be completed by the contractor, the following instructions will be observed.

(2) If the procurement office desires that the contractor's proposal be kept open for a certain number of days, that number may be inserted in the blank space provided therefor in paragraph 2 on page 2 of the form. That time should be kept to a minimum and in any event will not exceed thirty days. Otherwise the space should be left blank for completion by the contractor.

(3) In Title III (A) of Standard Procurement Form No. 3, Scope of Proposal, show the F. O. B. point in the space provided therefor and insert in the appropriate columns of the table the following information as to each item: Item number, description of item (or reference to description contained in any attachment), total quantity and unit (as pounds, yards, etc.) on the first two lines of column (3), and the Government's requested delivery schedule. The description of the item may be extended into column (3). Items for which separate prices are wanted, e. g., special packaging, should be shown as separate items in the table. If the delivery schedule for one item is the same as that for an item already specified, the schedule need not be repeated but may be indicated by the words "Same as for Item ——". In the case of spare parts, reference may be made to deliveries concurrent with the item or items to which they relate. If a proposal is desired without deviations from the request, the words "No Deviation" should be inserted in the columns for the description, total quantity and delivery schedule, or in one or more of such columns. If deviations are allowed, leave space at least equal to that used in filling out the Government's requested delivery schedule below each item. Columns (5) and (6), for the proposed unit and total prices, and column (7), for the contractor's proposed delivery schedule, should of course be left blank for completion by the contractor.

(4) Attention is invited to the space provided at the end of paragraph (c) of Title III of the "Instructions for Completing War Department Standard Procurement Form No. 3". (WD AGO Form 299–2, March 1, 1945). This space is intended for the insertion, by the procurement office, of special instructions relating to taxes in any case where the general instructions are inapplicable or inappropriate.

(5) Insert in paragraph (D) of Title III of Standard Procurement Form No. 3, a brief but adequate description of any material which the Government proposes to furnish. If more convenient, that description may be included in column (2) of the table under Title III (A). If no such material is to be furnished, insert the word "None". Where necessary, insert the words "No Deviation".

(6) Before the contractor is asked to complete Titles II and IV of Standard Procurement Form No. 3, the paragraphs appearing under those titles should be carefully checked by the contracting officer. To the extent that any of the information called for will not be useful or the procurement office already has obtained, or has made other arrangements by means of periodic reports or otherwise for obtaining, the information called for, the contractor should not be asked to complete the titles. Thus the box on page 1 of the form should list only such

of the paragraphs of Titles II and IV as will elicit new and useful information. It should be noted that some information is requested only to the extent available, and that whether the information called for by specification of paragraph 6 of Title IV is or is not to be furnished is a matter to be left to the contractor's judgment.

(7) When the contractor is asked to fill out Title V of Standard Procurement Form No. 3, Unit Cost Breakdowns, or some part or parts thereof, Column A under that title will be called for in nearly all cases, but Column B will be omitted where the contractor has not had relevant previous experience or where the procurement office already has satisfactory cost information on hand. It is permissible to insert in lines 12 through 19 any special elements of cost which are not included in the classifications appearing in the preceding lines, e. g., packaging materials or special tooling, but such insertions should be made sparingly and only when there is good reason for them. It is also permissible to work out with the contractor other classifications that are suitable for use with his cost accounting system or to make arrangements for over-all reports on his past cost experience. Where the proposal is to include more than one type of item, a continuation sheet for Title V (WD AGO Form 299–1, February 1, 1945 or July 12, 1944) should be added to each counterpart of the form for each of the additional items for which cost information is required.

(8) The supplement to Standard Procurement Form 3 includes Titles VI through X. If no part of those titles or any part thereof is specified in the box on page 1 the supplement should not be sent to the contractor.

(9) Title VI, Indirect Factory Expenses, and Title VII, General and Administrative Expenses, portions of Standard Procurement Form No. 3, should not be specified in the box on page 1 of the form unless there is reasonable cause for believing that the information to be elicited thereby will assist materially in the negotiation of the contract price, and the information is not already on file with the procurement office. Arrangements may be made with the contractor for the submission of this information in some other form or forms acceptable to both the procurement office and the contractor. Note that under each title, columns 1, 2 or 3 may be listed in the box on page 1 of the form. Use only the column or columns necessary in the particular instance.

(10) Title VIII of Standard Procurement Form No. 3, Accounting Methods, should be used only infrequently, when the information called for therein will contribute substantially to an understanding of the contractor's proposal. Where the information is considered useful, the request may be limited, by an appropriate indication in the box on page 1, to such of the lettered clauses as may be deemed appropriate in the particular instance. This title should not ordinarily be used where the contractor has supplied the information to the procurement office in connection with a reasonably recent or current procurement. Such information should be preserved in the files of the procurement office.

(11) Title IX of Standard Procurement Form No. 3, Costs of Other Items, should be specified only where the amount involved in any of the paragraphs of that title is substantial. Where necessary, the items as to which the information is sought should be specified. Note that any one or more of the paragraphs may be listed in the box on page 1 of the form. Continuation sheets used with Title V (WD AGO Form 299–1, February 1, 1945 or July 12, 1944) should be supplied where Title IX is used.

(12) Title X of Standard Procurement Form No. 3, Direct Materials, is to be used only where a few materials constitute an important element of total material cost and where the amount of subcontracting is not large in relation to total material cost. A list of the materials as to which the information is desired may be inserted by the procurement office in the space provided therefor. If Title X is specified in the box on page 1 of the form with respect to more than one item, the necessary additional copies of the supplement should be furnished to the contractor.

(13) One copy of the "Instructions for Completing War Department Standard Procurement Form No. 3" (WD AGO Form 299–2, March 1, 1945) should be sent to each contractor along with the necessary number of counterparts of Standard Procurement Form No. 3.

§ 802.243–2c Detailed instructions to contractors for completing Form No. 3 are set forth in the related form, WD AGO Form 299–2, March 1, 1945.

§ 802.243–2d Standard Procurement Form No. 4 (WD AGO Form 298) is self-explanatory.

§ 802.243–3 *Deviations from standard proposal forms permitted only with approval of higher authority.* (a) Unless authority is obtained under paragraph (b) below, Standard Procurement Forms Nos. 3 and 4 will be used without deviation or addition, and no substitute or supplementary proposal forms will be used (except that W.D. Contract Form No. 5 may be employed in lieu of Standard Procurement Form No. 4, as provided in § 802.243–2 (a). Where necessary, however, the information obtained through use of Standard Procurement Forms No. 3 or 4 may be clarified or amplified through correspondence or personal negotiation.

(b) Upon request and justification by the technical service involved, the Director, Purchases Division, Headquarters, Army Service Forces, may in particular classes of cases permit deviations from or additions to Standard Procurement Forms Nos. 3 and 4, or otherwise grant partial or complete exemptions from the requirements of §§ 802.243–2 and 802.243–3 (a). Such authority will normally be granted only where the forms do not fit the cost patterns of particular industries, and in these instances it will be required that the authorized deviations from or additions to the forms be applied uniformly to all members of the industry.

§ 802.244 *Purchase analysis.*

§ 802.244–1 *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.

§ 802.244–2 *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.)

§ 802.244–3 *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).

§ 802.244–4 *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.

§ 802.246–1 *Mandatory orders.* Under section 9 of the Selective Training and Service Act of 1940 as amended, mandatory orders may be placed with producers requiring them to supply items of the nature and kind usually produced or readily capable of being produced by them. Payment for such items will be

at prices determined by the Secretary of War to be reasonable. While the general use of such orders is not favored they will be resorted to when necessary under the circumstances described and outlined in § 814.1450 et seq. Thus, where a qualified producer whose products are required in the war effort refuses to produce and deliver upon terms which in the opinion of the contracting officer are fair and reasonable, the issuance of a mandatory order will normally follow. Specific reference should be made to § 814.1450 et seq. for detailed procedures covering this method of procurement.

§ 802.246–2 *Requisitioning.* When articles needed in the war effort are already in existence but for one reason or another cannot be purchased after reasonable negotiation, the procedure under the requisitioning acts, as outlined in § 814.1401 et seq., should be resorted to in order to obtain the required items.

§ 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.*

§ 802.248–1 *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.

§ 802.248–2 *Adjustment of prices and terms of subcontracts and purchase orders under cost-plus-a-fixed-fee contracts* (a) 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.

(b) 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.

(c) 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 paragraph (b) above, whenever the contracting officer specifically determines.

(1) 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

(2) That fair and equitable dealing with the subcontractor or supplier in accordance with sound business practice requires such price increase or other adjustment; or

(3) That the maximum use of available facilities through subcontracting will be thereby facilitated or encouraged; or

(4) 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.

(d) 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 paragraph (c) above. Whenever approval of any such adjustment is contemplated, the contracting officer shall prepare and file a complete memorandum of the circumstances involved and the reasons for the proposed approval, and shall forward a copy of this memorandum to the chief of the technical service concerned for review and concurrence. No approval shall be given by the contracting officer under the contract until concurrence of the chief of the technical service concerned has been received. 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.

(e) 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.*

§ 802.251–1 *Functions.* The chief of each technical service will maintain within his service appropriate agencies to perform the following price analysis functions:

(a) 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;

(b) To prepare special price analysis reports for procurement officers; and

(c) To compile and maintain comparative price records and indices for such items and their important components.

§ 802.251–2 *Sources of data.* In performing their functions, price analysis agencies will make use of the following types of information:

(a) 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.

(b) Cost estimates and other relevant data from proposals submitted by contractors.

(c) Analyses of the effect of major production and engineering problems on prices and costs.

(d) Prices paid for important subcontracted items. (See § 802.254.)

(e) Breakdowns of costs of subcontractors and sub-subcontractors based on production experience.

(f) Balance sheets and operating statements and similar data for contractors and subcontractors from price adjustment sections and financial services.

(g) Information from other Government agencies such as the Office of Price Administration. (See §§ 811.1130 to 811.1135.)

(h) Where necessary, audits of costs of contractors and subcontractors made by the cost analysis sections.

§ 802.251–3 *Use of price data.* (a) 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.

(b) 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.

(c) 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.

(d) 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.

§ 802.251–4 *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.*

§ 802.253–1 *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.

§ 802.253–2 *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.*

§ 802.254–1 *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.

§ 802.254–2 *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.

(a) 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 (1) whether prices paid are reasonable; (2) whether quantities purchased are proper; (3) whether suppliers and subcontractors are reasonably qualified; (4) whether the purchasing personnel are well-qualified; and (5) whether purchasing procedures are sound and adequate.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

§ 802.254–3 *Methods of supervising purchasing by fixed price contractors.* (a) 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.

(b) 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 § 802.254–2. 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.

§ 802.254–4 *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.

§ 802.260–1 *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.

(a) All such new work within the meaning of the above definition will be prosecuted under contract whenever possible.

(b) 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.

§ 802.260–2 *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 § 809.911–5, 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 § 809.911–7, 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.

§ 802.260–3 *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.

§ 802.260–4 *Same; termination of construction contracts.* The completion of specific construction projects, including original installation of equipment, will be made whenever possible under construction contracts.

(a) When this procedure is not practical, resort will then be made to hired labor.

(b) 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

§ 802.290 *General*—(a) *Purpose.* This subpart relates to procedures established for purchase action reporting in order to comply with requirements of law and to provide a single system within the Army for reporting placement, cancellation and amendment of contracts.

(b) *Effective date.* Compliance is required, effective 1 March 1945, with the revised procedures provided in this subpart. However, in the event the new Purchase Action Report Forms W.D., A.G.O. No. 375 (original) and W.D., A.G.O. No. 376 (supplemental), which replace the old Report of Negotiated Purchase in Excess of $10,000, W.D., A.G.O. Forms No. 496 and 495, are not available by 1 March 1945, existing supplies of old forms may be used until such time as the new forms become available. Every effort will be made to utilize the new forms as early as possible.

(c) *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.

(d) *Matters to be reported.* All purchase actions, original and supplemental, as defined in § 802.291 (c) and (d), will be reported if involving the required dollar amount.

§ 802.291 *Definitions*—(a) *Technical service.* Notwithstanding the provisions of § 801.108–5 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 any service command. The term "chief of a technical service" shall be deemed to include the Commanding General, Army Air Forces.

(b) *Service command.* The term service command" shall be deemed to include the Military District of Washington and the Northwest Service Command.

(c) *Purchase action.* A purchase action is any transaction whatsoever (including all types of awards, also mandatory orders and requisitions under Part 814) 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; *Provided, however,* That the following are not regarded as purchase actions and therefore are not reportable:

(1) Transactions of the Army Exchange Service (see § 802.294 (c));

(2) Pay of individuals;

(3) Shipping and traveling expenses;

(4) Open-end contracts for services which are subject to open allotment as enumerated in Circular 245, W.D., 1944 and open-end contracts for the rental or lease of communications services or facilities;

(5) Indefinite quantity contracts, such as those listed in § 806.605d, which are for the use of more than one technical service or service command; and

(6) Delivery or purchase orders placed against a contract executed by another Department of the Government, such as a contract executed by the Procurement Division, Treasury Department.

Each delivery or purchase order in excess of $10,000 issued against an indefinite quantity contract of the character described in subparagraph (5) above, is considered to be a purchase action and should be reported as such on W.D., A.G.O. Form No. 375 (see § 802.205–3 (c)).

(d) *Supplemental purchase action.* A supplemental purchase action is any transaction affecting the cost of an existing purchase action by means of change order, supplemental agreement, amendment, cancellation, extension, renewal, etc.; this includes changes resulting from renegotiation, price adjustment, export differentials, etc. Changes such as adjustments due to over or under deliveries pursuant to a Variation in Quantities clause (see § 802.295–3 (a)) are not supplemental purchase actions.

(e) *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. Letter orders, letter purchase orders, letter contracts and letters of intent are examples of preliminary contractual agreements (see W.D. Contract Form No. 7, § 813.1307, as one type of such agreement). For manner of reporting, see § 802.295–1.

(f) *Open-end contract.* The term "open-end contract" as used in this subpart, means a contract in which no final completion date is set and which usually involves recurring charges for goods and services. (Contracts for gas, electricity or water may be cited as examples.) For manner of reporting, see § 802.295–2.

(g) *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 of the contracting officer, and with or without a written change order modifying the contract. For manner of reporting, see § 802.295–3.

(h) *Date of award; date of action.* The "date of award" of an original purchase action is the date upon which a verbal or written notice of award thereof is given by the contracting officer to the contractor. The "date of action" with respect to a supplemental purchase action is the date upon which verbal or written notice thereof is given by the contracting officer to the contractor.

§ 802.292 *Filing of reports by stations under the jurisdiction of chiefs of technical services or commanding generals of service commands.* Stations under the jurisdiction of chiefs of technical services or commanding generals of service commands are required to file purchase action reports of the types, in the man-

ner, and under the conditions provided in §§ 802.292–1 through 802.292–5. Stations under the jurisdiction of functional staff divisions, Headquarters, Army Service Forces, will file such reports as provided in § 802.294.

§ 802.292–1 *Stations required to report.* Except as noted below, it is the responsibility of every station (whether an exempted or non-exempted 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 file reports of purchase actions. Such reports, however, are not required to be filed by stations under the jurisdiction of the commanding generals of the Army Ground Forces or of the Defense Commands, or stations outside the continental limits of the United States (except those in the Northwest Service Command).

§ 802.292–2 *Method of determining whether report is to be filed with chief of technical service or commanding general of service command.* The numbering of the contract being reported determines to whom the report is to be forwarded by the station concerned. A purchase action or supplemental purchase action bearing a contract number which contains the letter symbol representing a particular technical service (see § 803.309–2) will be reported to the chief of that technical service. A purchase action or supplemental purchase action bearing a contract number which contains the symbol indicating a particular service command (see § 803.318b–5) will be reported to the commanding general of that service command.

§ 802.292–3 *Original Purchase Action Reports.* (a) A Purchase Action Report (W.D., A.G.O. Form No. 375, see § 802.297–1) will be submitted for every original purchase action which involves a total cost (actual or estimated) in excess of $10,000. The original and five copies (or more if directed by appropriate authority) of such report, will be forwarded to the chief of the appropriate technical service or commanding general of the appropriate service command, not later than the fifth calendar day following the date of award of the purchase action. (See § 802.291 (h).)

(b) When a purchase action, which was not reported because it previously involved a total cost of not more than $10,000 is increased so as to involve, after such increase, a total cost (actual or estimated) in excess of $10,000, a Purchase Action Report (W.D., A.G.O. Form No. 375, see § 802.297–1) will be submitted. The original and five copies (or more if directed by appropriate authority) of such report will be forwarded to the chief of the appropriate technical service or commanding general of the appropriate service command not later than the fifth calendar day following the date of award, which, in this instance, is considered to be the date on which a written or verbal notice of the increase is given by the contracting officer to the contractor.

§ 802.292–4 *Supplemental Purchase Action Reports.* (a) Subject to the conditions set forth in this paragraph, a Supplemental Purchase Action Report (W.D., A.G.O. Form No. 376, see § 802.297–2) will be submitted for every supplemental purchase action as defined in § 802.291 (d) when, with respect to the purchase action involved (including such supplemental purchase actions, if any, as may have been reported previously),

(1) The cost of such purchase action is completely cancelled,

(2) The total cost (actual or estimated) of such purchase action is decreased to $10,000 or less, or

(3) The total cost (actual or estimated) of such purchase action is increased or decreased by more than $1,000.

The original and one copy (or more if directed by appropriate authority) of the Supplemental Purchase Action Report will be forwarded to the chief of the appropriate technical service or to the commanding general of the appropriate service command not later than the fifth calendar day following the date of action. (See § 802.291 (h).)

(b) For purposes of purchase action reporting, a decrease to $10,000 or less of the total previously reported cost (actual or estimated) involved in a purchase action will be considered and reported as a complete cancellation of such purchase action. This is so because only purchase actions involving a total cost in excess of $10,000 are reportable. If, due to a decrease to $10,000 or less in total cost involved in a purchase action, a Supplemental Purchase Action Report has been filed showing the complete cancellation of such purchase action and if subsequent changes (including termination settlements) increase such total cost to more than $10,000, a further Supplemental Purchase Action Report (W.D., A.G.O. Form No. 376) will be filed; notwithstanding the provisions of § 802.292–3 (b), such increase should not be reflected on a Purchase Action Report (W.D., A.G.O. Form No. 375).

(c) Supplemental purchase actions involving increases or decreases of $1,000 or less in the total cost (actual or estimated) of previously reported purchase actions, normally will not be reported on the Supplemental Purchase Action Report (W.D., A.G.O. Form No. 376) but will, instead, be included in the Monthly Summary Report (see § 802.292–5 and item (4) (c) in § 802.297–3a). Exceptions to this general rule concerning supplemental purchase actions of $1,000 or less are: (1) When the supplemental purchase action involves an increase in the total cost (actual or estimated) from $10,000 or less to more than $10,000; and (2) When the supplemental purchase action involves a decrease in the total previously reported cost (actual or estimated) from more than $10,000 to $10,000 or less. In the former case the entire purchase action will be reported as an original purchase action on W.D., A.G.O. Form No. 375 (see § 802.292–3 (b)), and in the latter case it will be reported as a complete cancellation on W.D., A.G.O. Form No. 376 (see paragraph (b) of this section.)

§ 802.292–5 *Monthly Summary Report of purchase actions.* (a) Within five calendar days after the close of each calendar month, one copy (or more if directed by appropriate authority) of the Monthly Summary Report (see § 802.297–3) will be submitted to the chief(s) of the appropriate technical service(s). Each Monthly Summary Report will reflect all original (W.D., A.G.O. Form No. 375) and all Supplemental (W.D., A.G.O. Form No. 376) Purchase Action Reports submitted to the chief(s) of such technical service(s) during the preceding calendar month. In addition each Monthly Summary Report will reflect the total of all supplemental purchase actions which (1) involve increases or decreases during the month under report of $1,000 or less in the cost of previously reported purchase actions and (2) are not required to be, and have not been reported on W.D., A.G.O. Forms No. 375 or 376 (See § 802.292–4 (d) and item (4) (c) in § 802.297–3a.) and have not been reported on previous Monthly Summary Reports. In preparing the Monthly Summary Report, the Purchase Action Reports (W.D., A.G.O. Form No. 375) should be classified by date of award (see § 802.291 (h)) and the Supplemental Purchase Action Reports (W.D., A.G.O. Form No. 376) and supplemental purchase actions of $1,000 or less should be classified by date of action (see § 802.291 (h)) and separate Monthly Summary Reports should be submitted for each month in which any reported action took place.

(b) No Monthly Summary Reports are required to be filed with the commanding generals of service commands.

§ 802.293 *Filing and distribution of reports by chiefs of technical services and commanding generals of service commands.* Chiefs of technical services and commanding generals of service commands are required to file purchase action reports of the types, in the manner, and under the conditions provided in § 802.293–1 through § 802.293–3. Functional staff divisions, Headquarters, Army Service Forces, will file such reports as provided in § 802.294.

§ 802.293–1 *Original and Supplemental Purchase Action Reports.* (a) Purchase Action Reports (W.D., A.G.O. Form No. 375, see § 802.297–1) and Supplemental Purchase Action Reports (W.D., A.G.O. Form No. 376, see § 802.297–2) will be forwarded by the chiefs of the technical services and commanding generals of service commands as follows:

Purchase Action Report (W.D., A.G.O. Form No. 375): 4 copies to the Department of Labor; 1 copy to the War Production Board.

Supplemental Purchase Action Report (W.D., A.G.O. Form No. 376): 1 copy to the War Production Board.

(b) In forwarding reports as provided in paragraph (a), the following addresses should be used:

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 Program and Statistics, Room H-327, Temporary E, 6th and Adams Drive SW., Washington 25, D. C.

(c) Notwithstanding the instructions in paragraphs (a) and (b) above, all

required copies of original or Supplemental Purchase Action Reports with respect to mandatory orders and requisitions (pursuant to Part 814) will be filed by the chiefs of technical services and commanding generals of service commands with the Director, Purchases Division, Headquarters, Army Service Forces, Attention: Chief, Control Branch.

§ 802.293–2 *Monthly Summary Report.* (a) Within 10 calendar days after the close of each calendar month, one copy of the Monthly Summary Report (see § 802.297–3) will be submitted by the chief of each technical service to the Commanding General, Army Service Forces, Attention: Director, Purchases Division. Each such report will be reconciled with the Monthly Summary Reports submitted to the chief of the technical service by stations reporting to him during or for that month (see § 802.292–5). The purpose of the Monthly Summary Report submitted by the chiefs of the technical services is to provide a control over purchase action reporting and to enable Purchases Division, Headquarters, Army Service Forces, to maintain a record of the totals of all purchase actions (with a value as awarded or supplemented in excess of $10,000) as of the month in which they took place, regardless of the month during which they are reported. It is essential, therefore, that the chief of each technical service, in preparing the Monthly Summary Report, classify original Purchase Action Reports (W.D., A.G.O. Form No. 375) by date of award (see § 802.291 (h)) and Supplemental Purchase Action Reports and changes of $1,000 or less by date of action (see § 802.291 (h)), and forward to Purchases Division a separate Monthly Summary Report for each month in which any reported action took place.

(b) Commanding Generals of service commands are not required to submit Monthly Summary Reports.

§ 802.293–3 *Quarterly Report on Procurement.* The chiefs of the technical services and the commanding generals of the service commands will submit to the Commanding General, Army Service Forces, Attention: Director, Purchases Division, within twenty days from the close of each quarter of each fiscal year, one copy of the Quarterly Report on Procurement (see § 802.297–4). Purchases Division will assemble the Quarterly Reports submitted by the chiefs of the technical services and the commanding generals of the service commands into one report which will be submitted by it to Congress, pursuant to Public Law 528, 77th Congress.

§ 802.294 *Filing of reports by functional staff divisions and stations under their jurisdiction.* (a) Except as otherwise provided in paragraph (c) of this section, functional staff divisions, Headquarters, Army Service Forces, and stations under their jurisdiction, will submit reports concerning purchase actions in the same manner as chiefs of technical services and stations under the jurisdiction of the chiefs of technical services. A purchase action or supplemental purchase action bearing a contract number which contains the symbol indicating a particular functional staff division will be reported by a station to the director of that division.

(b) The director of each functional staff division will be responsible for submission by that division and stations under its jurisdiction of reports concerning purchase actions, to the same extent as the chief of a technical service is responsible for reports by that technical service and stations under its jurisdiction.

(c) Nothing in this subpart shall require the preparation or submission of any reports concerning purchase actions by Army Exchange Service.

§ 802.295 *Special instructions concerning reporting of preliminary contractual agreements, open-end contracts and indefinite quantity contracts.*

§ 802.295–1 *Preliminary contractual agreements* (see § 802.291–5). (a) A Purchase Action Report (W.D., A.G.O. Form No. 375) covering a preliminary contractual agreement, will be submitted by a reporting station not later than the fifth calendar day following the date of award (see § 802.291 (h)) under the following conditions:

(1) If the preliminary contractual agreement obligates funds in an amount (actual or estimated) in excess of $10,000,

(2) If the preliminary contractual agreement does not obligate funds, but the undertaking of the Government is not conditioned upon funds becoming available, and if the estimated cost involved under the preliminary contractual agreement exceeds $10,000.

(b) If the undertaking of the Government under the preliminary contractual agreement is conditioned upon funds becoming available (see, for example, the Letter of Intent which was the subject of the decision of the Comptroller General, issued under date of 22 December 1941; B–21873; 21 Comp. Gen. 605), an original Purchase Action Report will be filed when either the expenditures of the Government under such agreement total in excess of $10,000 or a final definitive contract (involving an actual or estimated cost in excess of $10,000) is executed, whichever shall first occur.

(c) If a Purchase Action Report (W.D., A.G.O. Form 375) is filed for a preliminary contractual agreement, a Supplemental Purchase Action Report (W.D., A.G.O. Form 376) will be filed not later than the fifth calendar day after completion of performance under such preliminary contractual agreement or after supplement (including execution of a final definitive contract), amendment or change order to such preliminary contractual agreement, provided in any such case that an increase or decrease in excess of $1,000 from the amount previously reported is involved. A Supplemental Purchase Action Report reflecting execution of a final definitive contract or completion of performance of the preliminary contractual agreement shall indicate this fact and shall also reconcile any difference in excess of $1,000 between the amount shown in the Supplemental Purchase Action Report with the amount reported on the original Purchase Action Report as supplemented by previous Supplemental Purchase Action Reports, if any.

§ 802.295–2 *Open-end contracts.* (See § 802.291 (f)). (a) The Purchase Action Report (W.D., A.G.O. Form No. 375) for an open-end contract will include the full amount estimated to be expended for the first contract year. A Supplemental Purchase Action Report (W.D., A.G.O. Form No. 376) will be filed not later than the fifth calendar day after the close of the first contract year, reconciling the difference between the estimated and actual expenditures for such contract year, and reporting, as a separate item the estimated expenditure for the ensuing contract year. Similar Supplemental Purchase Action Reports will be filed at the end of each succeeding contract year during the life of the contract. A final Supplemental Purchase Action Report clearly marked, "Final Report," will be submitted not later than the fifth calendar day after the completion or termination of the contract, adjusting any unreported quantity and value, whether it be an increase or a decrease.

(b) Where the amount to be expended under an open-end contract cannot be estimated in advance, a Purchase Action Report (W.D., A.G.O. Form No. 375) will be filed on the basis of actual expenditures when the aggregate expenditures thereunder exceed $10,000. Supplemental Purchase Action Reports will not be rendered from time to time as additional expenditures, aggregating in excess of $1,000, are incurred. Such additional expenditures will be reported on a contract or fiscal year basis on a Supplemental Purchase Action Report filed not later than the fifth calendar day after the close of the contract or fiscal year, as the case may be.

§ 802.295–3 *Indefinite quantity contracts.* For the purposes of this subpart, indefinite quantity contracts, as defined in § 802.291 (g), fall into four broad classes as follows:

(a) Those containing the standard clause entitled "Variation in Quantities" (§ 803.329) which permits the contractor to deliver 10 per cent over or under the quantity specified in the contract. In reporting this type of contract, only the original quantity and value need be stated; upon completion of deliveries no Supplemental Purchase Action Report is required even though deliveries may fall short or exceed the amount originally reported. Supplemental purchase actions (see § 802.291 (d)) involving an increase or decrease of more than $1,000, however, are required to be reported (see § 802.292–4).

(b) Those containing a clause 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 (see § 803.329a). This type of contract will be reported originally at the quantity and value set forth in the contract. Supplemental purchase actions involving an increase or decrease of more than $1,000 will be reported (see § 802.292–4).

(c) Those, such as listed in § 806.605d, which are for the use of more than one technical service or service command.

This type of contract is not regarded as a purchase action (see § 802.291 (c) (5)) and the basic contract will not be reported. A Purchase Action Report (W.D., A.G.O. Form No. 375), however, is required to be submitted for each purchase or delivery order executed under such an indefinite quantity contract and involving a total cost (actual or estimated) in excess of $10,000. Each such purchase or delivery order will be regarded as a separate purchase action and therefore will be reported on a non-cumulative basis without regard to any other such purchase or delivery order issued under the basic contract. For reference purposes, reports of such purchase or delivery orders should always indicate (in space (34)) the full contract number of the basic contract.

(d) Any other type of indefinite quantity contract. For the purposes of this subpart indefinite quantity contracts not falling within paragraphs (a), (b) or (c) above, will be considered and reported as "open-end contracts" (see § 802.295 (b)).

§ 802.296 *General instructions concerning report forms*—(a) *Supply of forms.* (1) W.D., A.G.O. Forms No. 375 and 376 are available upon requisition from Adjutant General Depots, or in case of Army Air Force activities, from the appropriate Air Technical Service Command Depot.

(2) Forms for Monthly Summary Reports may be reproduced locally or typed as required.

(b) *Classified reports.* If the item or service covered by either an original or Supplemental Purchase Action Report is classified, proper entries should be made in all spaces (see §§ 802.297–1a and 802.297–2a) and the whole report prominently labeled with the appropriate classification and transmitted according to regulations governing classified information.

§ 802.297 *Report forms and related instructions.*

§ 802.297–1 *Purchase Action Report; W.D., A.G.O. Form No. 375.*

WAR DEPARTMENT PURCHASE ACTION REPORT	1. Date of report	2. Per. Serial No.
3. From (station, name, and address)	4. Station No. service	5. Contract No. (P. O. No.)
6. To (technical service or service command concerned)	7. Type of purchase action	8. Date of award
9. Contractor (name and address)	10. Contracting as: Mfr. / Dealer	11. Contractor code / State code
	12. Delivery to start	13. To be completed.
14. Work performed at (name and address)	15. Inspected at	16.
	17. F. o. b.	18.
19. Subj. to Walsh-Healey Act: Yes / No	20. Title of applicable industry minimum wage determination (Secretary of Labor) if any:	21. Date P. C.—Rcvd

22. Item No.	23. Description of items	24. No. of units	25. Unit cost and unit	26. Total cost (indicate if estimate)
27. Total supplies and services				$
28. Government facilities provided this contract				$
29. Total amount of contract				$

Additional information required for contracts in excess of $100,000

30. Negotiators for Government	31. Negotiators for contractor
32. Reason for contractor selection (if no competition obtained)	33. Specification approval (name)

34. Remarks:

35. Name, grade, or title (type)	36. Signature

WD AGO Form 375 1 December 1944 — This form supersedes WD AGO 496, 13 December 1943, which will not be used after receipt of this revision.

§ 802.297–1a *Instructions for preparation of Purchase Action Report; W.D., A.G.O. Form No. 375.* The following numbered instructions apply to the corresponding numbers appearing on the report form reproduced in § 802.297–1.

(1) *Date of report.* This shall be the date upon which the report is prepared.

(2) *Purchase action report serial number.* This enables the contracting station and the controlling technical service or service command to reconcile their records. Inasmuch as many stations may originate purchase actions for and report them to more than one technical service, a separate serial number will be used for each such technical service. Each series of serial numbers will begin with Serial Number 1 for each new fiscal year and continue in exact sequence to the end of the fiscal year. No symbol indicating a technical service or service command need appear as part of the serial number; this will be indicated by the symbol shown in the contract number. (See §§ 803.209 and 803.316b–5. Reports made in one fiscal year for purchase actions awarded in a previous fiscal year should bear a serial number in the series of the fiscal year in which awarded.

(3) *From.* Include the name and address of the station preparing the report.

(4) *Station number and service.* This is the first part of the contract number and will include the station number and technical service or service command symbol appearing on the contract.

(5) *Contract Number (P. O. No.).* This is the final part of the contract number and will show the number assigned to the individual contract being reported. If a purchase order is being reported, the number thereof also will be indicated here.

(6) *To.* Indicate the name and address of the technical service or service command to which the report is being rendered.

(7) *Type of purchase action.* Indicate the type of contract involved. This information should state (i) whether the contract is a formal contract (namely, a contract contained in one instrument, executed by both parties, see § 803.303–2), purchase order, delivery order (see § 803.614) or letter order and (ii) whether the contract is a fixed price (lump sum) or cost-plus-a-fixed-fee contract. In addition, if the contract is a preliminary contractual agreement (see § 802.291 (e)), so indicate by the word "preliminary". If a mandatory order or requisition pursuant to Part 814 is involved, this should be indicated.

(8) *Date of award.* Indicate the date of award as defined in § 802.291 (h).

(9) *Name and address of contractor.* Insert here the name and address of the contractor as it appears on the contract. If more than one prime contractor is involved, list each one as a split award on separate Purchase Action Reports, and indicate by cross reference the Purchase Action Report Serial Numbers of all such reports.

(10) *Contracting as manufacturer or dealer.* Indicate by checking proper box whether the contractor is acting as a manufacturer or as a dealer.

(11) *Contractor code.* This space will always be left blank.

(12) *Delivery to start.* In most cases this will be the initial delivery date specified in the contract. If the contract is a construction contract, the date work is to begin should be shown. If the contract is for the purchase of real estate, the date of possession should be indicated. Where dates are dependent upon receipt of material, estimated dates are permissible but will be so indicated.

(13) *Completion date.* This will normally be the date specified in the contract for the completion of deliveries. In some cases it may be the same as the starting date or the date of award. If the date is dependent upon the receipt of material, an estimated date may be used but should be so indicated.

(14) *Work performed at.* Where the work is to be performed by the contractor and at the address indicated in space (9) the words "same as above" will be entered here. However, if the work is to be performed by a different contractor or at a different address, the name and location of the establishment or plant where the work will be performed must be stated. If the work is to be performed at more than one location, list each one and where possible indicate the approximate percentage of work to be performed at each location. If the space provided is insufficient, additional data may be inserted under "Remarks" at space (34). Where the street address as well as the name of the city is shown on the face of the contract, this should be included.

(15) *Inspection point.* The use of this space is optional with the chief of each technical service or commanding general of each service command.

(16) This space will normally be left blank. However, at the discretion of the chief of a technical service or a commanding general of a service command it may be utilized for such information as may be desired.

(17) *F.O.B. point.* Same as (15).

(18) Same as (16).

(19) *Walsh-Healey Act.* Reporting provisions of the Walsh-Healey Act (Act of June 30, 1936; 49 Stat. 2036; 41 U.S.C. 35-45) will, after 1 May 1943, be fulfilled by the proper submission of four copies of W.D., A.G.O. Form No. 375 for each original purchase action. Indicate by appropriate check mark whether or not the contract is subject to that act.

(20) *Title of applicable industry minimum wage determination.* If the purchase action comes under any industry minimum wage determination (see Part 809), the industry involved should be indicated by name.

(21) *Date P.C.-13 sent.* Enter the date on which the poster, P.C.-13, was sent to the contractor and to the plant locations. (See § 809.919-3).

(22) *Item Number.* Enter the item number for each item described in space (23). The use of space (22) is optional with the chief of each technical service and the commanding general of each service command.

(23) *Description of items.* Insert 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".

(24) *Number of units.* Enter the number of units for each item described in space (23).

(25) *Unit cost and unit.* State the unit cost and the unit involved. In cases where a varied group of items is shown in space (23), and not detailed, indicate various unit prices in the same manner; either as a price range, i.e., $4.37 to $4.69 each, or show the word "various" for a wide range of unit prices, such as on tools.

(26) *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 as a separate item. In cases where both supply items and either land acquisition, plant expansion or tool expansion are involved in a single purchase action, a description and cost of these groups should be shown separately as well as total cost of all groups. If, the purchase action is a preliminary contractural agreement (see § 802.291 (e)), the amount for which the War Department is obligated will be shown in space (26) and the estimated full contract price entered in space (23). In all other cases the total cost (actual or estimated) will be shown in space (26).

(27) *Total supplies and services.* Enter the total of all entries in space (26).

(28) *Government facilities provided this contract.* Enter the amount of funds made available for Government facilities under the contract being reported upon. Do not include such amount in the spaces (22) through (27).

(29) *Total amount of contract.* This is a total of spaces (27) and (28).

Spaces (30) through (33) need be filled in only if original value of contract at date of award exceeds $150,000.

(30) *Negotiator for the Government.* This may or may not be the contracting officer, but in each case the name(s) of the person(s) negotiating the contract for the Government will be shown.

(31) *Negotiator for contractor.* This should include the name(s) of the person(s) representing the contractor in negotiating the contract with the Government.

(32) *Reason for contractor selection.* Enter the principal or controlling reason why the particular contractor was selected for this contract if no competition was obtained. Where the contract was awarded pursuant to competitive bidding, so state by entering the words "competitive bidding", or a similar phrase.

(33) *Specification approval.* Where standard Government specifications, such as Army, Navy, Treasury Procurement, etc., are used, enter only the name of such agency. Where other than standard specifications have been used, enter the name of the person approving the use thereof.

(34) *Remarks.* This space may be used for any pertinent remarks, including data which cannot be entered in the appropriate prior spaces. At the discretion of the chief of each technical service or commanding general of each service command, additional data, such as the monthly scheduled deliveries, may be entered here. Where the Purchase Action Report covers a contract for the acquisition of land and the original value thereof at date of award exceeds $150,000, the following additional information will be added in this space for use in the Quarterly Report on Procurement (see § 802.297-4a (e)): a brief statement as to the location; the intended use of the land; the area; and the assessed value thereof as it appears on the records.

(35) *Name, grade or title.* Type the name and grade or title of the person signing the report.

(36) *Signature.* The original of each report should be signed by some responsible officer, normally the contracting officer; copies may bear either typewritten or rubber stamped signatures.

§ 802.297-2 *Supplemental Purchase Action Report; W.D., A.G.O. Form No. 376.*

WAR DEPARTMENT SUPPLEMENTAL PURCHASE ACTION REPORT	1. Date of report	2. Par. Ser. No.
3. From (Station name and address)	4. Station No. service	5. Contract No. / Supplement No.
6. To (Technical service or service command concerned)	7. Type of purchase action	8. Date of action
9. Contractor (Name and address)	10. Contracting as: Mfr. / Dealer	11. Contractor code / State
	12. Delivery to start	13. To be completed
14. Work performed at (Name and address)	15. Inspected at	16.
	17. F. O. B.	18.

19. Subj. to Walsh-Healey Act: Yes / No	20. Title of applicable industry minimum wage determination (Secretary of Labor) if any	21. Date P. C.—13 sent

22. Item No.	23. Description of items	24. No. of units	25. Unit cost and unit	26. Total cost (Indicate if estimate)

27. Contract value of items not revised		$
28. Total contract value including this revision		$
29. Total contract value prior to this revision	$	"xxxxxxxxxxxxxx"
30. Net change in contract value, this revision ☐ increase ☐ decrease	$	"xxxxxxxxxxxxxx"
31. Cash refunds prior to this revision ( ) this revision ( )		$

34. Remarks:

35. Name, grade or title (Type)	36. Signature

WD AGO FORM 376 1 December 1944 — This Form Supersedes WD AGO 495, 13 December 1943, which will not be used after receipt of this revision.

§ 802.297-2a *Instructions for preparation of Supplemental Purchase Action Report; W.D., A.G.O. Form No. 376.* The following numbered instructions apply to the corresponding number appearing on the report form reproduced in § 802.297-2. The word "Same" used in any of the following instructions means that the correspondingly numbered instruction in § 802.297-1a applies.

(1) Same.

(2) *Purchase Action Report Serial Number.* A Supplemental Purchase Action Report will contain the same serial number as the original Purchase Action Report, followed by a letter of the alphabet in parentheses, the first Supplemental Purchase Action Report using the letter "(a)"; the second "(b)," etc.

(3)-(4) Same.

(5) Same. In addition to the contract number, there will be entered in this space the number or letter of the contract supplement represented by the supplemental purchase action (see § 803.313–1).

(6)–(7) Same.

(8) *Date of action.* The date of the supplemental purchase action, determined as stated in § 802.291 (h), will be entered. In no case will the date shown be the date of award of the original purchase action.

(9) through (21) Same.

(22) through (26) Same. Entries under spaces (22), (23), (24), (25) and (26) will be made only for the items affected by the particular supplemental purchase action being reported. All entries will be the full quantities or costs as revised—do not enter merely the net increase or decrease. In all cases, the nature of the supplemental purchase action will be indicated (space (34) may be used)—viz: quantity increase or decrease; price increase or decrease, etc. Where quantities have been changed, show the number of units added or deleted; where delivery or completion dates have been changed, indicate the changes and specify the initial delivery date of any increased quantities; where a decreased quantity represents a partial or complete termination for the convenience of the Government, or a partial or complete termination by default of contractor, so indicate; where price changes have occurred, indicate the nature of the change and whether due to a change in specifications or in costs; where prices have been affected by partial termination, so indicate.

(27) *Contract value of items not revised.* Show the contract value of all items on the contract which are not affected by the supplemental purchase action being reported.

(28) *Total contract value, including this revision.* This entry will be the sum of the entries in spaces (26) and (27).

(29) *Total contract value prior to this revision.* The entry here will be the value of the contract as previously reported (including Supplemental Purchase Action Reports, if any).

(30) *Net change in contract value, this revision.* The entry in this space will be the difference between spaces (28) and (29). Indicate by check marks in the box whether the amount shown in space (28) is an increase or a decrease.

(31) *Cash refunds prior to this revision.* Use of this space (31) is optional with the chiefs of technical services or commanding generals of service commands.

(32)–(33) Omitted from W. D., A. G. O. Form No. 376.

(34) through (36) Same (except that data on the acquisition of land is not required on Supplemental Purchase Action Reports).

§ 802.297–3 *Monthly Summary Report.*

Control Approval Symbol PDS–18

MONTHLY SUMMARY REPORT

(1) for Month of _____ 194__
(2) To: _____
(3) From: _____
(4) Purchase actions not previously reported for this month:

	Value	*Number*
(a) W. D., A. G. O. Form No. 375	$	
(b) W. D., A. G. O. Form No. 376:		
(i) Cancellations (decrease)	$	
(ii) All other reported changes—Increase ☐ Decrease ☐	$	
(c) Changes and supplements of $1,000 or less, each, not reported on W. D., A. G. O. Form No. 376—Increase ☐ Decrease ☐	$	XXXX
(d) Total of items (b) and (c)—Increase ☐ Decrease ☐	$	
(5)		
(6)		
(7)		

§ 802.297–3a *Instructions for preparation of Monthly Summary Report.* The Monthly Summary Report will be prepared on the basis of net obligations undertaken during the month and not on the basis of appropriations authorized. This report will be submitted on an 8" x 10½" sheet. The following numbered instructions apply to the corresponding numbers appearing on the report form set forth in § 802.297–3:

(1) *Month for which report submitted.* As required in §§ 802.292–5 and 802.293–2, a separate Monthly Summary Report will be submitted for each month in which any purchase action, reported during or for the preceding calendar month, took place, as determined by the "date of award" or "date of action" (space (8) on W.D., A.G.O. Forms No. 375 and 376). Enter on line (1) the month covered by the particular Monthly Summary Report for which figures are reported under item (4) below.

(2) *For stations reporting to a chief of a technical service.* Enter the name and address of the technical service to which submitted.

For chiefs of technical services. Enter "Director, Purchases Division, Headquarters, Army Service Forces".

(3) *For stations reporting to a chief of a technical service.* Enter the name and station number of the reporting station.

For chiefs of technical services. Enter the name of the technical service.

(4) *Purchase Action Reports not previously reported for this month.* All entries under item (4) will pertain to the calendar month indicated in line (1).

(a) Under "Value" enter the sum of the entries in space (29) of all W.D., A.G.O. Forms No. 375 submitted during the previous calendar month, reporting purchase actions awarded during the month indicated in line (1). Under "Number" enter the count of all such W.D., A.G.O. Forms No. 375.

(b) (i) Under "Value" enter the sum of the entries in space (29) of all W.D., A.G.O. Forms No. 376 submitted during the preceding calendar month, reporting purchase actions, the cost of which was completely cancelled during the month indicated in line (1). As provided in § 802.292–4 (b), decrease to $10,000 or less in total cost of purchase actions is considered a complete cancellation. Under "Number" include the count of all such W.D., A.G.O. Forms No. 376.

(b) (ii) Under "Value" enter the total of entries in space (30) of all W.D., A.G.O. Form No. 376 submitted during the preceding calendar month, reporting increases or decreases during the month indicated in line (1) of more than $1,000 in the total cost of purchase actions, except decreases reported in (b) (i) above. Indicate whether increase or decrease by check in proper box. Under "Number" enter the count of all such W.D., A.G.O. Forms No. 376.

(c) Under "Value" enter the mathematical sum of all supplemental purchase actions made during the month indicated in line (1) which involved an increase or decrease of $1,000 or less in total cost and which were NOT reported on W.D., A.G.O. Form Nos. 375 or 376 and have not been reported on Monthly Summary Reports previously submitted. Indicate whether increase or decrease by check in proper box. No entry is required under "Number".

(d) Under "Value" enter sum of the entries in lines (b) (i); (b) (ii); and (c). Indicate whether increase or decrease by check in proper box. Under "Number" enter the sum of the entries in lines (b) (i) and (b) (ii).

(5) *Signature.* The officer or person responsible for procurement, or for preparation of purchase action reports, will sign here.

(6) *Name, grade or title.* Type the name, and grade or title of person signing report.

(7) *Date of submission.* Enter the date the report is submitted.

§ 802.297–4 *Quarterly Report on Procurement, Control Approval Symbol PDS–19.*

§ 802.297–4a *Instructions for preparation of Quarterly Report on Procurement.* (a) The Quarterly Report on Procurement will be submitted by the chief of each technical service and the commanding general of each service command. It will include only those contracts which have an original value at the date of award in excess of $150,000. No report will be made of any contract with an original value at the date of award of $150,000 or less, even though the value of such contract may have been increased by supplements to an amount in excess of $150,000. Similarly, no report will be made of any supplements, or changes, including increases, decreases, or cancellations of contracts. If no contract in excess of $150,000 has been awarded during the quarterly period, a negative report will be submitted.

(b) The Quarterly Report will be typed on individual strips, which, after typing, will be arranged in alphabetical order by the contractors' names, then grouped into pages attached to a header strip which will be provided in advance of each quarter by the Purchases Division, Headquarters, Army Service Forces. Headers and individual strips will be assembled by the use of crinkly "draftsman's type" Scotch tape, if available. The pages shall have no more than 10" of printed and typed matter, including the header strip showing. The space on the header strip, providing for the page numbers, will never be filled in by the reporting technical service or service command. At the foot of the last page submitted for each technical service or service command, there will be typed the total dollar value of all contracts included in the report. This total will include only the total of the individual figures reported, and will not be adjusted to record supplements, changes, cancellations, etc., occurring subsequent to the initial award.

(c) Purchases Division will assemble the reports submitted to it, into one report which it will submit to Congress. Subsequent to the preparation of this completed report by Purchases Division, the pages will be returned to the submitting headquarters for disassembly and filing of the individual strips for future reference.

(d) The following information will be submitted for each contract for supply items or services included in the Quarterly Report on Procurement; subparagraphs below refer to column headings on the header strip and the space references are to W.D., A.G.O. Form No. 375 and the explanations thereof in § 802.297–1a:

(1) *Contract number, date and type of contract.* Insert full contract number,

date of award, and indicate whether the contract is fixed price, cost-plus-a-fixed-fee, unit price, letter order, letter purchase order, purchase order, etc. (Spaces (4), (5), (8) and (7).)

(2) *Item description and quantity.* Insert brief description of the item or items and the quantity of each. (Spaces (23) and (24).)

(3) *Value.* The dollar value of the contract as reported in space (29).

(4) *Name and address of the contractor and negotiator.* Insert data from spaces (9) and (31).

(5) *Name of Government negotiator.* Space (30).

(6) *Specifications.* Space (33).

(7) *Reasons for contractor selection.* Space (32).

(c) The following information will be furnished for each contract for the purchase of land included in the Quarterly Report on Procurement. The subparagraphs below refer to columns in the special header strip for land acquisitions, which will be furnished by Purchases Division upon request. The space references are to W.D., A.G.O. Form No. 375 and to the explanations thereof in § 802.297–1a.

(1) *Contract number, date and type of contract.* Spaces (4), (5), (8) and (7).

(2) *Location and intended use.* Enter a brief statement as to the location and intended use of the land. (Space (34).)

(3) *Value.* Space (29).

(4) *Name and address of contractor and negotiator.* Spaces (9) and (31).

(5) *Name of Government negotiator.* Space (30).

(6) *Area and assessed value.* State the area of the land purchased and the assessed value as it appears on the records. (Space (34).)

(7) *Reasons for contractor selection.* Space (32).

§ 802.298 *Responsibilities of chiefs of technical services and commanding generals of service commands.* The chiefs of the technical services and commanding generals of the service commands are charged with the following responsibilities:

(a) Responsibility for assuring that all reports required by this subpart to be prepared and forwarded by the stations under their jurisdiction are prepared and forwarded in accordance with §§ 802.292–1 through 802.292–5. This responsibility includes:

(1) Responsibility for controlling by means of the serial numbering system (see §§ 802.297–1a (2)) the submission of original and Supplemental Purchase Action Reports (W.D., A.G.O. Forms No. 375 and 376).

(2) Responsibility for requiring the submission of at least a sufficient number of copies of original and Supplemental Purchase Action Reports to accomplish the distribution required by § 802.293 to be made by the chiefs of technical services and the commanding generals of the service commands.

(3) Responsibility for checking by contract number to assure that duplicate reports are not received. This will include the checking of terminations and cancellations to be sure they are properly reported, as specified in § 802.292–4.

(4) Responsibility for reconciling individual Purchase Action Reports submitted by each station with the Monthly Summary Reports submitted by that station. (Does not apply to commanding generals of service commands.)

(b) Responsibility for assuring that all reports required by this subpart to be prepared and forwarded by them are prepared and forwarded in accordance with §§ 802.293–1 through 802.293–3.

(c) Responsibility for obtaining, upon request, detailed information on specific transactions when same is deemed necessary, and for prompt submission of such information to Purchase Division, Headquarters, Army Service Forces.

§ 802.299 *Special Purchase Action Report Forms.* The Quartermaster Corps and the Ordnance Department have been authorized by the Director, Purchases Division to use special forms of Purchase Action Reports and Supplemental Purchase Action Reports deviating slightly from the standard W.D., A.G.O. Forms No. 375 and 376, set forth in §§ 802.297–1 and 802.297–2. Stations under the jurisdiction of the Quartermaster General and those under the Chief of Ordnance will obtain supplies of these special forms as directed by the respective chiefs of those services.

[Procurement Reg. 3]

PART 803—CONTRACTS

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Sec.
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803.348 Advance payments without interest.
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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.

§ 803.301-1 *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 chapter the following terms will have the meanings assigned to them in the following sections:

§ 803.302-1 *United States and Government.* These terms are synonymous and include the War Department.

§ 803.302-2 *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.

§ 803.302-3 *Contracting officer.* (a) 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:

(1) The Secretary of War;

(2) The Under Secretary of War;

(3) The Commanding General in a Theatre of Operations;

(4) The Commanding General, Army Air Forces;

(5) The Director, Purchases Division, Army Service Forces;

(6) The Chief of any Technical Service.

(b) 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:

(1) His duly appointed successor or authorized representative;

(2) Any and all contracting officers, acting within the scope of the orders respectively appointing them contracting officers.

(c) Representatives may be designated as follows:

(1) 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;

(2) 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;

(3) A contracting officer, his duly appointed successor, and any representative designated pursuant to (1) or (2) of this paragraph, may respectively designate any officers or civilian officials to act as their representatives.

(d) A designation authorized by paragraph (c) 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.

(e) Any person duly appointed a contracting officer in accordance with paragraph (a) 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.

(f) All action heretofore taken which would have been valid if this section had then been in effect, is hereby ratified and confirmed.

§ 803.302-3a *Appointment of contracting officers at installations such as ports of embarkation.* The question sometimes arises whether a contracting officer carrying on procurement activities at an installation such as a port of embarkation should be appointed by the chief of the technical service having jurisdiction of the installation, or by the chief of another technical service which may have an interest in the particular type of procurement. The following rule of administration is established: The chief of the technical service (including the Commanding General, Army Air Forces) having jurisdiction of an installation is charged with primary responsibility for appointing contracting officers to carry on procurement activities at the installation, but with the concurrence of the chief of that technical service, the chiefs of other technical services (including the Commanding General, Army Air Forces) interested in the various types of procurement may appoint such contracting officers. This

does not alter in any way the authority of the persons designated in § 803.302–3 (a) (1), (2), (3) and (5) to appoint contracting officers. (See also § 803.-318b–1).

§ 803.302–4 *Disbursing officer.* A disbursing officer is the officer who has been designated to make payments under a contract.

§ 803.302–5 The following are terms used in connection with contracts:

(a) Signed number. A signed number means the instrument with the required signatures.

(b) Authenticated copy. An authenticated copy means a copy of the instrument shown to be authentic by either:

(1) Certification as a true copy,

(2) Official seal, or

(3) Photostatic process.

The signatures on such copies may be either facsimile, stamped, or typed. In lieu of copying the signatures of the parties signing the contract or supplemental agreement and of the witnesses thereto, and the corporate certification or certificate, if any, of the contracting officers as to the authority of the person who signed the original for the corporate contractor, the contracting officer or his authorized representative may execute the following certificate on the copies furnished the Fiscal Office and the Financing Disbursing Office for their use:

I certify that this is a true copy of the document properly signed and witnessed ---------- and that the corporate certification therein was properly executed.
(date)

(c) Copy. A copy means a copy of the instrument, including the names of the contracting parties, but lacking authentication.

§ 803.302–6 *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.* (a) Every purchase transaction except those where payment is made coincidentally with receipt of supplies will be evidenced by a written contract.

(b) 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.

(c) War Department Form No. 332, when used as authorized in paragraph (b) above, will be prepared in quadruplicate (original and three memorandum copies) and distributed as follows:

(1) Original and duplicate to accountable disbursing officer, supported by certified invoices.

(2) 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

(3) 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.

(d) When funds are expended in accordance with the procedure outlined in paragraphs (b) and (c) above, the transaction need not be evidenced by any written contract or purchase order, since payment will be made coincidentally with receipt of supplies.

§ 803.303–1 Contracts may be either formal or informal.

§ 803.303–2 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.

§ 803.303–3 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.

§ 803.303–4 (a) 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 § 803.303–3, 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.

(b) When the contractor furnishes no evidence of his assent either (1) by a written or oral quotation, (2) by a written acceptance or (3) 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.

(c) The provisions of this section and of §§ 803.301–2 and 803.301–3 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 § 813.1317e, Form No. 19).

§ 803.303–5 *Numbering and distribution of contracts.* (a) The numbering of contracts is discussed in §§ 803.309 to 803.309–3 and 803.318b–5 and the distribution of contracts is discussed in Subpart D of this part.

(b) *Distribution of purchase orders.* As pointed out in § 803.303–4 (b), 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:

(1) 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.

(2) 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 identification)
---------- price list, dated ----------, 194--".

§ 803.303–6 *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 § 803.309–1 and distributed in accordance with § 803.316.

§ 803.303a *Letters of intent and letter orders*—(a) *Use.* The use of letters of

intent and letter orders 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 definitive 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 §§ 842.212–2 (b) and 842.213–3) 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.

(b) *Report on letters of intent, etc.* (1) On or before the 10th of each month the chief of each technical service will file with the Director, Purchases Division, Headquarters, Army Service Forces, a report entitled "Age Analysis of Outstanding Letters of Intent, Etc." (Control Approval Symbol PDS–17) and described in subparagraph (2) below. The first report shall be due September 10, 1944, for the period ending August 31, 1944. This report does not conflict with the reports of negotiated purchase actions in excess of $10,000, (Control Approval Symbol ICY–33) required by § 802.293.

(2) The reports "Age Analysis of Outstanding Letters of Intent, Etc." (Control Approval Symbol PDS–17) will be submitted original only, on an unclassified basis. For the purposes of these reports, the phrase "letters of intent, etc." shall be deemed to include letters of intent, letter orders, letter purchase orders, letter contracts, etc. Negative reports and letters of transmittal will not be submitted. Chiefs of technical services where necessary will obtain appropriate data from their procurement district offices, using the same reporting method as required for their report to the Purchases Division, Headquarters, Army Service Forces. These reports shall be in two parts and shall set forth the following information:

Part I. A tabulation, classified by month of origin, of the number of letters of intent, etc. outstanding at the close of the preceding month.

Part II. A separate listing of each letter of intent, etc. which at the close of the reporting month had been outstanding more than 90 days. This listing shall set forth:

(i) Contract number.

(ii) Name of contractor.

(iii) Date of original issuance of letter of intent, letter order, letter purchase order, etc.

(iv) The month in which it is anticipated the outstanding letter of intent, etc. will be converted to a definitive agreement.

(v) A brief statement of the reasons why each letter of intent, etc., which had been outstanding more than 90 days as of the end of the reporting period, had not been converted into a definitive contract.

(3) Letters of commitment (see W.D. Contract Form No. 28 and §§ 802.222–7 and 813.1328) will not be included in either Part I or Part II of these reports.

§ 803.303a–1 *Use of provisions for allowance of profit in standard termination provisions.* (a) The standard termination provisions (see §§ 842.212–2 (b) and 842.213–3) 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 (1) 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 (2) 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.

(b) With respect to amendment of letters of intent or letter orders to include therein standard termination provisions, see § 842.213–3. With respect to allowance of profit on termination of letters of intent or letter orders, see § 845.533–4.

SUBPART B—AUTHORITY TO MAKE AWARDS, CONTRACTS, AND MODIFICATIONS THEREOF; REQUIRED APPROVALS

§ 803.304 *Definitions.*

§ 803.304–1 *Standard forms of contract.* The phrase "standard forms of contract", as used in this subpart, includes:

(a) 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 or Delivery Order and Voucher for Purchases and Services other than Personal (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) Patent Rights Contracts:
- Contract Adjusting Royalties (See § 813.1329).
- Patent Release and License Contract (See § 813.1330).
- Patent Release and Licence Contract (See § 813.1331).
- Patent Release and Assignment Contract (See § 813.1332).
- Patent Release Contract (See § 813.1333).
- Patent Release Contract (See § 813.1334).

(ix) Contracts for use in connection with termination of contracts—see Part 849 of this chapter.

(x) Miscellaneous Contracts:
- Defense Supplies Corporation (See § 813.1311).
- Metals Reserve Company (See § 813.1311a).
- Defense Plant Corporation (See §§ 813.1311b and 813.1311c).
- War Supplies Limited (See § 813.1313).
- Government-Owned Equipment Rental Agreement (See § 813.1314).
- Invitation, Bid and Acceptance (Sale of Property and Waste Material) (See § 813.1326).[1]
- Contract of Sale of Property (See § 813.1326a).[1]

[1] To be used in accordance with instructions appearing in the cited section.

(x) Miscellaneous Contracts—Continued.
Letter of Commitment (Raw Materials under CMP) (See § 813.1328).

(b) 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 § 801.107–8), for the use of that technical service or staff division. Forms so approved should be periodically revised (see § 803.301–1) 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.

(c) The forms of contract enumerated below are (January 1, 1945) in use by the various offices named. Except where the particular form was approved under paragraph (b) by memorandum or indorsement, in which case the precise terms approved together with any conditions on their use will appear from the pertinent file, it may be assumed that that version of the form was approved (subject to all requirements of the regulations in this chapter) which on January 1, 1945 was authorized by the technical service or staff division involved for use by personnel under its jurisdiction.

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
- W. D. (Engineers) Form No. 17. — Hire by Government of Plant or Equipment.
- W. D. (Engineers) Form No. 520. — Contract for Reconditioning Construction and Maintenance Equipment
- W. D. (Engineers) Form No. 715. — War Department Lease of United States Property (Military Industrial Facilities)
- W. D. (Engineers) Form No. 843. — Contract for Dismantling, Demolition and Removal

Office of the Chief of Ordnance:
- Notice of Award
- Equipment Lease Form
- Sale of Scrap (Allocated)
- Gage Repair Contract
- "Drive-Away" Carrier, Repair Services
- Letter Order for Emergency Supplies
- Master Facilities Lease
- Contract for Spare Parts and Military Publications
- Recognizing the Assignment of Contracts

Office of the Quartermaster General:
- QMC Form No. 300. — Purchase Order for Use in Purchasing Certain Food Supplies.
- QMC Forms No. 315, 315b, and 316 (Tentative). — Invitation, Bid and Acceptance Form for Purchasing Coal
- Uniform Burial Contract QMC Form No. P642. — Contract for Purchasing Lubricating Oils and Greases

Office of the Quartermaster General—Continued.
- QMC Form No. 1013. — Contract for Warehouse Services
- QMC Form No. 1029. — Federal Emergency Warehouse Association Contract
- QMC Form No. 1048. — Research and Development Contract

Office of the Chief Signal Officer:
- O. C. S. O. Form No. 6–D. — Purchase Order
- W. D., A. G. O. Form No. 11–26 (superseding W. D. S. C. Form No. 57)[1] — General Contract for trunkline and other Communication Facilities and Services
- W. D., A. G. O. Form No. 11–51 (superseding W. D. S. C. Form No. 134).[1] — Contract for Communication and Electric Time Facilities and Services
- W. D., A. G. O. Form No. 11–140, June 28, 1944 (superseding W. D. S. C. Form No. 1137). — Telephone Service Order
- W. D., A. G. O. Form No. 11–148 (superseding 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
- Letter Order for Supplies (No Price Stated)
- Letter Contract for Motion Picture Training Film
- Contract for Motion Picture Training Film
- Letter Order for Stock Film and Sound Track
- General Contract for Operation and Maintenance in connection with Army Telephone Systems[1]
- Contract for Maintenance in Connection with Army-Owned Teletypewriter Equipment

GOVERNMENT-OWNED EQUIPMENT RENTAL AGREEMENT

Office of The Surgeon General:
- S.G. Form No. 1–H. — Supply Contract
- S.G. Form No. 2–D. — Long Term Supply Contract
- S.G. Form No. 3–D (and Appendix "1"). — Purchase Order
- S.G. Form No. 891. — Blood Plasma Contract
- Contract with Universities for Courses of Instruction
- Medical Research Contract (Cost Basis)
- Supplemental Agreement for Use of Cellular Residue

Office of the Chief of 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 Congress
- TC Form No. 103. — Standard Master Ship Repair Contract
- TC Form No. 104. — Freight Handling Services.

Office of the Chief of Transportation—Continued.
- TC Form No. 224. (W.D., A.G.O. Form 55—123 Revised—Approved 14 October 1944). — Contract for Movement of Household Goods and Effects (see Section II, Circular No. 445, W.D., 1944)
- TC Form No. 225. — Government-Owned Facilities Lease Agreement
- TC Form No. 520. — Rental Agreement, Loading and Handling Equipment.

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 (and Supplement)
- Contract Pilot School
- Blanket Bailment Agreement
- Sale of Property (General)
- Sale of Propeller Boxes
- Contract for Return of Excess Parts to Manufacturers
- Sale of Aircraft and Spare Parts
- Blanket Agreement for Sale to Air Carriers of Components and Parts for Aircraft
- Sales of Aircraft to Defense Supplies Corporation for Resale
- Sale of Excess Engine Parts (two forms)
- Lease of Government-owned Facilities
- Special Facilities Contract
- Contract for Lease of Tractors and Trailers under Public No. 779, 77th Congress
- Contract for Lease of Tractors and Trailers and Indemnity Agreement under Public No. 779, 77th Congress
- Laundry and Dry Cleaning Contract; Hospital Laundry Contract

Office of the Provost Marshal General:
- Contract for Prisoner of War Labor

Office, Director of Personnel:
- Contract for Correspondence Instruction
- Contract for Radio and Phonograph Recordings

Service Commands:
- Contract for Training in Medicine and Dentistry
- Contract for Training in Veterinary Medicine
- Training Unit Contract
- Boiler Inspection Contract
- Contract for Inspection and Maintenance of Automatic Fire Alarm Systems
- Laundry and Dry Cleaning Contract; Hospital Laundry Contract (see ASF Circular No. 128, 1944, as amended by Section II, ASF Circular No. 159, 1945)

§ 803.304–2 *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.

§ 803.304–3 *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.

§ 803.304–4 *Technical service.* Whenever authority is conferred by this subpart upon a technical service, that authority may be exercised by the chief of

[1] It is emphasized that these forms should contain the standard clauses set forth in §§ 803.323 and 803.325, and General Condition 12 of W. D. Contract Form No. 47 (§ 813.1317c–2).

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.*

§ 803.305–1 *Authority of technical services to make awards.* All awards of contracts, supplemental agreements and change orders, other than those described in § 803.305–2 may be made by the technical service concerned without approval of higher authority.

§ 803.305–2 *Awards requiring the approval of Director, Purchases Division.* (a) The following awards must be submitted for approval to the Director, Purchases Division, Headquarters, Army Service Forces:

(1) 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.

(2) 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.

(b) Neither preliminary contractual agreements, such as letters of intent, letter orders and letter purchase orders, nor letters of commitment (see §§ 802.222–7, 813.1328) are required to be submitted to the Director, Purchases Division, for approval pursuant to the provisions of paragraph (a) above, regardless of the amount of funds obligated thereunder or the estimated cost of the proposed procurement. However, approval of the award of a final definitive contract, involving conversion of a preliminary contractual agreement or the use of materials or components acquired pursuant to a letter of commitment, will be obtained if required by paragraph (a) above.

§ 803.305–3 *Submission of contract, supplemental agreement or change order in lieu of award.* In lieu of submitting an award for approval under § 803.305–2, 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.

§ 803.305–4 *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.

(a) Requests for approval of awards under § 803.305–2 (a) (1):

(1) Name and address of contractor.

(2) Location of the plant from which items are to be furnished.

(3) Quantity and brief description of items to be furnished.

(4) Unit prices and total amount to be expended.

(5) Brief summary of delivery schedules.

(6) Experience of contractor with same or similar work.

(7) New facilities required and reference to any necessary approval thereof.

(8) Whether negotiations were conducted with more than one contractor.

(9) Brief reference to the consideration and application of contract placement policies (see Part 802, Subpart B).

(10) 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, §§ 803.306–2, 803.306–4, 803.370, and 803.378).

(11) 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 (i) comparative prices, (ii) components of price, and (iii) 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; (*3*) 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 over-all 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.

(12) State whether advance payments are to be requested and indicate percentage of total price.

(13) 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.

(14) 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.

(15) Where the agreement is on a cost-plus-a-fixed-fee basis, in addition to an analysis similar to that required elsewhere in this paragraph (to the extent feasible), a full statement of the reasons for the use of such type of agreement should be given (see §§ 802.232–1 through 802.232–3, inclusive), together with an explanation of the basis of calculation of the fixed fee (see § 802.232–3).

(16) A brief statement of the consideration given to (i) the results of, (ii) the information obtained in, and (iii) 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.

(17) Any other matters having a bearing on the reasonableness of the price, which it is desired to submit.

(18) Recommendation of the chief of the technical service, or his representative, as to the action desired to be taken by the Director, Purchases Division.

(b) Requests for approval of awards under § 803.305–2 (a) (2):

(1) Name and address of contractor who is to furnish the services.

(2) Brief description of the services and place of performance.

(3) Brief statement of past performance record of the contractor.

(4) Whether negotiations were conducted with more than one contractor.

(5) Brief description of project to which the services relate.

(6) Form of agreement, with adequate reference to and justification of any provisions requiring approval of higher authority or to any such approval previously obtained.

(7) The price, and whether it is considered reasonable.

(8) 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.

(9) Ratio of fixed fee to estimated gross construction cost.

(10) Whether agreement covers design only or supervision only, or both design and supervision.

(11) 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.

(12) Recommendation of the chief of the technical 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.*

§ 803.306–1 *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 § 803.305–2, and the contract substantially embodies the award as approved), if:

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

(b) The contract (1) complies with the requirements of Subpart H of this part, and (2) 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.

§ 803.306–2 *Factors to be considered in determining whether review is necessary.* 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:

(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 appears to be desirable;

(d) Whether there is involved a decision on an important or doubtful question of law.

§ 803.306–3 *Authority of technical services to make supplemental agreements and change orders.* Except as provided in § 803.306–5 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 § 803.305–2 and the supplemental agreement, or change order substantially embodies the award as approved), if:

(a) The technical service had authority to make the original contract pursuant to § 803.306–1, or the technical service did not have such authority but obtained approval pursuant to § 803.306–4; and

(b) 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 § 803.306–1.

Changes in Architect-Engineer, Management or similar contracts may also be made by the technical service concerned, provided that the requirements of paragraphs (a) and (b) 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 § 803.306–5.

§ 803.306–4 *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 § 803.306–1, and all supplemental agreements and change orders other than those specified in § 803.306–3. 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 §§ 803.365–1 to 803.365–9, 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.

§ 803.306–5 *Supplemental agreements converting cost-plus-a-fixed-fee contracts to a fixed price basis.* (a) In all cases, supplemental agreements converting cost-plus-a-fixed-fee contracts to a fixed price basis (which for purposes of this section will include conversion to the incentive type contract—see § 803.378–5) will be made subject to the approval of the Director, Purchases Division, Headquarters, Army Service Forces. In submitting such supplemental agreements for the approval of the Director, Purchases Division, Headquarters, Army Service Forces, in addition to any information required by § 803.305–4 or other instructions as to contract clearance, a written statement should be presented (1) analyzing the price data and other similar information, if any, submitted by the contractor, (2) describing the investigations of these data and of other relevant facts which have been made by the War Department representatives, and (3) setting forth the principal factors considered in negotiating 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 is entitled to reimbursement or has been reimbursed under the cost-plus-a-fixed-fee portion of the 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 concerned.

(b) It is the policy of the War Department to convert cost-plus-a-fixed-fee contracts to a fixed price basis as stated in the recitals quoted below in this paragraph. It has been administratively determined by the Under Secretary of War that such policy is to the advantage of the Government and 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 shall have satisfied himself as hereinafter provided in this paragraph and when the supplemental agreements shall have been approved as provided in paragraph (a) above. Although a fixed price, properly determined, will usually result in lower expenditure by the Government than on a cost-plus-a-fixed-fee basis, in some instances it may be to the interest of the Government to convert cost-plus-a-fixed-fee contracts for various reasons other than expected monetary saving. Therefore, the policy in favor of conversion may be carried out even in those cases where a price must be set for the first period of deliveries after the conversion which appears to be higher than the unit cost plus unit fee being paid on the cost-plus-a-fixed-fee basis at the time of the conversion. The price for the first period of deliveries after conversion may be necessitated by the increased risks to which the contractor is subject, but opportunity may exist over the life of the contract for savings to develop for the Government as a result of increased efficiency. Each supplemental agreement providing for such a conversion will be made only after the contracting officer has satisfied him-

self in the light of the above-mentioned policy of the War Department 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 in order, among other things, (1) to develop greater efficiency in the use of manpower, materials and capacity by providing the contractor with an incentive to improve its operations, (2) to develop lower prices and costs through improvements in operating efficiency, and (3) to reduce the expense and manpower necessary for administrative work, both for the Government and for contractors; and

Whereas, it has been administratively determined by the Under Secretary of War that such policy is to the advantage of the Government and 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; and

Whereas, the conversion of this contract from a cost-plus-a-fixed-fee to a fixed price basis will implement the policy of the War Department aforementioned not only insofar as this contract is concerned but also to the extent that future contracts for supplies wih the contractor may, as a result of this conversion, be placed by the Government on a fixed price basis; and

Whereas, in view of the aforementioned policy of the War Department and after consideration of all factors deemed relevant to the conversion of this contract from a cost-plus-a-fixed-fee to a fixed price basis, and after reasonable price analysis, the terms and conditions set forth in this supplemental agreement have been found to be reasonable under all the circumstances; and

Whereas, for the purposes aforesaid this supplemental agreement is entered into pursuant to the First War Powers Act, 1941, and Executive Order No. 9001.

(c) The supplemental agreement covering the conversion will be distributed as provided in §§ 803.303–5 and 803.315 et seq. The statements and other data referred to in paragraph (a) 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 paragraph (a) available for inspection.

(d) Prior to distribution there will be attached to each copy of the conversion supplement a certificate signed by the contracting officer stating specifically that the conversion of the contract from a cost-plus-a-fixed-fee to a fixed price basis was made after an investigation and determination that, in the judgment of the War Department, such action would facilitate the prosecution of the war.

(e) Any supplemental agreement, converting a cost-plus-a-fixed-fee subcontract to a fixed price basis, if required to be approved by the contracting officer, shall, prior to such approval, be forwarded for approval of the Director, Purchases Division, Headquarters, Army Service Forces, accompanied by the information required by paragraph (a) 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 entered into prior to 21 July 1944, 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. (Also see § 847.748). The authority conferred by this paragraph is not subject to any of the limitations created by paragraph (a) above or by § 803.308f. Termination settlement agreements entered into on or after July 21, 1944 may be amended as authorized by § 847.748.

(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 § 803.306–4 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 section 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 specified in the written instrument of approval or ratification. In general, cases which are appropriate for the exercise of the authority contained in this section 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 authority, 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 section.

§ 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 the Renegotiation Act of 1942 (see § 812.1201–1 (b), 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. Each such supplemental agreement shall contain, among other things, the following provision:

> All unpaid installments hereunder may at the option of the Government be declared and thereupon shall become immediately due and payable, in the event of a default continuing for 20 days in the payment of any amount required to be paid under this agreement. Interest, at the rate provided by law in the District of Columbia as the rate which is applicable in the absence of express contract as to the rate of interest, shall accrue and be payable upon each payment due hereunder from and after the due date thereof, whether original or accelerated.

(c) Supplemental agreements extending the time within which payment is to be made under any contract for the repayment to the Government of excessive profits, executed pursuant to the Renegotiation Act of 1943 (see § 812.1201–1 (a), are required to be submitted for the approval of the Director, Purchases Division, Headquarters, Army Service Forces (see § 803.308a). In submitting any such supplemental agreement for approval it shall be forwarded to the Director, Purchases Division, through the Director, Renegotiation Division, Headquarters, Army Service Forces.

§ 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 §§ 803.306–3, 803.306–4, 803.308a, 803.308b, 803.308e, 803.308h–4, 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.

§ 803.308h *Defective, informal and quasi-contracts.*

§ 803.308h–1 *Statutory provisions.* Section 17 of the Contract Settlement Act of 1944 reads as follows:

SEC. 17. (a) Where any person has arranged to furnish or furnished to a contracting agency or to a war contractor any materials, services, or facilities related to the prosecution of the war, without a formal contract, relying in good faith upon the apparent authority of an officer or agent of a contracting agency, written or oral instructions, or any other request to proceed from a contracting agency, the contracting agency shall pay such person fair compensation therefor.

(b) Whenever any formal or technical defect or omission in any prime contract, or in any grant of authority to an officer or agent of a contracting agency who ordered any materials, services, and facilities might invalidate the contract or commitment, the contracting agency (1) shall not take advantage of such defect or omission; (2) shall amend, confirm, or ratify such contract or commitment without consideration in order to cure such defect or omission; and (3) shall make a fair settlement of any obligation thereby created or incurred by such agency, whether expressed or implied, in fact or in law, or in the nature of an implied or quasi contract.

(c) Where a contracting agency fails to settle by agreement any claim asserted under this section, the dispute shall be subject to the provisions of section 13 of this act.

(d) The Director shall require each contracting agency to formalize all such obligations and commitments within such period as the Director deems appropriate.

Regulation No. 12 of the Office of Contract Settlement, dated January 24, 1945, issued under this section 17, authorizes the War Department to make or continue in effect regulations not inconsistent with those prescribed by the Office of Contract Settlement.

§ 803.308h–2 *Investigation of claims under statute.* The chiefs of the several technical services will arrange for the prompt investigation of all claims which may come within the purview of section 17 of the Contract-Settlement Act of 1944. Claims under this section shall be in such form and supported by such documentary evidence as the chief of the technical service deems appropriate under the circumstances of individual cases. If the chief of the technical service concerned is of the opinion that any such claim is without merit or if the Director, Purchases Division, withholds approval of any claim recommended by the chief of the technical service under the provisions of § 803.308h–5, such claim will be denied by the chief of the technical service by written notice to the claimant accompanied by findings indicating the basis of the denial. The written notice and findings will be sent by registered mail, return receipt requested. Two copies of each such notice and findings, together with a copy of the claim and supporting papers and a brief statement of the circumstances of the investigation made by the technical service will be transmitted to the Judge Advocate General (attention Contract Appeals Branch, Contracts Division). Such brief statement should include the names and permanent addresses of any witnesses relied upon by the technical service in denying such claim. A copy of the findings will be forwarded by the Judge Advocate General to the Office of Contract Settlement in accordance with Regulation No. 12 of that office. Whenever the chief of the technical service is advised of the filing of an appeal or suit under section 13 of the Contract Settlement Act of 1944 with respect to a claim denied by him, he shall promptly transmit such information to the Judge Advocate General (attention Contract Appeals Branch, Contract Division).

§ 803.308h–3 *Formalization of claims under existing procedures.* Insofar as specifically authorized by other provisions of the regulations in this chapter in effect prior to the effective date of the Contract Settlement Act of 1944, the chiefs of the technical services may continue to approve and formalize instructions given or requests made in the behalf of the technical service to furnish or arrange to furnish materials, services, or facilities. Approval or formalization of instructions or requests not authorized by the regulations in this chapter prior to the effective date of the Contract Settlement Act of 1944 pursuant to section 17 of that act will be dealt with in accordance with §§ 803.308h to 803.308h–9, inclusive.

§ 803.308h–4 *Action under section 17 by the technical service.* (a) The chief of any technical service may take or approve any action authorized by subsections (a) and (b) of section 17 of the Contract Settlement Act of 1944, if there was in existence at the time of the furnishing or arranging to furnish any materials, services and facilities in question, a valid, formal contract between the Government (acting through the technical service in question) and the person claiming the benefit of section 17: *Provided,* That:

(1) Such person acted in good faith upon instructions from an officer or employee of such technical service;

(2) Such instructions were of a type which, when given could properly be embodied in a change order, supplemental agreement or other modifying instrument under such existing contract;

(3) Such person actually furnished or arranged to furnish materials, services or facilities which the Government in fact desired such person to furnish or to arrange to furnish in connection with such contract at the time such instructions were given; and

(4) Such person (i) has not been paid for such materials, services or facilities or for arranging to furnish the same, (ii) has no pending contractual arrangement for such payment by the Government, and (iii) is willing to accept in complete discharge of all liability of the Government for furnishing or arranging to furnish such materials, services or facilities an amount which the chief of the technical service considers to be not in excess of fair compensation for what such person has in fact done or furnished and which is not in excess of $500,000.

(5) No claim relating to the furnishing of such materials, services or facilities has been referred to the General Accounting Office (see § 803.308g).

(6) Final payment has not been made under the contract as theretofore formally amended in writing.

(b) The chief of the technical service also may take or approve any action authorized by section 17 (a) of the Contract Settlement Act of 1944, in case there was not in existence at the time of the furnishing or arranging to furnish any materials, services and facilities in question, a valid, formal contract, within the purview of § 803.308h–4 (a), which could properly have been the subject of timely amendment by change order, supplemental agreement or other modifying instrument making provision therefor, *Provided,* That:

(1) The person claiming the benefit of said statutory provision acted in good faith upon instructions from an officer or employee of such technical service;

(2) Such instructions were of a type which, when given could properly be embodied in a formal or informal contract;

(3) Such person actually furnished or arranged to furnish materials, services or facilities which the Government in fact desired such person to furnish or to arrange to furnish at the time such instructions were given;

(4) Such person (i) has not been paid for such materials, services or facilities or for arranging to furnish the same, (ii) has no pending contractual arrangement for such payment by the Government, and (iii) is willing to accept in complete discharge of all liability of the Government for furnishing or arranging to furnish such materials, services or facilities an amount which the chief of the technical service considers to be not in excess of fair compensation for what such person has in fact done or furnished and which is not in excess of $50,000; and

(5) No claim relating to the furnishing of such materials, services or facilities has been referred to the General Accounting Office (see § 803.308g).

(c) Any action taken by the chief of the technical service will be embodied (1) in a supplemental agreement to the existing contract involved when the

claim is handled under authority of § 803.308h–4 (a), and (2) in a contract where the claim is handled under authority of § 803.308h–4 (b). In each case involving the payment to the contractor of more than $50,000 by reason of such a supplemental agreement or of more than $5,000 by reason of such a contract, the supplemental agreement or contract shall be subject to the prior written approval of the chief of the technical service in person or of any one or more employees or officers designated by him within the headquarters office of the technical service, or, in case of the Army Air Forces, within the headquarters office of the Army Air Forces or of one of its major component commands.

(d) The chief of the technical service will make a written report promptly to the Director, Purchases Division, Headquarters, Army Service Forces, of each action taken pursuant to the authority granted by this section which involves in excess of $500. Such report will contain the following:

(1) A copy of the supplemental agreement or contract constituting the action;

(2) A brief statement of facts and evidence upon which such action is based; and

(3) A statement of the reasons why such instructions were not formalized at the time they were given.

(e) The chief of the technical service concerned will require full records to be preserved containing the facts relevant to any action taken pursuant to this section.

(f) The chief of each technical service will take adequate steps to make certain that the grant of authority contained in this section does not lead to any relaxation of the efforts of the procurement offices within such technical service to formalize promptly all instructions and agreements with contractors as required by applicable regulations.

§ 803.308h–5 *Action by Director, Purchases Division.* (a) In any case not clearly covered by § 803.308h–4, the chief of each technical service will not grant any claim or request for relief or action under section 17 of the Contract Settlement Act of 1944 without obtaining the prior written approval of the Director, Purchases Division, Headquarters, Army Service Forces. Each recommendation for such relief or action will be accompanied by an adequate statement of the circumstances which, in the opinion of the chief of the technical service, justify such relief or action and in addition the following:

(1) A statement of the scope and nature of the investigation of the circumstances made by the technical service and signed statements by representatives of the Government and of the claimant having knowledge of the relevant circumstances, sworn to where practicable;

(2) The original or photostatic copies of any written instructions and a full statement of any oral instructions, relied upon by the claimant;

(3) Identification of any officer or agent upon whose authority to bind the War Department the claimant relied, together with a statement by the claimant that he in fact relied upon such authority;

(4) A statement of when and to whom such materials, services, or facilities were furnished or were arranged to be furnished, and of the arrangements made for furnishing them, showing whether or not at the time of furnishing or arranging to furnish such materials, services or facilities the claimant intended to be directly compensated for the same by the War Department;

(5) A finding by the chief of the technical service that the amount claimed constitutes fair compensation for the materials, services, or facilities furnished or arranged to be furnished; such finding shall be supported by (i) substantiating evidence, (ii) statement of profit allowance, if any (see § 803.308h–7 and (iii) and explanation of the scope of the investigation of the costs incurred;

(6) A statement of the reasons why the proposed action was not, at the time of the circumstances upon which the relief requested is based, promptly embodied in an appropriate supplemental agreement, change order or contract;

(7) A brief description of the contract or contracts, if any, to which such proposed relief or action is related;

(8) A statement as to whether any other claim for any part or all of the relief requested has been, or is being, submitted to any other Government agency or war contractor, and if so, of the action taken thereon;

(9) The name, address and telephone number of the person in the War Department with detailed knowledge of the facts of the case.

(b) Upon receipt of written approval by the Director, Purchases Division, of any such claim, the chief of the technical service will embody the action authorized in an appropriate contract or supplemental agreement and will send a copy of the executed instrument to the Director, Purchases Division.

§ 803.308h–6 *Form of contract or supplemental agreement.* Unless otherwise authorized by the Director, Purchases Division, Headquarters, Army Service Forces, each contract or supplemental agreement executed or proposed for execution under the authority of section 17 of the Contract Settlement Act of 1944 will contain the provisions mentioned below (in addition to provisions which may be specially pertinent to the particular case). In the case of supplemental agreements it will not, of course, be necessary to repeat any standard clause referred to below if the original contract already contains that clause.

(a) Recitals of the principal facts and circumstances which justify a finding that the action taken is within the scope of section 17 of the Contract Settlement Act of 1944, including a statement in cases of action within the scope of subsection (a) of such section 17, that the materials, services or facilities in question were related to the prosecution of the war.

(b) Recital that the execution of the contract or supplemental agreement has been authorized by or in behalf of the Secretary of War pursuant to the authority of the Contract Settlement Act of 1944.

(c) A provision enumerating and describing the materials, services or facilities which the contractor has furnished or delivered and setting forth the actual delivery schedule.

(d) A provision whereby the contractor releases and discharges the Government of and from all liabilities for furnishing or arranging to furnish the described materials, services or facilities.

(e) A provision stating that by the execution of the agreement the contractor warrants that, in furnishing the described materials, services or facilities, it complied with all provisions required by Federal law or Executive order to be incorporated in War Department contracts for procurements of this nature.

(f) The patent indemnity provisions (see § 803.335) and patent license provisions (relating to research or development work) which would apply if the procurement were being contracted for in the usual manner, modified so far as necessary in the light of the fact that the materials, services or facilities have already been furnished.

(g) The contract provisions appearing in § 803.322 (Officials Not to Benefit), § 803.323 (Covenant Against Contingent Fees), § 803.326 (Disputes), and § 813.1301, Article 23 (Definitions); and the first sentence of § 813.1301, Article 8 (Payments), and § 803.342–1 (a) (Renegotiation), to the extent such contract provisions are required if the procurement were being contracted for in the usual manner.

§ 803.308h–7 *Action by War Department Board of Contract Appeals.* The War Department Board of Contract Appeals in connection with any appeal pending before it under the "Disputes" article of a contract (see e. g. § 803.326) may authorize or direct the taking of any action pursuant to section 17 of the Contract Settlement Act of 1944 which in its opinion is required or authorized by that section.

§ 803.308h–8 *Fair compensation.* Under some circumstances, fair compensation under section 17 of the Contract Settlement Act of 1944 will consist of reimbursement for all or part of the costs incurred in furnishing or arranging to furnish materials, services or facilities. In others, a profit, in addition to costs, may be appropriate. The determination of compensation after performance obviously differs from pricing before the fact in certain important respects. Contingency allowances are of course improper. The profit allowance, if any, must be made in the light of the fact that the amount to be paid is determined after costs are known and risks have been removed.

§ 803.308h–9 *Time limitation.* Paragraph 8 of Regulation 12 of the Director, Office of Contract Settlement dated 24 January 1945 reads as follows:

8. Contracting agencies required to formalize obligations and commitments. Where an obligation or commitment created or incurred by a contracting agency might be invalidated because of a formal or technical defect or omission, in a prime contract or in any grant of authority to an officer or agent

who ordered materials, services, or facilities related to the prosecution of the war, the agency shall formalize the obligation or commitment within ninety days from notice to its headquarters office of the existence of such formal or technical defect or omission.

For the purposes of the foregoing, the term "headquarters office" is interpreted to mean the office from which the last approval is required.

SUBPART C—FORMALITIES IN CONNECTION WITH EXECUTION OF CONTRACTS AND MODIFICATIONS THEREOF

§ 803.309 *Numbering contracts.*

§ 803.309–1 *When required.* (a) Every formal contract (see § 803.303–2) involving the receipt or expenditure of public moneys will be numbered.

(b) Every informal contract (see § 803.303–3) involving the receipt or expenditure of public moneys will be numbered when:

(1) The actual or estimated amount involved is $5,000 or more, or

(2) It is contemplated that more than one payment (or receipt) will be involved, regardless of the amount involved.

(c) The provisions of paragraph (a) are not applicable to delivery orders evidencing interbranch or interdepartmental purchases (see § 806.605a and Subpart C of Part 806 of this subchapter). 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 §§ 803.309–2 or 803.318b–5 unless the procedure prescribed in § 803.318–1 (c) is followed.

§ 803.309–2 *System.* Contract numbers will be placed in the upper right-hand corner and will consist of the following in the order named:

(a) The capital letter "W", representing the War Department.

(b) Station number representing the station or office as published in the War Department Fiscal Code.

(c) 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.

(d) 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–5.

As to numbering of contracts of sale by the War Department, see § 821.113.

§ 803.309–2a *Contracts executed by Army Air Forces contracting officers.* In numbering contracts executed by Army Air Forces contracting officers, the letter symbol representing the technical service shall be the letters representing the Army Air Forces, regardless of the source of the funds being used to finance the contracts. Burial contracts, however, shall continue to be numbered as service command contracts.

§ 803.309–3 *Examples.* Based upon § 803.309–2 above, the following is the number of the first numbered contract executed by the Philadelphia Quartermaster Depot:

W-36-030 qm-1

§ 803.309–4 *Effect of War Department Fiscal Code.* (a) Under date of January 1, 1944, the War Department Fiscal Code was issued as TM 14–700.

(b) Chapter 8 of the aforementioned code sets forth list of procurement station numbers presently prescribed. These station numbers are to be used in numbering contracts (as required by §§ 803.309–2 (b) and 803.318b–5 (a) (2).

(c) It is to be noted that Chapter 7 of the aforementioned code contains 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 used to designate the technical services and the service commands (as required by §§ 803.309–2 (c) and 803.318b–5 (a) (3)), since symbol letters used in the numbering of contracts to designate the technical services must be approved, prior to their use, by the Comptroller General of the United States.

§ 803.309a *Identification of subcontracts.* Section 803.309 prescribes a numbering system for prime contracts with the War Department; it does not prescribe a numbering system for subcontracts (including purchase orders) under such prime contracts. It is desirable, however, that subcontracts be properly identified and tied-in with the prime contracts to which they respectively relate. Accordingly, contracting officers will urge contractors holding prime contracts with the War Department to include in their subcontracts, so far as practicable, a reference to the number of the prime contract involved. Prime contractors will also be asked to urge their subcontractors to include a reference to the number of the applicable prime contract in sub-subcontracts; and so on down the line. This practice will materially assist in accounting and auditing and particularly in the settlement of terminated subcontracts of all tiers.

§ 803.310 *Fiscal procedures.*

§ 803.310–1 *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.

§ 803.310–2 *Statements as to availability of funds.* See AR 35–240 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.*

§ 803.311–1 *Contracts with individuals.* A contract with an individual will be signed by the individual in his own name.

§ 803.311–2 *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)

§ 803.311–3 *Contracts with partnerships.* (a) 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.

(b) 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.

(c) If the contract is executed in the manner specified in paragraph (b) 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.

§ 803.311–4 *Contracts with corporations.* (a) 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.

(b) The contracting officer will in all cases endeavor to satisfy himself that the signer has authority to bind the corporation.

(c) 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.

(d) 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 paragraph (e) be required.

(e) In lieu of complying with paragraph (c) 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

(1) 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

(2) 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.

§ 803.311–5 *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 §§ 803.311–1, 803.311–2, 803.311–3 or 803.311–4.

§ 803.311–6 *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.

§ 803.311–7 *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, (a) an appropriate approval article will be included in the instrument, (b) all changes and deletions shall have been made before the instrument is forwarded for such approval, and (c) 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).*

§ 803.312–1 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:

(a) 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,

(b) 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).

§ 803.312–2 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.*

§ 803.313–1 *Supplemental agreements.* (a) 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: *Provided, however,* That a separate series of subnumbers, following the regular contract symbol, may be used to designate termination supplemental agreements, this to be preceded by the words "Termination Supplemental Agreement No. _____", For example, the first termination supplemental agreement of Contract No. W 36–030–qm–417 may be designated "Termination Supplemental Agreement No. W 36–030–qm–417 (1)".

(b) 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 Renegotiation Act, as amended, or otherwise). Such supplemental agreements should be numbered in accordance with paragraph (a) 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 36–030–qm–417
4	W 36–030–qm–418
8	W 36–030–qm–419

The above designations indicate that the single supplemental agreement constitutes the third modification of contract number W 36–030–qm–417, the fourth modification of contract number W 36–030–qm–418 and the eighth modification of contract number W 36–030–qm–419.

(c) In lieu of the procedure outlined in paragraph (b), a company pricing agreement (see ASF Manual M–609) which affects a substantial number of contracts with the Government may be given a number of its own distinct from the numbers of the contracts affected thereby. If this is done, a statement will be made on the face of the company pricing agreement, or in a schedule to the agreement and referred to on the face, to the effect that the agreement modifies the prices under specified contracts, identified by number; the company pricing agreement will not be given a separate supplemental agreement number with respect to each contract affected thereby. Any supplemental agreement to a company pricing agreement, numbered in accordance with the provisions of this paragraph, will similarly indicate the contracts affected thereby.

§ 803.313–2 *Change orders.* (a) 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.

(b) 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:

(1) Change orders will be classified as primary change orders and secondary change orders.

(2) 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.

(3) 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.

(4) Primary change orders will be numbered in accordance with paragraph (a) above.

(5) Secondary change orders will be given only such identification as the chief of the technical service shall prescribe.

(6) Secondary change orders will not be included in the continuous series of lettering or numbering referred to in the last sentence of paragraph (a).

(7) 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.*

§ 803.314–1 *Supplemental agreements.* Subject to the provisions of § 803.314–3, if payment or performance bonds have been executed in connection with a con-

tract 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.

§ 803.314–2 *Change orders.* Likewise, subject to the provisions of § 803.314–3, 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.

§ 803.314–3 *Exception to requirement of consent of surety.* The provisions of §§ 803.314–1 and 803.314–2 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 (a) an additional bond is furnished in support of the supplemental agreement or change order and (b) such surety is also surety on the additional bond.

§ 803.314–4 *Examination of consents of sureties.* The original of each consent of surety required by §§ 803.314–1 and 803.314–2 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.

§ 803.314–5 *Form of consent of surety.* For form of consent of surety see § 804.496–8.

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:

§ 803.315–1 Contracts will not be distributed until properly signed by all parties, and approved, if approval is required.

§ 803.315–2 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 war effort of the United States. Copies of secret or confidential contracts submitted to the General Accounting Office will be transmitted under two covers. In the case of lump sum (fixed price) contracts, each cover is to be addressed to Assistant Chief, Audit Subdivision, General Accounting Office, at the address of the appropriate Army Audit Branch (see § 803.317b). In the case of cost-plus-a-fixed-fee contracts, each cover is to be addressed to Assistant Chief, War Contract Service Section, Audit Division, General Accounting Office, Washington 25, D. C. The inner cover only will be marked "Personal and Confidential".

§ 803.316 *Numbered contracts.*

§ 803.316–1 Subject to such special instructions as may be issued by the chief of the technical service concerned, numbered contracts will be distributed as follows:

(a) 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. If a surety bond or bonds were required in support of a contract, whether lump sum or cost-plus-a-fixed-fee, see § 804.409–2 (a).

(b) The duplicate signed number will be filed with the contracting officer or as directed by the chief of the technical service concerned.

(c) The triplicate signed number will be forwarded to the contractor.

(d) An authenticated copy will be forwarded to the disbursing officer for his files.

(e) Additional authenticated copies or unauthenticated copies will be distributed as directed by the chief of the technical service concerned.

§ 803.317 *Unnumbered contracts.*

§ 803.317–1 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). If a surety bond or bonds were required in support of a contract, whether lump sum or cost-plus-a-fixed-fee, see § 804.409–2 (a).

§ 803.317–2 The duplicate signed number will be forwarded to the contractor.

§ 803.317–3 An authenticated copy will be furnished the disbursing officer for his files.

§ 803.317–4 Additional copies will be prepared and distributed as directed by the chief of the technical service concerned.

§ 803.317–5 *Payments for partial deliveries under unnumbered contracts.* 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.* (a) 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 § 803.313–1 (b), a single supplemental agreement is executed to modify more than one contract, the following procedure will be followed:

(1) The original signed number will be forwarded to the Army Audit Branch of the General Accounting Office (see § 803.317b). If a surety bond or bonds were required in support of such modification of the contract, see § 804.409–2 (a).

(2) 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.

(3) The triplicate signed number will be forwarded to the contractor.

(4) An authenticated copy will be forwarded to the disbursing officer under each contract affected by the supplemental agreement.

(b) If the alternative procedure of numbering change orders provided for in § 803.313–2 (b) is adopted, only primary change orders will be distributed in accordance with paragraph (a) 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.

§ 803.317b–1 (a) The Army Audit Branches are maintained at the various Army Regional 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 § 803.317b–2). 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.

(b) 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:

Army Audit Branch of General Accounting Office, 1206 Santee Street, Los Angeles, Calif.

§ 803.317b–2 (a) The following is a list (set forth in Section I, Circular No. 481, W.D., 1944) of the Army Regional Accounting Offices in the United States to which disbursing officers are required to submit their accounts.

Region I. Army Regional Accounting Office, 63 Vesey Street, New York 7, New York.

(a) Disbursing officers stationed in Washington, D. C., except the Disbursing Officer, Finance Office, U. S. Army, Washington 25, D. C., Transportation Division.

(b) Disbursing officers stationed in the Military District of Washington, D. C.

(c) Disbursing officers stationed within the geographical limits of the First, Second, and Third Service Commands, except those assigned to tactical organizations and mobile units.

(d) Disbursing officers stationed in the offices of the military attaches, except as otherwise directed.

(e) Disbursing officers stationed at any Atlantic base command, including Iceland but excluding the Caribbean Defense Command.

(f) Disbursing officers of task forces in the Atlantic area.

Region II. Army Regional Accounting Office, 449 West Peachtree Street, Atlanta 3, Georgia.

(a) Disbursing officers stationed within the geographical limits of the Fourth Service Command, except those assigned to tactical organizations and mobile units.

(b) Disbursing officers serving with the United States Army Forces in Central and South America.

(c) Disbursing officers located in the Caribbean Defense Command.

Region III. Army Regional Accounting Office, 366 West Adams Street, Chicago 6, Illinois.

(a) Disbursing officers who are assigned to tactical organizations and mobile units which operate within the continental limits of the United States.

(b) Disbursing officers who are stationed within the geographical limits of the Fifth, Sixth, and Seventh Service Commands.

(c) Disbursing officers of the Alaskan Department, the Northwest Service Command, and other United States Army Forces in Canada.

(d) Special disbursing agents assigned to United States Army transports whose home port is in the continental United States or in foreign theaters of operation where no theater fiscal office has been established.

(e) The Disbursing Officer, Finance Office, U. S. Army, Washington 25, D. C., Transportation Division.

Region IV. Army Regional Accounting Office, 1206 Santee Street, Los Angeles 54, California.

(a) Disbursing officers stationed within the geographical limits of the Eighth and Ninth Service Commands, except those assigned to tactical organizations and mobile units.

(b) A list of foreign theater fiscal offices which have been established in theaters of operation is also set forth in Section I, Circular No. 481, W.D., 1944.

§ 803.318 *Special cases.*

§ 803.318–1 *Purchases under contracts of Procurement Division, Treasury Department; Navy Department; Post Office Department; etc.* (a) 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 § 803.316–1.

(b) 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.

(c) 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.*

§ 803.318a–1 *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.)

§ 803.318a–2 *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.*

§ 803.318b–1 *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 § 803.318b–2 below, as well as technical service contracts executed on behalf of a technical service as set forth in § 803.318b–3 (a) (6) to (8) below.

§ 803.318b–2 *Reasons for separate system of numbering and distribution of service command contracts.* As indicated in § 803.318a–2, as a result of the service command reorganization, much of the contracting done at Class I, II, IV and special installations located within service commands is done under the complete jurisdiction of the commanding generals of the service commands. Except as provided in § 803.318c–2 and except as staff officers of the Commanding General, Army Service Forces, the chiefs of technical services have no function to perform in connection with this contracting. Some of the contracting done at Class I, II, IV and special installations is still, however, under the jurisdiction of the chiefs of the technical services. In order clearly to differentiate contracts which are executed at such installations 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. In the succeeding sections a separate system of numbering and distribution is provided for contracts executed under the jurisdiction of the commanding generals of the service commands. These contracts will be referred to as service command contracts.

§ 803.318b–3 *Guides to determine when a contract is a service command contract.* (a) 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 with respect to contracts (other than contracts executed by Army Air Forces contracting officers, as to which, see § 803.309–2a:

(1) 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.

(2) Contracts which are executed under the supervision of the commanding generals of the service commands and which are to be financed under an open allotment (see Chapter 5, section I, of the War Department Fiscal Code, TM 14–700), are to be regarded as service command contracts.

(3) Training contracts are to be regarded as service command contracts.

(4) 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 § 821.113.

(5) In addition to contracts coming within the categories enumerated in subparagraphs (1) to (4) 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.

(6) Any type of contract which is to be financed with technical service funds is to be regarded as a technical service contract. Subparagraphs (7) and (8) below are two specific illustrations of the general rule contained in this subparagraph.

(7) 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.

(8) 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.

(9) 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:

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(10) Contracts for furnishing local transportation to Government and other personnel, executed in accordance with Circular No. 397, War Department, 1944 and Memorandum No. W55-15-43, issued by the Office of the Adjutant General, will be numbered as Transportation Corps contracts.

(b) 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.

(c) As indicated in § 803.318b-1 the authority of a contracting officer of a service command includes authority to execute technical service contracts of the type referred to in paragraph (a) (6) to (8) of this section.

§ 803.318b-4 *Distribution of service command contracts.* The provisions of Subpart D of this part 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." Except as required by § 803.318c-2, service command contracts (as that term is defined in § 303.318b-3) 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 § 803.316-1 (e).

§ 803.318b-5 *Numbering of service command contracts.* (a) 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:

(1) The capital letter "W", representing the War Department, followed by a hyphen.

(2) 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 subparagraph 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.

(3) A symbol in parentheses to indicate the service command. In the case of the nine service commands, this symbol will consist of the capital letters S. C. in parentheses 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 parentheses.

(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.

(b) It is to be emphasized that the numbering procedure set forth in this section is applicable only to service command contracts (as the term is defined in § 803.318b-3). When technical service contracts are executed within a service command (see § 803.318b-3, particularly paragraph (a) (6) to (8), such contracts should be numbered as technical service contracts in accordance with the provisions of § 803.309-2.

(c) Serial numbers: It is desirable that separate series be commenced for service command contracts (as defined in § 803.318b-3). This should be done as promptly as possible. By adding the branch symbols authorized by paragraph (a) (2) above, separate series may be maintained for each branch of a post, camp or station.

(d) Effect of War Department Fiscal Code. See § 803.309-4.

(e) *Contract of sale.* Reference is made to § 821.113. 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 paragraph (a) (3) of this section. The letter "s" will be so added not only in the case of contracts for the sale of property but also in the case of contracts for the sale of services.

§ 803.318b-6 *Example.* Based upon § 803.318b-5, 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.

§ 803.318b-7 *Identification of subcontracts under service command contracts.* See § 803.309a.

§ 803.318c *Service command utility contracts.*

§ 803.318c-1 Utility contracts, for the purpose hereof, whether including connection charges or not, are defined as those for the procurement of electricity, gas, water, sewage disposal, steam, railroad track maintenance and switching service, inspection and maintenance of fire alarm systems, boiler inspection and maintenance of elevators.

§ 803.318c-2 All utility contracts and changes or supplemental agreements thereto entered into by service commands which require approval of higher authority pursuant to §§ 803.306-1 through 803.306-4 will be referred by

the commanding general of the service command direct to the Office of the Chief of Engineers, Attention: Repairs and Utilities Branch, New War Department Building, Washington 25, D. C. Such contracts will be reviewed by the Office of the Chief of Engineers for engineering and rate features, matters of policy and legal sufficiency and approved or returned for revision. Prior to reference to the Chief of Engineers such contracts will be referred to the Repairs and Utilities Divisions of the service command for review of engineering and rate features. The action taken and comments made by Repairs and Utilities Divisions will be made a part of the file forwarded to the Chief of Engineers for review.

Any such utility contract or modification thereof requiring approval pursuant to §§ 803.306–1 through 803.306–4 will contain a provision that it is subject to the approval of the Chief of Engineers and will not be binding until so approved. Prior to such approval any required approval by the Purchases Division, Headquarters, Army Service Forces, will be obtained by the Chief of Engineers. Provisions of this paragraph shall not be construed to interfere with or supersede the provisions of §§ 803.394 to 803.394–5, inclusive, and in accordance with § 803.394–5 any utility contract which is of the character described in § 803.394–2 will also contain a provision that it is subject to approval by the War Department Power Procurement Officer or the Deputy War Department Power Procurement Officer and will not be binding until so approved.

§803.318c–3 See §§ 803.397–1 and 803.397–3 with respect to Army Air Forces and Engineer utility contracts, respectively.

§ 803.318c–4 *Service command utility contract procedure.* The procedure set forth in § 803.318c–2 does not affect the execution, numbering and distribution of service command utility contracts as provided for in §§ 803.318b through 803.318b–6.

SUBPART F—CONTRACT APPEALS

§ 803.318d *War Department Board.*

§ 803.318d–1 *General.* By memorandum of the Secretary of war, dated August 8, 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.

§ 803.318d–2 *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 and 803.326–1). 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 speciafically authorizing the designation of "a board" are hereinafter referred to as "contracts" containing the nonstandard clause".

§ 803.318d–3 *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.

§ 203.318d–4 *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.

§ 203.318d–5 *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 § 803.318d–3 or in an advisory capacity under § 803.318d–4.

§ 803.318d–6 *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.

§ 803.318d–7 *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 §§ 803.318e–1 to 803.318e–12.

Memorandum of the Secretary of War, dated July 4, 1944, provided that in the consideration and disposition of appeals to the Secretary of War, the Board and the President of the Board, as representatives of the Secretary of War for the disposition of appeals, shall:

(a) Exercise such delegable authority and discretion as the Secretary of War himself might exercise either through contractual power or otherwise in the consideration and disposition of appeals, to ratify or approve the acts of subordinates and to waive any contract requirement which the Secretary of War himself legally might waive, whenever in the discretion of the Board or the President of the Board, as the case may be, such action is deemed necessary or desirable to arrive at a just and equitable adjustment or disposition of the dispute involved in the appeal.

(b) Consider and administratively pass on appeals not specifically or impliedly authorized by the contract where the ruling appealed from is not thereby made final and conclusive, and the appeal is taken within the time fixed in the contract for appeals.

(c) Find and administratively determine the facts out of which a claim by a contractor arises for damages against the Government for breach of contract, without expressing opinion on the question of the Government's liability for damages.

§ 803.318d–8 *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.

§ 803.318d–9 *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.

§ 803.318d–10 *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 §§ 803.318e–1 to 803.318e–12. A form of notice of appeal is set forth in § 803.318e–13. As said rules and regulations or such form are amended by the Board from time to time, these paragraphs will be amended to conform.

§ 803.318e–1 *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 (§ 803.318e–2).

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.

§ 803.318e–2 *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.

§ 803.318e–3 *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.

§ 803.318e–4 *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.

§ 803.318e–5 *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.

§ 803.318e–6 *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.

§ 803.318e–7 *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.

§ 803.318e–8 *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.

§ 803.318e–9 *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.

§ 803.318e–10 *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.

§ 803.318e–11 *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.

§ 803.318e–12 *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.

§ 803.318e–13 *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.*

§ 803.318f–1 *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.

§ 803.318f–2 *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.

§ 803.318f–3 *Procedure.* In order that a uniform and orderly procedure may be followed, the following steps are prescribed in each case. The board should:

(a) 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.

(b) 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.

(c) Based upon these findings of fact, prepare any necessary correspondence, supplemental agreements, or other documents for the action of the persons concerned.

§ 803.318f–4 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.

§ 803.318f–5 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.*

§ 803.319–1 *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.

§ 803.319–2 *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:

(a) Where a number of technical services are involved,

(b) Where the prime contractor is at the same time a subcontractor under other prime contracts,

(c) Where the prime contractor has contracts with several branches of the government,

(d) 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.

§ 803.319–3 *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.

§ 803.319–4 *Cooperation with liaison officers.* The closest cooperation should exist between contracting officers, liaison officers (see § 803.320–4), 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 (a) private financing, (b) a guaranteed loan, (c) advanced payments, or (d) 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 officer to endeavor to insure cooperation among the several technical services and with other branches of the government to this end.

§ 803.319–5 *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.*

§ 803.320–1 *Executive Order No. 9112.* Under date of March 26, 1942, Executive Order 9112 (3 CFR Cum. Supp.) 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.

§ 803.320–2 *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.

§ 803.320–3 *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.

§ 803.320–4 *Liaison officers.* Liaison officers are officers or civilian officials attached to the Advanced Payment and Loan Branch, Office of the Fiscal Director, Headquarters, Army Services 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 §§ 803.320–5 and 803.320–9 as well as in various other sections of this subpart.

§ 803.320–5 *Procedure for obtaining guaranteed loans.* Contractors may make applications for guaranteed loans:

(a) Through a local bank which in turn will transmit the applications to the Federal Reserve Bank in the district where the bank is located,

(b) Directly to the Federal Reserve Bank, or

(c) 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.

§ 803.320–6 *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 § 803.320–7.

§ 803.320–7 *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:

(a) 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.

(b) All guarantees when the liaison officer and the Federal Reserve Bank disagree as to the terms and conditions thereof.

(c) 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.

(d) All guarantees when the Federal Reserve Bank is itself participating in the loan.

§ 803.320–8 *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.

§ 803.320–9 *Cooperation of procurement officers.* When it has been determined pursuant to §§ 803.319–1 and 803.319–4 that a guaranteed loan is the method of financing most conductive 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:

(a) The need for the borrower's production, and

(b) 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.*

§ 803.321–1 *General policy.* Subject to the provisions of §§ 803.319–1 to 803.319–3, 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.

§ 803.321–2 *Types of contracts.* Subject to the provisions of § 803.321–1, advance payments may be made in connection with agreements of all kinds (whether contracts, letter contracts, letter purchase orders or other types of agreements).

§ 803.321–3 *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.

§ 803.321–4 *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 § 803.321–11. 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 §§ 804.406–4 and 804.407–1).

§ 803.321–4a *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.

§ 803.321–5 *Definitions.* As used in §§ 803.321–6, 803.321–7 and 803.321–14, the following terms shall have the following meaning:

(a) 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.

(b) Standard contract clause: A contract clause following without substantial deviation the wording of one of the contract clauses referred to in § 803.321–11.

(c) Standard supplemental agreement: A supplemental agreement following without substantial deviation the wording of one of the forms of supplemental agreement referred to in § 803.321–11.

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.

§ 803.321–6 *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:

(a) 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

(b) The advance payment is authorized under a standard contract clause or a standard supplemental agreement.

§ 803.321–7 *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:

(a) 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

(b) The proposed advance payment is authorized under an approved contract clause or an approved supplemental agreement.

As used in this section, 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.

§ 803.321–8 *Advance payments requiring approval of Advance Payment and Loan Branch.* Unless an advance payment comes within the provisions of §§ 803.321–6 or 803.321–7, 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:

(a) The amount proposed to be advanced.

(b) The amount of contract involved and the subject matter thereof.

(c) Whether the contract was awarded on a fixed price or on a cost-plus-a-fixed-fee basis.

(d) The terms of the proposed advance (including method and time of repayment or liquidation including, if possible, a schedule of deliveries).

(e) The national interest in making the advance.

(f) 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.

(g) 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.

(h) A copy of the contractor's letter of request and any financial and budget data submitted relating to the necessity for the advance.

(i) Copy of contracting officer's report, if any, on the advance payment request.

(j) Any other information pertinent to a proper decision in the case.

(k) 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.

§ 803.321–9 *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.

§ 803.321–10 *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.

§ 803.321–11 *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:

(a) The contract clause contained in § 803.347 will be used in providing for advance payments with interest on fixed-price contracts.

(b) 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)

(c) 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)

(d) The contract clause contained in § 803.348a will be used in providing for advance payments with interest on cost-plus-a-fixed-fee contracts.

(e) 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)

(f) The contract clause contained in § 803.348 will be used in providing for advance payments without interest on fixed-price contracts.

(g) 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)

(h) The contract clause contained in § 803.348b will be used in providing for advance payments without interest on cost-plus-a-fixed-fee contracts.

(i) 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)

(j) 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)

§ 803.321–12 *Interest.* Except as set forth in § 803.321–13 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.

§ 803.321–13 *Exceptions to interest requirement.* The requirement that interest be charged on advance payments shall not be applicable to advance payments:

(a) Authorized in connection with contracts which provide that the work thereunder shall be performed at cost without profit or fee to the contractor.

(b) 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.

(c) 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.

(d) 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 § 803.321–12 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.

(e) Authorized to be made without interest by specific action of the Fiscal Director, Headquarters, Army Service Forces.

(f) 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 §§ 846.654–1 and 803.349a.)

§ 803.321–14 *Reports.* In connection with advance payments, the technical services will make the following report:

(a) *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 §§ 803.321–8 or 803.321–9, 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.

(b) *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.

(c) *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. This report should include a statement of the facts in the case and of the steps being taken to protect the advance payments.

§ 803.321–15 *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 § 803.321–14.

SUBPART H—MANDATORY AND OPTIONAL CONTRACT PROVISIONS

§ 803.322 *Officials not to benefit.* 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.* (a) Every contract, regardless of subject matter or amount (except contracts of sale) 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.

(b) As to contracts of sale, see General Provision 13 of W.D. Contract Form No. 26 (§ 813.1326).

(c) Also see § 811.1181.

§ 803.324 *Uniform termination article.* (a) There is set forth below the uniform termination article prescribed by the Office of War Mobilization for use in fixed price (lump sum) supply contracts. This article will be referred to hereafter in this paragraph as the uniform article.

(b) The uniform article may be inserted in any lump sum supply contract.

(c) Every lump sum supply contract for the manufacture of supplies and equipment executed on and after February 20, 1944, except:

(1) Contracts to be completed in six months or less for an amount of less than $500,000,

(2) Contracts for an amount of less than $50,000, regardless of the date of completion and

(3) Requirement or open end contracts, will contain the uniform article without deviation.

(d) As to amendment of contracts to include the uniform article, see § 842.213.

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;

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 to 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, as amended by Regulation No. 5 of the Office of Contract Settlement dated September 30, 1944. 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.

§ 803.324-1 Every lump-sum construction contract regardless of subject matter, except:

(a) Contracts to be completed in six months or less for an amount of less than $500,000 and

(b) 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.

(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 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, 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 * * * 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 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.

§ 803.324–2 *Termination at the option of the Government (Short form).* The following article may be used in any supply or construction contract where neither of the articles set out in §§ 803.324 and 803.324–1 is required to be used.

ARTICLE ___. *Termination at the option of the Government.* The performance of work under this contract may be terminated by the Government whenever the Contracting Officer shall determine that such action is for the best interests of the Government. If this contract is so terminated, fair compensation, within the meaning of the Contract Settlement Act of 1944 (Public No. 395, 78th Cong.), as the same may from time to time be amended, will be provided for the contractor.

§ 803.325 *Anti-discrimination clause.* (a) Every contract, regardless of subject matter or amount, will contain (except as may be otherwise specifically permitted by the interpretations of Executive Order No. 9346 set forth in §§ 809.985 and 809.986) 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) When a prime contract is amended in accordance with § 809.986 to include the clause set forth in paragraph (a) of this section, 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.

(c) The contract clause set forth in paragraph (a) of this section is required under the provisions of Executive Order No. 9346. Such Executive order is discussed in Subpart L of Part 809.

§ 803.326 *Disputes article.* (a) Every contract, regardless of subject matter, for an amount of $20,000 or 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.

(b) 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 paragraph (a) of this section. 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.

§ 803.326–1 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 *Buy-American Act; contract clause.* Whenever the restrictions of the Buy-American Act are applicable to any items deliverable under a contract (see §§ 805.502 to 805.504), 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 article.* All contracts for the furnishing of supplies, except contracts for the furnishing of supplies in connection with which a Government inspector, transportation officer, 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 (see § 811.1182b):

ARTICLE —. *Notice of Shipments.* At the time of delivery of a shipment to a carrier for transportation, the Contractor shall give such prepaid notice of shipment to the consignee establishment, and to such other persons or installations designated by the Contracting Officer, as the Contracting Officer may require. If such instructions have not been received at least 24 hours prior to such delivery to a carrier, the Contractor shall request instructions from the Contracting Officer, concerning the notice of shipment to be given.

§ 803.329 *Variation in quantities clause.* 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.* 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.

§ 803.329b *Adjustments under changes article in fixed price supply contracts.*

§ 803.329b–1 *General.* (a) The "Changes" article authorized for use in fixed-price supply contracts (see § 813.1301 (Art. 2) of this chapter) permits the contracting officer by a written order to make changes in the drawings or specifications, or in the requirements as to packing and shipment. The article authorized in § 803.329a may be used in supply contracts in lieu of that authorized in § 813.1301 (Art. 2) of this chapter in which event the contracting officer is also empowered to increase or decrease within stated limits the quantities called for by the contract or to accelerate or reduce the rate of deliveries. An equitable adjustment is to be made and the contract modified accordingly.

(1) If such changes cause an increase or decrease in the amount due under the contract or in the time required for its performance (§ 813.1301 (Art. 2)), or

(2) If such changes cause an increase or decrease in the amount of work under the contract or in the time required for its performance (§ 803.329a),

If the parties fail to agree the dispute is to be determined as provided in the Disputes article.

(b) The different types of changes which may be ordered will raise different

kinds of problems in effecting the equitable adjustment required. These are discussed in §§ 803.329b–2 to 803.329b–4, inclusive.

(c) Reference is made to § 803.398b with respect to analogous problems of adjustments of fixed-price subcontracts under cost-plus-a-fixed-fee prime contracts.

§ 803.329b–2 *Types of adjustments after a change order.* There are two types of adjustments either or both of which may be required to be made as the result of a change order:

(a) Adjustments attributable to increases or decreases in the unit costs for the balance of the contract as a result of the change order, including changes in the direct costs and in the amounts as well as the allocations of indirect expenses required for the performance of the balance of the contract;

(b) Adjustments attributable to the portion of the work done prior to the change order, including items such as work in process, materials or machinery no longer usable, and subcontract or purchase order cancellation charges.

It is important that the difference between these two types of charges be clearly understood and observed in order to avoid duplication of the expenses incurred by the Government. Ordinarily it is desirable that these two types of adjustments be kept distinct, although the results may be included in a single written instrument. From the standpoint of pricing such separation is particularly desirable, since including those adjustments which are attributable to work done prior to the change order in the adjustment of unit prices tends to distort the unit prices for the purpose of pricing continuation orders and other comparable contracts. Where the two types of adjustment mentioned in (a) and (b) above are not set out in a single instrument it is important that each instrument shall indicate that it accomplishes only a part of the "equitable adjustment" contemplated as a result of the change order.

§ 803.329b–3 *Adjustments attributable to the balance of the contract.* Efficient administration of the contract requires that the charges attributable to the change in unit costs as a result of the change order be determined and adjusted as quickly as possible in order that the contractor shall assume the same risks as he assumed in negotiating the original contract price. In effecting this adjustment, consideration must be given to the factors and principles relating to the negotiation of a new contract discussed in ASF Manual M–601 "Pricing in War Contracts", with particular attention to changes in the cost factors. Any necessary adjustment will in every case be reflected in an increase or decrease of the unit price of the items to be delivered after the change became effective. The claim for this type of adjustment is similar in nature to a claim asserted by a contractor under subparagraph (f) of the Uniform Termination Article (see e. g. § 803.324). Including this adjustment in a written agreement need not be delayed pending completion of the adjustment discussed in the next paragraph. In the event that the contract in question contains the optional price adjustment article set forth in § 803.373–5 or 803.373–6, consideration will be given to the desirability of a negotiation for price adjustment under that article in lieu of the adjustment described in this section.

§ 803.329b–4 *Adjustments attributable to the work before the change order.* (a) A claim for the adjustment of charges attributable to the work done prior to the effective date of the change order is similar in nature to a claim with respect to the uncompleted portion of the contract arising upon termination under the termination article (see e. g. § 803.324). In adjusting such charges the provisions of Subchapter C of this chapter are not controlling but may be used as a guide. The adjustment of this type of charge may be reflected in a lump sum payment and should normally be so reflected where substantial amounts are involved rather than reflected in the price of the article itself.

(b) In the event that the contractor includes in his claim the cost of any property which is rendered unusable by reason of the change order, the contracting officer must safeguard the interests of the Government by assuring that the value of such property is reflected in the adjustment made by reason of the change. Any excess inventory resulting from the change order should, if practicable, be dealt with and accounted for in conformity with Part 844 of this chapter. If title is to be taken by the Government, the agreement will provide clearly what is to be done with the property. The contracting officer will take all necessary action for prompt execution of the provisions of the supplementary agreement relating to property which is to be transferred to the Government.

(c) In view of section 3 (d) of the Contract Settlement Act and § 841.111–4 of this chapter the claim of a subcontractor under a fixed-price prime contract for work cancelled in whole or in part under circumstances which require the Government to bear the cost is a termination claim. The settlement of such a termination claim will be effected in accordance with the principles and under the procedures set out in Subchapter C of this chapter (see especially Part 846). Accordingly, in effecting the adjustments of the prime contract attributable to the work done prior to change order, the prime contractor will not be permitted to include estimated sums on account of the claims of his subcontractors. Instead he will be required to effect settlements of those claims before he may be paid therefor and to agree that any sums received on account of the settlement of the claims of his immediate subcontractors, which are not paid or credited to the immediate subcontractor within 10 days after receipt thereof, will be returned to the Government (see Article 3 of § 849.981–1 of this chapter).

§ 803.329b–5 *Adjustments of changes resulting in a reduction in quantity.* A reduction in the quantity to be delivered under the contract made pursuant to the "Changes" article set forth in § 803.329a constitutes a partial termination within the meaning of the Contract Settlement Act of 1944. The use of a "Changes" article to effect a reduction in quantity and the problems incident thereto are discussed in § 842.216 of this chapter. Attention, however, is directed to the importance of safeguarding the interest of the Government in property rendered unusable because of the reduction by securing title thereto or otherwise receiving credit for the value thereof.

§ 803.330 *Partial payments article when payments are not to exceed 75 per cent of cost of property.* 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 an article 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 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: *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 total contract price of supplies still to be delivered.

(b) Upon the making of any partial payment under this contract, title to all parts, materials, inventories, work in process and non-durable tools theretofore acquired or produced by the Contractor for the performance of this contract, and properly chargeable thereto under sound accounting practice, shall forthwith vest in the Government; and title to all like property thereafter acquired or produced by the Contractor for the performance of this contract and properly chargeable thereto as aforesaid shall vest in the Government forthwith upon said acquisition or production: *Provided*, That nothing herein shall deprive the Contractor of any further partial or final payments due or to become due hereunder; or 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. The Contractor, either before or after receipt of notice of termination at the option of the Government, may acquire or dispose of property to which title is vested in the Government under this Article, upon terms approved by the Contracting Officer, *Provided*, That, after receipt of notice of termination,

any such property that is a part of termination inventory may be acquired or disposed of only in accordance with the provisions of the termination article of this contract and applicable laws and regulations. The agreed price (in case of acquisition by the contractor) or the proceeds received by the contractor (in case of any other disposition), shall, to the extent that such price and proceeds do not exceed the unliquidated balance of partial payments hereunder, be paid or credited to the Government as the contracting officer shall direct; and such unliquidated balance shall be reduced accordingly. Current production scrap may be sold by the Contractor without approval of the Contracting Officer but the proceeds will be applied as provided in this subparagraph (d); *Provided*, That any such scrap which is a part of termination inventory may be sold only in accordance with the provisions of the termination article of this contract and applicable laws and regulations. Upon liquidation of all partial payments hereunder or upon completion of deliveries called for by this contract, title to all property (or the proceeds thereof) which has not been delivered to and accepted by the Government under this contract or which has not been incorporated in supplies delivered to and accepted by the Government under this contract and to which title has vested in the Government under this Article shall vest in the Contractor.

(e) The article of this contract captioned "Liability for Government Property" and any other provision of this contract defining liability for Government-owned property shall be inapplicable to property to which the Government shall have acquired title solely by virtue of the provisions of this Article. The provisions of this Article shall not relieve the Contractor from risk of loss or destruction of or damage to property to which title vests in the Government under the provisions hereof.

(f) If this contract (as heretofore or hereafter supplemented or amended) contains provision for Advance Payments, and in addition if at the time any partial payment is to be made to the Contractor under the provisions of this partial payments article any unliquidated balance of advance payments is outstanding, then notwithstanding any other provision of the Advance Payments Article of this contract the net amount, after appropriate deduction for liquidation of the advance payment, of such partial payment shall be deposited in the special bank account or accounts maintained as required by the provisions of the Advance payments Article, and shall thereafter be withdrawn only pursuant to such provisions.

§ 803.331 *Partial payments article when payments are not to exceed 90 per cent of direct labor and material costs.* 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 costs to the contractor will be made, the contract will contain an article 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 percent of the contract price of supplies still to be delivered.

(b) (c) (d) (e) (f) [These subparagraphs are the same as similarly lettered subparagraphs of the article contained in § 803.330 of these procurement regulations].

§ 803.331a *Amendment of contracts containing partial payments article to include substance of paragraph (d) of partial payments article in § 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 ——[2] 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.

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

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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".

[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."

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 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.

[4] Italicized language may be omitted in appropriate cases.

(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.[4] 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)[6] 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 §§ 803.365–1a, 804.451–1, 804.498 and 827.723, 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:

(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

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[5] Delete if inapplicable.

[6] If such costs are to be 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.

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: contract clause.* 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:

Records of Government-owned property. The property officer, _____, is designated as the officer to maintain the necessary property records in connection with this contract.

§ 803.335 *Patent provisions.* The patent articles set forth in §§ 803.335–1 to 803.335–8, inclusive, are for use in accordance with the policy and discretion set forth in §§ 811.1116, 811.1117 and 811.1118.

§ 803.335–1 *License under foreground patents.* Where it is proper in a development contract (see §§ 811.1116–1 to 811.1116–7, inclusive) to require the contractor to grant the Government a license under foreground patents, the appropriate contract article is as follows:

ARTICLE ___. *Patent rights.* (1) Where used in this Article, and not elsewhere in this contract, the expression "Subject Invention" means each invention, improvement and discovery (whether or not patentable) conceived or first actually reduced to practice in the performance of this contract, including any subcontract hereunder, or in the performance of any research or development work relating to the subject-matter hereof which was done upon the understanding that this contract or any subcontract hereunder would be awarded; the expression "Technical Personnel" means each person employed by or working under the direction of Contractor or any subcontractor hereunder who, by reason of the nature of his duties in connection with the performance of this contract, or any subcontract hereunder, would reasonably be expected to make inventions; and the expression "Contractor's Patent Rights" means all patents and applications for patent, under which Contractor now has or may hereafter acquire the right to grant a licence, to the extent that they are based upon the disclosure of inventions other than a Subject Invention.

(2) Contractor agrees to and does hereby grant to the Government an irrevocable, non-exclusive, non-transferable and royalty-free license to practice, and cause to be practiced for the Government, throughout the world, each Subject Invention in the manufacture, use and disposition according to law of any article or material, and the use of any method: *Provided, however,* That as respects any Subject Invention made by others than Technical Personnel, and as respects the practice of any Subject Invention in foreign countries, the said license shall be to the extent of Contractor's right to grant the same: *And provided further,* That nothing contained in this sentence shall be deemed to grant a license under Contractor's Patent Rights. Contractor agrees (i) to deliver to the Contracting Officer or his designee, promptly and in any event prior to final settlement, a complete written disclosure of each Subject Invention which reasonably appears to be patentable and, as to each such invention, to exert its best efforts to effect such delivery within six months after first publication, public use or sale; (ii) to designate, at the time of such delivery, whether or not said invention has been or will be claimed in a patent application, and to file or cause to be filed in due form and time an application covering each such invention affirmatively so designated; (iii) to furnish to the Contracting Officer or his designee, on request, copies or an irrevocable power to inspect and make copies of each patent application filed by or on behalf of the Contractor covering any Subject Invention; (iv) to deliver to the Contracting Officer or his designee, duly executed, such instruments of assignment, application papers and rightful oaths, prepared by the Government, as the Contracting Officer or his designee deems necessary to vest in the Government (but, as to any Subject Invention made by others than Technical Personnel, only to the extent of Contractor's right to do so) the sole and exclusive ownership in, and the right to apply for and prosecute patent applications covering, each Subject Invention which Contractor does not affirmatively designate as aforesaid (subject however to the reservation of a personal, non-exclusive and royalty-free license thereunder to Contractor); and (v) to deliver to the Contracting Officer or his designee, duly executed, such instruments of licence, prepared by the Government, confirmatory of any licence rights herein agreed to be granted to the Government, as the Contracting Officer or his designee may require.

(3) Contractor agrees to and does hereby grant to the Government the right to reproduce, use and disclose for any governmental purpose all or any part of the reports, drawings, blueprints, data and technical information to be delievered by Contractor to the Government under this contract: *Provided, however,* That nothing contained in this sentence shall be deemed to grant a license under any patent now or hereafter issued.

§ 803.335–2 *License under foreground and background patents.* Where it is proper in a development contract (see § 811.1116–8 to 811.1116–10, inclusive) to require the contractor to grant the Government a license under foreground and background patents, the appropriate contract article is as follows:

ARTICLE ___. *Patent rights.* (1) Where used in this Article and not elsewhere in this contract, the expression "Subject Invention" means each invention, improvement and discovery (whether or not patentable) conceived or first actually reduced to practice in the performance of this contract, including any subcontract hereunder, or in the performance of any research or development work relating to the subject-matter hereof which was done upon the understanding that this contract or any subcontract hereunder would be awarded; the expression "Technical Personnel" means each person employed by or working under the direction of Contractor or any subcontractor hereunder who, by reason of the nature of his duties in connection with the performance of this contract, or any subcontract hereunder, would reasonably be expected to make inventions; and the expression "Contractor's Patent Rights" means all patents and applications for patent, under which Contractor now has or may hereafter prior to final settlement acquire the right (without obligation to make payment to others) to grant the license hereinafter set forth, to the extent that they are based upon the disclosure of inventions (other than a Subject Invention) which relate to or are useful in connection with the manufacture or use of the subject-matter of this contract.

(2) Contractor agrees to and does hereby grant to the Government an irrevocable, non-exclusive, non-transferable and royalty-free license to practice, and cause to be practiced for the Government, throughout the world, (a) each Subject Invention in the manufacture, use and disposition according to law of any article or material, and the use of any method: *Provided, however,* That as respects any Subject Invention made by others than Technical Personnel, and as respects the practice of any Subject Invention in foreign countries, the said license shall be to the extent of Contractor's right to grant the same; and (b) each invention covered by Contractor's Patent Rights in the manufacture, use and disposition according to law of any and all _____ and parts thereof of the type made or developed in the performance of this contract or any subcontract hereunder, and any modification or improvement thereof, but acceptance or exercise of said license shall not estop the Government at any time to contest the enforceability, validity or scope of, or the title to, any patent so licensed. Contractor agrees (i) to deliver to the Contracting Officer, or his designee, promptly and in any event prior to final settlement, a complete written disclosure of each Subject Invention which reasonably appears to be patentable and, as to each such invention, to exert its best efforts to effect such delivery within six months after first publication, public use or sale; (ii) to designate, at the time of such delivery, whether or not said invention has been or will be claimed in a patent application, and to file or cause to be filed in due form and time an application covering each such invention affirmatively designated as aforesaid; (iii) to furnish to the Contracting Officer or his designee, on request, copies or an irrevocable power to inspect and make copies of each patent application filed by or on behalf of the Contractor covering any Subject Invention; (iv) to deliver to the Contracting Officer or his designee, duly executed, such instruments of assignment, application papers and rightful oaths, prepared by the Government, as the Contracting Officer or his designee deems necessary to vest in the Government (but, as to any Subject Invention made by others than Technical Personnel only to the extent of Contractor's right to do so) the sole and exclusive ownership

in, and the right to apply for and prosecute patent applications covering, each Subject Invention which Contractor does not affirmatively designate as aforesaid (subject however to the reservation of a personal, nonexclusive and royalty-free license thereunder to Contractor); and (v) to deliver to the Contracting Officer or his designee, duly executed, such instruments of license, prepared by the Government, confirmatory of any license rights herein agreed to be granted to the Government, as the Contracting Officer or his designee may require.

(3) Contractor agrees to and does hereby grant to the Government the right to reproduce, use and disclose for any governmental purpose all or any part of the reports, drawings, blueprints, data and technical information to be delivered by Contractor to the Government under this contract; *Provided, however,* That nothing contained in this sentence shall be deemed to grant a license under any patent now or hereafter issued.

§ 803.335–3 *Title to foreground patents.* Where it is proper in a development contract (see §§ 811.1116–11 and 811.1116–12) to require the contractor to assign to the Government title to foreground patents, the appropriate contract article is as follows:

ARTICLE ___. *Patent rights.* (1) Where used in this Article and not elsewhere in this contract, the expression "Subject Invention" means each invention, improvement and discovery (whether or not patentable) conceived or first reduced to practice in the performance of this contract, including any subcontract hereunder, or in the performance of any research or development work relating to the subject-matter hereof which was done upon the understanding that this contract or any subcontract hereunder would be awarded, unless disclosed in a patent application filed prior to the commencement of such performance; the expression "Technical Personnel" means each person employed by or working under the direction of Contractor or any subcontractor hereunder who, by reason of the nature of his duties in connection with the performance of this contract, or any subcontract hereunder, would reasonably be expected to make inventions; and the expression "Contractor's Patent Rights" means all patents and applications for patent, under which Contractor now has or may hereafter acquire the right to grant a license, to the extent that they are based upon the disclosure of inventions other than a Subject Invention.

(2) Each Subject Invention made by Technical Personnel and, to the extent of Contractor's assignable rights therein, each Subject Invention made by others than Technical Personnel, shall be the sole and exclusive property of the Government, and the Contracting Officer or his designee shall have sole power to determine to whom, and in what manner and form, consistent with law, title thereto shall be assigned and patent protection therefor shall be obtained in any country; *Provided, however,* That nothing contained in this sentence shall be deemed to grant a license under Contractor's Patent Rights. Contractor agrees (i) to deliver to the Contracting Officer or his designee, promptly and in any event prior to final settlement, a complete written disclosure of each Subject Invention which reasonably appears to be patentable and, as to each such invention, to exert its best efforts to effect such delivery within six months after first publication, public use or sale; and (ii) to deliver to the Contracting Officer or his designee, duly executed, such instruments of assignment, application papers and rightful oaths, relating to each Subject Invention title to which is to be assigned pursuant to this contract, as the Contracting Officer or his designee may require in order to enable patent applications therefor to be filed and prosecuted, and title to such applications to be assigned and recorded, in any country.

(3) Contractor agrees to and does hereby grant to the Government the right to reproduce, use and disclose for any governmental purpose all or any part of the reports, drawings, blueprints, data and technical information to be delivered by Contractor to the Government under this contract; *Provided, however,* That nothing contained in this sentence shall be deemed to grant a license under any patent now or hereafter issued.

§ 803.335–4 *Indemnity against patent risks (broad form).* Where it is proper (see § 811.1117–3) to require the contractor to indemnify the Government against all patent infringement risks, the appropriate contract article is as follows:

ARTICLE ___. *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 arising (in respect only of inventions which are actually embodied in items manufactured or supplied hereunder, or are involved in the use, unless there be more than one practicable use, of such items) by reason of the use or disposal of such items by or for the account of the Government.

§ 803.335–5 *Indemnity against patent risks (narrow form).* Where it is proper (see § 811.1117–4) 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 (unless originating with the contractor) 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 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 arising (in respect only of inventions which are actually embodied in items manufactured or supplied hereunder, or are involved in the use, unless there be more than one practicable use, of such items) by reason of the use or disposal of such items by or for the account of the Government; excepting however infringements necessarily resulting from the Contractor's compliance with specifications (unless originating with the Contractor) 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 said claim or bearing has heretofore or shall hereafter prior to final settlement come to the attention of the Contractor's legal representatives or executive agents.

§ 803.335–6 *Authorization and assistance.* Where there is reason to believe (see § 811.1117–6) 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 (whether or not the contractor indemnifies the Government against patent infringement risks), 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 machinery, tools or methods the use of which necessarily results from compliance by the Contractor or the using subcontractor 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 purpose of directing the manner of such performance.

(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 said claim or bearing 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, 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 § 803.335–5 above. If the contract articles set forth in this section and in § 803.335–5 are both used in the same contract, the duplicating provision of this section should be eliminated.

§ 803.335–7 *Indemnity bond.* Where the giving of bond in support of the contractor's indemnity obligation is deemed necessary (see § 804.406–5) the appropriate contract article is as follows:

ARTICLE ___. *Patent infringement 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.

§ 803.335–8 *Patent applications disclosing certain classified subject-matter.* Where it is proper for the Government to control the filing of patent applications disclosing top secret, secret or confidential subject-matter of a contract (see § 811.1116–13), the appropriate contract article is as follows:

While and so long as the subject-matter of this contract is classified by the War Department as "Confidential" or "Secret" or higher, Contractor agrees that, before filing or causing to be filed a patent application disclosing such subject-matter, Contractor will refer the proposed application to the Contracting Officer or his designee for a recommendation by the War Department whether such application should be ordered to be kept secret under the provisions of the Act of October 6, 1917, as amended (35 U.S.C. 42), and will faithfully observe any reasonable instructions given by the Contracting Officer or his designee in that regard which instructions may include a direction not to file the same so long as the Contracting Officer or his designee deems such action necessary in the interests of national security. If and to the extent that the subject-matter of this contract is classified by the War Deparment as "Secret" or higher, Contractor agrees upon request of the Contracting Officer or his designee to assign and convey to the Government the entire right, title and interest in and to each United States patent application, disclosing the said subject-matter or any part thereof of this contract and filed by or on behalf of Contractor, which Contractor is not obligated to assign to the Government by virtue of any other provision of this contract, the same to be held by the Government subject to reversion of the entire right, title and interest therein to Contractor upon allowance of the said application; *Provided, however,* That nothing contained in this sentence shall enlarge or diminish the rights otherwise granted to or reserved by the Government or Contractor in respect of said application or the invention covered thereby except as and to the extent herein expressly provided.

§ 803.336 *Classified contracts: disclosure of information clause.* All top secret, 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 *Classified contracts; employment of aliens clause.* All top secret, secret, confidential or restricted contracts will contain the following clause without deviation (for a further discussion of the subject of employment of aliens, see Subpart K of Part 809):

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 classified 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.

§ 803.337–1 *Employment of aliens in connection with contracts for aircraft, aircraft parts or aeronautical accessories.* All top secret, 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 provisions as the Commanding General, Army Air Forces, deems appropriate.

§ 803.338 *Plant protection; contract clauses.* 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 (b) 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

[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.

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 request of the Contracting Officer, shall suspend from access to work under this contract any officer or employee whose continued employment is deemed by the Contracting Officer to endanger the security of the war effort.

(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.

§ 803.340 *Rental of gas cylinders; contract clause.* 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 220 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 contractor's plant.

§ 803.341–3 *Article _____. Conversion to fixed price contract.* The following article will be used in cost-plus-a-fixed-fee contracts in accordance with § 802.232–3 of this chapter:

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.

§ 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.).

§ 803.342–1 [*Form 1*] *Renegotiation pursuant to the Renegotiation Act: Form for general use.*

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[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 those 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).

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).

§ 803.342–2 [*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.

§ 803.342–3 [*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.

§ 803.343 *Davis-Bacon Act: contract clause.* All contracts subject to the Davis-Bacon Act will contain the following clause without deviation (for a discussion of the Davis-Bacon Act and information as to the contracts which are subject to and those which are exempt from such act, see Subpart D of Part 809):

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.

§ 803.343–1 *Minimum wages.* 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 *Copeland "Kick-back" Act: contract clause.* All contracts subject to the Copeland "Kick-back" Act will contain the following clause without deviation (for a discussion of the Copeland "Kick-back" Act and information as to the contracts which are subject to and those which are exempt from such act, see Subpart C of Part 809):

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; contract clause.* 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 803.353–4 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 Subpart A of Part 809 of this chapter.

§ 803.346 *Eight-Hour Law of 1912; contract clause.* All contracts subject to the provisions of the Eight-Hour Law of 1912 will contain the following clause without deviation (for a discussion of the Eight-Hour Law of 1912 and information as to contracts which are subject to and

those which are exempt from such law, see Subpart B of Part 809):

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; clause for fixed price contracts.* 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 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 _____
(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 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 pro-

[1] The bracket provision may be inserted in the case of experimental contracts or other cases where deemed especially appropriate.

vided, 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 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 duly authorized representative the amount of such excess shall, upon demand made by the_____ _____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 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.

(Chief of technical service)

(Chief of technical service)

(Chief of technical service)

(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 _____, 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.

(Chief of technical service)

(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 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 authorized representative shall have the right to suspend further advance payments without notice.

(Chief of technical service)

§ 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 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.

(Chief of technical service)

(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

[1] The bracket provision may be inserted in the case of experimental contracts or other cases where deemed especially appropriate.

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 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.

(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 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 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 Contratcor 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 §§ 843.331 and 845.564–2 of this chapter:

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 re-

gard 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 *CPFF construction contracts; termination article.* 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 ir 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 *OPA escalation articles.* The articles appearing in §§ 803.351–4, 803.351–5, and 803.351–6, providing for escalation upon a change in maximum prices fixed by the Office of Price Administration, are authorized for use in the contracts and upon the conditions specified in the italic heading of each of those sections.

§ 803.351–4 *Article for use in contracts for the purchase of lumber or coal.*

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_____ _____ 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.

§ 803.351–5 *Article for use in contracts for the purchase of 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 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 fraction thereof, per unit, that such maximum price may be increased up to and including the date of delivery. If the OPA maximum price in effect on the date of shipment of any of the supplies to be delivered hereunder is less than the price stated herein, the price payable for such supplies shall be the OPA maximum ceiling price in effect on the date of shipment.

NOTE: Where the foregoing article is used, the clause set forth in the note to § 803.351–4 may be added.

§ 803.351–6 *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 negligence 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.

§ 803.352–1 If desired, paragraph (b) of the clause set forth in § 803.352 may be modified in either of the following manners:

(a) 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".

(b) 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.

§ 803.352–2 If desired, the word "unforeseeable", contained in the clause set forth in § 803.352, 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 section, 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.

§ 803.352–3 For the purpose of the first sentence of paragraph (b) of the Delays-Damages clause set forth in § 803.352, 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 § 803.353–4, 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.

§ 803.353–1 *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 Subpart E of Part 809). Accordingly, if desired, there may be added to the representations and stipulations set forth in § 803.353 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.

§ 803.353–2 *Convict labor.* For discussion of the provision with respect to convict labor contained in paragraph (d) of the representations and stipulations set forth in § 803.353, see § 809.903–2.

§ 803.353–3 *Minimum wage determinations under the Walsh-Healey Act.* (a) It is not necessary that contracts subject to the Walsh-Healey Act contain a statement as to the minimum wage determination which is applicable.

(b) Provisions of paragraph (a) above do not however, affect the requirement that the applicable minimum wage determinations, if any, be set forth in the individual purchase action report (see item (20) in § 802.297–1a.

§ 803.353–4 *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 § 803.353, 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 § 803.353–1.)

§ 803.354 *Notice of labor disputes; contract clause.* The following clause will be contained without deviation in all contracts except (a) those to which it is clearly inapplicable, (b) those which are written on a standard form of contract, such as War Department Contract Form No. 47 (§ 813.1317c), 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; contract clause.* In accordance with the Assignment of Claims Act of 1940 (54 Stat. 1029) 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 *Provisions concerning assignment of rights under classified 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 61, AR 380–5. 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.* Form of tax articles are set forth below in §§ 803.357–1 and 803.357–2. Whichever form is applicable must be used in all contracts executed on or after June 1, 1944 and may be used (in preference to the forms of articles formerly contained in such sections) in contracts executed before that date.

§ 803.357–1 *Long form tax article.* Except as otherwise stated in §§ 803.357–2 and 803.357–5 all fixed price (lump sum) contracts will include a tax article substantially in the form set forth in this section. Attention is directed to the necessity of including in each contract suitable provisions (see §§ 803.358) 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,

[1] Such officers as may be designated by the chief of the technical service concerned.

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 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.

§ 803.357–2 *Short form tax article.* (a) The short form tax article set forth below may be used, in lieu of the form set forth in § 803.357–1, (1) where the estimated time for performance does not exceed sixty days, (2) where the contract is executed on a standard form of contract (as that term is defined in § 803.304–1) which contains the short form tax article, and (3) where the contract instrument is a purchase order. The long form tax article (§ 803.357–1) 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.

(b) 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.

§ 803.357–4 *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 (a) 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 (b) any other state or local taxes, exemption from which is available in the case of transactions to which the Federal Government is a party.

§ 803.357–5 *Omission of standard tax articles.* The chief of any technical service may authorize the omission of the tax articles set forth in §§ 803.357–1 and 803.357–2 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 § 803.357–1 but should not be made applicable to taxes other than those paid with respect to the wages of the employees of the particular contractor.

§ 803.357–6 *Customs duties.* Customs duties are Federal taxes and under the contract clauses set forth in §§ 803.357–1 and 803.357–2, 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 to 805.506–3.

§ 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, speci-

fications 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.

§ 803.362 *Lump sum construction contracts; accident prevention clause.* 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 § 827.727:

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 _____ (Subcontractor) in connection with the performance of this subcontract. With the approval in writing of the Contracting Officer for the plant of _____ (Subcontractor) (whether such approval is given prior to or after the giving of a notice of the termination of this subcontract), _____ (Subcontractor) may transfer 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, _____ (Subcontractor) may itself acquire title 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 _____ (Prime Contractor) under this subcontract, 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 to 811.1101–7):

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.*

§ 803.365–1 *Liability for Government-owned property; cost-plus-a-fixed-fee contracts.* 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 willful 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 contractor'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 prop-

erty 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 March 15, 1944.

(b) Whenever the terms of a cost-plus-a-fixed-fee contract are to be modified by the execution, on or after March 15, 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 §§ 804.434–1 and 804.498 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 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).

§ 803.365–1a *Same; fixed or unit price contracts.* 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 reimbursed or compensated 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 March 15, 1944.

(b) Whenever the terms of such a fixed or unit price contract are to be modified by the execution, on or after March 15, 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 con-

[1] Italicized language may be omitted in appropriate cases.

tracts 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 §§ 804.451–1 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.

§ 803.365–1b *Liability and insurance clauses for use in fixed price contracts for transportation services.* The contract articles set forth below shall be used under the conditions prescribed for the use of each article in fixed price contracts for services accessorial to or forming a part of a transportation movement, including contracts for freight handling, car loading and unloading, packing and crating, stevedoring, lighterage, trucking, heavy lift service, lumber handling and other contracts for terminal services not procured by means of a bill of lading.

(a) *Where eliminating cost of insurance results in savings.* Where savings to the Government may be obtained by eliminating the cost of insurance on Government property which otherwise would be added to the contract price, the contract will, unless an indemnity article for liability for extraordinary wartime risks and hazards is required, contain the article set forth in § 803.365–1 (omitting paragraph (f) and, in cases where the contract is performed on Government premises, paragraph (e)).

(b) *Where services performed by common carrier or warehouseman.* The following liability provision will be used where the services are performed by a common carrier or a common warehouseman at tariff or established rates, since such rates include a factor for the liability imposed or assumed:

Liability for Government-owned property. The Contractor's responsibility for Government property in its possession or control pursuant to the performance of this contract shall be that imposed by law.

(c) *Where savings trivial in amount, difficult of ascertainment or performed at tariff rates.* Except as otherwise provided in paragraph (b) of this section, where savings will be trivial in amount or difficult of ascertainment or where the services are performed at tariff or established rates, which rates include a factor for liability imposed or assumed, the following article will be used:

Liability for Government-owned property. The Contractor shall be liable to the Government for all loss of or damage to property of the Government in its possession or control in connection with this contract resulting from the fault or negligence of the Contractor's officers, agents, or employees.

(d) *Where contractor carries limited amount of insurance.* Where insurance covering Contractor's liability for property is carried in a limited amount and no substantial savings will accrue to the Government if this insurance is eliminated, yet if the Contractor be required to assume total liability the Contractor's insurance limits would have to be increased or additional insurance purchased, thereby increasing the cost of services, the following article will be used:

Liability for Government-owned property. (a) The Contractor shall be liable to the Government for all loss or destruction of or damage to the property of the Government in its possession or control in connection with this contract (hereinafter called "Government property") resulting from the fault or negligence of the Contractor's officers, agents, or employees: *Provided, however,* That the liability of the Contractor under this paragraph shall not exceed $(A) on account of any one accident or occurrence and that with respect to so much of any loss or destruction of or damage to Government property on account of any one accident or occurrence as exceeds $(A) the Contractor shall be liable only under the conditions set forth in subparagraph (b) hereof.

(b) Except as otherwise specifically provided, the Contractor shall not be liable for loss or destruction of or damage to Government property unless such loss, destruction or damage results from the willful 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 Contractor's business or of the whole of Contractor's operations at any place where the Contractor may perform services under this contract.

(c) 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 in excess of the maximum amount of liability provided in subparagraph (a) hereof, and represents that it is not including and agrees that it will not hereafter include in any price to the Government any charges or reserve for such insurance.

(d) Upon the happening of loss or destruction of or damage to Government property in excess of $(A) the Contractor shall communicate with the Contracting Officer and, if directed by the Contracting Officer, with the Loss and Salvage Organization now or hereafter designated by the Contracting Officer; and, with the assistance of that organization, if employed by the Contractor to perform services in accordance with instructions or regulations of the Government, 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, (4) the insurance, if any, covering any part of or interest in such commingled property. The Contractor shall be reimbursed the expenditures made by it and approved by the Contracting Officer in performing its obligations under this subparagraph (d) (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).

(e) 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.

(f) The Government shall at all times have access to the premises wherein any Government property is located. (Omit this subparagraph if the contract is to be performed at an Army installation.)

(e) *Where Government may obtain benefit of insurance carried as part of contractor's regular operations.* If the Contractor carries as a part of its regular commercial operations insurance on property covering loss or damage caused by fire, lightning, flood, windstorm and the like, and the Government may obtain the benefit of such additional insurance protection without substantial increase in the contract price, the following provision will be added at the end of the articles prescribed in paragraphs (a) and (b), at the end of subparagraph (a) of the article prescribed in paragraph (d) of this section or (with the first seven words of the second sentence deleted) in lieu of subparagraph (a) of the article prescribed in paragraph (d) of this section, depending upon the nature of the Contractor's insurance:

The Contractor carries and will maintain as a part of its regular commercial operations insurance covering loss or destruction of or damage to property in the amount of $_____. In addition to the liability hereinabove imposed, the Contractor shall be liable to the Government for any loss or damage to property of the Government in its possession or control in connection with this contract to the extent coverage is provided in such insurance.

(f) *Where extraordinary risks and hazards are involved.* In rare cases contracts which may involve extraordinary risks and hazards of loading and unloading, discharging, handling, storage, or proximity of ammunition,, explosives, gasoline, or other inherently dangerous freight may provide that the Government assumes such extraordinary risks and hazards incident to wartime operations to which the Contractor may be exposed. In such instances, where a lower contract rate may be obtained thereby and it is deemed that the assumption of such risks and hazards by the Government will facilitate the prosecution of the war, the article set forth below may be used with such minor variations as may be necessary to fit the particular situation.

[1] Italicized language may be omitted in appropriate cases.

All contracts containing such article will be submitted for prior written approval in accordance with § 802.238–3 of this chapter. No indemnity provision will be used in contracts at tariff rates with common carriers or common warehousemen.

Liability and indemnity. (a) The Contractor shall procure and maintain at all times during the continuance of this contract a policy or policies of insurance insuring the Contractor against liability for injury to or death of any person or persons in an amount not less than $(X) in any one accident, and for liability for property damage, including but not limited to property of the Government, in an amount not less than $(Y) in any one accident. The Contractor shall have attached to and made a part of all said insurance policies a provision by the terms of which the insurer agrees to waive any and all rights of subrogation which it may have against the United States by reason of any payment under said policy or policies.

(b) The Contractor shall be liable to the Government for any loss or damage which may be sustained by the Government as a result of the fault or negligence of the Contractor's officers, agents or employees, subject, however, to the following limitations and conditions:

(i) The Contractor's liability to the Government in connection with any one accident shall be limited to the amount of $(Y) (or the amount of insurance carried by the Contractor, whichever is greater). The Contractor represents that the prices stated herein do not include the cost of insurance against the risks assumed by the Government nor any provision for a reserve to cover such risks.

(ii) The Contractor shall not be responsible to the Government for any loss or damage resulting from any act or omission of any employee of the Government or resulting from compliance by officers, agents, or employees of the Contractor with specific directions of the Contracting Officer; nor shall the Contractor be so responsible for any such loss or damage resulting from failure of the equipment supplied by the Government, unless the Contractor is negligent in the care and use of such Government furnished equipment.

(c) The services to be performed under this contract are incident to war activities of the Government and may include, in addition to services of a nature normally performed by the Contractor in peacetime commercial operations with the risks and hazards normally incident thereto, the loading, discharging, handling, presence or proximity of ammunition, explosives, gasoline or other inherently dangerous freight. It is understood that the compensation to the Contractor for the work has been established with regard only to the normal risks and hazards involved in similar services in peacetime commercial operations, and that such consideration does not include any allowance for the additional and extraordinary risks and hazards described above. To induce the contractor to undertake the performance of such services for the compensation herein provided, and thus obtained for the Government the resulting benefit of such reduced compensation, the Government will hold the Contractor harmless,

(i) Against liability to parties other than the Government because of death, bodily injury, or property damage or destruction or otherwise of any kind whatsoever, irrespective of negligence of the Contractor, its officers, agents, servants, or employees; and

(ii) For any expense, not excluded under subparagraph (4) hereof, which may be incurred by the Contractor, and which is attributable to such liability:

subject, however, to the following conditions and limitations:

(1) The undertaking of the Government shall be applicable and limited to situations where such liability arises out of, results from, or is in any way attributable to or connected with the presence or proximity of ammunition, explosives, gasoline or other inherently dangerous freight, or the loading, unloading, discharging, handling or storing of such freight by the Contractor.

(2) The undertaking of the Government shall be limited to the excess over and above $ (X), or the amount of insurance carried by the Contractor, whichever is greater, for injury to or death of persons, and $ (Y), or the amount of insurance carried by the Contractor, whichever is greater, for property damage, of the total and entire amount of such liability arising out of any single accident.

(3) The undertaking of the Government shall not be applicable and the Government shall have no obligation or liability in respect of such undertaking or otherwise, in situations in which such liability and expense is due in whole or in part to willful and deliberate disregard of instructions of the Government or to the personal failure to exercise good faith, or, insofar as the character of the work permits under wartime operations, that degree of care normally exercised under like conditions in the performance of the Contractor's peacetime commercial operations, by the elected corporate officers of the Contractor or the representative of the Contractor having supervision or direction of all operations at any place where the contractor may perform services hereunder, unless such failure to exercise such normal care is in compliance with express instructions of the Government.

(4) The Contractor shall cooperate with the Government and, upon the Government's request, shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits; and the Government shall reimburse the Contractor for actual out-of-pocket expenses incurred by it in compliance with such a request, other than the cost of maintaining the contractor's usual organization and loss of earnings, unless and to the extent such expenses are covered by a policy or policies of insurance carried by the Contractor. The Contractor shall not, except at its own cost, voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical and surgical relief to others as shall be imperative at the time of said occurrence of such event.

(5) This undertaking of the Government to hold the Contractor harmless against liability, as herein provided, shall not create or give rise to any right, privilege, or power in any person or organization, except the Contractor, nor shall any person or organization be or became entitled to join the Government as a co-defendant in any action against the Contractor brought to determine the Contractor's liability or for any other purpose: *Provided, however,* That as to any risk borne or assumed by the Government through its undertaking above set forth, the Government shall be subrogated to any claim, demand or cause of action against third persons or organizations which exists in favor of the Contractor, and the Contractor shall, if so required, forthwith execute one or more formal assignments or transfers of such claims, demands or causes of action.

(6) The undertaking of the Government shall not be applicable to the Contractor's liability arising under the applicable provisions of a federal, state, territorial or district Workmen's Compensation law.

(7) Upon the happening of any event from which the obligation of the Government to hold the Contractor harmless against liability and expenses might arise, the Contractor shall communicate with The Judge Advocate General, Washington, D. C., the Contracting Officer and with the Loss and Salvage Organization now or hereafter designated by the Contracting Officer. If claim is made or suit is brought thereafter against the Contractor as a result or because of such event, the Contractor shall immediately deliver to the Government every demand, notice, summons or other process received by it or its representatives, and the Government shall provide appropriate attachment or appeal bonds or undertakings where required in the course of such litigation.

§ 803.365–2 *Cost-plus-a-fixed-fee contract; clause concerning reimbursement for losses and insurance expenses.* 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.

§ 803.365–3 *Cost-plus-a-fixed-fee contracts; insurance clause.* 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 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.

§ 803.365–4 *Cost-plus-a-fixed-fee contracts; clause concerning insertion of insurance and liability provisions in CPFF subcontracts.* 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.

§ 803.365.5 In accordance with the instructions contained in §§ 803.365–6 to 803.365–9, 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 sections.

§ 803.365–6 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)

§ 803.365–7 In cost-plus-a-fixed-fee subcontracts, executed under Architect-Engineer - Construction - Management Service Contracts, there will 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.

§ 803.365–8 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, 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 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.

§ 803.365–9 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 aggre-

gate 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 *Clause concerning discounts to be contained in invitations for bids.* 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 *Clause concerning subcontracting: for fixed price supply contracts.* 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 *Clause concerning subcontract; for 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.

§ 803.369 *Release upon final payment under cost-plus-a-fixed-fee contracts.* To facilitate the prosecution of the war and the final settlement of war procurement contracts, authority is granted to the chiefs of technical services and their representatives, pursuant to the First War Powers Act, 1941, Executive Order No. 9001 and the Contract Settlement Act of 1944, to amend existing cost-plus-a-fixed-fee contracts, whether or not terminated or completed, but in no event after final payment thereunder has been made, to include substantially the following article, and concurrently to delete any existing provisions of such contracts which are inconsistent with the following article:

Article ____. *Release provisions.* 1. 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 (a) 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 (b) 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.

2. 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 hereinafter provided) to be due and payable for overtime compensation and allowances under local, state or Federal laws in connection with such wages and salaries.

3. The Contractor shall promptly notify the Contracting Officer of any claims of the type described in paragraph 1 (b) above which are asserted subsequent to the execution of the release.

4. 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. The term "litigation" shall include suits at law or in equity and proceedings before any Governmental agency having jurisdiction over the claim.

§ 803.370 *General cosiderations.*

§ 803.370–1 *General policy.* As announced in Part 802 of this chapter, the policy of the War Department is to enter into supply contracts on a fixed price basis whenever such a course is feasible. Fixed price contracts at close prices tend to stimulate contractors to keep down costs by making the most effective use of manpower, materials and productive equipment and thus to minimize the cost of the war in terms of those economic resources as well as in terms of monetary outlay. Every effort must be made, therefore, to place supply contracts at close prices, regardless of whether any of the Price Revision Articles set out in §§ 803.370 to 803.377, inclusive, are used. Where the use of such an article is deemed necessary, the appropriate article may and should be incorporated in the contract if the conditions prescribed for its use are satisfied. The various articles to which the foregoing statements are applicable, together with the rules governing their use, are set forth hereinafter in §§ 803.370 to 803.377, inclusive.

§ 803.370–2 *Exceptions to general policy and regulations.* In specific instances where the contracting officer is of the opinion that (a) prices submitted by prospective contractors have not been arrived at independently, or (b) reasonable prices cannot be established from cost break-downs and other available data, or (c) other circumstances require protection of the Government's interests by the use of an appropriate Price Revision Article, or a modification thereof providing for downward adjustment only, he may initiate a request through channels to the Director Purchases Division, Headquarters, Army Service Forces, for authority to deviate from the policy and regulations set forth herein. Such requests will be accompanied by (1) a

full statement of all the facts and circumstances deemed to require such deviation, (2) a statement of the proposed manner and effect of the deviation, and (3) the recommendation of the chief of the technical service with respect thereto.

§ 803.370–3 *Arrangement of articles and regulations.* (a) Forms I–A, I–B and I–C provide for periodic revision of price at fixed intervals. Forms II–A and II–B provide for optional periodic revision of price upon the demand of either party. These forms constitute the basic price revision articles and are identical in provision except to the extent that their specific purposes require variations therein. The regulations common and applicable to all these forms are contained in § 803.371. Additional regulations governing the use and administration of each separate form will be found in the paragraph setting out that form.

(b) Form III, providing for revision of price on account of retroactive changes in labor conditions, and the regulations for its use and administration, are set out in § 803.374.

(c) Form IV, providing for downward price revision after completion or termination of the contract, and the regulations for its use and administration, are set out in § 803.375.

(d) Form V, providing for downward or limited upward price revision after completion or termination of the contract, and the regulations for its use and administration, are set out in § 803.376.

(e) Form VI, providing for repricing upon the happening of a specified contingency, and the regulations for its use and administration, are set out in § 803.377.

§ 803.370–4 *Relation of revision of prices under contract articles to statutory renegotiation.* (a) It is the policy of the War Department that each War Department contract should stand on its own feet insofar as the price is concerned and that, in arriving at a sound price initially or in revising the price pursuant to a contract article, no consideration should be given to the fact that the contractor may have incurred low profits or losses under other war contracts. It is recognized that where a Price Revision Article calls for a revision of the prices of items delivered during a completed fiscal period the price change may affect the billings for a period which has been included in a renegotiation settlement. It is the policy of the War Department that, except insofar as a different result is required by reason of contractual provisions which are now no longer authorized, there shall be no difference in net result to the contractor and the Government whether the price revision relating to the completed fiscal period follows or precedes the statutory renegotiation of sales for that period. This policy is given effect by a provision inserted in those Price Revision Articles which call for retroactive price revision (e. g. §§ 803.372–7 (j) and 803.373–6 (j)).

(b) In the great majority of cases the revision of prices of items delivered in the completed fiscal period can be completed before conclusion of the statutory renegotiation for that period. Contracting officers will make every effort to see that this result is attained. In the few cases where the revision of prices of items delivered in a completed fiscal period has not been completed before the conclusion of the statutory renegotiation for that period, the negotiation to establish the revised price should be carried to conclusion as promptly as possible. In determining what changes are to be made in the amounts paid or payable by or to the contractor in respect of items delivered during the completed fiscal period, the following general guides should be considered by the contracting officer:

(1) If the renegotiation resulted in a clearance notice or clearance agreement:

(i) Any reduction in price should be recovered from the contractor;

(ii) An increase in price should be allowed to the contractor if and to the extent that the office which conducted the renegotiation advises the contracting officer that excessive profits will not result therefrom.

(2) If the renegotiation resulted in a recapture of excessive profits:

(i) No increase in price should be allowed, since that would merely have the effect of increasing the excessive profits;

(ii) To the extent that the renegotiation has permitted the contractor to set up a reserve against possible downward price revisions, any reduction in price should be recovered from the contractor;

(iii) After exhaustion of any reserves against downward price revisions the contracting officer may permit the amount recaptured in renegotiation to be treated as an offset against any downward price revision to the extent that he is reasonably satisfied that the renegotiation recapture has not been applied as an offset against downward price revisions under other contracts.

§ 803.370–5 *Tabular view of price revision articles.*

NOTE: This table is designed to assist contracting officers and other procurement personnel to familiarize themselves with the price revision articles and to enable them quickly to ascertain which article appears most appropriate for a particular proposed contract. It is not designed to supplant in any way the textual regulations themselves, since the effect of each article and the conditions for its use are not stated in detail. Before any article is proposed to be used or is used in a particular case, the full text of the applicable regulations will be carefully examined and followed.

Effect of article	Conditions for use	
	Applicable to particular article	Applicable to all Form I and Form II articles
Form I–A (§ 803.372–6) Upward or downward price revision negotiated at fixed periods, with prospective effect only.	(§ 803.372–2) 1. Contract is such that both parties should be bound by price for the first period. Pricing period is range from 3 to 4 months in length. 2. Price is based on projections not extending beyond end of first period. 3. Periods should conform with operation of contractor's cost accounting system and need not be of equal length. 4. Periods may be measured in time or production or delivery of items.	(§ 803.371–1) 1. Contract is fixed price contract for supplies or services. 2. There is an absence of competition as that term is defined in § 803.371–1 (b). 3. Price is negotiated on understanding that particular article is to be included in contract and is a close price containing substantially no contingency charges. 4. Contractor employs proper estimating methods. 5. Contractor's cost accounting system is sufficiently reliable and accurate for proper operation of article. 6. One article is not to be substituted for another without express authority. 7. Alternative provisions for disagreements are provided. See §§ 803.372–2, 803.372–8, 803.373–2 and 803.372–7.
Form I–B (§ 803.372–6) Upward or downward price revision negotiated at fixed periods, with prospective effect only and with first period price based on experience under prior contract for same or similar item.	(§ 803.372–2) 1. Production under prior contract will continue to beginning of production under new contract. 2. Where new contract is of short duration, it may constitute one period. 3. Price is based on projections which do not extend beyond end of first period. 4. Periods should conform with operation of contractor's cost accounting system and need not be of equal length. 5. Periods may be measured in time or production or delivery of items.	
Form I–C (§ 803.372–7) Upward or downward price revision negotiated at fixed intervals, with retroactive revision at end of first period and prospective revision thereafter.	(§ 803.372–2) 1. Contract is such that neither party should be bound by price for first period. First period not to extend beyond 45% of production under contract. 2. Price is based on projections not extending beyond end of first period. 3. Periods should conform with operation of contractor's cost accounting system and need not be of equal length. 4. Periods may be measured in time or production or delivery of items. 5. Article may provide for one repricing, both retroactive and prospective, in appropriate cases.	

Effect of article	Conditions for use	
	Applicable to particular article	Applicable to all Form I and Form II articles
Form II-A (§ 803.373-5) Upward or downward price revision negotiated upon demand of either party, with prospective effect only, and subject to specified limitations on frequency of demands.	(§ 803.373-2) 1. Contract is such that both parties should be bound by initial price. 2. Price is based on projections extending over life of entire contract, taking into account reasonably expected cost decreases. 3. Date before which first demand cannot be made is specified. Ninety-day limitation effective thereafter may be varied by chief of technical service.	(§ 803.371-1) 1. Contract is fixed price contract for supplies or services. 2. There is an absence of competition as that term is defined in § 803.371-1 (b). 3. Price is negotiated on understanding that particular article is to be included in contract and is a close price containing substantially no contingency charges. 4. Contractor employs proper estimating methods. 5. Contractor's cost accounting system is sufficiently reliable and accurate for proper operation of article. 6. One article is not to be substituted for another without express authority. 7. Alternative provisions for disagreements are provided. See §§ 803.372-2, 803.372-8, 803.373-2 and 803.373-7.
Form II-B (§ 803.373-6) Upward or downward negotiated price revision, with first period fixed and subject to retroactive revision, and with prospective revision thereafter upon demand of either party, subject to specified limitations on frequency of demands.	(§ 803.373-2) 1. Contract is such that neither party should be bound by initial price. 2. Price is based on projections extending over life of entire contract, taking into account reasonably expected cost decreases. 3. Ninety-day limitation on frequency of demands may be varied by chiefs of technical service. 4. Percentage figure in paragraph (b) (1) of article to be kept as low as possible and never is to exceed 40%.	
Form III (§ 803.374-5) Negotiated price revision in event of retroactive changes in wages, salaries or employment conditions ordered or authorized by War Labor Board or any other authorized Government Agency.	(§ 803.374-2) 1. Contract must contain one of the Form I or Form II price revision articles. 2. Price must contain substantially no charge for changes in wages, salaries or employment conditions.	
Form IV (§ 803.375-4) Downward price revision negotiated upon contracting officer's demand after completion or termination of contract.	(§ 803.375-2) 1. Contract amount is $100,000 or less. 2. Initial price bears reasonable relationship to expected final price under contract. 3. Items are strictly developmental or experimental in character. 4. Contractor's cost accounting system is sufficient to show costs under contract.	
Form V (§ 803.376-4) Downward or limited upward price revision negotiated after completion or termination of contract.	(§ 803.376-2) 1. Maximum price does not exceed $1,000,000. 2. Contract calls for experimental or developmental items or service for tests in laboratories or field operations or similar experiments. 3. Form I-C or II-B cannot be used in contract. 4. Price is as close as circumstances permit. Maximum price bears reasonable relationship to initial price. 5. Contractor has or will establish adequate cost accounting system. 6. Prior written approval of Director, Purchases Division is required before article is used in any contract.	
Form VI (§ 803.377-2) Upward or downward price revision negotiated upon happening of specified contingent event and limited to that event and its direct effect.	(§ 803.377-2) 1. Contingency or basic assumption must be clearly stated in article. 2. Contingency must come within one of specified categories. 3. Certain events are excluded as possible contingencies. 4. Price contains no charge or allowance on account of specified contingency. 5. Article may be used even though one of Form I or Form II articles is used in same contract.	

§803.371 *Rules applicable to Forms I-A, I-B, I-C, II-A and II-B.*

§ 803.371-1 *Conditions for use.* None of Forms I-A, I-B, I-C, II-A and II-B will be used unless all of the following conditions are satisfied:

(a) The contract is a fixed price contract for supplies or services.

(b) The contracting officer believes that there is an absence of competition for the business to which the contract is to relate and that the prices quoted do not clearly reflect competition. The term "competition" as used herein means an actual striving by two or more persons for the particular order. It generally presupposes that available productive facilities are more than sufficient to meet the entire demand for the item in question, with the consequence that there is a free interaction between the forces of supply and demand. The term does not include formal bids or quotations which do not reflect a genuine attempt on the part of the bidders to obtain the order in actual rivalry with one another or which do not indicate independent action in arriving at the prices quoted.

(c) The price (1) is negotiated upon the express understanding that the particular Price Revision Article is to be included in the contract and (2) is a close price meeting the requirements of Army Service Forces Manual M601, "Pricing in War Contracts," and Subpart C of Part 802 of this chapter and containing substantially no charge or allowance for contingencies.

(d) The contracting officer is satisfied that the contractor employs methods of estimating its costs which accurately reflect current shop and engineering experience and proper quantity and price allowances for material, labor, machine utilization and other cost elements.

(e) The contracting officer is satisfied that the contractor has a cost accounting system of sufficient accuracy and reliability to show the cost information required by the article at the time or times provided therein.

(f) Except as otherwise specifically authorized in §§ 803.370 to 803.377, inclusive, no Price Revision Article will be substituted for another in or be deleted from an existing contract without the prior approval of the Director, Purchases Division, Headquarters, Army Service Forces.

(g) The special conditions for the use of the particular Form I or Form II article to be employed, hereinafter prescribed, are met and satisfied.

§ 803.371-2 *Rules for administration.* In negotiating a price adjustment under any of the Form I or Form II articles, the contracting officer will adhere to the following rules:

(a) The negotiations to revise prices should ordinarily take into account all changes in specifications which have been made up to the time of the negotiations.

(b) Negotiations to revise prices will be conducted upon substantially the same basis as the original negotiation of a price when like information on costs and estimates is available. The contracting officer ordinarily should not give consideration to an increase in price beyond the amount estimated to be the excess of (1) any increases in cost beyond the contractor's control over (2) any offsetting 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 profit margin for especially efficient and economical production.

(c) The contracting officer should take into consideration the fact that increases in certain costs may be offset by decreases in others. The contracting officer should also recognize that increases in wages and in the prices of materials will not necessarily increase, immediately or proportionately, the cost 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. Again, materials included in work in process may have been bought by the contractor before the effective date of a price increase. Similarly, the contractor may have an inventory on hand or materials on order at prices which do not reflect the current increases therein. Also, there may be offsetting savings not attributable to the efficiency of the contractor.

(d) The contractor's estimate of future costs will be considered in the light of all available data, including shop, en-

gineering, accounting and other relevant information, which will help to check the accuracy of the estimate. When any component or components of the estimate are in question, the contracting officer should inquire into the physical facts, e. g., the number of men actually engaged in a particular operation or process, the quantity of material actually used, etc. Expense and overhead allocations are based upon an estimated amount of expense spread over an anticipated volume to be obtained. Check of the actual rate of expenditures and the actual volume being obtained should be made so that the rates used may be founded on up-to-date forecasts. The aggregate of those charges included in the prices of contracts entered into within the current period should be considered in order to avoid excessive prices through over-absorption of such charges.

(e) In addition to consideration of the contractor's cost experience under the contract and its estimates of future production costs, the contracting officer should make use of comparative prices, comparative costs and the trends of such prices and costs. If, since the making of the contract, prices have become competitive (in the sense indicated in § 803.371–1), particular weight shall be given to comparative prices, to the end that the effect of competitive forces may be fully realized for the benefit of the Government.

(f) The contracting officer should make such use and verification of the estimate and the supporting cost data submitted by the contractor as he would make with respect to similar data upon the negotiation of a price under a new contract. The verification may include the examination of the contractor's records, accounts and books and, if necessary in a particular case, may include an audit thereof, but generally the emphasis should be upon a check of the physical facts underlying the estimate (e. g., the quantity of material actually used, scrap losses, man and machine hours consumed, etc.) and the prices and rates used therein.

(g) The negotiations will be promptly instituted and concluded in strict accordance with the provisions of the particular article. Every effort will be made to come to an agreement as to revised price or prices. The provisions operative in the event of failure of the parties to agree shall be relied upon only as a last resort. If the alternative provisions of §§ 803.372–8 or 803.373–7 have been used and an order is to be entered pursuant to section 801 of the Revenue Act of 1943, the price thereunder will be fixed in accordance with Subpart I of Part 812 of this chapter.

(h) Upon the conclusion of each negotiation for price revision, the revised price or prices will be evidenced by a supplemental agreement. The supplemental agreement should clearly indicate what costs, if any, of a nonrecurrent nature have been recognized as having been paid for in prices for the preceding period or periods, so as to avoid the possibility of a second payment therefor in the event of termination at the option of the Government. This is particularly important where Form I–C or Form II–B has been used.

(i) Whenever a contract containing one of the Form I–A, I–B, I–C, II–A or II–B Price Revision Articles is modified by change order or supplemental agreement, so as to affect the rate of deliveries or quantities of items called for, the contracting officer will take care to deal with and cover explicitly any modifications in the operation of the Price Revision Article which he considers are made necessary by the modification of rates of deliveries or quantities.

§ 803.371–3 *Exemption from statutory renegotiation.* Provisions for exemption from renegotiation may be added to any Form I or Form II Article in accordance with and subject to the provisions of § 812.1205 of this chapter.

§ 803.372 *Forms I–A, I–B and I–C, for periodic pricing at fixed intervals.*

§ 803.372–1 *Nature and effect of articles.* (a) Form I–A, appearing in § 803.372–5 provides for negotiated upward or downward revision of the price at intervals fixed in paragraph (b) of the Article. Every revision is prospective only and may result in a price which is the same as, or higher or lower than, the price for the preceding period. In appropriate cases the contract may be divided into two periods, with the result that there will be only one revision of price.

(b) Form I–B, appearing in § 803.372–6 is the same as Form I–A except that specific reference is made to a prior existing contract for the same or substantially similar items or services as those called for by the new contract and the price for the first period is subject to a revision at the beginning of the period on the basis of the contractor's experience under the prior contract and all other relevant factors.

(c) Form I–C, appearing in §803.372–7 (replacing the articles formerly appearing in §§ 803.360–2 and 803.341–2), is the same as Form I–A except that the price for the first period is subject to retroactive revision at the end thereof. Every revision thereafter has a forward effect only, and any revision may result in a price which is the same as, or higher or lower than, the price previously in effect. In appropriate cases the contract may be divided into two periods, with the result that there will be only one revision of price.

§ 803.372–2 *Conditions for use of Forms I–A, I–B and I–C.* (a) Form I–A may be used where the nature of the product, the relative intricacies of manufacture, the proposed methods of production, the experience of the contractor and his labor force, the prior use of the particular plant, the ability of the contractor to make reasonably accurate estimates, and other surrounding conditions are such that the Government and the contractor should be bound by the price for the first period. Generally such circumstances exist where the contractor has had substantial prior experience in producing the item, but this is not necessarily so, as where the item is simple and an accurate cost estimate may be made at the outset. The length of the pricing periods will depend on the circumstances of each case and will normally range from 3 to 4 months each.

(b) Form I–B may be used where the conditions for the use of Form I–A are satisfied and where the production under the previous contract will continue substantially to the beginning of production under the contract containing Form I–B. The length of the pricing periods will depend upon the circumstances of each case and will normally range from 3 to 4 months each. Where the duration of the contract subject to the Form I–B Article is relatively short, it may be appropriate to provide for only one pricing period. In such case the Form I–B Article will be appropriately modified.

(c) Form I–C may be used where the conditions prescribed in paragraph (a) above for the use of Form I–A cannot be satisfied and where, in consequence, the circumstances are such that neither the Government nor the contractor should be bound by the price initially negotiated for the first period. Generally such circumstances exist where the contractor has not had substantial prior experience in producing the items, but they may exist even in cases where the contractor has had substantial experience, as in cases where specification changes, the substitution of important materials, the use of an untried plant or labor force, the intricacies of manufacturing processes, or other conditions prevent the making of sufficiently reliable cost estimates at the outset of the contract. The first pricing period under this article should be no longer than is necessary to enable the contractor to gain the experience necessary to make an accurate estimate, but in any event shall not include more than 40 per cent of the items or services called for by the contract. The Article may also be used in those cases in which one price revision, both retroactive and prospective, is deemed appropriate.

(d) When any one of the Form I Articles is used, the price for the first period will be based on projections which do not extend beyond that period.

(e) The periods selected should be made to conform, as nearly as possible, with the operation of the contractor's accounting system, so that the contractor may submit the required experienced cost information with the least possible delay and interference with routine procedures. The periods need not be of equal length.

(f) The pricing periods under any of the Form I Articles may be measured by the production or delivery of a specified number or percentage of items in lieu of calendar periods. Where this course is followed the pricing periods will conform substantially to the foregoing limitations, and the Article will be appropriately modified to reflect the change in type of period.

(g) The conditions laid down in § 803.371–1 must be satisfied before any of the foregoing Articles is used.

(h) The optional paragraph (e) (Disagreements) set out in § 803.372–8 may

be substituted for paragraph (e) (Disagreements) in Form I–A, I–B or I–C at the option of the chief of the technical service.

§ 803.372–3 *Substitution or insertion by amendment.* (a) Any of the Form I Articles may be substituted for the old form of the corresponding Article contained in an existing contract.

(b) Form I–A or I–B may be inserted in an existing contract by amendment if all the conditions for its use in a new contract are satisfied and if (1) the price is substantially reduced or (2) the quantity is increased and the article is made applicable only to the increased quantity.

(c) Form I–C may be inserted in an existing contract only with the prior written approval of the Director, Purchases Division, Headquarters, Army Service Forces.

(d) It has been determined that the insertion of Form I–A, I–B or I–C in existing contracts by supplemental agreement in conformity with the requirements of this section will facilitate the prosecution of the war.

§ 803.372–4 *Administration of Forms I–A, I–B and I–C.* (a) The price revised prospectively for any period shall be based on projections which do not extend beyond the end of that period.

(b) In administering Form I–C particular care will be taken to conclude the retroactive price revision thereunder before conclusion of an agreement or unilateral determination under the Renegotiation Act which is applicable to any part of the period subject to such retroactive price revision.

(c) The rules for administration of all the Form I and II Price Revision Articles, set out in § 803.371–2, will be followed and applied with respect to Forms I–A, I–B and I–C.

§ 803.372–5 *Text of Form I–A.*

(a) The prices fixed in Article — may be increased or decreased in accordance with this Article.

(b) *Price periods.* The Government and the Contractor agree to revise the contract prices under this contract periodically in accordance with this Article and agree that the performance of 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. The first day of the second and each succeeding period is hereinafter referred to as "the effective date of the price revision." Fifteen days before the end of each period hereunder, except the last, or at such time or times as the Contracting Officer may fix, the Contractor shall furnish the statements and data referred to in paragraph (c) of this Article.

(c) *Submission of data.* At the time or each of the times specified or provided for in paragraph (b) of this Article the Contractor shall submit (i) a new estimate and breakdown of the unit cost and the proposed prices of the items to be delivered in the succeeding period under this contract, itemized so far as is practicable in the manner prescribed in War Department Procurement Form No. 3; (ii) an explanation of the differences between the original (or last preceding) estimate and the new estimate; (iii) such relevant shop and engineering data, cost records, overhead absorption reports and accounting statements as may be of assistance in determining the accuracy and reliability of the new estimates; (iv) a statement of experienced costs of production hereunder to the extent that they are available at the time or times of the negotiation of the revision of prices hereunder; and (v) any other relevant data usually furnished in the case of negotiation of prices under a new contract. The Government may make such examination of the Contractor's accounts, records and books as the Contracting Officer may require and may make such audit thereof as the Contracting Officer may deem necessary.

(d) *Negotiations.* (1) Upon the filing of the statements and data required by paragraph (c) of this Article, the Contractor and the Contracting Officer will negotiate promptly in good faith to agree upon prices for items to be delivered on and after the effective date of the price revision. Negotiations for price revision under this Article shall be conducted on the same basis, employing the same types of data (including, without limitation, comparative prices, comparative costs, and trends thereof) as in the negotiation of prices under a new War Department contract.

(2) After each negotiation the agreement reached will be evidenced by a supplemental agreement stating the revised prices to be effective with respect to deliveries on and after the effective date of the price revision.

(e) *Disagreements.* If within thirty days after the effective date of the price revision (or such further period as may be fixed by written agreement) the Contracting Officer and the Contractor fail to agree to revised prices for the period in question, the failure to agree shall be deemed to be a disagreement as to a question of fact which shall be disposed of in accordance with Article —. (Disputes).

(f) *Payments.* Until new prices shall become effective in accordance with this Article, the prices in force at the effective date of the price revision shall be paid upon all deliveries, subject to appropriate later revision made pursuant to paragraph (d) or (e) or (h) (2) (B) of this Article.

(g) *Reservation of Government's rights.* Any provision of this Article and any action thereunder shall be without prejudice to (1) the determination of the existence of any excessive profits of the Contractor under the Renegotiation Act; and (2) to any Order fixing the price of items to be furnished or services to be rendered hereunder made under Section 801 of the Revenue Act of 1943.

(h) *Termination provisions.* For any of the purposes 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 delivered articles shall be deemed to be,

(1) for all items delivered prior to the effective date of the price revision, the contract price (giving effect to any prior revisions under this Article) applicable to each such item;

(2) for all items delivered on or after the effective date of the price revision,

(A) the contract price as revised in accordance with this Article, if such revision shall have been agreed upon; and

(B) if such revision 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).

§ 803.372–6 *Text of Form I–B.*

(a) The prices fixed in Article —, may be increased or decreased in accordance with this Article.

(b) *Price periods.* The Government and the Contractor agree to revise the contract prices under this contract periodically in accordance with this Article and agree that the performance of 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. The first day of each period is hereinafter referred to as "the effective date of the price revision". Fifteen days before the beginning of the first period hereunder, or at such other time as the Contracting Officer may fix, the Contractor will furnish the statements and data referred to in paragraph (c) of this Article, which shall, however, be based on the Contractor's experience under Contract No. _____, which also calls for the manufacture and delivery to the Government of _____. Fifteen days before the end of the first and each succeeding period hereunder, except the last, or at such other time or times as the Contracting Officer may fix, the Contractor shall furnish the statements and data referred to in paragraph (c) of this Article, which shall be based on the contractor's experience under this contract.

(c) *Submission of data.* At the time or each of the times specified or provided for in paragraph (b) of this Article the Contractor shall submit (i) a new estimate and breakdown of the unit cost and the proposed prices of the items to be delivered in the succeeding period under this contract itemized so far as is practicable in the manner prescribed in War Department Standard Procurement Form No. 3; (ii) an explanation of the differences between the original (or last preceding) estimate and the new estimate; (iii) such relevant shop and engineering data, cost records, overhead absorption reports and accounting statements as may be of assistance in determining the accuracy and reliability of the new estimate; (iv) a statement of experienced costs of production hereunder to the extent that they are available at the time or times of the negotiation of the revision of prices hereunder; and (v) any other relevant data usually furnished in the case of negotiation of prices under a new contract. The Government may make such examination of the Contractor's accounts, records and books as the Contracting Officer may require and may make such audit thereof as the Contracting Officer may deem necessary.

(d) *Negotiations.* (1) Upon the filing of the statements and data required by paragraph (c), of this Article, the Contractor and the Contracting Officer will negotiate promptly in good faith to agree upon prices for items to be delivered on and after the effective date of the price revision. Negotiations for price revision under this Article shall be conducted on the same basis, employing the same types of data (including, without limitation, comparative prices, comparative costs, and trends thereof) as in the negotiation of prices under a new War Department contract.

(2) After each negotiation the agreement reached will be evidenced by a supplemental agreement stating the revised prices to be effective with respect to deliveries on and after the effective date of the price revision.

(e) *Disagreements.* If within thirty days after the effective date of the price revision (or such further period as may be fixed by written agreement) the Contracting Officer and the Contractor fail to agree to revised prices for the period in question, the failure to agree shall be deemed to be a disagreement as to a question of fact which shall be disposed of in accordance with Article — (Disputes).

(f) *Payments.* Until new prices shall become effective in accordance with this Article, the prices in force at the effective date of

the price revision shall be paid upon all deliveries, subject to appropriate later revision made pursuant to paragraph (d) or (e) or (h) (2) (B) of this Article.

(g) *Reservation of Government's rights.* Any provision of this Article and any action thereunder shall be without prejudice (1) to the determination of the existence of any excessive profits of the Contractor under the Renegotiation Act; and (2) to any Order fixing the price of items to be furnished or services to be rendered hereunder made under Section 801 of the Revenue Act of 1943.

(h) *Termination provisions.* For any of the purposes 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 delivered articles shall be deemed to be,

(1) for all items delivered prior to the effective date of the price revision, the contract price (giving effect to any prior revisions under this Article) applicable to each such item;

(2) for all items delivered on or after the effective date of the price revision;

(A) the contract price as revised in accordance with this Article, if such revision shall have been agreed upon; and

(B) if such revision 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).

§ 803.372–7 *Text of Form I–C.*

(a) The prices fixed in Article — may be increased or decreased in accordance with this Article.

(b) *Price periods.* The Government and the Contractor agree to revise the contract prices under this contract periodically in accordance with this Article and agree that the performance of 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. The first day of the second and each succeeding period is hereinafter referred to as "the effective date of the price revision." 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 shall furnish the statements and data referred to in paragraph (c) of this Article.

(c) *Submission of data.* At the time or each of the times specified or provided for in paragraph (b) of this Article the Contractor shall submit (i) a new estimate and breakdown of the unit cost and the proposed prices of the items to be delivered in the succeeding period under this contract, itemized so far as is practicable in the manner prescribed in War Department Standard Procurement Form No. 3; (ii) an explanation of the differences between the original (or last preceding) estimate and the new estimate; (iii) such relevant shop and engineering data, cost records, overhead absorption reports and accounting statements as may be of assistance in determining the accuracy and reliability of the new estimate; (iv) a statement of experienced costs of production hereunder to the extent that they are available at the time or times of the negotiation of the revision of prices hereunder; and (v) any other relevant data usually furnished in the case of negotiation of prices under a new contract. The Government may make such examination of the Contractor's accounts, records and books as the Contracting Officer may require and may make such audit thereof as the Contracting Officer may deem necessary.

(d) *Negotiations.* (1) Upon the filing of the statements and data required by paragraph (c) of this Article, the Contractor and the Contracting Officer will negotiate promptly in good faith to agree upon prices for items to be delivered on and after the effective date of the price revision, and in the case of the first negotiation under this Article the prices for items delivered prior to the effective date of the price revision. Negotiations for price revision under this Article shall be conducted on the same basis, employing the same types of data (including, without limitation, comparative prices, comparative costs, and trends thereof) as in the negotiation of prices under a new War Department contract.

(2) After each negotiation the agreement reached will be evidenced by a supplemental agreement stating the revised prices to be effective with respect to deliveries on and after the effective date of the price revision. The supplemental agreement made upon completion of the first negotiation shall also state revised prices for items delivered prior to the effective date of the price revision.

(e) *Disagreements.* If within thirty days after the effective date of the price revision (or such further period as may be fixed by written agreement) the Contracting Officer and the Contractor fail to agree to revised prices for the period in question, the failure to agree shall be deemed to be a disagreement as to a question of fact which shall be disposed of in accordance with Article — (Disputes).

(f) *Payments.* Until new prices shall become effective in accordance with this Article, the prices in force at the effective date of the price revision shall be paid upon all deliveries, subject to appropriate later revision made pursuant to paragraph (d) or (e) or (h) (2) (B) of this Article.

(g) *Reservation of Government's rights.* Any provision of this Article and any action thereunder shall be without prejudice (1) to the determination of the existence of any excessive profits of the Contractor under the Renegotiation Act; and (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.

(h) *Termination provisions.* For any of the purposes 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 delivered articles shall be deemed to be,

(1) for all items delivered prior to the effective date of the price revision, the contract price (giving effect to any prior revisions under this Article) applicable to each such item;

(2) for all items delivered on or after the effective date of the price revision,

(A) the contract price as revised in accordance with this Article, if such revision shall have been agreed upon; and

(B) if such revision 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).

(i) *Termination during the first period.* In the event that this contract is terminated under Article — (Termination at the Option of the Government) or the Contractor's right to deliver is terminated under Article — (Delays—Damages), so that the last delivery under the contract as terminated is made prior to the completion of the first period as defined in paragraph (b) of this Article, the Contractor within ____ days after such last delivery shall furnish the data required by paragraph (c) of this Article and thereupon the parties shall negotiate in good faith to agree upon revised prices under this contract. The agreement reached shall be evidenced by a supplemental agreement to this contract stating the revised prices under the contract. Any failure to agree as to the revised prices shall be deemed to be a disagreement as to a question of fact which shall be disposed of in accordance with Article — (Disputes).

(j) *Effect of prior renegotiation.* If, prior to any revision of the price under this Article, any sums paid or payable under this contract in respect of items the price of which may be affected by such revision have been included as renegotiable income received or accrued by the Contractor in any fiscal period for which there has been a final determination (by agreement or unilateral determination) as to the Contractor's liability to repay to the Government excessive profits under the Renegotiation Act, appropriate weight shall be given to the results of the proceedings in renegotiation in determining the sums, if any, to be paid or credited by or to the Contractor in connection with this revision under this Article of that part of the price applicable to that fiscal period, it being the intent of the parties that the net result shall be substantially the same as it would have been if the revision had preceded such final determination.

§ 803.372–8 *Optional paragraph (b) (Disagreements) for use with Form I–A, I–B or I–C.*

(e) *Disagreements.* (1) If within 30 days after any effective date of the price revision (or such further period as may be fixed by written agreement) the Contracting Officer and the Contractor fail to agree as to revised prices, the Contractor, if it has substantially complied with the requirements of this Article as to the furnishing of statements and data, may give written notice to the Contracting Officer requiring the Government to pay the prices set forth in such notice from the time at which such price revision was to be effective under the provisions of this Article and until the beginning of the next succeeding period hereunder.

(2) The Government shall pay the prices set forth in such notice from the time such price revision was to be effective as aforesaid, unless within 30 days after the delivery of such notice 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 that Section) fixing the prices to be paid for items and services to be delivered from and after the date of the Order for the balance of the contract or until a date specified in the Order. If no such Order is served on the Contractor, the prices set forth in the Contractor's notice shall be incorporated in an appropriate supplemental agreement.

(3) The Contractor's delivery of a notice pursuant to this paragraph (e) shall constitute (1) a refusal, within the meaning of Section 801, to agree to prices for the items and services to be furnished under this contract lower than those specified in the Contractor's notice, (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 the rights and remedies granted to it under paragraph (c) of said Section

801. It is agreed that the prices fixed in the Order shall also be the prices applicable from the time at which such price revision was to be effective under the provisions of this Article until the effective date of the Order.

(4) If the Contracting Officer and the Contractor fail to agree as aforesaid, and if Section 801 of the Revenue Act of 1943 shall not be in force, the Contracting Officer within 30 days after the delivery of the Contractor's notice may serve upon the Contractor a written election by which the Government agrees to pay to the Contractor fair and just compensation for all deliveries made under the contract from the time at which such price revision was to be effective under the provisions of this Article until the beginning of the next succeeding period hereunder. The written election shall specify the amount which the Contracting Officer deems to be fair and just compensation. If no written election is served upon the Contractor, the prices set forth in the Contractor's notice shall be incorporated in an appropriate supplemental agreement. 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, the amount, if any, by which such fair and just compensation exceeds the amount so specified.

(5) If the Contracting Officer and the Contractor fail to agree and no notice has been given by the Contractor as contemplated in subparagraph (e) (1) of this Article, the Contractor shall be entitled to receive, from the time at which such price revision was to be effective under the provisions of this Article until the beginning of the next succeeding period hereunder, fair and just compensation the amount of which shall be determined as a question of fact under Article — (Disputes).

§ 803.373 *Forms II–A and II–B, for optional periodic pricing upon demand.*

§ 803.373–1 *Nature and effect of Articles.* (a) Form II–A, appearing in § 803.373–5 (formerly § 803.360a), provides for negotiated upward or downward revision of the price from time to time upon the written demand of either the Government or the Contractor, subject to specified limitations on the frequency of the demands. All revisions made under Form II–A have a prospective effect only, and upon any revision the new price may be the same as, or higher or lower than, the price theretofore in effect.

(b) Form II–B, appearing in § 803.373–6 replacing § 803.360a–1) provides for a negotiated upward or downward revision of the prices upon completion of delivery of a specified percentage of the principal items called for by the contract, without a demand by either party. Thereafter there may be upward or downward revision of the price upon written demand of either party, subject to specified limitations on the frequency of the demands, exactly as in the case of Form II–A. Any revision made pursuant to a demand after the initial period has a prospective effect only.

§ 803.373–2 *Conditions for use of Forms II–A and II–B.* (a) Form II–A may be used where the nature of the product, the relative intricacies of manufacture, the proposed methods of production, the experience of the Contractor and his labor force, the prior use of the particular plant, the ability of the Contractor to make reasonably accurate estimates, and other surrounding conditions are such that the Government and the Contractor should be bound by the initial price. Generally such circumstances exist where the Contractor has had substantial prior experience in producing the item, but this is not necessarily so, as where the item is simple and an accurate cost estimate may be made at the outset. Since price revision is not required under Form II–A unless one of the parties makes a demand therefor, the price initially fixed in a contract containing this Article may remain unchanged for the life of that contract. The price should therefore be based on projections extending over the entire life of the contract. The projections should give effect to all decreases in costs which might reasonably be expected to occur during performance of the contract. Because of the protection afforded the Contractor by the Article, however, the projections should not give effect to possible increases in costs.

(b) Form II–B may be used where the conditions prescribed in paragraph (a) above for the use of Form II–A cannot be satisfied and where, in consequence, the circumstances are such that neither the Government nor the Contractor should be bound by the price negotiated for the initial period. Generally such circumstances exist where the Contractor has not had substantial prior experience in producing the item, but they may exist even in cases where the Contractor has had substantial experience, as where specification changes, the substitution of important materials, the use of an untried plant or labor force, the intricacies of manufacturing processes, or other conditions prevent the making of sufficiently reliable cost estimates at the outset of the contract. The initial price should be based on projections which do not extend beyond the completion of the initial portion of the contract as specified in paragraph (b) of Form II–B.

(c) In the case of Form II–A the date before which the first demand may not be made will be fixed so as to preclude a first demand that may be premature, and will be inserted in the blank provided therefor in paragraph (b). In appropriate cases the 90-day limitations in paragraph (b) of Form II–A and II–B may be changed by the chief of the technical service to meet the exigencies of those cases.

(d) The percentage figures to be inserted in paragraph (b) (1) of Form II–B should be kept as low as circumstances will permit and should never exceed forty per cent.

(e) The conditions laid down in § 803.371–1 must be satisfied before either Form II–A or II–B is used.

(f) The optional paragraph (e) (Disagreements) set out in § 803.373–7 may be substituted for paragraph (e) (Disagreements) in Form II–A or II–B at the option of the chief of the technical service.

§ 803.373–3 *Substitution or insertion by amendment.* (a) Either Form II–A or II–B may be substituted for the old form of the corresponding Article contained in a preexisting contract.

(b) Form II–A may be inserted in an existing contract if all the conditions for its use are satisfied and (1) if the price is substantially reduced or (2) the quantity is increased and the Article is made applicable only to the increased quantity.

(c) Form II–B may be inserted in an existing contract only with the prior written approval of the Director, Purchases Division, Headquarters, Army Service Forces.

(d) It has been determined that the insertion of Form II–A or II–B in existing contracts by supplemental agreement in conformity with the requirement of this section will facilitate the prosecution of the war.

§ 803.373–4 *Administration of Forms II–A and II–B.* (a) Proper administration of Forms II–A and II–B requires that the contracting officer make regular periodic reviews of the contract price to ascertain whether or not a demand should be served. No demand should be made unless the contracting officer has good grounds for believing that a revision in price is necessary to protect the Government's interests. The need for such a demand may be indicated by factors such as the following: (1) Comparative prices, (2) movements or trends in such prices, (3) movements or trends in the costs of other contractors for the same or similar items or services, (4) information supplied by the Contractor in the ordinary course of business, (5) changes in market prices of materials or components, (6) changes in subcontract prices, (7) information revealed in connection with statutory renegotiation or the application of the company pricing program to the Contractor, and (8) changes in the Contractor's prices under other Government contracts.

(b) The first revised forward price under Form II–B and prices negotiated pursuant to a demand under either Article should be based on projections extending over the remaining life of the contract and should not take into account possible increases in costs.

(c) In administering Form II–B particular care will be taken to conclude the retroactive price revision thereunder before the conclusion of an agreement or unilateral determination under the Renegotiation Act which is applicable to any part of the period subject to such retroactive price revision.

(d) The rules for administration of the Form I and Form II price revision articles set out in § 803.371–2 will be followed and applied with respect to Forms II–A and II–B.

§ 803.373–5 *Text of Form II–A.*

(a) The prices fixed in Article — may be increased or decreased in accordance with this Article.

(b) *Demand for negotiation.* (1) At any time and from time to time, subject to the limitations specified in this Article, either the Government or the Contractor may deliver to the other a written demand that the parties negotiate to revise the prices under this contract. No such demand shall be

made before _____ 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 the War Labor Board or any other similar Government agency shall authorize or order a change in wages, salaries or conditions of employment in the plants of the Contractor used in the performance of this contract. Each demand shall specify a date (identical with or subsequent to the date of the delivery of the demand) as of which the revised prices shall be effective as to the deliveries made thereon and thereafter. This date is hereinafter referred to as "the effective date of the price revision". Any demand under this Article, if made by the Contractor, shall state briefly the ground or grounds therefor and shall be accompanied by the statements and data referred to in paragraph (c) of this Article. If the demand is made by the Government, such statements and data will be furnished by the Contractor within 30 days of the delivery of the demand.

(2) In the event all remaining work under this contract, as it may from time to time be amended, shall be terminated under Article —. (Termination at the Option of the Government), no demand shall then or thereafter be made and any demand the effective date of which is less than 30 days before the effective date of such termination shall be void and of no effect.

(c) *Submission of data.* At the time or each of the times specified or provided for in paragraph (b) of this Article the Contractor shall submit (i) a new estimate and break-down of the unit cost and the proposed prices of the items remaining under this contract after the effective date of the price revision, itemized so far as is practicable in the manner prescribed in War Department Standard Procurement Form No. 3; (ii) an explanation of the differences between the original (or last preceding) estimate and the new estimate; (iii) such relevant shop and engineering data, cost records, overhead absorption reports and accounting statements as may be of assistance to determining the accuracy and reliability of the new estimate; (iv) a statement of experienced costs of production hereunder to the extent that they are available at the time or times of the negotiation of the revision of prices hereunder; and (v) any other relevant data usually furnished in the case of negotiation of prices under a new contract. The Government may make such examination of the Contractor's accounts, records and books as the Contracting Officer may require and may make such audit thereof as the Contracting Officer may deem necessary.

(d) *Negotiations.* (1) Upon the filing of the statements and data required by paragraph (c) of this Article, the Contractor and the Contracting Officer will negotiate promptly in good faith to agree upon prices for items to be delivered on and after the effective date of the price revision. Negotiations for price revisions under this Article shall be conducted on the same basis, employing the same types of data, including, without limitation, comparative prices, comparative costs, and trends thereof, as in the negotiation of prices under a new War Department contract.

(2) After each negotiation the agreement reached will be evidenced by a supplemental agreement stating the revised prices to be effective with respect to deliveries on and after the effective date of the price revision (or such other later date as the parties may fix in such supplemental agreement).

(e) *Disagreements.* If, within 30 days after the date on which the statements and data are required pursuant to paragraph (b) of this Article to be filed (or such further period as may be fixed by written agreement), the Contracting Officer and the Contractor fail to agree to revised prices, the failure to agree shall be deemed to be a disagreement as to a question of fact which shall be disposed of in accordance with Article — (Disputes), and the prices so fixed shall remain in effect for the balance of the contract notwithstanding any other provision of this Article.

(f) *Payments.* Until new prices shall become effective in accordance with this Article, the prices in force at the effective date of the price revision shall be paid upon all deliveries, subject to appropriate later revision made pursuant to paragraph (d) or (e) or (h) (2) (B) of this Article.

(g) *Reservation of Government's rights.* Any provision of this Article and any action thereunder shall be without prejudice (1) to the determination of the existence of any excessive profits of the Contractor under the Renegotiation Act, and (2) to any Order fixing the price of items to be furnished or services to be rendered hereunder made under Section 801 of the Revenue Act of 1943.

(h) *Termination provisions.* For any of the purposes 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 delivered articles shall be deemed to be,

(1) for all items delivered prior to the effective date of the price revision, the contract price (giving effect to any prior revisions under this Article) applicable to each such item;

(2) for all items delivered on or after the effective date of the price revision,

(A) the contract price as revised in accordance with this Article, if such revision shall have been agreed upon; and

(B) if such revision 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).

§ 803.373–6 *Text of Form II–B.*

(a) The prices fixed in Article — may be increased or decreased in accordance with this Article.

(b) *Times for negotiation.* (1) Upon completion of delivery of ____ per cent of the (*here specify the principal items to be furnished under the contract*) to be furnished under this contract, the parties shall negotiate to revise the prices of all items theretofore and thereafter to be delivered. Within 5 days after the completion of delivery of said ____ per cent, the Contractor shall furnish to the Contracting Officer the statements and data referred to in paragraph (c) of this Article. At any time and from time to time after the completion of delivery of said ____ per cent, subject to the limitations specified in this Article, either the Government or the Contractor may deliver to the other a written demand that the parties negotiate to adjust the prices under this contract. No demand shall be made prior to 90 days after the completion of delivery of said ____ per cent an dthereafter neither party shall make a demand having an effective date within 90 days of the effective date at any prior demand, *Provided, however,* That this limitation shall not be applicable in the event that during any 90-day period the War Labor Board or any similar Government agency shall authorize or order a change in wages, salaries or conditions of employment in the plants of the Contractor used in the performance of this contract. Each demand shall specify a date (identical with or subsequent to the date of the delivery of the demand) as of which the revised prices shall be effective as to the deliveries made thereon and thereafter. This date is hereinafter referred to as "the effective date of the price revision". For the purposes of the first negotiation contemplated by this paragraph, the date of execution of this contract shall be deemed to be the effective date of the price revision. Any demand under this Article, if made by the Contractor, shall state briefly the ground or grounds therefor and shall be accompanied by the statements and data referred to in paragraph (c) of this Article. If the demand is made by the Government, such statements and data will be furnished by the Contractor within 30 days of the delivery of the demand.

(2) In the event all remaining work under this contract, as it may from time to time be amended, shall be terminated under Article — (Termination at the Option of the Government), no demand shall then or thereafter be made and any demand the effective date of which is less than 30 days before the effective date of such termination shall be void and of no effect.

(c) *Submission of data.* At the time or each of the times specified or provided for in paragraph (b) of this Article the Contractor shall submit (i) a new estimate and breakdown of the unit cost and the proposed prices of the items remaining under this contract after the effective date of the price revision, itemized so far as is practicable in the manner prescribed by War Department Standard Procurement Form No. 3; (ii) an explanation of the differences between the original (or last preceding) estimate and the new estimate; (iii) such relevant shop and engineering data, cost records, overhead absorption reports and accounting statements as may be of assistance in determining the accuracy and reliability of the new estimate; (iv) a statement of experienced costs of production hereunder to the extent that they are available at the time or times of the negotiation of the revision of prices hereunder; and (v) any other relevant data usually furnished in the case of negotiation of prices under a new contract. The Government may make such examination of the Contractor's accounts, records and books as the Contracting Officer may require and may make such audit thereof as the Contracting Officer may deem necessary.

(d) *Negotiations.* (1) Upon the filing of the statements and data required by paragraph (c) of this Article, the Contractor and the Contracting Officer will negotiate promptly in good faith to agree upon prices for items to be delivered on and after the effective date of the price revision. Negotiations for price revisions under this Article shall be conducted on the same basis, employing the same types of data (including, without limitation, comparative prices, comparative costs, and trends thereof) as in the negotiation of prices under a new War Department contract.

(2) After each negotiation the agreement reached will be evidenced by a supplemental agreement stating the revised prices to be effective with respect to deliveries on and after the effective date of the price revision (or such other later date as the parties may fix in such supplemental agreement).

(e) *Disagreements.* If within 30 days after the date on which the statements and data are required pursuant to paragraph (b) of this Article to be filed (or such further period as may be fixed by written agreement) the Contracting Officer and the Contractor fail to agree to revised prices, the failure to agree shall be deemed to be a disagreement as to a question of fact which shall be disposed of in accordance with Article — (Disputes), and the prices so fixed shall remain in effect for the balance of the contract notwithstanding any other provision of this Article.

(f) *Payments.* Until new prices shall become effective in accordance with this Article, the prices in force at the effective date

of the price revision shall be paid upon all deliveries, subject to appropriate later revision made pursuant to paragraph (d) or (e) or (h) (2) (B) of this Article.

(g) *Reservation of Government's rights.* Any provision of this Article and any action thereunder shall be without prejudice to (1) the determination of the existence of any excessive profits of the Contractor under the Renegotiation Act, and (2) to any Order fixing the price of items to be furnished or services to be rendered hereunder made under Section 801 of the Revenue Act of 1943.

(h) *Termination provisions.* For any of the purposes 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 delivered articles shall be deemed to be,

(1) for all items delivered prior to the effective date of the price revision, the contract price (giving effect to any prior revisions under this Article) applicable to each such item;

(2) for all items delivered on or after the effective date of the price revision,

(A) the contract price as revised in accordance with this Article if such revision shall have been agreed upon; and

(B) if such revision 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).

(i) *Termination during the initial period.* In the event that this contract is terminated under Article — (Termination at the Option of the Government) or the Contractor's right to deliver is terminated under Article — (Delays—Damages), so that the last delivery under the contract as terminated is made prior to the completion of the initial period as specified in paragraph (b) of this Article, the contractor within —— days after such last delivery shall furnish the data required by paragraph (c) of this Article and thereupon the parties shall negotiate in good faith to agree upon revised prices under this contract. The agreement reached shall be evidenced by a supplemental agreement to this contract stating the revised prices under the contract. Any disagreement as to the revised prices will be disposed of as a question of fact in accordance with Article — (Disputes).

(j) *Effect of prior renegotiation.* If, prior to any revision of the price under this Article, any sums paid or payable under this contract in respect of items the price of which may be affected by such revision have been included as renegotiable income received or accrued by the Contractor in any fiscal period for which there has been a final determination (by agreement or unilateral determination) as to the Contractor's liability to repay to the Government excessive profits under the Renegotiation Act, appropriate weight shall be given to the results of the proceedings in renegotiation in determining the sums, if any, to be paid or credited by or to the Contractor in connection with the revision under this Article of that part of the price applicable to that fiscal period, it being the intent of the parties that the net result shall be substantially the same as it would have been if the revision had preceded such final determination.

§ 803.373–7 *Optional paragraph (e) (Disagreements) for use with Form II–A or II–B.*

(e) *Disagreements.* (1) If within 30 days after the date on which the statements and data are required pursuant to paragraph (b) of this Article to be filed (or such further period as may be fixed by written agreement) the Contracting Officer and the Contractor fail to agree to revised prices, the Contractor, if it has substantially complied with the requirements of this Article as to the furnishing of statements and data, may give written notice to the Contracting Officer requiring the Government to pay the prices set forth in such notice from the time at which such price revision was to be effective under the provisions of this Article.

(2) The Government shall pay the prices set forth in such notice from the time such price revision was to be effective as aforesaid, unless within 30 days after the delivery of such notice 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 that Section) fixing the prices to be paid for items and services to be delivered from and after the date of the Order for the balance of the contract or until a date specified in the Order. If no such Order is served on the Contractor, the prices set forth in the Contractor's notice shall be incorporated in an appropriate supplemental agreement.

(3) The Contractor's delivery of a notice pursuant to this paragraph (e) shall constitute (1) a refusal, within the meaning of Section 801, to agree to prices for the items and services to be furnished under this contract lower than those specified in the Contractor's notice, (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 the rights and remedies granted to it under paragraph (c) of said Section 801. It is agreed that the prices fixed in the Order shall be the prices applicable from the time at which such price revision was to be effective under the provisions of this Article.

(4) If the Contracting Officer and the Contractor fail to agree as aforesaid, and if Section 801 of the Revenue Act of 1943 shall not be in force, the Contracting Officer within 30 days after the delivery of the Contractor's notice may serve upon the Contractor a written election by which the Government agrees to pay to the Contractor fair and just compensation from the time at which such price revision was to be effective under the provisions of this Article. The written election shall specify the amount which the Contracting Officer deems to be fair and just compensation. If no written election is served upon the Contractor, the prices set forth in the Contractor's notice shall be incorporated in an appropriate supplemental agreement. 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, the amount, if any, by which such fair and just compensation exceeds the amount so specified.

(5) If the Contracting Officer and the Contractor fail to agree and no notice has been given by the Contractor as contemplated in paragraph (e) (1) of this Article, the Contractor shall be entitled to receive, from the time at which such price revision was to be effective under the provisions of this Article, fair and just compensation the amount of which shall be determined as a question of fact under Article — (Disputes).

§ 803.374 *Form III Price Revision Article; for retroactive changes in employment conditions.*

§ 803.374–1 *Nature and effect of Article.* This Article (formerly § 803.360b), authorized for use only in conjunction with any one of the Form I or Form II Articles, is designed to protect contractors against retroactive changes in wages, salaries, or condition of employment ordered or authorized by the War Labor Board or any other similar agency of the Government. It provides for a negotiated price revision applicable to items delivered and to be delivered under the contract between the effective date of the wage increase and the earliest possible time for price revision under the Form I or Form II Article used in the contract. Any price revision giving effect to the wage increase for deliveries made after such earliest possible time, e. g., the end of the current pricing period under the Form I–A Article, is to be negotiated under that Article.

§ 803.374–2 *Conditions for use.* (a) The contract must contain one of the Form I or Form II price revision Articles.

(b) The contract price must contain substantially no contingency allowance or charge on account of any possible change in wages, salaries or conditions of employment.

§ 803.374–3 *Insertion by amendment.* The Article may be inserted by amendment in an existing contract if and only if the following conditions are satisfied: (a) The conditions set out in § 803.374–2 are met; and either (b) the Article is inserted at the time when the quantities of items called for by the contract are increased and is limited in its application to the items added at that time, or (c) (1) the Article is inserted at the time of a price revision under one of the Form I or Form II Articles and is limited in its retroactive application to items the prices of which are then being revised and (2) the amendment is approved by the Director, Purchases Division, Headquarters, Army Service Forces. Every request for such approval by the Director, Purchases Division, shall contain a full statement of facts which justify the insertion of the Article, including estimates of (i) the Government's maximum liability under the Article, (ii) its probable liability thereunder, (iii) reference to pending or threatened labor disputes, and (iv) the amount of the price reduction made in return for the insertion of the Article. It has been determined that the insertion of Form III in existing contracts by supplemental agreement in conformity with the requirements of this paragraph will facilitate the prosecution of the war.

§ 803.374–4 *Rules for administration.* (a) The procedure prescribed by the Article will be strictly followed before any negotiations are had or any price revision is made thereunder.

(b) In the negotiations particular care will be taken to see that the price revision is applied only to such deliveries as shall have been affected by the change in employment conditions and is not applied to (1) completed items or work in process at the effective date of the order authoriz-

ing or directing the change in employment conditions, or (2) work performed but not completed by delivery during the period subject to revision under the Article.

(c) The price revision made under this Article shall be limited to items delivered and to be delivered under the contract between the effective date of the order and the earliest possible time for price revision under the Form I or Form II Article to which this Article is supplemental.

(d) Any price revision made pursuant to this Article will be evidenced by a supplemental agreement, which shall be subject to prior approval of the Director, Purchases Division, Headquarters, Army Service Forces.

§ 303.374–5 *Text of Form III.*

Article . . . . *Price revision upon change of wages or employment conditions.* (a) The prices fixed in Article—may be revised from time to time in accordance with this Article. As used in this Article, the term "adjustment in wages" shall include any adjustment in wages, salaries or conditions of employment.

(b) *Conditions precedent.* If all the following conditions are satisfied, the Contracting Officer shall enter into negotiations with the Contractor for the revision of the prices of items called for under this contract but only to the extent set forth in paragraph (c) of this Article:

(1) The Contractor shall advise the Contracting Officer in writing of any reference to the War Labor Board or to any other similar Government agency of any request on behalf of the employees of the Contractor for any adjustment in wages which may materially effect the costs of performing this contract. This advice shall be given within twenty days after the Contractor shall learn that such reference has been made. In the event that the reference has been made prior to the inclusion of this Article—in this contract and has not been finally acted upon, the written advice shall be given at the time of execution of the instrument effecting such inclusion.

(2) The Contractor, prior to the expiration of thirty days (or such greater period as may be agreed upon in writing) after the date of the order for or authorization of any adjustment in wages, but, in any event, prior to the expiration of one year after the date specified for the delivery of the last item of supplies called for by this contract as it may from time to time be amended, shall submit to the Contracting Officer the following:

A. A true copy of the order or authorization for such adjustment.

B. A written demand that the parties negotiate to revise the contract prices of items delivered and to be delivered under the contract during a period stated in the demand. That period shall not commence at a date earlier than the first day specified in the order or authorization for the adjustment in wages.[1] That period shall not extend after the earliest date after the demand as of which the contract prices of items to be delivered under this contract can be revised pursuant to Article — (Revision of Prices).

C. Estimates of the probable effects of such adjustment in wages upon the Contractor's costs of producing the items delivered or to be delivered during the period stated in the demand. These estimates shall give due effect to estimates of completed items and work in process on hand at the beginning of such period and to the fact that the full effect of such adjustment will not normally be reflected immediately in the cost of items delivered under the contract. The estimates shall be accompanied by estimates of the effect of such adjustment on the direct and indirect labor costs of the items delivered and to be delivered during the stated period.

D. Proposed revised prices for the items delivered or to be delivered under the contract during the stated period.

(c) *Negotiations.* Upon the filing of the estimates and data required by paragraph (b) (2) of this Article, the Contracting Officer and the Contractor will negotiate promptly in good faith to agree upon revised prices for the items delivered or to be delivered during the stated period, the cost of producing which has been affected by such adjustment in wages. In the negotiation the Contracting Officer and the Contractor in good faith will estimate the effect of such adjustment upon the cost of such items. It is recognized that it will not be practicable to make precise computations of the effect of any such adjustment on the Contractor's costs and therefore it is the intention of the parties that negotiation and determination of any revision in price under this Article shall be on the basis of the estimates of the effect of the adjustment. The prices payable for the items to delivered and to be delivered will be revised to reflect, to an extent which is deemed reasonable under all the circumstances, such estimated effect on costs.

(d) *Limitation on revision.* The Contractor agrees that it will not request and shall not be entitled to receive a price revision under this Article except to the extent that such adjustment in wages operates to make the price under this contract less than a fair and reasonable one under all the circumstances. In no event shall any such revision exceed the amount of the estimated effect of such adjustment in wages on the Contractor's costs hereunder during the stated period specified in the written demand mentioned in subparagraph (b) (2) B of this Article.

(e) *Supplemental agreement.* 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 (1) the revised prices to be effective with respect to deliveries during a specified period to be set forth in such agreement and (2) the method of adjusting the payments therefor.

(f) *Disagreements.* If within 30 days after the time for filing the estimates and data required by paragraph (b) (2) of this Article (or such further period as may be fixed by written agreement) the Contracting Officer and the Contractor fail to agree to revised prices, the failure to agree shall be deemed to be a disagreement as to a question of fact which shall be disposed of in accordance with Article — (Disputes).

(g) *Effect of Article.* Any provision of this Article and any action thereunder shall be without prejudice to (1) the determination of the existence of any excessive profits of the Contractor under the Renegotiation Act; and (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.

(h) *Effect of prior renegotiation.* If, prior to any revision of the price under this Article the final or contingent cost of retroactive wage adjustments increasing the cost of performing this contract has been included and allowed for the purpose of the final determination (by agreement or unilateral determination) for a fiscal period, as to the Contractor's liability to repay to the Government excessive profits under the Renegotiation Act, appropriate weight shall be given to the results of the proceedings in renegotiation in determining the sums, if any, to be paid or credited to the Contractor in connection with the revision of the price under this Article, it being the intent of the parties that the net result shall be substantially the same as it would have been if the revision had preceded such final determination.

§ 303.375 *Form IV Price Revision Article; retroactive price revision by mutual agreement.*

§ 303.375–1 *Nature and effect of Article.* This Article is designed for use in contracts of $100,000 or less for experimental or developmental items or services. By its terms the contracting officer is empowered, after completion or termination of the contract, to demand that the parties negotiate to reduce the entire contract price. The revision effected thereunder is wholly retroactive.

§ 303.375–2 *Conditions for use.* (a) The amount of the contract is $100,000 or less.

(b) The price initially fixed in the contract should bear a reasonable relationship to the expected final price thereunder.

(c) The items or services called for by the contract are strictly developmental or experimental in character.

(d) The contractor's cost accounting system is sufficient to show the costs under the contract.

§ 303.375–3 *Rules for administration.* (a) If the production cost figures indicate that the price was high, the contracting officer will make the demand contemplated by the Article and will proceed promptly with and conclude the revision of the price in accordance with the Article.

(b) The Contracting Officer should make such use and verification of the cost data as he would make with respect to similar data upon the negotiation of a price under a new contract. The verification may include an examination and audit of the contractor's books and records.

(c) The profit agreed to upon the revision will be dependent upon the contractor's efficiency in the performance of the contract.

(d) The revised price will be evidenced by a supplemental agreement making adequate provision to secure to the Government the benefit of the reduction.

§ 303.375–4 *Text of Form IV.*

(a) Within sixty days after the completion or termination of this contract, the Contractor will submit to the Contracting Officer a detailed statement of the costs of performing this contract. Upon the written demand of the Contracting Officer, made at any time within thirty days after the submission of such statement, the Contractor will negotiate to reduce the contract price 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 other 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

[1] Where this Article is inserted in a contract by amendment, insert at this point an additional sentence stating the earliest date as of which this Article may apply (see paragraph (c) of this section).

audits and examinations of its books, records and accounts as the Contracting Officer may request.

(c) If within thirty (30) days after the making of such demand (or such further period as may be fixed by written agreement) the Contracting Officer and the Contractor fail to agree to a revised price, the failure to agree shall be deemed to be a disagreement as to a question of fact which shall be disposed of in accordance with Article —. (Disputes).

(d) The Government shall retain from amounts otherwise due the Contractor, or the Contractor shall repay to the Government if paid to him, any amount by which the contract price is found as a result of the application of this Article to exceed a fair and reasonable price, as the Contracting Officer may direct.

(e) Any provision of this Article and any action thereunder shall be without prejudice to (1) the determination of the existence of any excessive profits of the Contractor under the Renegotiation Act, and (2) any Order fixing the price of items to be furnished or services to be rendered hereunder made under Section 801 of the Revenue Act of 1943.

§ 803.376 *Form V Price Revision Article—for retroactive pricing with limited upward revision.*

§ 803.376–1 *Nature and effect of Article.* This Article, providing for upward and downward price revision, is authorized for use in certain limited kinds of experimental or developmental contracts which involve a maximum price of not more than $1,000,000. Under the Article a contract price is agreed upon which it is believed will tend to compel the contractor to do as efficient a job as possible in the circumstances, and at the same time a maximum price is fixed as a ceiling on any upward revision under the Article. The revision takes place after completion or termination of the contract and is of course wholly retroactive.

§ 803.376–2 *Conditions for use.* (a) The maximum price under the contract as set forth in paragraph (c) of the Article must never exceed $1,000,000.

(b) The contract must call only for experimental or developmental items or services for tests in (1) laboratories, (2) field operations, or (3) similar experiments.

(c) The items or services called for by the contract are of such a non-repetitive character as to preclude the proper use of Form I–C or II–B. (See §§ 803.371–2, 803.372–2 and 803.373–2.)

(d) The contract price shall be as close as the circumstances of the particular procurement will permit. The maximum price will bear a reasonable relationship to the initial contract price in the light of the predictability of costs.

(e) The Contractor must have or establish a cost accounting system which will show the costs of performing the contract. If the Contractor's normal cost accounting methods are not satisfactory, it will be necessary to use one of the optional alternative sentences set out in paragraph (b) of the Article, in which event it will be necessary to prescribe the cost records which the contractor is to maintain and the method of maintaining such records. Wherever possible this determination concerning the records should be made at the time the contract is initially executed, using the first optional alternative sentence and specifying in detail what is to be required of the contractor. When such determination cannot be made at once, the contracting officer may conclude that after further investigation he will be able to prescribe the appropriate cost records, in which event the second optional alternative sentence should be used; and in that case such determination should be reflected, when possible, by an agreement supplemental to the contract.

(f) Any use of the Article shall be subject to prior written approval of the Director, Purchases Division, Headquarters, Army Service Forces. The request for such approval shall show in detail full compliance with the foregoing conditions and shall include, to the extent practicable, the information called for by § 803.305–4

§ 803.376–3 *Rules for administration.* (a) The time limitations prescribed in the Article will be strictly followed.

(b) The contracting officer should make such use and verification of the cost data submitted by the contractor as he would make with respect to similar data upon the negotiation of a price under a new contract. The verification may include the examination and audit of the contractor's books and records.

(c) The negotiations under the Article may result in a revised price which is the same as, or higher or lower than, the contract price but never in a revised price in excess of the maximum price. The profit agreed to upon the revision of the price will be dependent upon the contractor's efficiency in performing the contract.

(d) The revised price will be evidenced by a supplemental agreement making adequate provision to secure to the Government the benefit of any price reduction negotiated, or for payment to the contractor of any price increase, as the case may be.

§ 803.376–4 *Text of Form V.*

(a) Because of the experimental and developmental nature of the work called for by this contract and the great uncertainty as to the cost of performance hereunder, the parties agree that the contract price fixed in Article — hereof may be increased or decreased in accordance with the provisions of this Article.

(b) Within ____ [not exceeding 60] days after the completion or termination of this contract, the Contractor will file with the Contracting Officer a statement showing, in such form and detail as the Contracting Officer may prescribe, the Contractor's cost of producing the supplies or furnishing the services called for hereunder, together with such other information as may be pertinent in the negotiations for a revised price pursuant to this Article. Such statement of cost shall fairly reflect the normal operation of the Contractor's cost system. [*First optional alternative to preceding sentence:* The Contractor will establish and maintain records of the costs of performing this contract, as follows: * * *] [*Second optional alternative:* The Contractor will establish and maintain such records of the costs of performing this contract as the Contracting Officer may require in writing.] The Contracting Officer shall have the right at all reasonable times to make or cause to be made such examinations and audits of the Contractor's books, records and accounts as he may request.

(c) Upon the filing of the statement and other pertinent information required by paragraph (b) of this Article, the Contractor and the Contracting Officer will promptly negotiate in good faith to agree upon a reasonable revised price for the entire contract which, upon the basis of such statement and other pertinent information, will constitute fair and just compensation to the Contractor for the performance of this contract. In determining the extent of any estimated allowance for profit to be taken into account in fixing such revised price, consideration will be given to the extent to which the Contractor has performed the contract with efficiency, economy and ingenuity. In no event shall the revised price exceed the sum of $_____. The revised price shall be evidenced by a supplemental agreement to this contract.

(d) If within _____ [not exceeding 90] days after the completion or termination of this contract, the parties shall fail to agree upon a revised price in accordance with the provisions of this Article, the failure to agree shall be deemed to be a disagreement as to a question of fact which shall be disposed of in accordance with Article — (Disputes).

(e) In the event of a price increase the Government will pay or credit to the Contractor the amount by which the revised price shall exceed the contract price aforesaid. In the event of a decrease in price the contractor will repay or credit the amount of such decrease to the Government in such manner as the Contracting Officer may direct.

(f) For any of the purposes of Article — (Termination at the Option of the Government) of this contract (including without limitation, computation of "the total contract price" and "the contract price of work not terminated") the contract price shall be the revised contract price agreed upon under paragraph (c) of this Article or determined under paragraph (d) of this Article, as the case may be.

(g) The provisions of this Article and any revision of price made hereunder shall be without prejudice to the determination of the existence of any excessive profits of the Contractor upon subsequent renegotiation under the Renegotiation Act or any contract article inserted pursuant to that Act.

(h) *Effect of prior renegotiation.* If, prior to any revision of the price under this Article, any sums paid or payable under this contract in respect of items the price of which may be affected by such revision have been included as renegotiable income received or accrued by the Contractor in any fiscal period for which there has been a final determination (by agreement or unilateral determination) as to the Contractor's liability to repay to the Government excessive profits under the Renegotiation Act, appropriate weight shall be given to the results of the proceedings in renegotiation in determining the sums, if any, to be paid or credited by or to the Contractor in connection with the revision under this Article of that part of the price applicable to that fiscal period, it being the intent of the parties that the net result shall be substantially the same as it would have been if the revision had preceded such final determination.

§ 803.377 *Form VI Price Revision Article—for repricing upon happening of specified contingency.*

§ 803.377–1 *Nature and effect of Article.* This Article provides for an equitable adjustment of prices upon the happening of a contingency specified in the Price Revision Article. The equitable adjustment may require either an increase or decrease in the price.

§ 803.377–2 *Conditions for use.* (a) The contingency upon which the equitable adjustment is to take place will be

clearly and accurately stated in the place provided therefor in paragraph (a) of the Article. Particular care will be taken to exclude from the statement of the contingency any point or matter which is not intended to be considered in making the equitable adjustment. For example, if the contingency relates to possible changes in price of a specified material, the statement will be strictly confined to that possibility and will not allow any adjustment on account of changes in the quantity of material to be used or on account of any factor other than price. The dollar estimate of the unit cost predicated on the realization of the basic assumption should also be clearly specified in the blank space, so that the difference in costs resulting from a non-realization of the basic assumption may be readily ascertained.

(b) The contingency must come within one of the following categories: (1) Cases where the Government actually fixes the price or effectively controls the entire supply of material to be used by the contractor in performance of the contract (e. g., natural or synthetic rubber); (2) cases where freight rates upon specified materials to be used by the contractor in performing the contract are changed under authority of the Interstate Commerce Commission; (3) cases where the cost of freight on specified materials to be used by the contractor in performing the contract is changed as the result of allocation or priority orders of the Government or any of its instrumentalities; (4) cases where the contractor contemplates the purchase of a single specified important material or component, which is to be used in performing the contract, from a stated source or at a stated price and such source or price is necessarily changed without fault or any voluntary action on the part of the contractor; (5) cases where the contractor's compliance with the delivery schedule of the contract is prevented as a direct or proximate result of any act of the Government or any of its instrumentalities. In each of such cases the probable effect of the happening of the contingency should be a substantial change in the contractor's costs.

(c) The Article is not authorized for use to cover any of the following contingencies: (1) Changes in taxes or duties (see § 803.357); (2) changes in wage rates or employment conditions (see § 803.374); (3) changes in OPA maximum prices of either components or end items (see § 803.351); (4) risks arising in connection with patents (see § 803.335); (5) termination of the contract in whole or in part (see § 803.324).

(d) The price must contain no charge or allowance on account of the specified contingency.

(e) In appropriate cases the Article may be included in a new contract even though such contract may also contain one of the Form I or Form II Price Revision Articles.

§ 803.377–3 *Rules for administration.* (a) The contracting officer will determine from the information supplied by the contractor and all other relevant data whether the contingency specified in the Article has occurred and the amount by which the contractor's costs have been changed thereby. The contracting officer may make such examination and audit of the contractor's books and records as he deems necessary.

(b) The adjustment in price should be sufficient to compensate the contractor or the Government for the net changes in the contractor's costs resulting from the happening of the contingency. There must be no adjustment under the Article on account of cost changes resulting from other factors.

(c) The adjustment in price will be evidenced by a supplemental agreement.

§ 803.377–4 *Text of Form VI.*

(a) *Basic assumption.* The contractor represents that the prices under this contract have been fixed on the following assumption (hereinafter called the basic assumption):

In the event that the basic assumption is not realized, in whole or in part, and that as a result the Contractor's costs vary materially from its presently anticipated costs as specified above, the parties agree that an equitable adjustment shall be made in the contract price on account of any net increase or decrease in such costs resulting from that non-realization.

(b) Within 30 days after the entire or partial nonfulfillment of the basic assumption, the Contractor shall notify the Contracting Officer in writing of the fact and extent of such occurrence, and shall also, within such time (or within such further period as the Contracting Officer may in writing allow before the date of final settlement of the contract) present in writing to the Contracting Officer any claim which it may then have for adjustment under this Article. Within 30 days after the Contractor's notification to him (or within such further time as the parties may agree upon in writing), the Contracting Officer shall present in writing to the Contractor any claim for adjustment under this Article which the Government may then have. The parties agree to negotiate in good faith concerning these claims and the amount and terms of any equitable adjustment which should be made. If the parties fail to agree whether an equitable adjustment is required under this Article, or upon the terms or amount of such adjustment, the dispute shall be disposed of as a question of fact in accordance with Article — (Disputes). But nothing provided in this Article shall excuse the Contractor from proceeding with the contract in accordance with its terms. Any adjustment hereunder shall be evidenced by a supplemental agreement to this contract. Nothing provided in this Article is intended to alter, restrict or limit the terms of Article — (Changes) or the authority of the Contracting Officer thereunder.

(c) *Warranty.* The Contractor represents and warrants that there is not included in the price hereunder any charge, allowance, or reserve for the possible non-fulfillment, in whole or in part, of the basic assumption.

(d) *Relation to Delays—Damages Article.* To the extent that performance of this contract may be delayed because of the non-realization of the basic assumption, in whole or in part, and that the Contractor shall have been unable to prevent such delay, the delay shall be deemed to be excusable for the purposes of Article — (Delays—Damages).

(e) *Reservation of Government's rights.* Any provision of this Article and any action thereunder shall be without prejudice to (1) the determination of the existence of any excessive profits of the Contractor under the Renegotiation Act, and (2) any Order fixing the price of items to be furnished or services to be rendered hereunder made under Section 801 of the Revenue Act of 1943.

(f) *Effect of prior renegotiation.* If, prior to any adjustment of the price under this Article, any sums paid or payable under this contract in respect of items the price of which may be affected by such adjustment have been included as renegotiable income received or accrued by the Contractor in any fiscal period for which there has been a final determination (by agreement or unilateral determination) as to the Contractor's liability to repay to the Government excessive profits under the Renegotiation Act, appropriate weight shall be given to the results of the proceedings in renegotiation in determining the sums, if any, to be paid or credited by or to the Contractor in connection with the adjustment under this Article of that part of the price applicable to that fiscal period, it being the intent of the parties that the net result shall be substantially the same as it would have been if the adjustment had preceded such final determination.

§ 803.378 *Incentive type contract article.*

§ 803.378–1 *General considerations.* (a) The contract Article set forth in § 803.379–5 is designed to reduce contract prices by providing contractors with an incentive to minimize the cost of performing contracts. The contractor shares with the Government the savings brought about by such reduction in costs. The contractor's profit per unit increases as costs decrease and decreases as costs increase up to a point where additional costs result in losses.

(b) Under this Article a target price, which should not exceed the sum of a realistic estimate of the total cost of performing the contract and a reasonable profit, is determined. Because of the advantage to the contractor in the opportunity to increase his profit by cost reductions and to be reimbursed up to a point for cost increases, his risk is less than under a fixed price contract; and therefore the profit margin at the target price will ordinarily be lower than that allowed for an equal fixed price. A maximum (ceiling) price which the final price cannot exceed is also set. The contractor and the Government share in the reduction in cost below that price. The final price consists of (1) the contractor's costs determined by negotiation and agreement after completion of all work under the contract and (2) a profit computed by the application of an agreed formula to the difference between the maximum (ceiling) price and such negotiated costs.

(c) The Article will be found more useful than the standard fixed-price contract in many situations. It provides a strong incentive to control and reduce costs. For contractors expecting to operate after the war it affords the opportunity to begin the restoration of efficiencies usually necessary in a competitive market. It furnishes protection to contractors who are not financially strong enough or are unwilling to accept the risk of loss which may possibly result from close fixed pricing. Contracting officers should carefully consider use of the Article in cases where satisfactory fixed prices cannot be agreed upon. The opportunity to adjust the price based on experienced costs will be found particularly adaptable in converting CPFF contracts, because it represents a less hazardous transition to a fixed-price basis.

When a contractor's volume is reduced by the termination of some but not all of its contracts, it may be expedient to insert the incentive provisions in remaining contracts; and such insertion will not be considered an amendment without consideration under § 803.308a merely because the maximum price exceeds the original fixed price. The incentive type contract is adaptable for use in contracts for first production quantities of items not previously produced. In some cases it may be feasible to utilize it in research, experimental and development contracts, particularly where considerable repetitive work is involved. In such cases provision should be made for revision of the target and maximum prices at some early point in performance of the contract.

(d) The Article is not intended to take the place of the Price Revision Article set out in §§ 803.370 to 803.377, inclusive. Rather, it is intended to provide another technique, for use in certain cases, of obtaining close prices from War Department contractors. This Article will not be used in any contract containing one of the Price Revision Articles set out in §§ 803.370 to 803.377, inclusive.

§ 803.378–2 *Conditions for use.* The Article may be used in fixed price contracts, subject to the following conditions:

(a) Sufficient experience is available to make a reasonably accurate determination of the target price.

(b) The maximum (ceiling) price is as low as possible under the circumstances and affords no protection to the contractor against extravagance and inefficiency.

(c) The formula for fixing the profit is so scaled that an effective premium is afforded for reducing costs below the estimate and a deterrent provided to discourage the contractor from increasing costs.

(d) The contracting officer is satisfied that the contractor's accounting system is sound, since final costs will be determined by negotiation and not by audit. The contract provides for the contractor to furnish detailed cost statements which can and should be supplemented by investigation whenever and to the extent deemed desirable by the contracting officer.

(e) The contract will be made subject to the approval of the Director, Purchases Division, Headquarters, Army Service Forces. The submission of the contract to him for approval will explain in detail how the foregoing conditions have been fulfilled, will analyze the target and maximum (ceiling) prices and the price data, if any, submitted by the contractor, and will contain any other information considered relevant.

§ 803.378–3 *Assistance by Purchases Division.* Purchases Division, Headquarters, Army Service Forces, has made a special study of the incentive type contract and the experience of other Government departments in its use. Contracting officers are encouraged to seek the assistance of representatives of the Purchase Division in connection with negotiation of such contracts.

§ 803.378–4 *Explanatory illustration of incentive type contract.* A case is assumed where a substantial number of a particular item have been furnished. The contracting officer has estimated that a price of $1,266,000 per unit would be fair and reasonable. Because of the uncertainty of the future the contractor has insisted on many contingency allowances and was unwilling to agree to a firm price of less than $1,335,000 per unit. An incentive contract was, therefore, resorted to which is explained by the following figures:

Target price	$1,266,000
Estimated Cost without contingencies	1,200,000
Maximum (ceiling) price	1,350,000

Formula for determining final price to include negotiated cost plus sum for profit which shall be equal to the following percentages of the amount by which negotiated cost is less than maximum (ceiling) price:

Fifty-two per cent (52%) of such amount to the extent of the first Fifty Thousand Dollars ($50,000) thereof;

Forty-eight per cent (48%) of such amount to the extent of the next Fifty Thousand Dollars ($50,000) thereof;

Thirty-two per cent (32%) of such amount to the extent of the next Fifty Thousand Dollars ($50,000) thereof;

Twenty per cent (20%) of such amount to the extent of any balance thereof.

Using various figures for the negotiated cost, the following table is illustrative of the results which would be obtained:

Negotiated final cost	Profit	Equal to—	Total final unit price to Government
		Percent	
$1,350,000	0	0	[3] $1,350,000
$1,300,000	$26,000	2	1,326,000
$1,250,000	50,000	4	1,300,000
$1,200,000 [1]	66,000	5.5	[2] 1,266,000
$1,100,000	86,000	7.82	1,186,000
$1,000,000	106,000	10.6	1,106,000
$900,000	126,000	14.0	1,026,000
$800,000 etc.	146,000	18.25	946,000

[1] War Department estimated cost.
[2] Target price.
[3] Maximum (ceiling) price.

§ 803.378–5 *Text of incentive type contract article.*

ARTICLE —. *Price Redetermination.* (a) *Scope of Article.* The parties hereto agree that the price stipulated in Article — hereof is a fair and reasonable negotiated price based upon estimates made in the light of the information available to the parties at the time of the negotiation. (The prices of spare parts to be determined in accordance with Appendix A hereto shall be negotiated on the same basis.) Such price(s) shall, however, be increased or decreased as provided in this Article.

(b) *Submission of data.* After the last delivery to be made hereunder, the Contracting Officer and the Contractor shall redetermine by negotiation in the manner provided in paragraph (c) of this Article the contract price(s) (and the prices of spare parts) (exclusive of changes agreed to from time to time pursuant to the Article hereof entitled "Changes"). For that purpose, within ninety (90) days (or such longer period as the Contracting Officer may approve) after the last delivery to be made hereunder, the Contractor shall submit to the Contracting Officer, in such form and detail and accompanied by such supporting data as the Contracting Officer may require, a statement of (1) all costs incurred by the Contractor in performing the contract to such time and chargeable thereto in accordance with generally accepted and sound accounting practices consistently followed by the Contractor and (2) the estimated cost of such further performance, if any, as may be necessary to complete the contract, excluding from such statement any costs separately reimbursable to the Contractor pursuant to any provision of this contract other than the provisions of the Article hereof entitled "Changes." Such statement and supporting data shall be certified by two officers or other responsible officials of the Contractor as having been prepared in compliance with the provisions of this paragraph. One of such persons shall be a person supervising accounting under the contract. Such certification shall be in the following form:

> The undersigned, as individuals and as authorized representatives of _____ (Contractor) (hereinafter called the Contractor), hereby certify that we have examined the statement and supporting data to which this certificate is attached and that, to the best of our knowledge and belief, such statement and supporting data, except as otherwise indicated therein in the case of estimates, have been prepared from the books of account and records of the Contractor; that such books of account and records have been kept in accordance with generally accepted and sound accounting practices consistently followed by the Contractor; that they include only actual and estimated costs allocable to the performance of Contract No. _____; and that they have been prepared with the knowledge that they will be used in connection with the negotiation of the final contract price under such contract.

Variations in the foregoing form shall not be made except with the approval of the Contracting Officer.

(c) *Manner of redetermination.* The redetermination provided in paragraph (b) above shall be effected in the following manner:

(1) On the basis of such statement and supporting data and such investigation as the Contracting Officer shall deem appropriate in the circumstances, there shall be established by negotiation the average unit cost of the items to be delivered hereunder. This shall then be adjusted by deducting therefrom the aggregate amount of all increases in cost, reduced to a unit basis, and adding thereto the aggregate amount of all decreases in cost, reduced to a unit basis, as provided for pursuant to the provisions of the Article hereof entitled "Changes." In the event of failure to agree, such adjusted average unit cost shall be determined under the provisions of the Article hereof entitled "Disputes."

(2) The redetermined unit price shall be established by adding to the adjusted average unit cost, as established under subparagraph (1) above, an allowance for profit equal to the following percentages of the amount, if any, by which such adjusted average unit cost is less than the sum of $_____ (the maximum price specified below):

> ____% of such amount to the extent of the first $_____ thereof,
> ____% of such amount to the extent of the next $_____ thereof,
> ____% of such amount to the extent of the next $_____ thereof,
> ____% of such amount to the extent of any balance thereof.

In no event, however, shall such redetermined unit price exceed $_____.

(3) The price of spare parts shall be redetermined by applying to the price of each spare part as it was first established hereunder (exclusive of packing and similar charges, if any) a percentage determined by dividing the total number of dollars in the redetermined unit price established pursuant to subparagraph (2) above by $_____ (the base unit prices specified in Article —).

(d) *Exclusion of changes.* The price adjustment for changes determined from time to time pursuant to the Article hereof entitled "Changes" shall not be redetermined under this Article and shall be paid in addition to or shall be deducted from, as the case may be, the redetermined prices established in accordance with paragraph (c) of this Article.

(e) *Supplemental Agreement.* When such redetermined prices shall have been arrived at as hereinabove provided, the amount thereof shall be evidenced by a supplemental agreement. In the event that the redetermined prices shall be greater than the prices previously in effect, the Contractor, upon submission of invoices therefor, shall be promptly paid the amount of the increase applicable to items theretofore delivered. In the event that the redetermined prices shall be less than the prices previously in effect, the Contractor shall promptly refund to the Government the amount of the decrease applicable to items theretofore delivered, or, with the approval of the Contracting Officer, the same may be deducted from any amount thereafter payable to the Contractor under this contract.

(f) *Effect of termination.* If this contract shall be terminated pursuant to the Article hereof entitled "Termination at the Option of the Government" prior to a price redetermination under this Article and if (A) such termination shall occur after deliveries have commenced or (B) such termination shall be partial, leaving one or more items to be delivered thereafter, then in that event (i) there shall at the request of the Contractor promptly be established by negotiation between the parties an amendment to this contract, subject, in the event of failure to agree, to final determination under the provisions of the Article hereof entitled "Disputes", which shall establish such revisions, if any, in the maximum price and profit allowances specified in subparagraph (c) (2) hereof as shall be equitable under the circumstances; and (ii) upon completion of deliveries under the contract as terminated, the contract prices for items delivered shall be redetermined under the provisions of this Article on the basis of the adjusted average unit cost for such completed items, exclusive of all costs allocable to the terminated portion of this contract.

(g) *Termination under Delays-Damages Article.* In the event that this contract shall be terminated pursuant to the Article hereof entitled "Delays-Damages," prior to a price redetermination under this Article, the prices, if any, payable to the Contractor pursuant to said Delays-Damages Article shall be either (i) the prices currently in effect as of the effective date of termination, as established under paragraph (h) of this Article, or if the contracting officer shall determine in his discretion that the payment of the said prices is not in the best interest of the Government, (ii) the prices redetermined in accordance with paragraph (c) of this Article on the basis of the adjusted average unit cost for completed items, exclusive of all costs allocable to the terminated portion of the contract.

(h) *Revision of tentative contract prices.* Pending the price redetermination pursuant to the provisions of paragraph (c) of this Article, the sum of $_____ specified in Article — hereof and based upon an assumed average unit cost of $_____, (and the prices of spare parts to be determined in accordance with Appendix A hereto) (hereinafter called the tentative contract prices), as the same may be revised pursuant to the provisions of this paragraph, shall be deemed to be the contract prices for all purposes of this contract. If at any time after the delivery of the _____ item under the contract, it appears that the average unit cost will be substantially greater or less than such assumed average unit cost, either the Contractor or the Contracting Officer may by notice to the other request negotiations for the fixing of revised tentative contract prices. If the parties are unable within thirty (30) days after the receipt of such notice to agree upon revised tentative contract prices, the dispute shall be deemed a question of fact to be determined under the Disputes Article. Within thirty (30) days after revised tentative contract prices shall have been so fixed, the amounts paid to the Contractor on the basis of the previous tentative contract prices shall be recomputed upon the basis of such prices as revised, and if such amounts so recomputed are in excess of the amounts theretofore paid, the Government will promptly pay the excess to the Contractor upon the submission of invoices therefor and, if such amounts so recomputed are less than the amounts theretofore paid, the Contractor shall promptly refund the difference to the Government or, with the approval of the Contracting Officer, the same may be deducted from any amount thereafter payable to the Contractor under this contract. The fixing of revised tentative contract prices pursuant to the provisions of this paragraph shall not limit nor affect in any way the price redetermination thereafter required to be effected pursuant to the provisions of paragraph (c) of this Article.

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 matériel 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 the 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 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 § 803.303g.

§ 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 to 803.380a–7 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 (Art. 9) 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:

(a) The contractor will be notified in writing that his right to proceed has been terminated.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

§ 803.380a–1 *Reports of default.* (a) The reports to which reference is made in § 803.380a (e) and (f) will be made on the form set forth in § 803.380a–7, 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).

(b) The number of copies of the report to be made is as follows:

(1) It will be submitted to the disbursing officer in quadruplicate, except that when the contracting officer makes the collection in accordance with § 803.380a (d) and (e), the report will be submitted in duplicate.

(2) 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.

(c) The form which is suggested for use under contracts generally is self-explanatory. However, attention should be given to the following:

(1) 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.

(2) The contracting office will sign the form in the space provided therefor under the heading "Remarks".

(d) In preparing reports covering TPS contracts on Form 59, in addition to paragraph (c) (1) and (2) of this section attention should be given to the following:

(1) 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.

§ 803.380a–2 *Collection of the excess cost.* (a) The disbursing officer, upon receipt of the report to which reference is made in § 803.380a (f), will effect collection of the excess cost from the defaulting contractor by deducting the amount thereof from any funds payable to the defaulting contractor.

(b) If the disbursing officer effects collection of the entire amount of excess cost due the Government in accordance with paragraph (a) of this section, 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:

(1) The original will be attached to the voucher or other form covering the collection.

(2) The duplicate copy will be filed in the office of the disbursing officer.

(3) The triplicate and quadruplicate copies, if any, will be transmitted to the contracting officer, marked for his information only.

(4) The three additional copies to which reference is made in § 803.380a–1 (b) (2) 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.

(c) 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:

(1) If the default was made on a War Department Contract:

(i) 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.

(ii) The duplicate copy will be filed in the office of the disbursing officer.

(iii) 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 Office of the Fiscal Director, Headquarters, Army Service Forces, for reference to the General Accounting Office.

(2) If the default was made on a contract of the Procurement Division, Treasury Department:

(i) The original, quadruplicate and the three additional copies to which reference is made in § 803.380a–1 (b) (2), will be transmitted directly to the Branch of Supply, Procurement Division, Treasury Department.

(ii) The duplicate copy will be filed in the office of the disbursing officer.

(iii) 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.

§ 803.380a–3 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 § 803.380a–1 (b) (2), when collection is effected, three additional copies of Standard Form No. 1044 will be made for transmission with the additional copies of the report.

§ 803.380a–4 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 § 803.380a–2 (c). 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.

§ 803.380a–5 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 section.

§ 803.380a–6 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.

§ 803.380a–7 *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 therefrom relative to the indebtedness.

SUBPART J—MISCELLANEOUS

§ 803.390 *Assignments.*

§ 803.390–1 *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 § 803.390–2.)

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 therefor, 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.)

§ 803.390–2 *Assignment of Claims Act of 1940.* (a) In 1940 by the enactment of the Assignment of Claims Act (Public No. 811—76th Congress), approved October 9, 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 (e) of the standard article contained in § 803.355.

(b) Where direct payment is made to the assignee, the contractor will furnish on each voucher, invoice, or other supporting paper a statement to the effect that he recognizes the assignment, its validity, and the right of the assignee to receive payment. (See par. 2f, AR 35–1040.)

§ 803.390–3 *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.)

§ 803.390–4 *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.)

§ 803.390–5 *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 another. (Seaboard Airline Railway v. U. S., 256 U. S. 655.)

§ 803.390–6 *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.

§ 803.390–7 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 March 6, 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 capable of prompt consummation is 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 promptly so notify the Contracting Officer. If the Contracting Officer concurs in this opinion, he will reimburse the prime contractor, if the latter has not been reimbursed previously for the amount of his claim against the supplier or subcontractor and if the claim is a reimbursable one under the prime contract, and he will direct the prime contractor to execute an assignment to the United States of the claim on the defaulted purchase order or subcontract, to assemble all the papers pertinent to the claim, 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.

(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.*

§ 803.394–1 *Presidential directives.* (a) 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.

(b) 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, Defense 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 October 22, 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.

§ 803.394–2 *War Department Power Procurement Officer.* Pursuant to the directives from the President, set forth in § 803.394–1 the Secretary of War has designated Col. S. M. Weaver as War Department Power Procurement Officer and Major George P. Steinmetz as Deputy 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:

(a) 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.

(b) 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.

§ 803.394–3 *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.

§ 803.394–4 *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.

§ 803.394–5 *Required provision in contracts and supplements.* All contracts and supplements of the character referred to in § 803.394–2 will contain a provision that the contract or supplement is subject to the approval of the War Department Power Procurement Officer or Deputy War Department Power Procurement Officer and will not be binding until so approved. Such contracts and supplements which are Army Air Forces utility contracts (see § 803.397–1) will be forwarded as provided in § 803.397–1 to the War Department Power Procurement Officer for approval. Such contracts and supplements which are not Army Air Forces utility contracts (see § 803.397–1) will be forwarded through the Repairs and Utilities Division of the Service Command to the War Department Power Procurement Officer, Office of the Chief of Engineers, for approval.

§ 803.395 *Contracts within section 9, Military Appropriation Act, 1944 and 1945.*

§ 803.395–1 *Section 9, Military Appropriation Act, 1944 and 1945.* 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.

Section 9, Military Appropriation Act, 1945 (Pub. Law 374, 78th Congress) provides:

Whenever, during the fiscal year ending June 30, 1945, 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 and travel expenses, including actual transportation and per diem in lieu of subsistence while traveling from their homes or places of business to official duty station and return as may be authorized in travel orders or letters of appointment 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.

§ 803.395–2 *Effect of statutes on contracts.* Except as may be provided in other applicable statutes (see, e. g., section 12, Public Law 580, 77th Congress), the statutes above-quoted affect (a) each War Department contract for architectural, engineering, technical or professional services (1) made with any individual; or (2) made with a firm or corporation which is engaged primarily in the business of furnishing such services, and (b) 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, they do 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.

§ 803.395–3 *Approval of contracts.* Notwithstanding anything contained in Subpart B of this part, each contract of the type described in the first sentence of § 803.395–2 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).

§ 803.395–4 *Citation of authority on contracts.* 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.

§ 803.395–5 *Compensation.* 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).

§ 803.395–6 *Approval of awards.* See § 803.396 below, requiring that the technical services obtain approval before making awards of certain contracts, supplemental agreements and change orders for "management consultant" services. As noted in § 803.396 (d), obtaining approval of such awards does not eliminate the requirement that the contracts, supplemental agreements and change orders embodying those awards be also processed under § 803.395–3 where § 803.395–3 is otherwise applicable.

§ 803.396 *Prior approval of awards of "management consultant" contracts.* (a) Notwithstanding anything contained in Subpart B, the technical services will obtain the approval of the Director, Purchases Division, Headquarters, Army Service Forces, before making an award of any contract to a corporation or firm (including a proprietorship) for "management consultant" services, or an award of any supplemental agreement or change order which involves any substantial change in the nature or the services or any substantial increase in the amount of the services to be performed under such a contract. "Management consultant" services are defined as including assistance in inaugurating new or changing old methods of transacting

business of the War Department, or in investigating, devising or developing procedures, methods, systems, forms or the like for accomplishing the business of the War Department. Assistance in developing systems of item identification, nomenclature or interchangeability of war matériel is an example of "management consultant" services within the meaning of this section. The character of the work to be performed determines whether the services involved are "management consultant" services within the meaning of this section; the question whether the proposed contractor is engaged primarily in the business of furnishing such services, and the dollar amount of the project, are irrelevant to the determination.

(b) It is the policy of the War Department that to the extent possible, firms shall not be employed to perform "management consultant" services on continuous operating activities, on projects which should be carried on by the War Department with its own personnel, or in lieu of the direct employment of individuals by the War Department or the employment of individuals as consultants. Where it is necessary to employ corporations or firms to perform "management consultant" services, the agreement should be made on a temporary basis and provision should be made for recruiting and training War Department personnel to take over the performance of such services as soon as practicable.

(c) Requests for approval of awards under this section will include the information indicated below or such parts thereof as are relevant to the particular transaction:

(1) Name and address of proposed contractor; its qualifications to perform the services; prior experience, if any;

(2) Necessity for and full description of the work to be performed;

(3) Types of personnel to be employed (for example, clerical, supervisory, engineers, draftsmen) and number of each type;

(4) Period of time required to complete the contract;

(5) Explanation of why the work cannot be accomplished by War Department personnel or by the employment of individual consultants, and steps taken to recruit such personnel;

(6) Price and justification;

(7) 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, §§ 803.306–2 and 803.306–4.

(d) Obtaining approval of an award under this section does not eliminate the requirement that the contract, supplemental agreement or change order be approved by higher authority under § 803.395–3 if the contract, supplemental agreement or change order is of a type which must receive such approval under the provisions of § 803.395–3.

§ 803.397 *Utility contracts.*

§ 803.397–1 *Army Air Forces utility contracts.* (a) Army Air Forces utility contracts are those utility contracts, as defined in § 803.318c–1, which affect Class III installations and which (1) are not of general or regional application or (2) do not primarily affect Class I, II and IV installations. Army Air forces utility contracts are the responsibility of the Commanding General, Army Air Forces, subject, however, to the provisions of §§ 803.306–1 through 803.306–4 and §§ 803.394 through 803.394–5, inclusive. Army Air Forces commanding officers, however, may request the advice and assistance of Service Command Engineers in connection with Army Air Forces utility contracts.

(b) Any Army Air Forces utility contract requiring approval of higher authority, will be referred by the commanding officer of the Class III installation concerned through Army Air Forces command channels to the Director, Purchases Division, Headquarters, Army Service Forces. If approval of any such contract is required under §§ 803.394 through 803.394–5, inclusive, it will contain the approval provision required by § 803.394–5 and will be forwarded by the Director, Purchases Division, to the War Department Power Procurement Officer for necessary action.

§ 803.397–2 *Service command utility contracts.* Utility contracts, as defined in § 803.318c–1, other than Army Air Forces utility contracts, are the responsibility of the Commanding Generals of the service commands. In this connection see §§ 803.318c to 803.318c–4, inclusive.

§ 803.397–3 *Engineer utility contracts.* Notwithstanding the provisions of §§ 803.397–1 and 803.397–2, if utility contracts, as defined in § 803.318c–1, are required during construction at Class I, II, III or IV installations, under the jurisdiction of the Chief of Engineers, such contracts will be entered into by Engineer contracting officers and administered as Engineer contracts until transferred to Army Air Forces or service command jurisdiction.

§ 803.398 *Certification by contracting officers, under cost-plus-fixed-fee contracts, of unusual items likely to be questioned.* (a) Experience has shown that in connection with the administration of many cost-plus-fixed-fee contracts a number of items of reimbursement are claimed by contractors which are unusual in nature and consequently require special attention of the contracting officer in making his administrative determination of whether the contractor is entitled to reimbursement therefor. Because of the possibility of subsequent inquiries by the General Accounting Office concerning reimbursement of such items, the procedure prescribed in paragraph (b) below will be followed. The following are illustrations of the types of items of this nature:

Attorneys' fees
Accountants' fees
Bonuses and special payments to employees
Cafeteria and other special activity losses or expenses
Check cashing fees or other expenses in connection therewith.
Expense of recruiting employees and transporting them to the site of work
Employee morale expenses
Losses not covered by insurance
Membership fee in Associations
Publications, including technical manuals, war law and labor services
Travel expenses

(b) Where in the judgment of the contracting officer, the item claimed is of the nature described in paragraph (a) above, the contracting officer will prepare and place in his files a memorandum setting forth in detail all pertinent facts and the particular reasons for approving reimbursement, including the nature of the expenditure and the necessity for its being made in connection with the contract. This memorandum will provide a basis for justifying the contracting officer's action if the item is later questioned by the General Accounting Office.

(c) Should the item in question be the subject of either an informal inquiry or a formal exception, the reply thereto may include a copy of the memorandum above mentioned. Should the matter of clearing any question raised by the General Accounting Office require the attention of higher authority, a copy of the memorandum will be furnished to assist in such clearance.

§ 803.398a *Reimbursement under cost-plus-fixed-fee supply contracts of contributions to charitable or community organizations.* (a) Supplemental Cost Interpretation No. 9, as originally issued December 9, 1942 and as published in paragraphs 263–267 of TM 14–1000 ("Administrative Audit Procedures for Cost-Plus-A-Fixed-Fee Supply Contracts") provided for the reimbursement of CPFF supply contractors for contributions to charitable or community organizations under certain limitations. In a decision of the Comptroller General, B–35488, August 15, 1944, the allowance of contributions to charitable or community organizations was questioned, and, in the particular case, the contribution was disallowed. Disbursing officers are now being instructed not to pay vouchers representing reimbursement of costs based upon contributions, even though the contract incorporates by reference TD 5000 and the costs are allowable under the provisions of Supplemental Cost Interpretation No. 9.

(b) Nevertheless, contracting officers are not necessarily required, because of the decision of the Comptroller General, to refuse to certify vouchers for reimbursement of such contributions if contractors appear otherwise to be entitled to such reimbursement under the terms of their contracts and in accordance with Supplemental Cost Interpretation No. 9. If in any case a voucher is to be certified in accordance with Supplemental Cost Interpretation No. 9, a separate voucher covering such item only will be prepared to which there will be attached a statement that the voucher has been certified in accordance with this section. Any voucher so certified will not be submitted to the disbursing officer but will be returned to the contractor.

§ 803.398b *Adjustments of fixed-price subcontracts under cost-plus-a-fixed-fee prime contracts.* (a) The principles set out in § 803.329b–3 apply to adjustments of a fixed price subcontract under a cost-plus-a-fixed-price prime contract attributable to the balance of the work under such subcontract.

(b) In view of section 3 (d) of the Contract Settlement Act and § 841.111–4 of this chapter the claim of a fixed-price

subcontractor under a cost-plus-a-fixed-fee contract for work terminated or cancelled in whole or in part under any circumstances which require the Government to bear the cost of settlement, is a termination claim. The settlement of such a termination claim will be effected in accordance with the principles and under the procedures set out in Subchapter C of this chapter (see especially Part 846 of this chapter).

(c) Approval by the contracting officer of adjustments and settlements of the character described in paragraphs (a) and (b) above will be effected to the extent required by the prime contract. In some cases the settlement of the subcontract may have been pursuant to an authorization to settle subcontracts under § 846.642 or § 846.643 of this chapter. Where the settlement has been made under such an authorization, any such approval will be taken to indicate only that the subcontract was terminated under circumstances which require the Government to bear the cost of the subcontract settlement and that the contractor has made the settlement under the authorization.

[Procurement Reg. 4]

PART 804—BONDS AND INSURANCE

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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 *Definition of "Contract Insurance Branch".* Whenever used in this part, the terms "Insurance Branch" or "Contract Insurance Branch" shall be deemed to mean the Contract Insurance Branch, Special Financial Services Division, Office of the Fiscal Director, Headquarters, Army Service Forces.

SUBPART B—BONDS

§ 804.405 *Types of bonds.* There are set forth in §§ 804.405–1 to 804.405–14, inclusive, brief descriptions of the more common types of bonds, riders, and endorsements used in connection with War Department Contracts. In certain of those sections there are contained cross references to the forms of bonds, riders, and endorsements which are contained in Subpart E of this part.

§ 804.405–1 *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:

(a) 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

(b) 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 § 804.496–1.)

§ 804.405–2 *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 § 804.496–2.)

§ 804.405–3 *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 § 804.496–3.)

§ 804.405–4 *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 § 804.496–4.)

§ 804.405–5 *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 § 804.496–5.)

§ 804.405–6 *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 § 804.496–6.)

§ 804.405–7 *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 § 803.335–7. (For form see § 804.496–7.)

§ 804.405–8 *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 § 804.496–9.)

§ 804.405–9 *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:

(a) 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.

(b) 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 § 804.496–10.)

§ 804.405–10 *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.

§ 804.405–11 *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.

§ 804.405–12 *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.

§ 804.405–13 *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.

§ 804.405–14 *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.*

§ 804.406–1 *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:

(a) On construction contracts not exceeding $2,500, a premium of twenty cents per $100 of bid price, the minimum premium being $1.00;

(b) On construction contracts in an amount in excess of $2,500, a flat fee of $5.00 per bond;

(c) 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;

(d) 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.

§ 804.406–2 *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 technical service concerned. The requirement of performance bonds will of necessity change from time to time to meet both changing conditions and specific situations. 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:

(a) On lump sum construction contracts for both performance and payment bonds on the same contract with stipulated completion time not exceeding twelve months:

(1) For Class "A" construction (including dredging):

(i) $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

(ii) 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

(iii) A minimum premium in any case of $7.50 per bond.

(2) For Class "B" construction (including highways and bridges):

(i) $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

(ii) 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

(iii) A minimum premium in any case of $10 per bond.

(b) 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.

§ 804.406–3 *Payment bonds*—(a) *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:

(1) When the contract price is $1,000,000 or less, 50 percent of the contract price;

(2) When the contract price is in excess of $1,000,000 but less than $5,000,000, 40 percent of the contract price;

(3) 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 ex-

ceed 3.3 percent of the penal sum of the bond. The minimum premium will be $10.00 per bond.

(b) *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:

(1) 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;

(2) On lump 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;

(3) 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;

(4) 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;

(5) 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 §§ 804.406–2 (b) and 804.406–3 (6) represent the maximum rates of premium for each separate bond.

§ 804.406–4 *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:

(a) On the first $2,500,000 advanced—$6.00 per thousand;

(b) On any sum advanced in excess of $2,500,000 and up to $5,000,000—$5.75 per thousand;

(c) On any sum advanced in excess of $5,000,000 and up to $7,500,000—$5.50 per thousand;

(d) 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.

§ 804.406–5 *Patent infringement bonds.* (a) A patent infringement bond will not be required with respect to any contract in connection with which a performance bond has been executed.

(b) 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.

§ 804.406–6 *Annual bid bonds.* The annual bid bond is not in general use for lump sum construction and supply contracts.

§ 804.406–7 *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.*

§ 804.407–1 *Bonds not required.* 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.

§ 804.407–2 *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:

(a) 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;

(b) A rider providing for pro rata refund of premium in the event of cancellation by the insured;

(c) 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;

(d) A rider providing for investigation of all claims;

(e) 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 § 804.409–3 hereof, a duplicate of the fidelity bond or policy is forwarded to the Contract Insurance Branch, it will be accompanied by (1) 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, (2) a classification of the employees showing the number placed in A, B, and C classes, and (3) 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.

§ 804.407–3 *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 (a) to (d), inclusive, of § 804.407–2 will be required.

§ 804.407–4 *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.

§ 804.407–5 *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 to 804.406–5, inclusive:

(a) 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.

(b) Apply to both prime contracts with the War Department and subcontracts thereunder.

(c) 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.

(d) Apply to the increased amount of any contract, the amount of which is increased on or after August 28, 1942.

(e) Are based on a stipulated completion time not exceeding twelve months on Class "A" and Class "B" construction contracts.

§ 804.408–1 *Bond premium computation on terminated contracts.* (a) Premium on the bonds described in §§ 804.406–2 and 806.406–3 (except in certain instances mentioned in such sections 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 August 28, 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 August 28, 1942, special rates have been promulgated for construction contracts where performance time required more than twelve months.

(b) Premium on bonds required in support of War Department contracts other than those described in §§ 804.406–2 and 804.406–3 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.

(c) 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.*

§ 804.409–1 *Bonds executed in duplicate.* All bonds of the types described in §§ 804.405–1 to 804.405–14, will be executed in duplicate.

§ 804.409–2 *Forwarding of bonds and consents of surety to Judge Advocate General.* (a) The original of all surety bonds required by the various elements of the War Department (except as hereinafter provided in paragraph (c) will be forwarded to The Judge Advocate General. If such bond was required in support of a contract or modification thereof, the original signed number of the bond should be attached to the original signed number of the contract or modification thereof, as the case may be, and forwarded to The Judge Advocate General. In the event it is not practicable to forward the original number of the contract or modification, a duplicate signed number or an authenticated copy thereof should be attached to the original bond and forwarded to The Judge Advocate General. The Judge Advocate General will examine bonds 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, together with any contract or modification thereof which it supports, to the proper office for filing. In this connection, it is important that the forwarding office indicate clearly the Army Audit Branch of the General Accounting Office to which the contract or modification and the bond should be sent (see §§ 803.317b–1 and 803.317b–2). The duplicate bond will be retained and filed in the office to which it pertains or which authorized its acceptance.

(b) 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.

(c) The following bonds will not be forwarded to The Judge Advocate General:

(1) 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.

(2) Blanket fidelity and forgery bonds. Refer to § 804.409–3 for filing of duplicates.

(3) 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.

§ 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) of _____) (guardian(s) of _____).

(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(s) of _____) (guardian(s) of _____).

(d) In the case of a bond executed by the receiver of a corporation, the corporate seal should not be affixed 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, guardians 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 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.

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 to 803.314–3.

§ 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 § 804.496–8 (b).

The forms of consent to be used in all other cases are set forth in § 804.496–8 (a).

§ 804.417–1 *Filing and examination of consents of surety.* See § 804.409–2.

§ 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:

(a) *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 § 804.410–2 (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 § 803.314–4.

(b) *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.*

§ 804.419–1 *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.

§ 804.419–2 *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.

§ 804.419–3 *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 §§ 804.496–3 (e), 804.496–5 (d) and 804.496–6 (e)), 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.*

§ 804.420–1 *Acceptability.* Individual sureties are acceptable for all types of bonds other than fidelity and forgery bonds: *Provided,* That they meet the requirements specified in §§ 804.420–3 and 804.420–5.

§ 804.420–2 *Number.* If individual sureties are used there shall be at least two responsible individuals on each bond.

§ 804.420–3 *Citizenship.* Except as prescribed in paragraph (b) individual sureties will be citizens of the United States.

(b) 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.

§ 804.420–4 *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.

§ 804.420–5 *Justification.* Individual sureties will each justify in an amount not less than the penal amount of the bond.

§ 804.420–6 *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 §§ 804.420–3 and 804.420–5 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 §§ 804.423–1 and 804.423–2, United States bonds or notes, certified checks, money orders or currency may be deposited in lieu of furnishing sureties on bonds.

§ 804.423–1 *United States bonds or notes.* (a) 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 paragraph (b) (3) 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).

(b) 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:

(1) 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.

(2) 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.

(3) 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.

(4) Treasury Certificates of Indebtedness are not acceptable in lieu of furnishing sureties.

§ 804.423–2 *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:

(a) Certified checks or Post Office money orders will be drawn to the order of the Treasurer of the United States.

(b) 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.

(c) 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 § 803.365–3.

Insurance in Connection with Cost-Plus-a-Fixed-Fee Contracts

§ 804.434 *Insurance on Government-owned property.* (a) 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 § 803.365–1. 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.

(b) 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.

§ 804.434–1 *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).* (a) 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.

(b) Accordingly upon the happening of loss or destruction of or damage to Government property, the prescribed contract article (§ 803.365–1) 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).

(c) 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.

(d) 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.

(e) 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 (§ 803.365–1) 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.

(f) 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, § 803.365–1 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.*

§ 804.435–1 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, and general liability and automobile liability insurance for bodily injury and property damage, 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.

§ 804.435–2 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 will be advised promptly of the following: (a) Name of contractor; (b) number of contract; (c) type of contract; (d) location of facility involved; (e) the plancor or lease number; (f) the estimated saving, if the same can be estimated; and (g) the recommendation of the chief of the technical service. For those cost-plus-a-fixed-fee contractors insured under the War Department Insurance Rating Plan, special policy forms required by Defense Plant Corporation will be terminated and the name of Defense Plant Corporation will be endorsed onto the contractor's policies as an additional insured together with a recital of the indemnity provisions of the lease agreement. The Defense Plant Corporation will 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 §§ 804.436–1 to 804.436–3 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.

§ 804.436–1 *Workmen's compensation insurance.* This coverage will be required as follows:

(a) In jurisdictions where there are workmen's compensation laws, either mandatory or elective:

(1) Statutory coverage, plus

(2) 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;

(3) 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

(4) 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.

(b) 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.

§ 804.436–2 *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.

§ 804.436–3 *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.

§ 804.436–4 *Self-insurance.* Self-insurance by cost-plus-a-fixed-fee contractors, in lieu of the requirements outlined in §§ 804.436–1 to 804.436–3, will not be approved except in unusual circumstances and then only after approval is obtained from the Contract Insurance Branch. 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 Contract Insurance Branch the following:

(a) 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;

(b) 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.

§ 804.436–5 *Insurance requirements for lump-sum subcontractors.* (a) 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.

(b) For the purposes of paragraph (a) 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 technical 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 §§ 804.437–1 to 804.437–10. In general, the authorization of any of these forms of insurance will be the exception rather than the rule.

§ 804.437–1 *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.

§ 804.437–2 *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 property 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.

§ 804.437–3 *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.

§ 804.437–4 *Contractual liability insurance.* This form of insurance is provided in the Comprehensive general liability policy where a contractor or subcontractor has assumed liability under:

(a) A lease of premises,
(b) An easement agreement,
(c) An agreement required by municipal ordinance,
(d) A sidetrack agreement, or
(e) An elevator or escalator maintenance agreement.

The chief of the technical service concerned may approve the purchase of insurance for other assumed liability where the assumption of the liability by the contractor or subcontractor has been authorized and the chief of the technical service determines that the purchase of such insurance is necessary.

§ 804.437–5 *Boiler and machinery insurance.* (a) This form of insurance will not be authorized. It may be desirable to arrange for boiler inspection service.

(b) *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 § 804.497–27). 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.

§ 804.437–6 *Ocean or inland marine insurance.* These forms of insurance will not be required and their purchase will be authorized only on those instances where the chief of the technical service concerned determines that the procurement of such insurance is desirable or necessary for the protection of the contractor or the Government.

§ 804.437–7 *Marine war-risk insurance.* See § 804.461 and following.

§ 804.437–8 *Fidelity bonds.* See § 804.407–2.

§ 804.437–9 *Forgery bonds.* See § 804.407–3.

§ 804.437–10 *License and permit bonds.* See § 804.407–4.

§ 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 §§ 804.438–1 to 804.438–6.

§ 804.438–1 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.

§ 804.438–2 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.

§ 804.438–3 If in the opinion of the chief of the technical service concerned the existing plan of group insurance is, in the light of § 804.438–2, 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.

§ 804.438–4 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: (a) A statement as to whether such insurance is common to the industry and to the community; (b) the purposes for which the group insurance plan is needed at the particular plant; (c) any other pertinent information; and (d) the recommendation of the chief of the technical service concerned.

§ 804.438–5 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: (a) A complete outline of the hazards involved; (b) the number of personnel involved; (c) the nature and probable duration of the coverage; (d) any other pertinent information; and (e) the recommendation of the chief of the supply service concerned.

§ 804.438–6 War Department Group Insurance Rating Plan: The War Department Group Insurance Rating Plan, which is set forth in §§ 804.440 to 804.440–18, is to be applied as provided in said paragraphs on and after March 1, 1943, in accordance with §§ 804.439 to 804.439–4.

§ 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:

(a) 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.

(b) 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.

§ 804.439–1 *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.

§ 804.439–2 *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.

§ 804.439–3 *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.

§ 804.439–4 *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.*

§ 804.440–1 *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 §§ 804.400–4 to 804.440–7 except that:

(a) The provisions of §§ 804.440 to 804.440–18 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 irrespective of when the policy was issued.

(b) 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 §§ 804.440 to 804.440–18, but no authorization shall be granted in any case if the pool reserve (§ 804.440–7 (b)) 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.

§ 804.440–2 *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 sections.

§ 804.440–3 *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.

§ 804.440–4 *Factor No. I; total losses.* Total losses shall be the amount of drafts issued during the period of calculation subject to the following modifications:

(a) 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.

(b) 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.

(c) 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 $050 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 § 804.440–11.

§ 804.440–5 *Factor No. II*—(a) *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:

(1) *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 § 804.440–7 (b).

(2) *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.)

(3) *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 § 804.440–7 (b).

(4) *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.

(b) *Other expenses and risk charges.* The maximum allowable charge for expenses not included in paragraph (a) above, or in § 804.440–6, 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

(1) 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.

(2) 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.

(3) 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.

(4) 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.

§ 804.440–6 *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:

(a) *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:*

(1) That such agreements are pursuant to customary practice of the respective insuring companies.

(2) 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.

(3) That renewal commissions shall not be paid for longer than nine years subsequent to the expiration of the first year commissions.

(b) *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.

(c) *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.

(d) *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.

§ 804.440–7 *Factor No. IV*—(a) *Policy reserves*—(1) *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 § 804.440–4), the insuring company may retain the percentage of premiums in Table III (see subparagraph (3) of this paragraph), calculated by using minimum rates with extras for industry, race, sex, or other cause.

(2) *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 (i) the amounts actually paid as the result of claims under this rating plan for which such reserves were held, and (ii) 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 paragraph (b) of this section, 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 subparagraph (1) 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.

(3) Subject to the limitations of this plan, the policy reserves maintained shall be in strict accordance with the general practice of the insuring company.

(b) *Pool reserve*—(1) *Final disposition.* Each insuring company shall create and

maintain a pool reserve which shall be available for the payment of losses (as outlined in subparagraph (2) of this paragraph) 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.

(2) *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.

(3) *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 (i) 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 (ii) 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 § 804.440–8 (a) to (h), inclusive.

§ 804.440–8 *Experience rating account.* 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:

(a) Credit the actual premium.

(b) Charge losses as described in § 804.440–4.

(c) Charge one-half the maximum increase in the policy reserve permitted for the period by reason of increase in premium in accordance with § 804.440–7 (a) (3).

(d) Credit the decrease in policy reserve by reason of decrease in premiums to the extent that (b) exceeds (a).

(e) Credit from the pool reserve:

(1) In the event of an increase in policy reserve (b) plus (c) minus (a).

(2) In the event of a decrease in policy reserve (b) minus (d) minus (a).

(f) Charge expenses not greater than the maximum allowable under §§ 804.440–5 and 804.440–6.

(g) Charge deficit carried over (if any) from previous period. (In first calculation under this plan (g) shall be taken as zero. For subsequent calculations, it shall be taken as (k)).

(h) Charge an amount, if available, which if added to (c) shall not be greater than sufficient to attain one-half the maximum policy reserve for the period as set forth in § 804.440–7 (a).

(i) 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 § 804.440–7 (b).

(j) Charge an amount, if available, not greater than sufficient to attain the maximum policy reserve for the period as set forth in § 804.440–7 (a).

(k) 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.

§ 804.440–9 *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:

(a) 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.

(b) 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.

§ 804.440–10 *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 section, 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 Contract Insurance Branch, Special Financial Services Division, Office of the Fiscal Director, Headquarters, Army Service Forces.

§ 804.440–11 *Establishment of arbitration committee.* For revaluation of the reserves described in § 804.440–4 (c), 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.

§ 804.440–12 *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 for examination.

§ 804.440–13 *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 prior to the effective date of any rates greater than above specified.

§ 804.440–14 *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.

§ 804.440–15 *Endorsement of policies.* All policies shall bear suitable identifying endorsement, in a form acceptable to the Contract Insurance Branch, as evidence that the War Department Group Insurance Rating Plan is applicable.

§ 804.440–16 *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, but shall not be earlier than March 1, 1943.

§ 804.440–17 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.

§ 804.440–18 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: (a) Reasons why such increase is necessary; (b) statement as to whether qualified employees can be obtained without providing increased benefits; (c) number of employees involved; (d) location of operations; (e) any special hazards; (f) any other pertinent information; (g) 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, 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.* (a) The same general policy exists with respect to Government-owned property in the possession, care, custody or control of lump sum or unit price contractors as exists with respect to such property in the possession, care, custody or control of cost-plus-a-fixed-fee contractors (see § 804.434.) To implement this policy—under which the Government is in effect a self-insurer on its own property—there shall be inserted in lump sum or unit price contracts for the performance of which Government-owned property is furnished to contractors, the article set forth in § 803.365–1a, or, in case where Government-owned production machinery or other facilities are so furnished, the liability provisions of § 803.332.

(b) The contract articles referred to are intended to put the contractor in the same position he would occupy if he obtained commercial insurance policies providing broad coverage against the "expected perils" set forth in the contract article. In view of the protection thus afforded to the contractor by the Government in lieu of commercial insurance, the contractor has no liability for loss or destruction of or damage to Government-owned property caused by any "excepted peril" against which he may obtain commercial insurance, and the contractor is in fact required by the contract article to make the express representation (among others) that he is not maintaining and will not maintain insurance (including self-insurance funds or reserves) covering such liability.

(c) The policy described above rests to a large degree upon the savings to the Government obtained by the elimination of charges for commercial insurance, which savings are, of course, intended to be reflected in the contract price. When, by reason of special circumstances, it is not practicable to obtain such savings (for example, when Government interests are so far commingled with other interests as to be practically incapable of segregation) or the savings are trivial in amount, the chief of the technical service concerned may, in his discretion, determine that the general policy will not be applied. Typical cases where this determination has been made in the past are: service contracts such as laundry contracts; shoe, tent or tire repair contracts; machinery maintenance or repair contracts; fixed rate storage contracts. In such cases neither the contract article set forth in § 803.365–1a nor the liability provision of § 803.332 will be used. In lieu thereof the following will be used:

(1) Instead of the article set forth in § 803.365–1a, a clause may be used stating in substance that except for reasonable wear and tear or depreciation or the utilization of the Government-owned property in connection with the contract, the contractor shall be liable for any loss or destruction of or damage to such property.

(2) Instead of the liability provision appearing in § 803.332, a clause may be used stating in substance that except for reasonable wear and tear or depreciation, the Government-owned facilities shall be returned to the Government or delivered to the Government's designee, at the time elsewhere in the article provided, in as good condition as when received.

(d) The same general policy as exists with regard to lump-sum supply contracts applies to fixed-price contracts for services accessorial to or forming a part of a transportation movement, including contracts for freight handling, car loading and unloading, packing and crating, stevedoring, lighterage, trucking, heavy lift service, lumber handling and other contracts for terminal services not procured by means of a bill of lading. For forms of contract articles covering liability for Government-owned property, see § 803.365–1b.

§ 804.451–1 *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).* (a) 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 §§ 803.365–1a and 803.332) the procedure to be followed is the same as that described in § 804.434–1.

(b) In connection with the disposal of damaged Government property, attention is invited to paragraph (d) of the article set forth in § 803.365–1a 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 to 804.435–2 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 to 804.436–3. 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 §§ 804.436–1 to 804.436–3 (for contract provisions see §§ 803.365–5 to 803.365–8).

(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 to the War Shipping Administration by the Chief of the technical service concerned or any subordinate whom he may designate. All declarations will be numbered in sequence as reports are made. For required form of report see § 804.497–3.

§ 804.461–1 *Risks covered.* The master policy covers risks or liabilities that are assumed by or that may be imposed on the War Department:

(a) As owner, operator or owner and operator of vessels or other floating equipment;

(b) Under charters or other forms of contracts for the use by the War Department of privately owned vessels or other floating equipment;

(c) Under any form of agreement for the operation of such vessels or equipment;

(d) Under any form of agreement for the carriage by water of any person or property on a commercial basis; and

(e) Under any contract for the construction of vessels or other floating equipment for the War Department.

§ 804.461–2 *Property and interests insurable.* 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:

(a) Vessels:

(1) American vessels (including vessels under construction);

(2) Vessels registered under the law of the Philippine Islands;

(3) 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 § 804.461–1 (c) 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.

(b) Cargoes shipped or to be shipped on any vessels specified in paragraph (a) above, including shipments by express or registered mail.

(c) The disbursements (including advances to masters and general average disbursements) and freight and passage moneys of such vessels.

(d) The personal effects of the masters, officers and crews of such vessels, and of other persons transported on such vessels:

(1) Personal effects of licensed officers and other persons may be covered for $500; and of unlicensed crew members for $300;

(e) 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. ((1) Crew life: Personnel of vessels and other persons may be covered for $5,000 against loss of life and for scheduled benefits against injury. (2) 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.)

(f) 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.)

§ 804.461–3 The master policy does not cover:

(a) Total or constructive total loss, or partial loss (particular average) of any vessels, equipment, or property owned by the War Department;

(b) Claims for damage or service of any nature asserted by any other Government Department or Agency, or barrel by decision of the Comptroller General;

(c) Liabilities of any nature toward personnel of the military forces of the United States and other United Nations;

(d) Any losses or liabilities existing or imminent at the time any vessel, property or other interest is reported to the War Shipping Administration for coverage under this policy;

(e) Losses or liabilities of any nature excluded by the provisions of War Shipping Administration policies.

Purchase of Insurance by Cost-Plus-a-Fixed-Fee Contractors

§ 804.470 *Acceptability of insurance carrier.*

§ 804.470–1 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 § 804.470–2. The insurance carrier selected must meet the following minimum standards of acceptability:

(a) 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.

(b) The carrier must have an unobligated minimum surplus of $350,000.

(c) 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 will not expose it in a single accident or occurrence to a loss (1) in the case of a fixed-premium carrier of more than 10% of its total capital stock and surplus, or (2) in the case of a dividend paying carrier of more than 10% of its net assets.

(d) In the case of workmen's compensation insurance, the insurance carrier shall have (1) in the case of fixed-premium carrier, a total capital and surplus of at least a million dollars, or (2) in the case of a dividend paying carrier, at least a million dollars of net assets.

§ 804.470–2 The chief of the technical service concerned will pass upon the acceptability of the insurance carrier whether selected by the contractor or chosen on a competitive basis. The chief of the technical service will obtain from the contractor the following information which will be used by him in conjunction with the standards set forth in § 804.470–1 in determining the acceptability of the carrier:

(a) The name of the insurance carrier;

(b) The jurisdiction in which the insurance carrier is organized;

(c) Whether the insurance carrier is qualified to write the required insurance in the jurisdiction in which the project is located;

(d) A statement executed by an authorized official of the insurance carrier that the insurance carrier meets the standards of acceptability set forth in § 804.470–1;

(e) The engineering, claims and medical facilities, if required, which will be provided at the project by the insurer;

(f) The latest financial statement of the insurance carrier;

(g) A separate letter which may be forwarded directly by the insurance carrier to the chief of the technical 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 In-

surance 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.

§ 804.471 *Methods of purchase of casualty insurance.* Casualty insurance required or authorized under any section of this part will be purchased in the manner specified in §§ 804.471–1 to 804.471–4.

§ 804.471–1 Where the premiums involved are estimated to amount to $300 or less the contractor will select the insurance carrier and procure the necessary insurance.

§ 804.471–2 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.

§ 804.471–3 (a) Except as provided in paragraph (b), where the premiums involved 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.

(b) 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.

§ 804.471–4 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 § 804.436–4.

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 §§ 804.436–1 to 804.436–3. It may be extended to include the coverages outlined in §§ 804.437–2 to 804.437–4. 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 and 804.499–1, 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 § 804.497–4).

(b) General endorsement for general liability policy (see $804.497–5).

(c) General endorsement for automobile liability policy (see § 804.497–6).

(d) General endorsement for workmen's compensation and employers' liability policy (see § 804.497–7).

§ 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 804.482–1 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 paragraphs 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 paragraphs (b) to (n): 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 *Experience rating not to be employed.* 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.

§ 804.480–1 *Modification of basic manual rules by interpretation.* With respect to workmen's compensation, employers'. liability and manufacturers' and contractors' liability insurance, the Joint Rating Committee has made provision whereby the basic manual rules with regard to assignment of payroll of miscellaneous employees will be modified by interpretation as follows:

(a) The payroll of miscellaneous employees shall be assigned by audit period.

(b) The payroll of miscellaneous employees whose duties during the entire audit period were incidental to and are directly assignable to a single manufacturing classification shall be assigned to the rate for that classification unless such payroll has not been so allocated on the records in which case these employees shall be assigned as cited in the following paragraph (c).

(c) The payroll of miscellaneous unassignable employees whose duties during the audit period were incidental to two or more manufacturing classifications shall be assigned to the several manufacturing classifications in the same proportion which the payroll of the several manufacturing classifications bears to the total payroll of such manufacturing classifications.

(d) In cases where a project average rate is to be used to cover all operations, the payroll of miscellaneous employees shall be included in the rate determination and the procedure described in paragraphs (b) and (c) above shall be followed on an estimated basis for the entire period covered by the policy rather than by audit period.

§ 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 March 1, 1943, in all states except:

Kansas effective April 30, 1943.

Indiana and North Carolina effective May 5, 1943.

Washington effective May 8, 1943.

Virginia effective May 30, 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, except that when cars are hired without chauffeurs the payroll upon which the premium will be calculated will be double the cost of hire.

(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.

§ 804.482–1 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 Contract Insurance Branch, Special Financial Services Division, Office of the Fiscal Director, 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.* (a) 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 § 804.497–13). The advisor selected will be requested to submit a detailed statement of the knowledge and experience which qualifies him to act as Insurance Advisor.

(b) 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.

§ 804.483–1 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".

§ 804.483–2 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.

§ 804.483–3 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 § 804.490–3).

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 assignmment 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 804.471–4. 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 804.471–4. 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.
Montana.	West Virginia.
New Hampshire.	Wyoming.

(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.

(4) Virginia: by having the employer elect to provide coverage under section 2–h of the Compensation Law amendment effective 1 July 1944 which will be accomplished by having the employer reject section 2–g and elect by written declaration, filed in the offices of the Industrial Commission, State Office Building, Richmond, Virginia, on a form provided by it, to be bound by the provisions of section 2–h relating to full coverage of all occupational diseases. Coverage under paragraph 1 (b) of the Workmen's Compensation policy for occupational diseases will not be required.

(f) In the State of Missouri the contractor will have the Missouri endorsement (see § 804.497–8) 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 § 804.497–9).
Massachusetts (See § 804.497–10).
Pennsylvania (See § 804.497–11).
Texas (See § 804.497–12).

§ 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 (2) and (3) 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 *Insurance against loss or damage to property.*

§ 804.487–1 *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 insurance covering against loss or damage to property and purchased pursuant to a provision contained in a War Department contract. For form see § 804.497–1.

§ 804.487–2 *Endorsement form.* (a) where a contract requires that the contractor shall provide and maintain insurance covering against loss or damage 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 § 804.497–2 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.

§ 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 § 804.497–10 (e)).

(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 §§ 804.497–5, 804.497–6 and 804.497–7.)

(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 throughout 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.*

§ 804.490–1 *Preliminary settlement.* 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 §§ 804.497–15 through 804.497–21). It is desired that this preliminary settlement be made prior to the termination of the contract.

§ 804.490–2 *Submission of preliminary settlement forms.* 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:

(a) One copy, together with the refund, to the disbursing officer.

(b) One copy to the General Accounting Office.

(c) Two copies to the chief of the technical service concerned.

(d) 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.

§ 804.490–3 *Generally the contract in question will have been terminated by the time final settlement* (see §§ 804.497–15 to 804.497–21 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.

§ 804.490–4 *Submission of final settlement forms.* The insurance carriers will be notified to submit simultaneously (a) to the technical service concerned the number of properly completed copies of final settlement forms required by it and (b) 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 section will be followed on and after April 29, 1944.

§ 804.490–5 *Valuation and adjustment of losses and claims.* 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.*

§ 804.491–1 *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.

§ 804.491–2 *Claims settlements by insurance carriers.* (a) 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."

(b) 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 indemnity 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.

§ 804.491–3 *Insurance medical facilities, first aid and hospital (contract medical).* (a) 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.

(b) 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.

(c) 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:

(1) Construction projects—66⅔% of such salaries.

(2) Manufacturing projects—50% of such salaries.

(3) Explosives risks—33⅓% of such salaries.

(d) The maximum percentages of Standard Premium for Workmen's Compensation and Employers' Liability coverages (second blank in above endorsement) are:

(1) Construction projects—7½% of standard premium.

(2) Manufacturing projects—10% of standard premium.

(3) Explosives risks—5% of standard premium.

(e) The endorsement set forth in paragraph (b) 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 paragraph (b) 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 paragraph (b) 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.

(f) 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 paragraph (b) above except that:

(1) 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.

(2) 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 _____ operations" replaces the phrase explosives) "____% 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.

(g) All policies effective July 15, 1943 and thereafter will have endorsements affixed thereto in accordance with this section. 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 July 15, 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.

(h) 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.

(i) In arriving at agreed percentages of medical salaries, consideration should be given to a proper allocation based upon industrial accident exposure.

§ 804.491–4 *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.

§ 804.491–5 *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 technical 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.

§ 804.491–6 *Loss reports*—(a) *Quarterly loss reports.* The insurance carrier is required to submit a quarterly loss report (for form see §§ 804.497–23 and 804.497–24) every three months during the term of the policy, except for the three (3) months period immediately preceding the policy anniversary date from which date preliminary (interim) settlement is due within sixty (60) days. 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 technical service concerned requires him to send it to a higher echelon within the technical service, and will forward two copies to the chief of the technical service concerned. The chief of the technical service will retain one copy and forward the other to the Contract Insurance Branch. In order that maximum use may be made of these reports, they will be forwarded promptly through channels as set forth above.

(b) *Preliminary settlement.* The insurance carrier will use the approved form of preliminary settlement. (See §§ 804.497–15 to 804.497–21.) Distribution of these forms when completed will be made as set forth in § 804.490–2. The chief of the technical service concerned will obtain the approval or disapproval of these statements by the Contract Insurance Branch before any final action is taken thereon. Refunds of premium may be accepted without reference to the approval or disapproval by the Contract Insurance Branch. The chief of the technical service concerned will be notified of the action taken by the Contract Insurance Branch.

(c) *Final settlement.* The same form shall be used for final settlement as is used for preliminary settlement statements (see §§ 804.497–15 to 804.497–21). If the final settlement statement is approved by the Contract Insurance Branch, after its examination of the claims files, the chief of the technical service concerned will be so notified. If settlement is deferred, the chief of the technical service concerned will be notified. Upon consummation of final settlement with the carrier, the Contract Insurance Branch will secure the necessary corrected settlement statements from the insurance carrier.

(d) No other reports by insurance carriers concerning insured losses will be required unless requested by the Contract Insurance Branch.

§ 804.491–7 *Arbitration of losses.* If final settlement with a carrier is not feasible, by reason of dispute over losses claimed by such carrier, the Contract Insurance Branch will arrange for arbitration in accordance with the provisions of the War Department Insurance Rating Plan, and will notify the chief of the technical service concerned of the pendency of such arbitration. Upon final settlement of such losses, the chief of the technical service concerned will be notified.

§ 804.491–8 *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 Commisioner of Missouri (for forms see §§ 804.497–25 and 804.497–26). 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.* There will be forwarded promptly to the Contract Insurance Branch the following information:

(a) In connection with insurance written under the War Department Insurance Rating plan copies of all policies, audit statements, other reports of insurance carriers, (except engineering inspection reports), reports of insurance advisors and any other pertinent data.

(b) In connection with any insurance where approval of losses by the Under Secretary of War is required for the determination of premium, copies of the policies and copies of all statements, except engineering inspection reports, required of the insurance carrier.

SUBPART E—BONDS AND INSURANCE FORMS

§ 804.496 *Bond forms.*

§ 804.496–1 *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 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.

§ 804.496–2 *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.

§ 804.496–3 *Performance bond.* (a) 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 paragraph (d) below.

(b) 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 paragraph (e) below.

(c) 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.

(d) 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.

(e) 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.

§ 804.496–4 *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.

§ 804.496–5 *Payment bond.* (a) 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 paragraph (c) below.

(b) 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 paragraph (d) below.

(c) 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.

(d) 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.

§ 804.496–6 *Advance payment bond.* (a) 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 paragraphs (c) and (d) 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.

(b) 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 paragraphs (e) and (f) 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."

(c) 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.

(d) 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.

(c) 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 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.

(f) 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.

§ 804.496–7 *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.

§ 804.496–8 *Consent of surety.* (a) The following form is authorized for use in all cases other than those specified in paragraph (b) below.

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.

(b) 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.

(c) In appropriate cases, the words "Supplemental Agreement" contained in the above forms may be changed to "Change Order".

§ 804.496–9 *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:

(a) A rider providing for retroactive reinstatement for prior losses.

(b) 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.

(c) A rider providing for pro rata refund of premium in event of cancellation by the Insured.

(d) A rider providing for notice to the technical service concerned in the event of any change in or cancellation of the bond.

(e) A rider providing for investigation of all Class A employees.

(f) A rider providing for investigation of all claims.

(g) (Optional) A rider eliminating a premium charge for restoring the bond penalty after losses.

§ 804.496–10 *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:

(a) A rider providing for retroactive reinstatement for prior losses.

(b) 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.

(c) A rider providing for pro rata refund of premium in event of cancellation by the Insured.

(d) A rider providing for notice to the technical service concerned in the event of any change in or cancellation of the bond.

(e) A rider providing for the investigation of all claims.

(f) (Optional) A rider eliminating premium charge for restoring the bond penalty after losses.

§ 804.496–11 *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.

§ 804.497 *Insurance forms.*

§ 804.497–1 *Release form.* (See § 804.487–1)

_____
(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. _____
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)

§ 804.497–2 *Endorsement form.* (See § 804.487–2.)

To be attached to _____ Dated_____
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).

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 underinsured, 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_____

§ 804.497–3 *War risk insurance report.* A report on the following form, numbered in sequence, should be executed in duplicate and forwarded to the War Shipping Administration, Commerce Building, Room 4039, Washington 25, D. C.

The following data is submitted pursuant to the terms of the master policy with coverage commencing_____

1. Name of vessel_____
2. Owners_____
3. Value of hull_____ 0_____
4. Crew life_____ 0_____
5. Crew effects_____ 0_____
6. Wages and Bonuses (annual)_____ 0_____
7. Protection and Indemnity_____ 0_____
8. Quote excerpt from Contract, Rental Agreement or Charter Parties, delineating responsibility of War Department.

_____
_____
_____
Technical Service or Command

§ 804.497–4 *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 80% 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	22.
$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 (80% 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 those

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	1.034	1.029	1.029
Arkansas	1.050	1.024	1.024
California[1]	1.035	1.030	1.030
Delaware	1.050	1.024	1.024
Florida	1.036	1.024	1.024
Georgia	1.053	1.024	1.024
Hawaii	1.034	1.029	1.029
Idaho	1.040	1.034	1.034
Iowa	1.034	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	1.056	1.034	1.034
S. Dakota	1.034	1.029	1.029
Tennessee	1.050	1.029	1.029
Texas	1.058	1.053	1.051
Utah	1.031	1.026	1.026
Virginia[2]	1.034	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 obtainod 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)

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§ 804.497–4a *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:

(a) The words "the insured and" are deleted from Division b. of paragraph 1, from paragraph 2 and from the second sentence of paragraph 7.

(b) The words "Under Secretary of War" are substituted for the word "insured" in the third sentence of paragraph 7.

Accepted By _____
(Name of Insured)

§ 804.497–5 *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)

---

§ 804.497–6 *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, public 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)

§ 804.497–7 *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. contractor with U. S. A., and others, as described in endorsement_____

_____
(Insert "attached" or number)

§ 804.497–8 *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.

§ 804.497–9 *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.

§ 804.497–10 *Special endorsements for Massachusetts compensation policies written under the War Department Insurance Rating Plan*—(a) *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.

(b) *War Department Insurance Rating Plan Endorsement Form (2A).* Amending revised Form 2 (see § 804.497–4).

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.

(c) *General Endorsement for Workmen's Compensation and Employers' Liability Policy.* Amending Workmen's Compensation Endorsement 10 (see § 804.497–7).

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.

(d) *General Endorsement for Automobile Liability Policy.* Amending Automobile Liability Endorsement 30 (see § 804.497–6).

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.

(e) *War Department Amended Insurance Service Agreement* (see § 804.497–12).

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.

§ 804.497–11 *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)

§804.497–12 *Texas National Defense Projects*—(a) *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 governing 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.

(b) *Attachment.* A company may use its usual attachment clause.

(c) *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 supersedes 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)

§ 804.497–13 *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

[1] Strike out this line if inapplicable.

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 supersedes 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)

_____
(Address)

If this Agreement 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.

§ 804.497–14 *Reports to be furnished by Insurance Advisors.*

(a) *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 Period _____ to _____ Standard Premium
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	$_____

(b) *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.)

(c) *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 _____

§ 804.497–15 *Computation of Earned Premium; Comprehensive Insurance Rating Plan; Exhibit 1.*

_____
(Name of Carrier)

COMPUTATION OF EARNED PREMIUM

Policy Numbers
_____
_____
_____
Policy Period: from _____ to _____
Valuation Date _____

Name of Risk _____
Location of Operations _____
Government Agency _____
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)X.00	(1)	(1)	
3	Fixed Charge Percentage				XXXX
4	Fixed Charge Amount (2)X(3)				
5	Incurred Losses				
6	Modified Losses (5)X1.1*				
7	Allocated Claims Expense				
8	Industrial Commission Agreements 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 Multiplier				XXXX
12	Gross Adjusted Premium (9)X(11) or (10)X(11) whichever is the less in total [Col. (d)].				
13	Premium Previously Billed				
14	Additional Premium due and now Payable (12)—(13) Return Premium (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

§ 804.497–16 *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 50 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)÷.50				

§ 804.497–17 *Comprehensive Insurance Rating Plan.*

Exhibit II

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. (1)	Type of claims (2)	Number of claims (3)	Losses incurred: Compensation or liability (4)	Medical (5)	Total losses (4)+(5) (6)	Allocated expense (7)	Total losses and expense (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.

§ 804.497–18 *Comprehensive Insurance Rating Plan.*

COMPREHENSIVE INSURANCE RATING PLAN

Exhibit III Page_____

Name of risk_____
Location of operations_____
Government agency_____
Government contract No_____
Policy No_____ Policy period: from_____
Valuation Date_____ to_____

_____
(Name of Carrier)
Itemized statement of workmen's compensation and employers' liability losses incurred

Carrier's claim No. (1)	Name of injured or claimant (2)	Date of accident (3)	Description of accident for closed cases only (4)	Losses incurred: Compensation (5)	Medical (6)	Allocated expense (7)	Total (5)+(6)+(7) (8)	
Totals			Number of claims					

§ 804.497–19 *Comprehensive Insurance Rating Plan.*

COMPREHENSIVE INSURANCE RATING PLAN

Exhibit IV Page_____

Name of risk_____
Location of operations_____
Government agency_____
Government contract No_____
Policy No_____ ☐Policy period: from_____
Valuation date_____ to_____

_____
(Name of Carrier)
Itemized statement of losses incurred
Automobile☐ General liability☐

Carrier's claim No. (1)	Name of injured or claimant (2)	Date of accident (3)	Description of accident for closed cases only (4)	LOSSES INCURRED: Bodily injury (5)	Property damage (6)	Allocated expense (7)	Total (5)+(6)+(7) (8)
Totals			Number of Claims				

§ 804.497–20 *Individual Report; open loss.*

INDIVIDUAL 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 expenses incurred

Detailed report of accident, injury or damage, and allocated claim expense.

Prospects regarding subrogation and action taken

War award or judgment entered in the case?

If so, name Court or Commission

Fatal loss data

Date of death

Dependents

Name	Relationship	Date of birth	No. of weeks	Rate of compensation	Amount

For use by Government agency only

§ 804.497–21 *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

§ 804.497–22 *Comprehensive Insurance Rating Plan Release.*

COMPREHENSIVE INSURANCE RATING PLAN RELEASE

This release executed this ..... day of ..... 194....., by the ....., (Insurance Company) hereinafter 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 ....., (Insurance Company) does by these presents, 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)

§ 804.497–23 *Comprehensive Insurance Rating Plan; quarterly report of losses incurred.*

Carrier..... U. S. Government agency..... Name of project.....
Effective date..... Insured..... Location of operations.....
Period covered by report..... to ..... Valuation date..... 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 $.....

§ 804.497–24 *Comprehensive Insurance Rating Plan; quarterly report of losses incurred.*

COMPREHENSIVE INSURANCE RATING PLAN QUARTERLY REPORT OF LOSSES INCURRED
(Itemized statement of serious claims)

Carrier _____ Name of project _____ Page _____
Period covered by report _____ to _____ Policy number _____

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

§ 804.497–25 *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.

_____
Notary Public

[1]

§ 804.497–26 *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 above-mentioned 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

§ 804.497–27 *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.;

[1] The matter in brackets is optional.

(b) $5.00 for each internal inspection of a water tube boiler having a rated heating 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.

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

LIST OF STATES WITH DISTRICT CLASSIFICATION

§ 804.498 *List of offices of loss and salvage organizations.* (See § 804.431–1).

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
Huntsville	FCAB	124 West Clinton St.	504
Mobile	FCAB	First National Annex, St. Francis St.	2-6771
Montgomery	FCAB	Shepherd Bldg.	5271
Arizona:			
Phoenix	FCAB	Luhrs Tower Bldg.	2-3177
Tucson	FCAB	201 East Congress St.	4333
Arkansas:			
El Dorado	FCAB	Marks Bldg.	1474
Fort Smith	FCAB	Kennedy Bldg.	5121
Jonesboro	FCAB	112½ West Washington St.	630
Little Rock	FCAB	Hall Bldg.	7125
Texarkana	FCAB	Texarkana National Bank Bldg.	1-245
West Memphis	FCAB	220 Broadway	83
California:			
Bakersfield	FCAB	Professional Bldg.	5-5703
Chico	FCAB	Merchant Bldg.	917
El Centro	FCAB	Bank of America Bldg.	173
Fresno	FCAB	Brix Bldg.	3-2151
Long Beach	FCAB	Ocean Center Bldg.	692-39
Los Angeles	FCAB	Fidelity Bldg.	Madison 1341
Oakland	FCAB	Bank of America Bldg.	Higate 2703
Riverside	FCAB	Bennett Bldg.	6224
Sacramento	FCAB	Farmers & Mechanics Bldg.	2-5331
Salinas	FCAB	Bank of America Bldg.	7355
San Bernardino	FCAB	Citizens National Bank Bldg.	2127
San Diego	FCAB	First National Bank Bldg.	Franklin 3163
San Francisco	FCAB	580 Montgomery St.	Garfield 6232
San Jose	FCAB	Bank of America Bldg.	Ballard 6033
San Luis Obispo	FCAB	Security First National Bank Bldg.	1903
Stockton	FCAB	California Bldg.	5-5776
Vallejo	FCAB	719 Florida St.	3-7039
Colorado:			
Colorado Springs	FCAB	Burns Bldg.	Main 6121
Denver	FCAB	Gas & Electric Bldg.	Cherry 5451
Durango	FCAB	675 Fourth Ave.	153
Grand Junction	FCAB	249 Grand Ave.	1339
Pueblo	FCAB	Thatcher Bldg.	2070
Trinidad	FCAB	First National Bank Bldg.	348M
Connecticut:			
Hartford	FCAB	410 Asylum St.	7-7118
New Haven	FCAB	205 Church St.	7-3128
Delaware: Wilmington	FCAB	Equitable Bldg.	4-2121
District of Columbia: Washington	FCAB	1311 K St. NW.	National 0570
Florida:			
Fort Myers	FCAB	1520 Crawford St.	737
Gainesville	FCAB	Professional Bldg.	294
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.	6119
Tampa	FCAB	Wallace S. Bldg.	M-3337
West Palm Beach	FCAB	Citizens Bldg.	6473
Georgia:			
Albany	FCAB	Albany Theatre Bldg.	1207
Atlanta	FCAB	Trust Co. of Georgia Bldg.	Walnut 2324
Augusta	FCAB	Herald Bldg.	2-5336
Columbus	FCAB	Hill Bldg.	3-0251
Macon	FCAB	516 Mulberry St.	3325
Savannah	FCAB	35 Bull St.	2-3179
Waycross	FCAB	Bunn Bldg.	20
Idaho:			
Boise	FCAB	First National Bank Bldg.	159
Pocatello	FCAB	Carlson Bldg.	40
Illinois:			
Aurora	WAIC	Terminal Bldg.	9168-9169
Bloomington	WAIC	114½ North Main St.	6005-5
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 0400
Danville	UAC	Temple Bldg.	Main 2257
Decatur	WAIC	Citizens Bldg.	5253
East St. Louis	WAIC	Goldman Bldg.	Hemlock 200
Galesburg	WAIC	Bondi Bldg.	1011 Main
Joliet	UAC	Morris Bldg.	6400

List of offices of loss and salvage organizations—Continued

City and State	Organization	Office location	Telephone No.
Illinois—Continued.			
Kankakee	WAIC	City National Bank Bldg	Main 339
La Salle	WAIC	La Salle State Bank Bldg	La Salle 680
Marion	UAC	304 Market St	433
Peoria	UAC	Alliance Life Bldg	8139
Quincy	WAIC	W. C. U. Bldg	285
Rockford	UAC	Rockford Trust Bldg	Main 4090
Springfield	WAIC	Myers Bldg	4654
Waukegan	WAIC	108 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	5297
Greensburg	WAIC	Decatur County National Bank Bldg	4341
Hammond	WAIC	Lloyd Bldg	6030-6031
Indianapolis	UAC	Fletcher Trust Bldg	Market 1491
Kokomo	WAIC	Armstrong-Landon Bldg	7612
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	3-3120
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	Foresters Bldg	548
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	Axe Bldg	807
Norton	WAIC	611 North Grant St	740
Parsons	WAIC	1151½ South 18th St	917
Salina	WAIC	National Bank of America Bldg	475
Topeka	WAIC	Insurance Bldg	5684-5685
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 6331
Shreveport	FCAB	City Bank Bldg	2-7151
Maine:			
Bangor	FCAB	84 Harlow St	7343
Portland	FCAB	Masonic Temple Bldg	3-5095
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

List of offices of loss and salvage organizations—Continued

City and State	Organization	Office location	Telephone No.
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	4624
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	93103
Ishpeming	WAIC	Bell Bldg	467
Jackson	UAC	Jackson City Bank Bldg	5657
Kalamazoo	WAIC	American National Bank Bldg	6163-4
Lansing	UAC	Hollister Bldg	5-7283
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	2-2136, 2137
Traverse City	WAIC	State Bank Bldg	412
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	600
Mississippi:			
Clarksdale	FCAB	McWilliams Bldg	436
Greenville	FCAB	Leyser Bldg	321
Gulfport	FCAB	Bank of Gulfport Bldg	346
Hattiesburg	FCAB	Ross Bldg	533
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	1488
Chillicothe	WAIC	601 Locust St	150
Independence	WAIC	First National Bank Bldg	Clifton 1777
Jefferson City	WAIC	Central Trust Bldg	2098
Joplin	UAC	Joplin National Bank Bldg	4124
Kansas City	UAC	Chambers Bldg	Harrison 3360
Springfield	WAIC	Landers Bldg	1401
St. Joseph	UAC	Corby Bldg	4-1151
St. Louis	WAIC	Pierce Bldg	Chestnut 9510
Montana:			
Billings	FCAB	Treasure State Bldg	3101
Butte	FCAB	Rialto Bldg	3231
Great Falls	FCAB	Ford Bldg	4329
Missoula	FCAB	Montana Bldg	5344
Nebraska:			
Grand Island	UAC	Masonic Bldg	578
Hastings	WAIC	Madgett Bldg	1113
Lincoln	UAC	Stuart Bldg	2-3307
Norfolk	WAIC	Bishop Block	606
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:			
Asbury Park	FCAB	601 Bangs Ave	8440
Jersey City	FCAB	26 Journal Square	Journal Sq. 2-3664
Newark	FCAB	31 Clinton St	Market 2-0322
Paterson	FCAB	5 Colt St	Sherwood 2-7234
New Mexico:			
Albuquerque	FCAB	Sunshine Bldg	8333
Roswell	FCAB	J. P. White Bldg	238
Clovis	FCAB	703 Axtell Ave	323-J
New York:			
Albany	FCAB	90 State St	4-7181
Binghamton	FCAB	19 Chenango St	2-4244
Buffalo	FCAB	Chamber of Commerce Bldg	Washington 0726
Elmira	FCAB	Hulett Bldg	6171
Jamaica	FCAB	161-19 Jamaica Ave	6-6232
Jamestown	FCAB	Wellman Bldg	7185
Malone	FCAB	36 West Main St	357

List of offices of loss and salvage organizations—Continued

City and State	Organization	Office location	Telephone No.
New York—Continued.			
New York	FOAB	116 John St.	Cortland 7-4074
Niagara Falls	FOAB	United Office Bldg.	3086
Poughkeepsie	FOAB	25 Market St.	2026
Rochester	FOAB	Lincoln Alliance Bank Bldg.	Stone 817
Syracuse	FOAB	O. C. S. B. Bldg.	2-2117
Utica	FOAB	First National Bank Bldg.	2-5161
White Plains	FOAB	31 Mamaroneck Ave.	9500
North Carolina:			
Asheville	FOAB	Flat Iron Bldg.	2303
Charlotte	FOAB	Commercial Bank Bldg.	3-3761
Goldsboro	FOAB	Bank of Wayne Bldg.	232
Greensboro	FOAB	Dixie Bldg.	2-0177
Raleigh	FOAB	Capital Club Bldg.	2-2041
Wilmington	FOAB	Murchison Bldg.	4119
Winston-Salem	FOAB	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
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 5571
Columbus	WAIC	Huntington National Bank Bldg.	Adams 3235
Dayton	UAC	Mutual Home Bldg.	Fulton 6163
Defiance	WAIC	Savings & Loan Bldg.	364
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.	2467-6
Marion	UAC	118 South State St.	2249
Portsmouth	WAIC	Masonic Temple	1639
Sandusky	WAIC	Folck Bldg.	1467
Springfield	WAIC	Tecumseh Bldg.	3727
Steubenville	WAIC	National Exchange Bank Bldg.	21595
Toledo	UAC	Richardson Bldg.	Main 6245
Youngstown	WAIC	Mahoning Bank Bldg.	4-2151-52
Oklahoma:			
Ada	FOAB	Cummings Bldg.	1420
Ardmore	FOAB	Gilbert Bldg.	423
Clinton	FOAB	First National Bank Bldg.	609
Lawton	FOAB	Kechler Bldg.	5374
McAlester	FOAB	Arnote Bldg.	1276
Muskogee	FOAB	Barnes Bldg.	2439
Oklahoma City	FOAB	Mercantile Bldg.	3-1403
Ponca City	FOAB	First National Bank Bldg.	611
Tulsa	FOAB	Hunt Bldg.	4-4175
Oregon:			
Eugene	FOAB	Miner Bldg.	2167
Klamath Falls	FOAB	First National Bank Bldg.	4144
Portland	FOAB	Yeon Bldg.	Broadway 3545
Pennsylvania:			
Allentown	FOAB	Dime Bldg.	9235
Altoona	FOAB	Central Trust Bldg.	9411
Du Bois	FOAB	Deposit National Bank Bldg.	294
Erie	FOAB	Marine National Bank Bldg.	25-797
Harrisburg	FOAB	240 North 3d St.	8277
Hazleton	FOAB	Markle Bank Bldg.	4094
Philadelphia	FOAB	The Insurance Exchange	Lombard 0653
Pittsburgh	FOAB	Arrott Bldg.	Court 3950
Reading	FOAB	Gaunster Bldg.	4-5171
Scranton	FOAB	125 Adams Ave.	7247
Wilkes-Barre	FOAB	Miners National Bank Bldg.	2-5101
Williamsport	FOAB	First National Bank Bldg.	4037
Rhode Island: Providence	FOAB	Turks Head Bldg.	Gaspee 0721
South Carolina:			
Charleston	FOAB	Southern Home Bldg.	7770
Columbia	FOAB	Liberty Life Bldg.	6945
Florence	FOAB	Florence Trust Co. Bldg.	1775
Greenville	FOAB	Woodside Bldg.	4670
South Dakota:			
Aberdeen	UAC	Capital Bldg.	3045
Huron	WAIC	Farmers & Merchants Bank Bldg.	3434
Rapid City	WAIC	Rapid City National Bank Bldg.	340
Sioux City	WAIC	National Bank of South Dakota Bldg.	211
Watertown	WAIC	Woolworth Bldg.	524

List of offices of loss and salvage organizations—Continued

City and State	Organization	Office location	Telephone No
Tennessee:			
Chattanooga	FOAB	Provident Life Bldg.	6-6434
Jackson	FOAB	Commercial Bldg.	3040
Knoxville	FOAB	Hamilton Bank Bldg.	3-0441
Memphis	FOAB	Sterick Bldg.	5-2781
Nashville	FOAB	Nashville Trust Bldg.	5-2703
Texas:			
Abilene	FOAB	Mims Bldg.	6251
Amarillo	FOAB	Oliver-Eakle Bldg.	2-2234
Austin	FOAB	Norwood Bldg.	8-0468
Beaumont	FOAB	Goodhue Bldg.	4005
Bryan	FOAB	First State Bank Bldg.	2-8705
Corpus Christi	FOAB	Jones Bldg.	7737
Dallas	FOAB	Liberty Bank Bldg.	7-0001
El Paso	FOAB	Bassett Tower Bldg.	Main 1172
Fort Worth	FOAB	Petroleum Bldg.	2-3295
Harlingen	FOAB	Rio Grande Bldg.	803
Houston	FOAB	Esperson Bldg.	Charter 4-5633
Lubbock	FOAB	1312½ Avenue J.	7403
Midland	FOAB	Thomas Bldg.	1653
Paris	FOAB	First National Bank Bldg.	1720
Port Arthur	FOAB	Adams Bldg.	2-4231
San Angelo	FOAB	2213 Houston St.	4671
San Antonio	FOAB	Gibbs Bldg.	CA-6351
Texarkana	FOAB	Texarkana National Bank Bldg.	1340
Tyler	FOAB	Citizens National Bank Bldg.	4723
Waco	FOAB	Professional Bldg.	44
Wichita Falls	FOAB	Waggoner Bldg.	15
Utah:			
Ogden	FOAB	Eccles Bldg.	6940
Salt Lake City	FOAB	Walker Bank Bldg.	7787
Vermont: Rutland	FCAB	125 Merchants Row	3-5923
Virginia:			2025
Bristol	FCAB	112 Piedmont Ave.	1047
Danville	FCAB	Masonic Bldg.	2447
Harrisonburg	FCAB	The National Bank Bldg.	784
Lynchburg	FCAB	Allied Arts Bldg.	4210
Newport News	FCAB	Chapin Bldg.	6-1020
Norfolk	FCAB	Citizens Bldg.	4-8501
Richmond	FCAB	American Bldg.	7-3721
Roanoke	FCAB	Boxley Bldg.	4-0350
Washington:			
Seattle	FCAB	Colman Bldg.	Main 4244
Spokane	FCAB	Mohawk Bldg.	Main 3180
Tacoma	FCAB	Washington Bldg.	Broadway 2203
Yakima	FCAB	Larson Bldg.	6180
West Virginia:			
Beckley	FCAB	Raleigh County Bank Bldg.	5241
Bluefield	FCAB	Bradmann Bldg.	1630
Charleston	FCAB	Peoples Exchange Bldg.	Capital 59-101
Clarksburg	FCAB	Union Bank Bldg.	695
Huntington	FCAB	West Virginia Bldg.	23501
Wheeling	FCAB	Riley Law Bldg.	1600
Wisconsin:			
Appleton	WAIC	Gloudemans Bldg.	7830
Eau Claire	WAIC	Market Square Bldg.	21653
Fond du Lac	UAC	National Exchange Bank Bldg.	5800
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 0673
Racine	WAIC	423 Main St.	Prospect 2144
Rhinelander	WAIC	Merchants State Bank Bldg.	1122
Wausau	WAIC	First American State Bank Bldg.	7474
Wyoming:			
Casper	FOAB	161 West 1st St.	45
Cheyenne	FOAB	Boyd Bldg.	4011
Rock Springs	FOAB	Rock Springs National Bank Bldg.	33
Thermopolis	FOAB	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 3 of the Declarations is amended to read:

Policy Period: From _____ to _____ 10__, 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 suc-

cessive 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.

§ 804.499–1 *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).

§ 805.502–1 *Restriction created by Appropriation Act.* (a) The Military Appropriation Act, 1945, approved June 28, 1944 (Public Law 374—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."

(b) The restriction created by the provision quoted in paragraph (a) 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 March 13, 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.

§ 805.503–1 *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 sections.

§ 805.503–2 *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.

§ 805.503–3 *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.	Fish oils.
Brazil Nuts.	Flour.
Canned corned beef.	Green olives.
Canned roast beef.	Molasses.
Chewing gum.	Orange and lemon peel.
Chocolate.	Spices.
Cigars.	Sugar.
Citron.	Tapioca.
Cocoa.	Tea.
Coffee.	Vanilla.
Dried beans.	Wheat.
Dried peas.	

§ 805.503–4 *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.
Guava concentrate—Cuba.

§ 805.503–5 *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.	

§ 805.503–6 *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 §§ 805.503–2 to 805.503–5.

§ 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.

§ 805.505–1 In connection with Circular No. 407, attention is invited to the following points:

(a) Except as indicated in paragraph (b) 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.

(b) 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.

(c) Materials consigned as indicated in paragraph (a) or (b) of this section 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.

(d) All entries of materials imported by the War Department will be made in the name of the War Department.

(e) 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.*

§ 805.506–1 *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".

§ 805.506–2 *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 § 805.506–1, 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.

§ 805.506–3 *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.*

§ 805.507–1 All materials procured abroad will be marked as prescribed in memorandum issued under date of June 1, 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 § 805.507–2.

§ 805.507–2 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.*

§ 805.509–1 *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 § 805.503–9, 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.

§ 805.509–2 *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 1235 Fifteenth Street, N. W., (Marshall Building), telephone Executive 2020, Extensions 120, 121, 186 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.

§ 805.509–3 *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.

§ 805.509–4 *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.

§ 805.509–5 *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.

§ 805.509–6 *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.

§ 805.509–7 *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.

§ 805.509–8 *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 Maritime 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.

§ 805.509–9 *Purchases in Canadian Northwest.* (a) In the past, contracts with suppliers domiciled in the Dominion of Canada for the purchase of materials, machinery, machine tools, and equipment necessary for the construction and maintenance of War Department projects in the Canadian Northwest, including the Alcan highway and associated projects, were not normally made direct with the suppliers but with North West Purchasing Limited, a Canadian Crown Company incorporated by the Canadian Department of Munitions and Supply.

(b) As of August 31, 1944 North West Purchasing Limited ceased to exist as a Crown Company.

(c) Accordingly, future contracts of the type described in paragraph (a) above will be entered into with the suppliers and not with North West Purchasing Limited. Normally, however, the agency of the Department of Munitions and Supply located at Edmonton, Alberta, will be given advance notice of required purchases and will allocate and negotiate the contracts. In unusual cases clearance through the agency of the Department of Munitions and Supply may be dispensed with, under such regulations as may be issued by the Commanding General, Northwest Service Command. See also §§ 812.1205–4 and 812.1291–1.

§ 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.

§ 805.510–1 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 wholeheartedly 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.

§ 805.510–2 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

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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.*

§ 806.602–1 *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:

(a) *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. Specifications will be such as to provide items meeting the approved military characteristics. For items not covered by military characteristics, specifications will be such as to provide items meeting the technical requirements of the using arms and services and the services interested therein by virtue of their missions.

(b) *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.

(c) *Provision of funds (Abbr. Funds).* This function involves the preparation of estimates, defense of estimates, and custody of funds.

(d) *Purchase (Abbr. Pur.)* This function consists of contracting for 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.

(e) *Inspection (Abbr. Insp.).* This function consists of making the inspections necessary for final acceptance of any item from the contractor.

§ 806.602–2 *Interbranch and interdepartmental procurement.* The term "interbranch 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 § 806.602–1 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 § 806.602–1 in respect to an item or class of items will remain with the technical service or technical services exercising such responsibility.

§ 806.603–1 *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.

§ 806.603–2 *Purchase of an item by other than the service assigned such responsibility.* (a) Purchase of item shall be made by the services assigned responsibility for purchase of such item except under the circumstances indicated in paragraph (b), (c) and (d) of this section.

(b) When an item is required within a brief period of time and, in the judgment of the service requiring it, cannot be provided in such time by the service having responsibility for purchasing it, the item may be purchased by the requiring service: *Provided, however,* That in connection with emergency purchases of paper and paper products, the procedure established in paragraph 8, War Department Supply Bulletin SB 10–8, 1945, will be observed.

(c) 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.

(d) 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.

(e) In the event that any purchase made pursuant to paragraph (b) 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.

(f) Purchases made pursuant to the provisions of this paragraph will be subject to the applicable restrictions concerning local purchases and purchases of restricted or prohibited items. See § 811.1187 et seq.

§ 806.603–3 *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:

(a) Transfer of any of the functions of procurement from one technical service to another or to or from the Army Air Forces, or

(b) 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.

§ 806.603–5 *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:

(a) 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:

(1) Number and adequate description of items including specifications and applicable funds;

(2) Name and address of supplier;

(3) Unit price;

(4) Delivery dates;

(5) Status of deliveries, to be supplemented monthly;

(6) Contract or purchase order symbol; and

(7) Partial payments or advance payments already made.

(b) 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.

(c) 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 paragraph (b) of this section.

(d) The transfer shall be effeted 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.

§ 806.603–6 *Procedure.* (a) All technical services requiring an item for which determinations 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.

(b) 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.

(c) When circumstances warrant, requirements may 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.

(d) Each requisition from a service responsible for determination of requirements and provision of funds will contain a certificate of availability of funds and citation of the applicable allotment number.

(e) Where items are assigned to a technical service other than the Medical Department for the requirements of the Army at large, the separate and additional requirements for such items for hospitals are not included therein. Determination of requirements and provision of funds for such separate and additional requirements for hospitals are the responsibility of the Medical Department.

§ 806.603–7 *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 § 801.108–7). 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.

§ 806.603–8 *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.* (a) There is contained in Appendix I to these procurement regulations[1] a condensed record of the assignments made by the Board since the beginning of the calendar year 1942. Actions taken by the Board are reported in ASF circulars. From time to time, information as to such actions 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.

(b) Certain actions of the Board are set forth in the sections immediately following. The Appendix, however, contains cross references to these sections.

§ 806.605 *Assignments made by Board.*

§ 806.605–1 *Assignment of fuel: charcoal, coal, coke, dust fuels, gas, gasoline, oil (fuel), wood, etc. (FSSC Class 7).*

Items	Spec.[1]	Req.	Funds	Pur.	Insp.
Gasoline with Octane Rating Higher than 80: All Uses. (This assignment covers but is not limited to the uses enumerated below, and assignments as to such uses are modified accordingly.)	AAF	AAF	AAF	AAF	AAF
Army Air Forces Aircraft: All fuels, except gasoline with octane rating higher than 80, which is covered above	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 Mfd	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), 80 octane or less	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.

§ 806.605–2 *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 in continental U.S.	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

[1] Filed as part of the original document.

Items	Spec.	Req.	Funds	Pur.	Insp.
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
Corps of Engineers Construction Equipment:					
Dredges, gear, and attachments	ENG	ENG	ENG	ENG	ENG
Pile drivers, gear and attachments	ENG	ENG	ENG	ENG	ENG
Scows, dump, for use with bucket dredges	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
Boats, aircraft crash rescue	AAF	AAF	AAF	TC	TC

[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.

§ 806.605–3 *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
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
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)—including all operational equipment	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 dental, 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.

§ 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. However, when it appears to his satisfaction that an item contracted for under an indefinite quantity contract was not purchased under such contract because the necessity of doing so was overlooked, the chief of the technical service which executed the indefinite quantity contract may ratify the 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 the facts, including the contract price paid as compared to that payable under the indefinite quantity contract and all facts bearing upon the failure to purchase under the indefinite quantity contract.

§ 806.605b *Indefinite quantity contract for safety glass.* As of April 1, 1945, the Ordnance Department has executed an indefinite quantity contract for safety glass in ordnance vehicles. Pertinent excerpts from this contract are set forth in Ordnance Procurement Circular No. 97–45, and in paragraph 6,068.2 of Ordnance Procurement Instructions, as amended.

§ 806.605c *Standard Master Ship Repair Contract.*

§ 806.605c–1 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 § 803.304–1 (c)). 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.

§ 806.605c–2 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.

§ 806.605c–3 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 section.

§ 806.605c–4 Contracting officers appointed pursuant to § 806.605c–3 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.

§ 806.605c–5 Colonel Wright has designated the following as his representatives, with power to issue and administer job orders, subject to various conditions and limitations:

(a) 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.

(b) 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.

§ 806.605c–6 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.

§ 806.605c–7 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 pursuant to the provisions of Article 5, subparagraphs (b) (ii) and (d) of TC Form No. 103 for the purpose of making recommendations as set forth in said subparagraphs.

§ 806.605c–8 The contracting officer for the War Department shall act jointly with the contracting officers for the Navy Department and War Shipping Administration to formulate policies and obtain uniformity of interpretation, administration and billing rates.

§ 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 War Department Supply Bulletins referred to in the tabulation. These Supply Bulletins are available at Adjutant General Depots.

INDEFINITE QUANTITY CONTRACTS EXECUTED BY OFFICE OF QUARTERMASTER GENERAL

Supply bulletin number	Date	Commodity	Contract period	Contract symbol number	Contractor	Area serviced	Applicability
To be numbered	To be issued	Books	Fiscal year 1946.	See Supply Bulletin		Continental United States and its possessions.	General utilization by the War Department except the Medical Corps.
10-94 (and Change No. 2[1]).	18 July 44 (12 Oct. 44).	Compressed yeast	Fiscal year 1945.	W 11-009-qm-19505	Federal Yeast Corp., Colgate Creek-Highlandtown, P. O., Baltimore, Md.	3d Service Command	All branches of the War Department.
				W 11-009-qm-19508	Varnum Yeast Co., 105 Cambridge St., Boston, Mass.	1st Service Command	
				W 11-009-qm-19730	Standard Brands, Inc., 595 Madison Ave., New York, N. Y.	4th, 8th, and 9th Service Commands.	
				W 11-009-qm-19731	Anheuser-Busch, Inc., 721 Pestalozzi St., St. Louis, Mo.	2d and 7th Service Commands Military District of Washington.	
				W 11-009-qm-19732	Red Star Yeast & Products Co., 221 E. Buffalo St., Milwaukee, Wis.	5th and 6th Service Commands.	
To be numbered	To be issued	Paper rolls, for cash registers.	Fiscal year 1946.	W 28-021-qm-35736	The National Cash Register Co., Main & K Sts., Dayton, Ohio.	See Supply Bulletin	All posts, camps and stations.
To be numbered	To be issued	Oil, engine, greases and gear lubricants.[2]	1 July 1945 to 31 Dec. 1945.	W 44-109-qm-610	The Texas Co	Continental United States, exclusive of Arizona, California, Illinois, Maryland, Massachusetts, New Jersey, North Dakota, Oregon, Pennsylvania, Vermont and Washington.	All War Department activities within continental United States (not including Alaska) for domestic consumption, exclusive of maneuvers ordered by Army Ground Force Headquarters.
				W 44-109-qm-611	Shell Oil Co. Inc. of California.	California, Oregon and Washington.	
				W 44-109-qm-612	Shell Oil Co. Inc. of New York.	Illinois	
				W 44-109-qm-613	Atlantic Refining Co	Maryland, Massachusetts, New Jersey, and Pennsylvania.	
		Malt	1 Apr. 1945 to 30 June 1945.	W-11-009-qm-46118	Malt-Diastase Company, Wyckoff Ave. & Decatur St., Brooklyn, N. Y.	1st, 2nd and 3rd Service Commands; Military District of Washington.	All Branches of the War Department.
				W 11-009-qm-46115	Anheuser-Busch, Inc., 721 Pestalozzi St., St. Louis, Mo.	4th Service Command	
				W 11-009-qm-46116	Birk Bros. Brewing Co., Webster and Wayne Sts., Chicago, Ill.	6th Service Command	
				W 11-009-qm-46117	Standard Brands, Inc., War Prod. & Supply Dept., 595 Madison Ave., New York, N. Y.	5th, 7th and 9th Service Commands.	
				W 11-009-qm-46114	Hazelton Syrup Co., Hazelton, Pa.	8th Service Command	
10-103	Jan. 45	Ink, duplicating machine, black 1 lb. cans.	1 Feb. 1945 to 31 Aug. 1945.	W 28-021-qm-27720	Howard Flint Ink Co., Clark Ave. & M. C. R. R., Detroit 9, Mich.	See Supply Bulletin No. 10-103.	All Branches of the War Department.

[1] Change No. 1, 16 Aug. 44, to Supply Bulletin Number 10-94 has been rescinded. Change No. 2 relates to Contract W 11-009-qm-19503.
[2] The basic contracts for greases and gear lubricants are contracts of Treasury Department, Procurement Division.

SUBPART C—INTERDEPARTMENTAL PURCHASES

§ 806.606 *Purchases under contracts of Procurement Division, Treasury Department.*

§ 806.606–1 *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. * * *

§ 806.606–2 *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.

§ 806.606–3 *Emergency purchases.* In any case where, pursuant to the provisions of § 806.606–2, purchases 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:

(a) 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

(b) 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.

§ 806.606–4 *Procedure.* (a) 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.

(b) 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.

§ 806.606–5 *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 (who, in case purchase responsibility for such item has been assigned to a particular technical service, shall be the chief of such technical service) 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 concerned 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.

§ 806.606–6 *Delivery orders under contracts of the Procurement Division, Treasury Department.* (a) Delivery orders issued under contracts of the Procurement Division, Treasury Department, will contain sufficient data to enable prompt identification by disbursing and auditing agencies of the correct listing in the proper General Schedule of Supplies. These data will include contract number, item number, and, where applicable, supplement, region or zone number.

(b) Reference is made to the discussion in § 806.614 concerning the suggested form of delivery order. As stated in § 806.614 all orders issued under contracts of the Procurement Division, Treasury Department, are included within the term "delivery orders" even though such orders are frequently referred to as "purchase orders."

(c) Each delivery order should show the name of the finance officer by whom payment will be made.

§ 806.606–7 *Mandatory schedules.* The following is a list of the classes of the General Schedule of Supplies which are mandatory by the terms of the schedules on the field services of the War Department:

Description of item and schedule of supplies	*Period*
Explosives and blasting accessories; 4 Supp. No. 1	July 1 to December 31, 1944 (extended to June 30, 1945).
Gasoline:	
Tank wagon and drum deliveries, tank-car, transport-truck and marine deliveries; 7 and Supps., Regions 1 to 6, incl.	July 1, 1944 to June 30, 1945.
Fuel Oil:	
Tank-wagon and drum deliveries, tank-car, transport-truck, and marine deliveries; 7 and 14 and Supps. Regions 1 to 6, incl.	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. 8, Revised	July 1, 1944 to June 30, 1945.
Motor-vehicle accessories, etc., item 8–C–3400 clutch facings) only; 8 & 66, Supp. No. 1, Revised.	July 1, 1944, to June 30, 1945.
Automotive storage batteries; 17, Supp. No. 2, Revised	March 16 to September 15, 1945.

Description of item and schedule of supplies	*Period*
Telephones and parts; 17, Supp. No. 6, Revised	March 1 to August 31, 1944 (extended to August 31, 1945).
Electric lamps; 17, Supp. No. 3	September 1, 1944 to August 31, 1945.
Wood furniture; 26, Part I	January 1 to December 31, 1945.
Steel furniture; 26, Part II, Revised	January 1 to December 31, 1942 (extended to December 31, 1945).
Steel insulated filing cabinets; 26, Part II, Supp. No. 1	July 1 to December 31, 1943 (extended to December 31, 1945).
Floor and window coverings; 27 Revised	October 1, 1944, to September 30, 1945.
Books; 35	December 1, 1944 to November 30, 1945.
Encyclopedia Britannica; 35	February 15 to November 30, 1945.
Machine tools (only the following items: 40-M-9-100, and 40-P-22 to 40-P-37, incl.); 40.	September 1, 1944 to August 31, 1945.
Woodworking saws; 40	July 1, 1944 to June 30, 1945.
Solvents; 51	February 1 to June 30, 1945.
Paper drinking cups; 53	July 1, 1944 to June 30, 1945.
Office equipment; 54	July 1, 1944 to June 30, 1945.
Filing cases, copy holders, and finished plates for offset duplicating machines; 54.	July 1, 1944 to June 30, 1945.
Offset duplicating supplies; 54	January 20 to June 30, 1945.
Typewriters; 54, Revised	July 1, 1941, to June 30, 1942 (extended to June 30, 1945).
Portable drinking fountains; 63	March 1, 1945 to February 28, 1946.
Feed and forage (applicable to certain D. C. installations only; 67.	June 1 to September 30, 1945.
Airplane tires and tubes; 83, Revised	April 24 to June 30, 1942 (extended to September 30, 1945).
Consolidated public utilities contracts in Baltimore, Md.; New York, N. Y.; and Philadelphia, Pa.; 101 (Electric service), 105 (Gas service).	Effective December 1, 1944 and thereafter until further notice.
Slide film prints; 103	February 1, 1945 to January 31, 1946.
Recording and transcription service; 103, Supp. No. 2, Revised.	September 1, 1944 to August 31, 1945.
Exchange allowances for typewriters; 104	March 1 to June 30, 1945.

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 *et seq.*, as to restrictions concerning local purchases and the purchases of restricted or prohibited items. Such restrictions apply to items, even though they may be listed on the General Schedule of Supplies.

§ 806.606a *Regional and District Warehouse and Supply Centers of Treasury Department, Procurement Division.*

§ 806.606a–1 *Establishment and functions of Regional and District Warehouse and Supply Centers.* Various Regional and District Warehouse and Supply Centers have been established by Treasury Department, Procurement Division in the United States. These Centers engage in procurement, storage and issue of commonly used items of supply. Items handled by these Centers in general are new items purchased by Treasury Department, Procurement Division.

§ 806.606a–2 *Stock Catalogs of Warehouse and Supply Centers.* Stock Catalogs are issued by each Regional and District Warehouse and Supply Center listing articles regularly carried by it in stock and available for issue by it. Such catalogs may be obtained from the appropriate Regional Directors, Treasury Department, Procurement Division. The addresses of such Regional Directors are as follows:

Region I: Park Square Building, Boston 16, Mass.

Region II: 50 Church Street, New York 7, N. Y.

Region III: 499 Pennsylvania Avenue NW., Washington 25, D. C.

Region IV: Commercial Arts Building, 704 Race Street, Cincinnati 2, Ohio.

Region V: 209 South LaSalle Street, Chicago 4, Ill.

Region VI: Belle Isle Building, 105 Pryor Street NE., Atlanta 3, Ga.

Region VII: P. O. Box 1407, Fort Worth 1, Tex.

Region VIII: 2605 Walnut Street, Kansas City 8, Mo.

Region IX: 1030 15th Street, 7th Floor, Denver 2, Colo.

Region X: 30 Van Ness Avenue, San Francisco 2, Calif.

Region XI: 2005 Fifth Avenue, Seattle 1, Wash.

Region XII: Iolani Palace, Honolulu 2, T. H.; Bulding "F," Munoz Rivera Park, San Juan, P. R.

§ 806.606a–3 *Authority to purchase from Warehouse and Supply Centers.* Field services of the War Department are required to purchase items through Treasury Department, Procurement Division, only to the extent provided in §§ 806.606–2 and 806.606–7. Purchase of any item from Warehouse and Supply Centers is, however, authorized, whenever desired by the responsible office, subject to such conditions and regulations, if any, as the chief of the interested technical service (who, in case purchase responsibility for such item has been assigned to a particular technical service, shall be the chief of such technical service) may prescribe. Purchase from a Warehouse and Supply Center of any item listed on a General Schedule of Supplies mandatory on the purchasing office (see § 806.606–7), or on the Schedule of Blind-Made Products (see § 806.606c) is considered a compliance with such Schedules. Similarly, purchase may be made from a Warehouse and Supply Center of an item even though such item is otherwise required to be purchased from Federal Prison Industries, Inc. (see § 806.608).

§ 806.606a–4 *Purchasing procedure.* See § 806.614 as to the appropriate form of delivery order to be used in purchasing items from Warehouse and Supply Centers. Instructions contained in the appropriate stock catalog are to be followed in purchasing items, except insofar as such instructions may be modified by § 806.614.

§ 806.606b *Stock Catalog, Washington, D. C.* 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 and adjacent area.

§ 806.606c *Blind-made products.*

§ 806.606c–1 *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).

§ 806.606c–2 *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 § 806.606–4). The basic law does not apply in cases where brooms and mops are procured for use outside continental United States.

§ 806.606c–3 *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.

§ 806.606c–4 *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.*

§ 806.607–1 *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.

§ 806.607–2 *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.*

§ 806.608–1 *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.

§ 806.608–2 *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.

§ 806.608–3 *General clearance.* The following general clearance, dated June 1, 1945, which covers purchases for the period July 1 to December 31, 1945, 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: As listed in Schedule of Products.
Canvas goods: Shell covers, canvas covers, tarpaulins, truck covers, truck curtains, barracks bags, shower curtains, miscellaneous bags, bandoleers.
Camouflage nets.
Cargo nets.
Castings: Manhole frames and covers, grates, grate bars, and gutter drains for delivery in Wisconsin, Michigan, Illinois, Indiana, Ohio, Pennsylvania, New York, New Jersey, Delaware, Maryland, West Virginia, Virginia, Kentucky and the District of Columbia.
Fiber furniture.
Laundry services required by posts and stations within 100 miles of the Federal Correctional Institution, Tallahassee, Florida, the United States Penitentiary, Alcatraz, California, the Federal Detention Headquarters, New York City, the Federal Reformatory for Women, Alderson, West Virginia, and the United States Penitentiary, Terre Haute, Indiana.
Mattresses: Cotton felt.
Metal products: Storage shelving, transfer cases, lockers, food trays, sputum cups, iron berths, bunks and hospital beds.
Milk: 1,000 lbs. per day for delivery to Fort Bliss, Texas, only.
Printing: See § 806.610 (i).
Wood furniture and specialties: Desk trays, costumers; striking tool handles as listed in Fed. Spec. NN–H–93, Grade A only; Douglas, 4C, 3C, wide arm and side chairs; stools as listed in Schedule of Products, except rotary type.

CLEARANCE

C–26980

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, 1945, 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. COMINS,
Associate Commissioner.

§ 806.608–4 *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–26980.

§ 806.608–5 *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 this chapter). 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.*

§ 806.609–1 *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.

§ 806.609–2 *Envelopes authorized for supply to the military service.* (a) 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.
30.	5 by 11½ inches, Kraft, open side.
42.	6½ by 9½ inches, Kraft, open side.
63.	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.	3⅛ by 5⅞ inches, Kraft, open end.
123.	3⅞ by 7½ inches, Kraft, tag, strong eyelet at bottom, open end.
183.	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.	3⅞ 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)	4⅞ by 8⅞ inches, Kraft, open side, window (for War Bonds).
(1)	4½ by 8¼ inches, Kraft, open side, window (for War Bonds).

[1] There has been no Item No. assigned to this envelope.

(b) 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.

§ 806.609–3 The foregoing does not affect in any way the present methods of procuring jackets, open end, thumb notched, as required by the various tech-

nical services, the same being procured on approved requisitions as are other supplies.

§ 806.610 *Purchases from Government Printing Office.*

§ 806.610–1 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.

§ 806.610–2 All printing and blankbook work other than that referred to in § 806.610–3, shall be obtained from the Government Printing Office unless a clearance is obtained from the Public Printer to have the work done elsewhere.

§ 806.610–3 (a) 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:

(1) By local Army-owned reproduction facilities;

(2) At United States Army Field Printing Plants authorized by the Joint Committee on Printing;

(3) By commercial firms, or

(4) By field plants, Justice Department, described under § 806.610–9.

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).

(b) 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.

§ 806.610–4 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.

§ 806.610–5 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 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. Paragraph 9, AR 35–1040 prescribes the form of certificate which is required to be placed on contracts or purchase orders involving payments for printing, binding, and blankbook 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.

§ 806.610–6 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.

§ 806.610–7 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 (a) stenographer's books or other articles in book form which require printing, binding or ruling operations for their manufacture, and (b) 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.

§ 806.610–8 The chiefs of technical services only are authorized to communicate directly with the Government Printing Office through their properly appointed representatives.

§ 806.610–9 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 § 806.608–3 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 (§ 809.903–1 (a)).

§ 806.610–10 Bureau of the Budget Regulation No. 4 (revised) January 18, 1944, (as reprinted in Circular 69, War Department, February 16, 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 §§ 806.613 to 806.613–8.

§ 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 (other than property which has been declared surplus) 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.

§ 806.612–1 *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 (a) by the War Food Administration, and by any constituent agency or corporation thereof, designated by the War Food Administrator (Executive Order 9418) and (b) 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.)

§ 806.613 *Procurement of surplus property from disposal agencies.*

§ 806.613–1 *Surplus Property Act.* The Surplus Property Act of 1944 (Public Law 457, 78th Congress) places the responsibility upon all Government agencies, in order to avoid making purchases through commercial channels when suitable items are available from surplus property disposal agencies, to consult continuously the records of surplus property maintained by the disposal agencies under the regulations of the Surplus Property Board, and to determine whether their requirements can be satisfied out of such surplus property.

§ 806.613–2 *Disposal agencies.* (a) The disposal agencies and the general types of property for which they are responsible are as follows:

Reconstruction Finance Corporation—Capital and producers goods.
Department of Commerce—Consumers goods.
U. S. Maritime Commission—Ships and Maritime property.
War Food Administration—Food and related products.

A detailed statement of the specific kinds of property assigned to each of the foregoing disposal agencies is set forth in § 829.904.

(b) The surplus property operations of Reconstruction Finance Corporation within the United States are conducted through regional offices. The addresses of these regional offices and the areas that they serve are set forth in § 829.907.

(c) The surplus property operations of the Department of Commerce within the United States are likewise conducted through regional offices. The addresses of these regionall offices and the areas that they serve are set forth in § 829.908.

(d) The surplus property operations of U. S. Maritime Commission are conducted through a centralized office, the address of which is:

United States Maritime Commission, Attention: Mr. E. W. Gorman, Assistant to the Director of the Procurement Division, Washington 25, D. C.

(e) The surplus property operations of War Food Administration are likewise conducted through a centralized office, the address of which is:

Office of Distribution, War Food Administration, Washington 25, D. C.

§ 806.613–3 *Information as to available surpluses.* Information as to available surpluses may be obtained from the regional offices of Reconstruction Finance Corporation and of Department of Commerce, and from the Washington offices of U. S. Maritime Commission and War Food Administration. Although the regional offices of Reconstruction Finance Corporation and of the Department of Commerce maintain detailed inventories only for surplus property located within their respective geographical areas, they are prepared to furnish information as to the availability of specific items of property held by other regional offices, upon request. Both Reconstruction Finance Corporation and the Department of Commerce, periodically publish listings of available surplus property, and these lists may be obtained from any of the regional offices of these disposal agencies.

§ 806.613–4 *Establishment of operational liaison with disposal agencies.* (a) In order that the War Department may utilize the surplus property of other Government agencies to the fullest extent practicable, and effectively discharge its responsibilities under the Surplus Property Act as set forth in § 806.613–1, the Commanding General, Army Air Forces, will establish and maintain operational liaison between the procuring offices of Army Air Forces and the disposal agencies in such manner and at such levels as he shall deem most effective; and chiefs of technical services (other than Army Air Forces) will establish and maintain operational liaison with the disposal agencies, as follows:

(1) Each technical service that procures food or related products of the nature assigned to War Food Administration for disposal will establish operational liaison with the Washington office of that disposal agency. Operational liaison may be established at the level of the office of the chief of service or at the level of the district procurement office of the technical service, as the chief of service deems desirable.

(2) Each technical service that procures ships or maritime products of the nature assigned to U. S. Maritime Commission for disposal will establish operational liaison with the Washington office of that disposal agency. Operational liaison may be established at the level of the office of the chief of service or at the level of the district procurement offices of the technical service, as the chief of service deems advisable.

(3) Each technical service will establish operational liaison between each of its field procurement offices and the regional offices of Reconstruction Finance Corporation and the Department of Commerce, respectively for the region in which the field procurement office is located. In addition, operational liaison between the office of the chief of service and the Washington offices of Reconstruction Finance Corporation and the Department of Commerce, may be established if the chief of service deems such operational liaison desirable.

(b) Each liaison officer shall be the focal point for the exchange of information with the disposal agencies as to contemplated Army procurements and as to the availability of surplus property to satisfy such procurements. The duties of each liaison officer shall be to review continuously the lists of surplus property published by the various disposal agencies; to be informed currently as to the items being procured by his respective procurement district office or technical service; to furnish information to the disposal agencies concerning items under procurement; to ascertain from the disposal agencies whether or not suitable items are available from surplus stock; and to transmit such information concerning available items to the proper procurement officer. All such reviews of surplus property lists and such exchanges of information as to procurements and available surplus property shall be made promptly and expeditiously so as not to delay procurement.

§ 806.613–5 *Procedure for acquiring surplus property.* In general, surplus property will be transferred with reimbursement by the War Department at a fair valuation determined by the disposal agency. Details of transfer procedure may be ascertained from the offices of the disposal agencies. See § 806.614 as to the appropriate form of delivery order to be used in acquiring surplus property from disposal agencies. However, where the property being transferred was declared surplus by another element of the War Department or by the Navy Department, non-reimbursable transfer can be arranged wherever permitted by Special Order No. 6 of the Surplus Property Board, dated May 1, 1945.

§ 806.613–6 *Direct communication with disposal agencies authorized.* Direct communication with disposal agencies is authorized in all matters pertaining to the acquisition of surplus property.

§ 806.613–7 *Readjustment Division.* Although direct communication with disposal agencies is authorized, Readjustment Division, Headquarters, Army Service Forces, is available for assistance in establishing operational liaison with the disposal agencies, and for consultation when the technical services desire assistance in their negotiations for acquisition of surplus property from the disposal agencies. All policy matters pertaining to the acquisition of surplus property from disposal agencies will be cleared with Readjustment Division, Headquarters, Army Service Forces (Section II, Circular 199, W.D. 1944).

§ 806.613–8 *Disposition of property to other Government agencies.* It is to be noted that this § 806.613 relates only to the acquisition of surplus property from the disposal agencies, and not to the reporting of surplus War Department property to the disposal agencies or to disposition of War Department property to other Government agencies. As to the latter, see Parts 821 to 829.

§ 806.614 *Form of delivery order to be used in making interdepartmental or interbranch purchases.* (a) Delivery orders are used to place orders:

(1) Under already existing contracts executed by other technical services or other departments of the Government (see §§ 806.605a, 806.606, 806.607 and 806.609) and

(2) With other departments of the Government furnishing particular services or supplies (see §§ 806.606a, 806.606b, 806.608, 806.610, 806.612 and 806.613).

(b) The term "delivery orders" is used in the procurement regulations to refer to orders of the character described in paragraph (a) above. Although orders placed under General Schedules of Supplies contract sometimes are referred to as "purchase orders", the term "delivery orders" is more accurate, since a binding contract already exists between the Government and the contractor.

(c) The following forms of delivery order may be used in making interbranch or interdepartmental purchases:

(1) W. D. Contract Form No. 303 (§ 813.1317a), [In certain cases, TM 38–403 (Station Supply Procedure) and ASF

Manual M 408 (Depot Supply Procedures) require the use of this form], or

(2) W. D. Contract Form No. 19 (§ 813.1317e).

(d) W. D. Contract Form Nos. 19 and 383, when used to place orders for services or supplies with other departments (see paragraph (a) (2) of this section), will be required to be modified to delete reference to a basic purchase agreement.

[Procurement Reg. 8]

PART 808—FEDERAL, STATE AND LOCAL TAXES

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§ 808.800 *Contract tax articles.* 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 sections 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 June 1, 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.	808.802-1	Exempt to extent provided in § 808.810 (Also see Note 1).
Automobiles, buses, trucks, etc.	Sec. 3403, IRC; Regs. 46, Subpart F.	808.802-2	Not exempt (But see Note 1).
Radio receiving sets, etc	Sec. 3404, IRC; Regs. 46, Subpart G.	808.802-3	Exempt (§ 808.810).
Refrigerators, etc	Sec. 3405, IRC; Regs. 46, Subpart H.	808.802-4	Not exempt (But see Note 1).
Sporting goods	Sec. 3406 (a) (1), IRC; Regs. 46, Subpart J.	808.802-5	Not exempt (But see Note 1).
Electric, gas or oil appliances	Sec. 3406 (a) (3), IRC; Regs. 46, Subpart L.	808.802-6	Not exempt (But see Note 1).
Photographic apparatus	Sec. 3406 (a) (4), IRC; Regs. 46, Subpart M.	808.802-7	Not exempt (But see Note 1).
Business and store machines	Sec. 3406 (a) (9), IRC; Regs. 46, Subpart O.	808.802-8	Not exempt (But see Note 1).
Electric light bulbs and tubes	Sec. 3406 (a) (10), IRC; Regs. 46, Subpart S.	808.802-9	Not exempt (But see Note 1).
Firearms, shells, cartridges	Sec. 3407, IRC; Regs. 46, Subpart I.	808.802-10	Exempt (§ 808.810).
Matches	Sec. 3409, IRC; Regs. 44, Subpart F.	808.802-11	Not exempt (But see Note 1).
Electrical energy	Sec. 3411, IRC; Regs. 46, Subpart T.	808.802-12	Not exempt (But see Note 1).
Gasoline	Sec. 3412, IRC; Regs. 44, Subpart D.	808.802-13	Not exempt (But see Note 1).
Lubricating Oils	Sec. 3413, IRC; Regs. 44, Subpart E.	808.802-14	Not exempt (But see Note 1).
Pistols and revolvers	Sec. 2700, IRC; Regs. 47	808.803	Exempt (§ 808.810).
Retailers' excise taxes	Ch. 19, IRC; Regs. 51	808.804	
Jewelry	Sec. 2400, IRC; Regs. 51, Subpart D.	808.804-1	Not exempt (But see Note 1).
Furs	Sec. 2401, IRC; Regs. 51, Subpart E.	808.804-2	Not exempt (But see Note 1).
Toilet preparations	Sec. 2402, IRC; Regs. 51, Subpart F.	808.804-3	Not exempt (But see Note 1).
Luggage	Sec. 1651, IRC; Regs. 51, Subpart G.	808.804-4	Not exempt (But see Note 1).
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 June 1, 1944 pursuant to contracts entered into prior to June 1 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 sections.

The manufacturers' excise taxes are set forth below in §§ 808.802–1 to 808.802–14, inclusive. 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 November 1, 1942, except in the case of the tax on electric light bulbs and tubes (§ 808.802–9), the rate of which was changed effective April 1, 1944.

§ 808.802–1 *Tires and inner tubes.* (Sec. 3400, IRC; Regulation 46, Subpart D; 26 CFR, Cum. Supp. 316.30–316.32).

(a) Tires wholly or in part of rubber (exclusive of metal rims or rim bases): 5 cents a pound on total weight.

(b) 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.

808.802–2 *Automobiles, buses, trucks trailers, motorcycles.* (Sec. 3403, IRC; Regulations 46, Subpart F; 26 CFR, Cum. Supp., 316.50–316.57).

(a) 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.

(b) 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.

(c) Parts or accessories (other than tires and inner tubes and other than radios) for any of the articles enumerated in paragraphs (a) or (b)—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 paragraphs (a) and (b) shall be considered parts or accessories for such articles, whether or not primarily adapted for such use.

(d) The following items are not subject to this tax:

(1) 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).

(2) Parts and accessories (which term does not include tires, inner tubes and automobile radios) sold to a manufacturer of articles enumerated in paragraphs (a) and (b) 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).

(e) 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).

§ 808.802–3 *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%.

(a) Radio receiving sets, automobile radio receiving sets, combination radio and phonograph set, and phonographs.

(b) 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 paragraph (a), whether or not primarily adapted for such use.

(c) Phonograph records,

(d) 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.

§ 808.802–4 *Refrigerators, refrigerating apparatus and air conditioners.* (Sec. 3405, IRC; Regulations 46, Subpart H; 26 CFR, Cum. Supp., 316.70–316.73). Rate: 10%.

(a) *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.

(b) *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 paragraph (a) except when sold as component parts of complete refrigerators or refrigerating or cooling apparatus.

(c) *Air-conditioners.* Self-contained air-conditioning units.

Including in each case parts or accessories therefor sold on or in connection with the sale thereof.

§ 803 802–5 *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.[3]
Badminton racket frames.[3]
Badminton racket string.
Badminton shuttlecocks.
Badminton standards.
Baseballs.
Baseball bats.[3]
Baseball body protectors.
Baseball chin 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.
Cricket 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.[3]
Indoor baseball gloves.
Indoor baseball mitts.
Lacrosse balls.
Lacrosse sticks.
Mass balls.
Polo balls.
Polo mallets.
Pool tables.[3]
Pool balls
Pool cues for such tables.
Push balls.
Skates.
Skis.
Ski poles.
Snow shoes.
Snow toboggans.
Snow sleds.
Soccer balls.
Softball balls.
Softball bats.[3]
Softball gloves.
Softball mitts.
Squash balls.
Squash rackets.[3]
Squash racket frames.[3]
Squash racket string.
Table tennis balls.
Table tennis nets.
Table tennis paddles.
Table tennis tables.
Tennis balls.
Tennis nets.
Tennis rackets.[3]
Tennis racket frames.[3]
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.

§ 808.802–6 *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,

[3] 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.

warming, or keeping warm food or beverages for consumption on the premises; and electric mixers, whippers, and juicers.

§ 808.802–7 *Photographic apparatus.* (Sec. 3406 (a) (4), IRC; Regulations 46, Subpart M; 26 CFR, Cum. Supp., 316.120–316.122).

(a) 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%.

(b) Unexposed photographic films (including motion picture films, but not including X-ray film), photographic plates and sensitized paper—15%.

(c) 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. 316.121, Regulations 46; 26 CFR, Cum. Supp., 316.121)

§ 808.802–8 *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.

and combinations of any of the foregoing.

§ 808.802–9 *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.

§ 808.802–10 *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.

§ 808.802–11 *Matches.* (Sec. 3409, IRC; Regulations 44, Subpart F; 26 CFR, Cum. Supp., 314.50–314.52).

(a) 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.

(b) All matches other than those enumerated above—2 cents per 1,000 matches.

§ 808.802–12 *Electrical energy for domestic or commercial consumption.* (Sec. 3411, IRC; Regulations 46 Subpart T; 26 CFR, Cum. Supp., 316.190–316.194). Rate: 3⅓%.

(a) Tax is imposed upon electrical energy sold for domestic or commercial consumption and not for resale.

(b) The term "electrical energy sold for domestic or commercial consumption" does not include:

(1) Electrical energy sold to the United States for consumption by the legislative, executive or judicial branches of the Federal Government and agencies thereof; examples of such governmental activities are office buildings for the legislative, executive and judicial branches of the Federal Government and agencies thereof, Army camps, post exchanges, barracks and dormitories for enlisted personnel of the armed forces, military supply depots, penal institutions and hospitals; but sales of electrical energy (when separately metered) to the United States for consumption in officers' quarters or residences at military establishments or in emergency housing for war workers or Federal housing projects, constitute sales for domestic consumption (S. T. 931, Int. Rev. Bull. 1944, No. 15, p. 36);

(2) Electrical energy sold for industrial consumption, e. g., for use in manufacturing, mining, refining, shipbuilding, building construction, irrigation, etc. (Sec. 316.190, Regulations 46; 26 CFR, Cum. Supp. 316.190); or

(3) Electrical energy 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)

(c) 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.

(d) 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.

§ 808.802–13 *Gasoline.* (Sec. 3412, IRC; Regulations 44, Subpart D; 26 CFR, Cum. Supp., 314.30–314.35). Rate: 1½ cents a gallon.

(a) Tax is imposed on gasoline sold by the producer or importer thereof, or by any producer of gasoline. The term "gasoline" means (1) 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 (2) 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.

(b) 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).

(c) Tax does not attach to products (other than those referred to in § 808.802–13 (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 paragraph 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.

§ 808.802–14 *Lubricating oils.* (Sec. 3413, IRC; Regulations 44, Subpart E; 26 CFR, Cum. Supp., 314.40–314.44). Rate: 6 cents a gallon.

(a) 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).

(b) 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).

(c) 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 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.

§ 808.802–15 *Basis and application of manufacturers excise taxes.* (a) 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).

(b) 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).

(c) 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; sec. 314.64, Regulations 44; 26 CFR, Cum. Supp. 316.204, 314.64).

(d) No manufacturers' excise tax is imposed under section 3406, Internal Revenue Code (§§ 808.802–5 to 808.802–9, inclusive), with respect to any article subject to the retailers' excise tax on sale of jewelry, etc., referred to in § 808.804–1. (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 April 1, 1944.) Tax is imposed upon the articles specified below in §§ 808.804–1 to 808.804–4, inclusive, sold at retail. Such articles when sold to the Government for use or consumption are considered to be sold at retail.

§ 808.804–1 *Jewelry, etc.* (Sec. 2400, IRC; Regulations 51, Subpart D; 26 CFR, Cum. Supp., 320.30–320.38).

(a) 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.

(b) 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.

(c) "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).

§ 808.804–2 *Furs.* (Sec. 2401, IRC; Regulations 51, Subpart E; 26 CFR, Cum. Supp., 320.40–320.41).

(a) Articles made of fur on the hide or pelt and articles of which such fur is the component material of chief value.

(b) 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 April 1, 1944, the provisions referred to in this paragraph.

§ 808.804–3 *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.

§ 808.804–4 *Luggage.* (Sec. 1651, IRC).

(a) 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.

(b) Purses, handbags, pocketbooks, wallets, billfolds, and card, pass, and key cases.

(c) 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 April 1, 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.

§ 808.804–5 *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.

§ 808.804–6 *Basis and application of retailers' excise taxes.* (a) 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)

(b) 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)

(c) 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).

(d) 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. (Sec. 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).

§ 808.805–1 *Basis and application of tax on transportation of persons.* (a) 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).

(b) 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).

(c) 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)).

(d) 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).

(e) 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; Regulations 113; 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 December 1, 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 December 1, 1943, the tax does not apply to amounts paid for the transportation of property to or from the American National Red Cross.

(d) Effective December 1, 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.

§ 808.806–1 *Basis and applications of tax on transportation of property*—(a) *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)).

(b) *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)).

(c) *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 § 808 805–1) applies. (Sec. 143.1 (c), Regulations 113; 26 CFR, Cum. Supp., 143.14 (c)).

(d) *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; 26 CFR. Cum. Supp., 130.20–130.26.) 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 April 1, 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 June 1, 1944.

(a) Manufacturers' excise tax on radio receiving sets, phonographs, phonograph records and musical instruments. See § 808.802–3.[1]

(b) Manufacturers' excise tax on firearms, shells, cartridges. See § 808.802–10.[1]

(c) Manufacturers' excise tax on tires and inner tubes (see § 808.802–1), 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.[3]

(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.[2]

(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.[2]

(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.[2]

§ 808.810–1 *Policy as to claiming exemption from specific Federal excise taxes listed in § 808.810.* Exclusion from contract prices of the tax on pistols and revolvers and the manufacturers' excise taxes referred to in § 808.810 is governed by the policy set forth in the Appendix to this part, except as otherwise provided in this section. 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 in § 808.810 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 in § 808.810 from communications taxes are automatically secured without the use of exemption certificates.

§ 808.811 *Exemption based upon exportation.* Exemption is available (a) 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 (b) 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). Under Treasury regulations this exemption, insofar as it relates to aircraft, is available only with respect to purchases made direct from manufacturers or producers and not with respect to purchases from dealers or distributors.

§ 808.812–1 *Policy as to claiming exemption described in § 808.812.* Serious administrative burdens would be imposed if the exemption described in § 808.812 were to be claimed with respect to articles of a character usable either (a) as supplies or legitimate equipment for vessels of war including aircraft or (b) 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:

(1) Aviation gasoline.

(2) Lubricating oil suitable only for aircraft engines.

(3) Aircraft tires and inner tubes.

(4) Aerial photographic cameras including gun cameras, lenses, apparatus, equipment, and films therefor.

§ 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 § 808.802–2 (d) (2).) 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 June 1, 1944, and agree-*

[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] Exemption of these items was authorized by the Secretary of the Treasury on April 29, 1944 (9 F.R. 4615, May 2, 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] This exemption was authorized by the Secretary of the Treasury on May 31, 1944 (9 F.R. 5993, June 2, 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.

ments and change orders supplemental thereto. Exemption from the manufacturers' excise taxes (§ 802.802 et seq.) 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 June 1, 1944, or to any agreement or change order (executed prior to, on or after June 1, 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. Accordingly, exemptions from the manufacturers' and retailers' excise taxes remain available with respect to:

(a) Sales to the United States by prime contractors under fixed price contracts entered into prior to June 1, 1944, if the prices exclude the taxes on such sales, and under cost-plus-a-fixed-fee contracts entered into prior to that date; and

(b) Purchases by such prime contractors from their suppliers or subcontractors under purchase orders or subcontracts entered into prior to, on or after June 1, 1944: *Provided,* That their prime contracts contemplated tax exclusive purchases and that the purchase orders or subcontracts provide for the exclusion of the taxes from the prices of the articles purchased. (As a general rule, fixed price prime contracts entered into on and after March 1, 1943, in conformity with the policies set forth in the Appendix to this part have not contemplated tax exclusive purchases by prime contractors—see §§ 808.897 to 808.897-6, inclusive.)

§ 808.814-1 *Policy as to claiming exemptions applying to sales under contracts entered into prior to June 1, 1944, and agreements and change orders supplemental thereto.* (a) The provisions of prime contracts entered into prior to June 1, 1944, determine whether and to what extent the contract price includes or excludes Federal excise taxes and consequently whether and to what extent exemptions are to be claimed.

(b) If the price under a contract entered into prior to June 1, 1944, includes an applicable Federal excise tax, agreements or change orders supplemental to such contract and executed on or after June 1, 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.

(c) If the price under a prime contract entered into prior to June 1, 1944, excludes an applicable Federal excise tax, agreements or change orders supplemental thereto and executed on or after June 1, 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.

(d) 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 June 1, 1944.

(b) Tax on transportation of persons—amounts paid on or after June 1, 1944.

(c) Tax on transportation of property—amounts paid on or after June 1, 1944.

(d) Tax on telephone, telegraph, radio and cable facilities:

(1) Messages and dispatches (§ 808.808 (a) and (b))—originating on or after June 1, 1944.

(2) Service (§ 808.808 (c) to (e))—amounts paid pursuant to bills rendered on or after June 1, 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).

§ 808.817-1 *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.

§ 808.817-2 *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 (a) 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 (b) 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 June 1, 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 §§ 808.810–1, 808.812–1 and 808.814–1.

§ 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 order issued under contract No. ____, dated ____, and for which a tax exemption certificate has not heretofore been issued.

Identification Card No. ____

Date ____ Vehicle License No. ____

(Signature, and title of purchaser)

For VENDOR To be filed 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. Ven. No. ____ Period ____

*State and local taxes to be paid only when absolutely necessary to obtain commodity required.

§ 808.822–1 *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:

(a) 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 808.825 in connection with exemption under section 3451, Internal Revenue Code.

(b) 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) Standard Forms 1094, 1094A, 1094B and 1094C will be requisitioned and distributed as prescribed in AR 310–200.

(b) Such forms will be subject to special control as prescribed in paragraph 10, AR 310–100.

(c) Submission of reports accounting for such forms is indefinitely suspended.

§ 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. 314.23) and Regulations 46 (Sec. 316.23) (26 CFR, Cum. Supp., 314.23 and 316.23):

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 otherwise entitled to exemption, 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 § 808.812–1 as to the policy with respect to claiming this exemption.

§ 808.826 *Tax exemption certificates for issuance by contractors.* T. D. 5114, Jan. 27, 1942 (26 CFR, Cum. Supp., Part 470) 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 to 808.803, inclusive) 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 § 808.826–1) attached to a standard Government Tax Exemption Certificate Form 1094. The forms prescribed by section 470.3 (b) of T. D. 5114 (26 CFR, Cum. Supp., 470.3 (b)) for use by contractors and subcontractors are set forth in §§ 808.826–2 and 808.826–3.

§ 808.826–1 *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)

§ 808.826–2 *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 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)

§ 808.826–3 *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

---; that the price to be charged said vendee)

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 (26 CFR, Cum. Supp., Part 470), 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 CFR, 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 §§ 808.826–2 and 808.826–3, as to the articles listed in 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 subcontrac-

[1] To be shown by contracting officer if known.

tors (suppliers) are then authorized to issue tax exemption certificates in the form prescribed in §§ 803.826–2 and 808.826–3, as to the articles listed on W. D. Tax Form No. 1 attached to the certificate.

(d) 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 section 470.3(b) of Treasury Decision 5114, approved Jan. 27, 1942 (26 CFR. Cum. Supp., 470.3(b)), 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 this chapter 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 accounts, "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 tax 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, 1944, as amended by Section IV, ASF Circular No. 57, 1945. (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	Section II, ASF Circular No. 233, 11 September 1944
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)), 23 August 1942. (Transactions prior to 7 February 1942) Memo. Hq. SOS (SPPDL-012.2 (Taxes) (Missouri)), 23 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

§ 808.831–1 *Information as to the situation in other states* or advice with respect to particular problems in the states lised above should be obtained from the office of The Judge Advocate General by inquiry addressed to the attention of the Chief, Tax Division.

§ 808.831–2 *The instructions contained in the memoranda listed above* are modified by the privisions 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 § 803.363),

(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 April 1, 1944) by the Revenue Act of 1943.

Description of tax	Old rate	Rate under 1943 act
Retailers' excise taxes:	*Per cent*	*Per cent*
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 April 1, 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 November 1, 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 § 803.357–1 (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 § 803.357–1 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 § 808.854 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 § 803.357–1.

§ 808.857 *Adjustments by reason of removal of exemptions by Revenue Act of 1943.* Effective June 1, 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 (§ 808.804 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 communication 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 December 1, 1942, and containing a tax article substantially in the form of the standard tax article prescribed in § 808.357–1, 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 June 1, 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 June 1, 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 and 808.814–1 with respect to exemption under contracts entered into prior to June 1, 1944, and §§ 808.810 and 808.810–1 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 June 1, 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, Jan. 27, 1942 (26 CFR, Cum. Supp., 470.1):

"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 § 803.–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 Jan. 27, 1942 (26 CFR, Cum. Supp., Part 470), 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 § 808.823). With respect to prime contracts or purchases made March 1, 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

[1] The matters set forth in this Appendix have limited application. See § 808.890.

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 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 March 1, 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 March 1, 1943, as to Federal excise tax.* The Under Secretary of War, jointly with the Under Secretary of the Navy, has issued the memorandum dated January 4, 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 March 1, 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 Defense 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.]

§ 808.897–1 *Changes effected by memorandum of policy.* (a) Fixed price (lump sum) prime contracts made on or after March 1, 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.

(b) Fixed price (lump sum) prime contractors under contracts made on or after March 1, 1943, and subcontractors under them will not in general be authorized to purchase "subsidiary articles" (see § 808.891) or articles used or consumed in the performance of the prime contract on a tax exclusive basis pursuant to Treasury Decision 5114.

(c) Where the price 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 March 1, 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.

(d) 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.

§ 808.897–2 *Issue of tax exemption certificates.* Except as provided in § 808.897–3, 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 808.897–1. Nothing in this chapter, 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).

§ 808.897–3 *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 § 803.397 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 § 808.897–5 need not be so reported.)

§ 808.897–4 *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 § 808.897. 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.

§ 808.897–5 *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 § 808.802–3). Accordingly, as an exception to the tax policy set forth in § 803.897 (see § 808.897–3), 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 (a) constitute subsidiary articles, or (b) 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.

§ 808.897–6 *Taxable articles manufactured by the prime contractor and included in a purchase article as a component part thereof.* The tax policy set out in §§ 803.897 and 803.897–1 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 (a) have been manufactured by the prime contractor himself and (b) 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]

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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 23 February 1887 (24 Stat. 411; 18 U.S.C. 708, 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.

§ 809.902 *Executive order of the President.* (a) Pursuant to the public policy prescribed by the aforementioned act of February 13, 1887, the President on May 18, 1905, issued an Executive order which provides, in substance, that all contracts which shall thereafter 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.

(b) 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."

(c) The form of the provision to be used in contracts to which such Executive orders apply (except contracts subject to the Walsh-Healey Act as to which see §§ 803.353 and 803.353–4) is set out in § 803.345.

§ 809.903 *Application of basic statutes.*

§ 809.903–1 *Exceptions to prohibitions.* The prohibitions contained in the foregoing provisions of this subpart do not apply to the following purchases:

(a) Purchases of items manufactured, or services rendered, by Federal Prison Industries, Inc. (see § 806.608).

(b) Purchases of items manufactured or produced, or of services rendered, by State prisons or other correctional State institutions (see § 806.608a).

§ 809.903–2 *Shipment of convict-made goods.* 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,*

(a) That there is no other source of supply readily available to him on the open market;

(b) That purchases of such articles, materials or supplies are limited to the amount necessary to fulfill specific existing contracts with the Government; and

(c) 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, date June 20, 1942.)

§ 809.903–3 *Employment.* 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 28 June 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.

§ 809.904–1 *Form of contract 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:

§ 809.905–1 *Exceptions.* (a) 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 (see Subpart E of this part).

(b) 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) 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) 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 ("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 13 June 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).

§ 809.906–1 *Form of contract 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.*

§ 809.907–1 *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. 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.

§ 809.907–2 *Exceptions.* (a) 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.

(b) 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.

§ 809.907–3 *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 made to §§ 809.911 to 809.911–5, which are equally applicable to this subpart.

§ 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 et seq.; also with regard to certain types of authorized deductions and the method of securing approval thereof. The substance of the pertinent regulations follows:

§ 809.908–1 *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 payroll; 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 payroll.

(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)).

§ 809.908–2 *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 § 809.908–1, 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, Department of Labor Regulations, 2.3 (c)). (29 CFR, Cum. Supp., 3.3 (c)).

§ 809.908–3 *Submission of weekly affidavits.* (a) Each weekly affidavit shall be delivered by 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.

(b) 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 specified payroll period.

(c) 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 St. NW., Atlanta Ga.

Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont: Regional Wage Analyst, Bureau of Labor Statistics, 224 Washington St., Boston, Mas.

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, Ill.

Louisiana, Oklahoma, Texas: Regional Wage Analyst, Bureau of Labor Statistics, 1610 Mercantile Bank Bldg., Dallas, Tex.

Kentucky, Ohio, West Virginia: Regional Wage Analyst, Bureau of Labor Statistics, 133 Federal Bldg., Public Square, Cleveland, Ohio.

Colorado, Idaho, Montana, New Mexico, Utah, Wyoming: Regional Wage Analyst, Bureau of Labor Statistics, 422 Chamber of Commerce Bldg., Denver, Colo.

Michigan: Regional Wage Analyst, Bureau of Labor Statistics, Room 926; David Stott Bldg., 1150 Griswold Street, Detroit, Mich.

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 Bldg., 341 Ninth Avenue, New York, N. Y.

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 Bldg., Chestnut and Juniper Sts., Philadelphia, Pa.

Arkansas, Iowa, Kansas, Missouri, Nebraska: Regional Wage Analyst, Bureau of Labor Statistics, 3000 Fidelity Bldg., Kansas City, Mo.

Arizona, California, Nevada: Regional Wage Analyst, Bureau of Labor Statistics, Room 410–412, Golden Gate Bldg., 25 Taylor St., San Francisco, Calif.

A separate office for the Southern California area is maintained at: Room 1523, Post Office and Court House Bldg., Los Angeles, Calif.

Oregon, Washington: Regional Wage Analyst, Bureau of Labor Statistics, 516 Seaboard Bldg., Seattle, Wash.

(d) In the case of shipbuilding and railroad contracts, affidavits and payrolls will be submitted for payroll periods ending nearest 15 May and 15 November to the Bureau of Labor Statistics, Washington, D. C.

§ 809.908–4 *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)).

§ 809.908–5 *Authorized payroll deductions.* (a) 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)).

(b) 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 Department of Labor Regulations 2.5 (b)). (29 CFR, Cum. Supp., 3.5 (b)).

(c) 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)).

(d) Upon application to and prior written permission from the Secretary of Labor and subject to the standards set forth in paragraph (b), 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)).

(e) In accordance with and subject to the standards set forth in paragraph (b), general permission is 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)).

§ 809.908–6 *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. (Title 29–A Department of Labor Regulations 2.5 (h)). (29 CFR, Cum. Supp., 3.5 (h)).

§ 809.908–7 *Lack of knowledge no defense.* Nothing in the regulations 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 his regulations, 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 Department of Labor Regulations 2.5 (g)). (29 CFR, Cum. Supp., 3.5 (g)).

§ 809.908–8 *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 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 described in § 809.908–1 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 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:

(a) 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),

(b) 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.

(c) The inclusion of certain additional provisions hereinafter referred to 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. 276a, a–1 to a–7), M.L. 1939 and Sup. I, sec. 746.

§ 809.910–1 *Form of contract provision.* The form of provisions required by regulation in contracts to which the act applies is set out in §§ 803.343 and 803.343–1. (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 in-

volve 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.

§ 809.911–1 *Definition of "building" and "work."* 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.

§ 809.911–2 *Definition of "construction," or "repair."* The Secretary of Labor has defined the above terms as used in the act and in the Copeland Act (see Subpart C of this part) 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)).

§ 809.911–3 *Exceptions as to contracts with States.* 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.

§ 809.911–4 *Exceptions based on nature of work contemplated by contract.* The act does not apply to:

(a) Contracts for servicing and maintenance work generally (Title 29–A, Department of Labor Regulations, 2.2 (a)) (29 CFR, Cum. Supp., 3.2 (a)).

(b) Contracts for manufacturing and furnishing materials or supplies. (See Title 29–A, Department of Labor Regulations, 2.2 (a)) (29 CFR, Cum. Supp., 3.2 (a)), and servicing and maintenance work incident thereto.

(c) Contracts covering the furnishing of equipment and operating personnel for work only incidental to public work (see 19 Comp. Gen. 467, Dec. B–6009, 1 Nov. 1939.).

§ 809.911–5 *Exceptions, "Servicing and maintenance work" defined.* The terms "servicing and maintenance work" as used in paragraphs (a) and (b) of § 809.911–4, include:

(a) Movement of machinery into or out of or from one part to another part of a building or plant completed or substantially completed.

(b) Installation of machinery, machine tools or other equipment in a plant or building completed or substantially completed.

(c) Plant rearrangement and production facilities adjustment or alterations incident to (a) or (b) above.

NOTE: This definition in connection with paragraph (a) and (b) of § 809.911–4 does not relate to servicing and maintenance procured by a construction contractor as a part of construction work.

§ 809.911–6 *Exceptions based on other grounds.* The act does not apply to:

(a) 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.

(b) 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 and 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).

§ 809.911–7 *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 of the Secretary of Labor.* The regulations of the Secretary of Labor described in §§ 809.908 to 809.908–8, inclusive, where pertinent, are applicable to all contracts subject to the act. Regulation No. 503 issued by the Secretary of Labor, September 30, 1935, as amended, prescribes the procedures to be followed in predetermining prevailing rates of wages.

§ 809.913 *Obtaining predeterminations of prevailing wage rates.*

§ 809.913–1 *Responsibility of the Chief of Engineers.* The Chief of Engineers is responsible for obtaining from the Secretary of Labor and for furnishing to the technical services upon request, as provided in § 809.913–2, all predeterminations of prevailing wage rates under the Davis-Bacon Act required in connection with the award of War Department contracts.

§ 809.913–2 *Responsibility of contracting officers.* Prior to entering into negotiations for awarding a contract to which the Davis-Bacon Act is applicable, the contracting officer concerned will request the Corps of Engineers to furnish the appropriate predetermination of the wage rates to be contained in the contract. The contracting officer will forward such request direct to the Division Engineer of the Corps of Engineers within whose territorial jurisdiction the work called for by the proposed contract is to be performed unless the chief of the technical service concerned directs that the request be forwarded through his office. In the latter event the request will be forwarded through the chief of the technical service concerned to the Labor Relations Branch, Personnel Division, Office of the Chief of Engineers. Since predeterminations are subject to change, contracting officers are cautioned, in any case where a predetermination previously furnished by the Corps of Engineers is apparently applicable to the proposed contract, to inquire whether such predetermination is current. (The territorial jurisdiction of the Division Engineers is coextensive with that of the service commands. For a list of the addresses of the Division Engineers with a statement of the service commands in which they are located, see § 809.939.)

§ 809.914 *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–34103, 28 February 1936, of the Comptroller General.)

§ 809.915 *Policy regarding construction and maintenance work.* See Subpart F of Part 802.

SUBPART E—WALSH-HEALEY PUBLIC CONTRACTS LAW

§ 809.916 *General.* The Walsh-Healey Public Contracts Law (act of June 30, 1936, 49 Stat. 2036; as amended by the act of May 13, 1942, 56 Stat. 277; 41 U.S.C. 35–45; sometimes hereinafter referred to as the act) requires the inclusion of certain representations and stipulations in contracts to which the act applies. The act further provides that the Secretary of Labor, under certain circumstances, may make exceptions to this requirement. Contracting officers are furnished with publications containing the text of the Act and certain regulations and interpretations relating thereto of the Secretary of Labor, who is charged with its administration (see § 809.917). Accordingly, this subpart is confined for the most part to matters relating to the act deemed of interest to War Department personnel not found in such publications. Provisions to be included in War Department contracts in compliance with the act may be found in §§ 803.353 to 803.353–4. The minimum wage determinations contemplated by the act made by the Secretary of Labor are set forth in §§ 809.994 et seq. Also, reference is made to § 809.803–2 for a

discussion respecting the convict labor provisions of the act and to item (19) of § 802.297–1a for a statement of procedure satisfying the requirements of the Department of Labor with respect to reporting the award of War Department contracts subject to the act.

§ 809.917 *Publications to be furnished contracting officers.* The Secretary of Labor has published a document entitled "Walsh-Healey Public Contracts Act, Rulings and Interpretations, No. 2, September 29, 1939" and a supplement thereto, published January 24, 1944, entitled "Supplement to Rulings and Interpretations No. 2." These publications contain a compilation of the text of the act, the regulations of the Secretary of Labor relating thereto, and pertinent rulings and interpretations. The chiefs of the technical services are responsible for furnishing these publications 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 item (19) of § 802.297–1a. Information of interest not found in these publications is set forth in §§ 809.920 and 809.921.

§ 809.918 *Contracts subject to the act.* Generally, the law is applicable to every War Department contract for the purchase of supplies the amount of which exceeds $10,000. The publications furnished to contracting officers in accordance with § 809.917, as supplemented by pertinent provisions of §§ 809.920 and 809.921, define in detail the contracts to which the act applies.

§ 809.919 *General instructions.*

§ 809.919–1 *Compliance with regulations.* The regulations and instructions contained in the publications mentioned in § 809.917 as supplemented by § 809.920 and 809.921 will be complied with by all contracting officers.

§ 809.919–2 *Minimum wage determinations.* Prospective contractors will be informed of applicable minimum wage determinations, if any, in advance of or coincident with negotiating contracts. (For a list of such determinations see §§ 809.994 et seq.)

§ 809.919–3 *Furnishing of posters.* Contracting officers are responsible for seeing that contractors who are awarded contracts subject to the Walsh-Healey Act are furnished Posters, Form PC–13 (Revised March 1944) 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 March 1944, must be destroyed and be replaced by that revised issue. These forms may be obtained from the Records, Control and Distribution Section, Room 1106, Department of Labor, Washington 25, D. C. In this connection, see § 809.917.

§ 809.920 *Interpretations not found in publications furnished contracting officers.* (a) The succeeding paragraphs of this section set forth or refer to certain interpretations of the act or of the regulations issued thereunder not found in the publications mentioned in § 809.917.

(b) Pursuant to an opinion of the Solicitor's Office, Department of Labor, released August 9, 1944, contracts which were originally $10,000 or less but are subsequently amended so as to increase the price to an amount in excess of that figure must contain the Walsh-Healey stipulations after such an amendment. This is so, irrespective of whether the amendment is the result of unilateral action by the War Department (under a change order or similar provision) or of mutual consent of the parties. With respect to contracts exceeding $10,000 which are subsequently modified to a figure of $10,000 or less, (1) the Walsh-Healey Act does not apply to any work performed thereunder after the date of modification if the reduction is effected by mutual consent of the parties, but (2) the act would apply to such work if the reduction is effected by unilateral action of the War Department authorized by the contract.

(c) Ice has been held to be a nonperishable commodity and thus contracts therefor are subject to the act.

§ 809.921 *Exceptions not stated in the publications furnished contracting officers.* (a) The succeeding paragraphs of this section set forth or refer to certain exceptions not stated in the publications mentioned in § 809.917.

(b) 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.

(c) The following are excepted from the representations and stipulations of section 1 of the act:

(1) Contracts awarded to any railroad or other carrier.

(2) 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.

(3) Contracts awarded during the present war for:

(i) Orange marmalade.

(ii) The production of training films.

(4) Contracts awarded through June 30, 1945 for dehydrated rutabagas and carrots and for the canned and dehydrated fruits and vegetables set forth on page 3 of "Supplemental to Rulings and Interpretations, No. 2" (except milk, evaporated).

§ 809.923 *Procedure for obtaining exceptions with respect to the stipulations required by the act.*

§ 809.923–1 *General.* Section 6 of the act permits the Secretary of Labor to make exceptions to the requirement that the representations and stipulations of section 1 of the act be included in War Department proposals or contracts which are subject to the act. On November 11, 1942, the Secretary of Labor granted a partial exception permitting the employment of female persons between the ages of 16 and 18, under certain conditions (see "Supplement to Rulings and Interpretations No. 2"). Section 809.923–5 prescribes the procedure to be followed where a broader exception, through a modification of the conditions attached to such partial exception is sought. Sections 809.923–2 to 809.923–4 set forth the procedure to be followed when any other exception is sought.

§ 809.923–2 *Requests for exceptions and review thereof by contracting officers.* Except as provided in §809.923–5, all requests of present or prospective War Department contractors for exceptions under section 6 of the act will be addressed to the chief of the interested technical service. Such requests of the contractor will be in writing, will be transmitted through the appropriate contracting officer, and will set forth all pertinent information, including the nature of the requested exception, the need therefor, and any action already taken by the contractor to avoid the necessity for the exception. Upon receipt of such a request from a contractor, the contracting officer and the chief of the labor branch of the service command in which the facility or facilities in question are located (hereinafter referred to as the appropriate labor officer), and, in those instances when requests are from contractors of Army Air Forces, the Army Air Forces labor officer in whose district the facility or facilities are located, will review the request in the light of:

(a) The urgency of the particular procurement;

(b) The relation of existing production schedules to War Department requirements;

(c) The relation of present and past deliveries to production schedules;

(d) The extent to which labor supply is a limiting factor in production, the reasons therefor, and in particular, the extent to which the contractor's wage scale is responsible for the labor supply problem;

(e) The steps, if any, which have been taken either by the contractor or by any government agency to resolve the labor supply problem;

(f) The extent to which factors inherent in the production processes involved necessitate the requested exception;

(g) The extent to which the productive capacity of the facility or facilities in question is being utilized for War Department procurement; and

(h) Any other pertinent data.

§ 809.923–3 *Consultation with regional directors, Department of Labor, and forwarding requests to chiefs of technical services.* (a) If the contracting officer believes that the requested exception is appropriate under the circumstances and necessary in the war effort:

(1) The appropriate labor officer will inform the appropriate regional director of the Wage and Hour and Public Contracts Divisions, United States Department of Labor, of the request for exception and the necessity therefor; and

(2) After joint consideration with such regional director, the contracting officer, if still of the opinion that the requested exception is appropriate, will

transmit the request together with (i) his written recommendation relative thereto, (ii) a statement of all the information upon which the recommendation is based and (iii) a recital of the steps taken in compliance with the procedure set forth in § 809.923–2 and this section, to the chief of the interested technical service. (A list of such regional directors is given in § 809.991.)

(b) The procedure set forth in paragraph (a) of this section with respect to such regional director will be complied with unless such compliance would result in undue delay. The contracting officer and the appropriate labor officer, in consulting with the appropriate regional director, will furnish him any pertinent information in their possession which he may require for rendering a report in connection with the need for the exception to the Administrator of the Wage and Hour and Public Contracts Divisions.

§ 809.923–4 *Review and processing of requests by chief of the technical service.* If the chief of the interested technical service concurs in the recommendation of the contracting officer, after review of the request and consideration as to whether the need for an exception can be avoided by utilization of alternative facilities, he will forward the request to the Industrial Personnel Division, Headquarters, Army Service Forces, through the Purchases Division, Headquarters, Army Service Forces, together with:

(a) A statement of all pertinent data;

(b) His recommendation;

(c) A letter setting forth the need for the exception, addressed to the Secretary of Labor and prepared for the signature of the Secretary of War; and

(d) Findings of fact as required by section 6 of the act, prepared for the signature of the Secretary of War.

§ 809.923–5 *Special procedure with respect to exception relative to employment of female minors.* If a present or prospective War Department contractor requests a modification of any of the conditions attached by the Secretary of Labor to her exception of November 11, 1942, in respect to the employment of female persons between 16 and 18 years of age, mentioned in § 809.923–1, the request will be processed in the same manner as other requests for exceptions under section 6 of the act, as provided in §§ 809.923–2 to 809.923–4, except as follows:

(a) The request will be addressed to the Secretary of Labor;

(b) If the chief of the technical service believes that the requested modification is appropriate under the circumstances and necessary in the war effort, he will transmit the request directly to the Administrator, Wage and Hour and Public Contracts Divisions, United States Department of Labor, with a brief statement of the need for the modification.

SUBPART F—FAIR LABOR STANDARDS ACT OF 1938

§ 809.930 *Basic law.* (a) 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 subpart.

(b) Section 6 (a) of the act 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.

(c) Section 7 (a) of the act prohibits 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 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 section 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.).

§ 809.931 *Exceptions.* The provisions of sections 6 and 7 of the act do not apply with respect to:

(a) 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

(b) Any employee engaged in any retail or service establishment the greater part of whose selling or servicing is in intrastate commerce; or

(c) Any employee employed as a seaman; or

(d) Any employee of a carrier by air subject to the provisions of title II of the Railway Labor Act; or

(e) Any employee employed in the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic 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

(f) Any employee employed in agriculture; or

(g) 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

(h) 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

(i) Any employee of a street, suburban, or interurban electric railway, or local trolley or motor bus carrier; or

(j) 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

(k) Any switchboard operator employed in a public telephone exchange which has less than five hundred stations.

§ 809.932 *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.

§ 809.933 *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.

§ 809.934 *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 § 809.935–2 for the administrative procedure to be followed in respect of such of said subsequently asserted claims are made the subject of an investigation

by the Administrator and § 811.1120–3 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 decision of December 15, 1943 (B–38642, 23 Comp. Gen. 439) 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.

§ 809.935 *Investigations and inspections.*

§ 809.935–1 *Investigations and inspections of records by the Administrator.* Each employer 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.

§ 809.935–2 *Investigations of cost-plus-a-fixed-fee contractors.* (a) The Under Secretary of War, by memorandum dated December 15, 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 and 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.

(b) 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.

(c) If the Administrator is of the opinion that any such investigation discloses violation of section 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 § 811.1120–3, the Judge Advocate General will be consulted as to the construction to be followed.

SUBPART G—OVERTIME WAGE COMPENSATION

§ 809.940 *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:

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 regular 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

§ 809.941 *Elimination of inconsistencies through amendment of contracts; nonreimbursement, etc.* By memorandum dated September 17, 1942, (See ASF 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 Mari-

time 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.

§ 809.942 *Interpretations of the order.* 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 following sections. As additional interpretations are issued, this subpart 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.

§ 809.942–1 *Basic purposes of the order as stated by the Secretary of Labor.* The order was designed (a) to facilitate round-the-clock war production, (b) to discourage absenteeism found to have resulted from the practice of paying premium rates for particular days as such, and (c) 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.

§ 809.942–2 *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.

§ 809.942–3 *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 noncovered 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.

§ 809.942–4 *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.

§ 809.942–5 *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.

§ 809.942–6 *The workweek.* A workweek consists of 7 successive days (see § 809.942–7) starting on the same calendar day each week. This is 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.

§ 809.942–7 *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.

§ 809.942–8 *Exceptions as to work day.* 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.

§ 809.942–9 *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-Healy 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.

§ 809.942–10 *Contracts for premium pay unrelated to 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.

§ 809.942–11 *Holidays; choice of sixth holiday.* Paragraph I B of the order has two requirements: (a) It requires time and one-half for work on the 6 holidays enumerated in the order, and (b) 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.

§ 809.942–12 *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 record should indicate which method is adopted.

§ 809.942–13 *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.

§ 809.942–14 *Holidays; determination of what constitutes work on holidays.* 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.

§ 809.942–15 *Holidays; not worked.* There is no provision in the order relating to compensation on holidays not worked.

§ 809.942–16 *Holiday pay not offset 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, but whether holiday premium pay can be credited against overtime compensation due under a contract for other hours depends on the terms of the contract. 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.

§ 809.942–17 *Seventh day pay not offset 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 § 809.942–16, 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.

§ 809.942–18 *Pyramiding not permitted 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.

§ 809.942–19 *Absences; full days of absence.* (a) If an employee is absent for all of one of 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.

(b) 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.

§ 809.942–20 *Absences for parts of workdays.* (a) 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.

(b) 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.

(c) 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.

§ 809.942–21 *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 H of this part should be followed before such changes are initiated by the employer.

§ 809.942–22 *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.

§ 809.943 *Exceptions to Executive Order 9240.*

§ 809.943–1 *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.

§ 809.943–2 *Building trades stabilization agreement.* (a) Except as indicated in paragraph (b) 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.)

(b) 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) While work covered by the Building Trades Stabilization Agreement has been exempted from the order, the holiday provisions of the order (paragraph I (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.)

§ 809.943–3 *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.

§ 809.943–4 *Fish processing industry.* The Secretary of Labor on April 24, 1944, 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 United States, its territories, and possessions.

§ 809.943–5 *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.

§ 809.943–6 *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.

§ 809.944 *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 this subpart. 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 application of the Executive order to fiscal matters.

§ 809.944–1 Requests for interpretations will be prepared in the following form and submitted in triplicate:

(a) A brief statement of the question for which interpretation is requested.

(b) A statement as to the person, official, department, or organization requesting the interpretation.

(c) Any facts or comments which are necessary for interpretation. These comments should not exceed one or two paragraphs.

SUBPART H—WAGE AND SALARY STABILIZATION

§ 809.950 *General.*

§ 809.950–1 *Scope of subpart.* This subpart deals with the national wage and salary stabilization program. The Stabilization Act of 1942, as amended (sometimes hereinafter referred to as "the Act"), authorizes and directs the President, among other things, and subject to certain limitations, (a) to issue a general order stabilizing wages and salaries affecting the cost of living on the basis, unless otherwise provided, of the levels which existed on September 15, 1942, and (b) generally to provide for the making of adjustments with respect to wages and salaries "to aid in the effective prosecution of the war or to correct gross inequities." By Executive Order No. 9250 and other directives, the President, with respect to the stabilization program, has (1) established policies, (2) defined certain functions of the National War Labor Board, and (3) delegated certain powers and responsibilities to the Economic Stabilization Director (sometimes hereinafter referred to as "the Director"). Some of these powers and responsibilities of the Director have been re-delegated by him to the National War Labor Board, the Commissioner of Internal Revenue and the War Food Administrator (sometimes hereinafter referred to respectively as "the Board", "the Commissioner", and "the Administrator"). The Board and the Commissioner, in turn, have authorized other agencies, in certain cases, to exercise their functions with respect to the stabilization program in the first instance, subject to their review. The succeeding sections discuss the broader aspects of the program and indicate, to the extent deemed of interest to War Department personnel, the functions of various agencies having jurisdiction with respect thereto. Contracting officers should be reasonably familiar with the program. However, since contracting and disbursing officers are not authorized to determine whether particular payments of wages and salaries by War Department contractors violate wage and salary stabilization policy (see §§ 809.961 and 809.962), no attempt is made in these procurement regulations to set forth in detail the various rules, regulations, orders and interpretations which have been promulgated pursuant to the act.

§ 809.950–2 *Applicable statutes, orders, regulations and rulings.* Statutes, orders, regulations and rulings respecting the stabilization program include the Stabilization Act of 1942 (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 and by the Stabilization Extension Act of 1944, the War Labor Disputes Act (relating to labor disputes which may lead to substantial interference with the war effort, to government operation of facilities under certain circumstances, and to other matters), Executive Order No. 9250 (wage stabilization order), Executive Order No. 9299 (regulations and procedure with respect to wage and salary adjustments for employees subject to the Railway Labor Act), Executive Order No. 9328 (supplemental stabilization order, the "hold-the-line" order), Executive Order No. 9370 (enforcement of orders of the Board), the regulations of the Director, the Director's policy directive of May 12, 1943, and the regulations, rulings, orders and interpretations of the various agencies having jurisdiction with respect to the stabilization program.

§ 809.950–3 *Where information may be obtained.* Any questions relating to the stabilization program may be addressed by the chiefs of the technical services to the Industrial Personnel Division, Headquarters, Army Service Forces, Washington 25, D. C. In addition, pursuant to a joint statement of the Board and the Commissioner, reliable advice relating to the national stabilization policy may be obtained from the Regional War Labor Boards (§ 809.990) and the regional offices of the Bureau of the Internal Revenue (§ 809.992).

§ 809.950–4 *Definition of wages and salaries.* For the purposes of the stabilization program, salaries and wages have been defined by the agencies charged with its administration to 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). "Salaries" means remuneration for personal services computed on a weekly, monthly, annual or other comparable basis, except a wage basis. "Wages" means remuneration for personal services computed on an hourly or daily basis, a piece-work basis, or other comparable basis.

§ 809.951 *Increases and decreases in wages and salaries under the stabilization program.*

§ 809.951–1 *General.* Generally (a) no increases or decreases in wage rates (regardless of whether required by the terms of any labor agreement), (b) no increases in salaries, and (c) no decreases in salaries (if below $5,000 or if the effect of the decrease is to reduce the salary below $5,000 per annum) shall be made without the approval of the appropriate agency having jurisdiction with respect thereto (§§ 809.952–809.958). Exceptions to this requirement of approval have been made (e. g. in the case of certain employers of eight people or less), limitations have been set within which approvals may be granted, and certain increases and decreases which may be made without the specific approval of the appropriate agency in the particular case have been defined. Sections 809.951–2 to 809.951–5, inclusive, contain a general summation of the limitations upon increases and decreases in wages and salaries under the stabilization program. For further details and for a statement of the exceptions and of the increases and decreases which may be made without specific approval, heretofore mentioned, reference is made to the regulations, rulings and orders of the agencies charged with the administration of the program.

§ 809.951–2 *Limitations on wage and salary increases*—(a) *Policy.* Existing policy as to wage and salary increases (insofar as those within the jurisdiction of the Board or the Commissioner as hereinafter set forth are concerned) is expressed in § 4001.11 of the regulations of the Director as supplemented by the Director's Policy Directive of May 12, 1943 and Policy Directive on "Fringe" Adjustments of March 8, 1945. This policy may be summarized as follows:

(1) No increase in wages or salaries shall be authorized by the Board or the Commissioner, as the case may be, except in the following cases:

(i) Such increases as are clearly necessary to correct substandards of living;

(ii) 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" (see paragraph (b) of this section), for the rise in the cost of living between January 1, 1941 and May 1, 1942;

(iii) Salary and wage adjustments necessary to adjust salaries or wages up to the minimum of the tested and going rates paid for comparable 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;

(iv) 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. (The Board may approve or direct certain such adjustments irrespective of such proviso in accordance with the Director's Policy Directive on "Fringe" Adjustments of March 8, 1945).

(2) No increase in a salary rate approved by the Commissioner 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.

(3) 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, there may be approved wage or salary adjustments 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.

(b) *Little Steel formula.* This formula has been adopted by the Board for application generally in the case of wage increases for a group of employees. Under the formula, the Board will consider requests for general increases in straight-time wage rates up to 15 percent above the level prevailing on January 1, 1941. Thus a terminal point for general wage increases is set. The formula is usually not applicable to individual workers or to employees in particular job classifications. It will normally be applied only to groups composed of all employees in a bargaining unit, in a plant, a company or an industry, depending upon the circumstances of each case.

§ 809.951–3 *Limitations on decreases in salaries of less than $5,000.* In the case of a salary rate existing as of the close of October 3, 1942, or thereafter approved, under which an employee is paid a salary of less than $5,000 per annum for any particular work, generally no decrease shall be made by the employer below the highest salary rate paid for such work in the local area between January 1, 1942, and September 15, 1942, unless to correct gross inequities or to aid in the effective prosecution of the war. In either such event, approval of the decrease must be obtained from the appropriate agency. The words "for any particular work" as used in this section refer to the particular work of the particular employee and not merely to a particular type of work.

§ 809.951–4 *Limitations on decreases in salaries of over $5,000.* In the case of a salary rate existing as of the close of October 3, 1942, or thereafter approved, under which an employee is paid a salary of $5,000 or more per annum, decrease may be made without approval: *Provided*, That if by virtue of such decrease the new salary paid is less than $5,000 per annum, then the validity of the decrease below $5,000 shall be determined as set forth in § 809.951–3.

§ 809.951–5 *Limitations on decreases in wages.* The Board shall not approve a decrease in the wages for any particular work below the highest wages paid therefor between January 1, 1942, and September 15, 1942, unless to correct gross inequities and to aid in the effective prosecution of the war.

§ 809.952 *Functions and operation of the National War Labor Board with respect to the wage and salary stabilization program.*

§ 809.952–1 *Jurisdiction of the Board.* The jurisdiction of the Board covers (a) the final disposition of labor disputes "which may lead to substantial interference with the war effort" and (b) the approval or disapproval of voluntary wage and salary adjustments. With respect to wages and salaries, the Board (except as indicated in §§ 809.956 and 809.957) is authorized to determine whether any:

(1) Wage payments, or

(2) Salary payments to an employee where the rate at which the salary, exclusive of bonuses and additional compensation and without regard to the contemplated adjustments, computed on an annual basis, is not in excess of $5,000 per annum, and where such employee:

(i) In his relations with his employer is represented by a duly recognized or certified labor organization, or

(ii) 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.

§ 809.952–2 *Regulations, orders and rulings of the Board.* From time to time the Board has issued regulations, general orders, and other directives (a) establishing stabilization policies, with respect to wages and salaries subject to its jurisdiction, within the limits set forth in the act, the pertinent Executive orders and the Director's regulations, (b) creating Regional War Labor Boards and other subagencies to exercise its functions in the first instance subject to the Board's review, and (c) establishing procedures to be followed in cases before the Board and such subagencies. In addition, the Board has delegated to various other government agencies authority to perform certain of its duties with respect to the stabilization program. With respect to adjustments in wages and salaries subject to its jurisdiction, the orders of the Board (and of the agencies upon which it has conferred appropriate authority) take one of two forms, depending upon the nature of the proceeding involved, as follows: (1) Upon applications for voluntary wage and salary adjustments proposed by employers or submitted pursuant to agreement of employers and their employees, the Board issues so-called "permissive" rulings, permitting specified adjustments within the limits of established stabilization policy, while (2) in cases of dispute between employers and employees or their representatives, the Board issues so-called "directive orders" directing the making of specified wage and salary adjustments within such limits. For a statement of the procedure to be followed by War Department personnel in cases before the Board (or before agencies upon which it has conferred authority) in which the War Department has an interest, reference is made to § 809.963.

§ 809.952–3 *Agencies which exercise functions of the Board subject to its review.*—(a) *Regional War Labor Boards.* The Board has established twelve Regional War Labor Boards together with a Territorial War Labor Board for Hawaii (Alaska has been made a part of Region XII) through which, generally, it exercises its functions in the first instance. (A list of these Regional War Labor Boards, together with a statement of the areas in which they have jurisdiction, respectively, may be found in § 809.930.) In addition, the Board has established various other subagencies and authorized them in certain types of cases, subject to the Board's review, (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. A list of certain such subagencies, together with a general designation (subject to exception) of the cases in connection with which they have been granted authority, is as follows:

(1) Non-Ferrous Metals Commission in cases affecting the stabilization of the mining, milling, smelting and refining of non-ferrous metals, referred to it by the Board or by the Regional Directors of the 9th, 10th and 12th regions of the Board. (The jurisdiction of the Non-Ferrous Metals Commission does not extend to those enterprises which supply materials and equipment to the above named industries.)

(2) Detroit Area Tool and Die Commission in cases concerning the tool and die industry in the counties of Wayne, Oakland, Macomb, Monroe, Washtenaw and Genessee in the State of Michigan.

(3) The Trucking Commission in cases involving persons employed in the fol-

lowing types of trucking operations: over-the-road (common, contract, or private carrier), local pick-up, and delivery; transfer and storage.

(4) Shipbuilding Commission in cases involving persons employed in the shipbuilding industry.

(5) West Coast Lumber Commission in cases involving the production of lumber and lumber products in Oregon, Washington, Idaho, Montana and California.

(6) The National Airframe Panel in cases involving employees of certain manufacturers of airplanes. In dispute cases this panel acts only in an advisory capacity to the Board but the panel is authorized, subject to the Board's review, to make final rulings on voluntary wage and salary adjustments within its jurisdiction in cases where the decision of the panel is unanimous.

(7) The War Shipping Panel in cases involving the shipping industry. In dispute cases this panel acts only in an advisory capacity to the Board but the panel is authorized, subject to the Board's review, to make final rulings on voluntary wage and salary adjustments within its jurisdiction in cases where the decision of the panel is unanimous.

(b) *Shipbuilding Stabilization Committee.* This committee composed of representatives of the Government, of shipbuilding management, and of shipbuilding labor, was established by General Administrative Order No. 2–57 of the War Production Board to perform certain functions with respect to the four Zone Standards Agreements, as amended. These agreements, negotiated in the four shipbuilding zones (i. e. the Pacific Coast, the Atlantic Coast, the Gulf Coast, and the Great Lakes) were originally entered into by the Office of Production Management (predecessor of the War Production Board), the Navy Department and the U. S. Maritime Commission on behalf of the Government; by the Metal Trades Department of the American Federation of Labor and by the Industrial Union of Marine and Shipbuilding Workers of America of the Congress of Industrial Organizations on behalf of labor; and by various shipbuilding companies. Subsequently the War Department indicated it would participate in Zone Standards. The agreements, as amended by proposals dated May 16, 1942 of a National Shipbuilding Conference subsequently ratified by the parties (such proposals so ratified being commonly termed the Chicago Amendments), among other things fix certain wage rates to be paid in the shipbuilding industry and provide for an annual wage review to be conducted by the Shipbuilding Stabilization Committee. Pursuant to Executive Order No. 9250, the Committee continues to exercise its functions. However, no new wage rate fixed by Zone Standards Agreement may become effective until approved by the Board which acts with respect thereto, in the first instance, through its subagency the Shipbuilding Commission. (See paragraph (a) (4) of this section.)

(c) *The Wage Adjustment Board for the Building Construction Industry.* On May 22, 1942, the War and Navy Departments, National Housing Administration, Reconstruction Finance Corporation, the Maritime Commission and the Building and Construction Trades Department of the American Federation of Labor, entered into an agreement stabilizing wage rates for all war construction work done for or financed by the United States (except non-Federal construction where state laws should govern wage rates) in the continental United States at the level in effect on July 1, 1942. Such agreement, by its terms to endure for the duration of the war, provided for the creation of a Wage Adjustment Board (1) to determine whether certain wage adjustments should be made and (2) to fix the amount of any such adjustment. The Wage Adjustment Board for the Building Construction Industry, (hereinafter referred to as the Wage Adjustment Board), has been established by order of the Secretary of Labor with authority (1) to investigate and act upon adjustments of wage rates under such agreement of May 22, 1942, and (2) to carry out the duties and functions delegated to it by the National War Labor Board. Under General Order No. 13 of the National War Labor Board, the Wage Adjustment Board continues to exercise its functions under such order of the Secretary of Labor and such agreement of May 22, 1942, insofar as the same are consistent with the terms of such General Order No. 13, and is authorized, (1) to hear and issue directive orders in labor dispute cases and (2) to make rulings on voluntary wage and salary adjustments. The jurisdiction of the Wage Adjustment Board is limited to mechanics and laborers in the building and construction industry in the continental United States and Alaska employed directly upon the site of the work, and its determinations are subject to review by the Board.

(d) *War Department Wage Administration Agency.* Pursuant to appropriate delegations of authority, the Wage Administration Section, Industrial Personnel Division, Headquarters, Army Service Forces (referred to as the War Department Wage Administration Agency when acting under such delegations), acting upon behalf of the Secretary of War, is authorized to rule upon all applications for wage and salary adjustments (insofar as approval thereof has been made a function of the 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) certain Government owned, privately operated facilities of the War Department designated in lists furnished from time to time to the Board by the War Department Wage Administration Agency. The chiefs of the technical services are responsible, respectively, for (i) designating to the War Department Wage Administration Agency the facilities which, in their opinion, should be placed upon such lists and (ii) advising the officers of their services concerned of the names of facilities which have been placed upon such lists. The War Department Wage Administration Agency has also been authorized, subject to certain limitations, to establish wage or salary schedules for civilian employees of the War Department in the various Government owned, Government operated installations located in the Territory of Hawaii. The delegations of the Board, contained in the Board's General Orders Nos. 14 and 37, are set forth in full at §§ 809.993 et seq.

§ 809.952–4 *When specific approval of Board is not required.* Reference is made to the General Orders of the Board for a definition of certain exceptions to the requirements of the stabilization program and of certain increases in wages and salaries subject to the jurisdiction of the Board which may be made without other or specific approval.

§ 809.952–5 *Preliminary inquiries as to wage and salary adjustments within the jurisdiction of the Board.* 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 Divisions of the United States Department of Labor in the region for a ruling as to whether the proposed adjustment may be made without Board approval. If said ruling is that the proposed wage or salary adjustment may be made without approval of the Board, the ruling shall be deemed to be authorative and shall remain in effect unless reversed. (For a list of the addresses of such officers, see § 809.991.)

§ 809.952–6 *Application for the Board's approval of voluntary adjustments.* Generally, each application for the Board's approval of a proposed voluntary wage or salary adjustment shall be filed with the nearest office of the Wage and Hour and Public Contracts Divisions of the United States Department of Labor in the region where the employer maintains his principal place of business. All applications shall be made upon appropriate forms prepared by the Board. (For a list of such offices see § 809.991.)

§ 809.952–7 *Procedure in dispute cases involving wages or salaries subject to the jurisdiction of the Board.* A dispute case arises out of a disagreement as to wages or working conditions, or both. The National War Labor Board usually accepts dispute cases only on certification by the U. S. Conciliation Service although the Board also has power to take cases on its own initiative. A dispute case is referred to the New Case Committee of the National Board which determines whether the case shall be retained by the National Board for disposition or referred to the appropriate regional board or industry commission for decision. Upon certification of the case to a regional board, the case is considered by a New Case Committee of the regional board and prepared for a hearing. The Committee designates a tripartite panel to hear the case or, if the parties agree, a single person is appointed. Upon conclusion of the hearing by the panel or individual, the findings are reported to the regional board which makes a decision on the panel's findings and recommendations. Arguments may be heard if the panel's report is not unanimous. A re-

gional board may certify to the National Board any case or any question in the case upon which it desires a National Board ruling. Directive orders are issued to the parties when made, except that issuance of any provision of an order, 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 an event a copy of the directive order and the request of stay, together with a statement of the reason for such request is transmitted to the National Board. Reconsideration of rulings and orders of regional boards may be had upon filing of petition under established rules. For a statement of procedure to be followed by War Department personnel in cases before the Board (or before agencies upon which it has conferred appropriate authority) in which the War Department has an interest, reference is made to § 809.963.

§ 809.954 *Jurisdiction and organization of the Bureau of Internal Revenue with respect to the stabilization program.*

§ 809.954–1 *Jurisdiction of the Commissioner.* The Commissioner is authorized to determine, under regulations prescribed by him with the approval of the Secretary of the Treasury, whether any salary payments (other than those under the jurisdiction of the Board, the War Food Administrator or the National Railway Labor Panel, as the case may be, as specified in §§ 809.922–1, 809.956 and 809.957) are made in contravention of the act or any regulations or rulings promulgated thereunder.

§ 809.954–2 *Salary Stabilization Unit.* There has been established within the Bureau of Internal Revenue, but independent of all other units therein, a Salary Stabilization Unit which, generally, is charged with the responsibility of exercising the Commissioner's authority and performing his duties with respect to the stabilization program. The Salary Stabilization Unit functions, generally, through Salary Stabilization Regional Offices. The head of the regional office having jurisdiction of any application is authorized to approve or disapprove it for the Commissioner, wholly or in part, and his decision is deemed to be that of the Commissioner unless and until modified or reversed as provided in the Commissioner's regulations. (For a list of such regional offices, see § 809.992.)

§ 809.954–3 *Delegation to War Department Wage Administration Agency.* The Wage Administration Section, Industrial Personnel Division, Headquarters, Army Service Forces (referred to as the War Department Wage Administration Agency when acting under the authority hereinafter mentioned) acting on behalf of the Secretary of War, has been authorized, subject to certain conditions, to rule upon all applications for salary adjustments (insofar as approval thereof has been made a function of the Commissioner) covering civilian employees within the continental limits of the United States and Alaska employed by (a) the War Department, (b) the Army Exchange Service, and (c) certain Government owned, privately operated facilities of the War Department named in lists furnished from time to time to the Commissioner by the War Department Wage Administration Agency. The chiefs of the technical services are responsible, respectively, for (1) furnishing the War Department Wage Administration Agency with the names of facilities which, in their opinion, should be placed upon such lists and (2) advising the officers of their services concerned of the names of facilities which have been placed on such lists. The Commissioner's delegation to the War Department Wage Administration Agency is set forth in full at § 809.993–3.

§ 809.954–4 *When specific approval of the Commissioner is not required.* Reference is made to the regulations of the Commissioner for a definition of certain exceptions to the requirements of the stabilization program and of certain increases in salaries subject to his jurisdiction which may be made without other or specific approval.

§ 809.954–5 *Where applications for approval of salary increases and decreases and salary rate schedules and rulings respecting exemptions within the jurisdiction of the Commissioner shall be filed.* Generally such an application shall be filed with the Salary Stabilization Regional Office in whose territorial jurisdiction the main office or principal place of business of the employer is located. (For a list of such offices see § 809.992.) Such application shall be filed on forms prescribed by the Commissioner and shall contain such information as he may require. If, however, the Commissioner has delegated to any other officer or agency (e. g. the War Department Wage Administration Agency, see § 809.954–3) his authority to approve or disapprove adjustments in salaries, then applications respecting 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.

§ 809.956 *Jurisdiction of the War Food Administrator with respect to the stabilization program.* The War Food Administrator, subject to certain limitations, is authorized to determine whether any salary or wage payments to agricultural labor are made in contravention of the act or any rulings, orders or regulations promulgated thereunder. The authority of the War Food Administrator does not extend to 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.

§ 809.957 *Jurisdiction of the National Railway Labor Panel with respect to the stabilization program.* Special procedures with respect to wage and salary adjustments for employees subject to the Railway Labor Act are established by Executive Order No. 9299.

§ 809.958 *When approval of Economic Stabilization Director required.* All wage or salary adjustments which may furnish the basis either to increase price ceilings or to resist otherwise justifiable reductions in price ceilings or which may increase production costs above the level prevailing in comparable plants or establishments, require the ultimate approval of the Economic Stabilization Director.

§ 809.959 *Territorial application.* The Board, the Commissioner and the Administrator have been authorized, under certain circumstances, to exempt from the operation of the stabilization program wages or salaries paid in any territory or possession of the United States. Pursuant to this authority, the Commissioner and the Board have provided that stabilization control shall not apply to salaries and wages under their jurisdiction, respectively, in any territory or possession of the United States, except Alaska and Hawaii.

§ 809.960 *Criminal penalties.* Section 11 of the act privides as follows:

> Any individual, corporation, partnership or association wilfully violating any provision of this Act, or of any regulation promulgated thereunder, shall, upon conviction thereof, be subject 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.

§ 809.961 *Effect of unlawful payments (determination of costs under Government contracts and other aspects of violations).* Upon determining that a wage or salary payment has been made by an employer in contravention of the act or the regulations, rulings or orders promulgated thereunder (see § 809.962 (e)), the Board, the Commissioner or the Administrator, as the case may be, pursuant to § 4001.15 of the regulations of the Director, may certify to the Departments and agencies of the government an amount to be disregarded as hereinafter set forth. In case of such certification to the War Department, the amount so certified will be disregarded by the appropriate agency of the War Department in determining costs or expenses of such employer for such of the following purposes as may be pertinent:

(a) For the purpose of any law or regulation, including the Emergency Price Control Act of 1942, or any maximum price regulation thereunder;

(b) For the purpose of calculating deductions under the revenue laws of the United States; and

(c) For the purpose of determining costs or expenses under any Government contract.

§ 809.962 *Responsibility of War Department personnel with respect to violations as defined by Joint Statement of the Board and the Commissioner.* (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 (i. e. the President's Wage Stabilization Order) or the regulations promulgated thereunder. The technical services are neither required nor authorized to determine that a prime contractor has violated the Executive Order or the Regulations thereunder (see, however, Renegotiation Regulations par. 382.3 (§ 1603.382–3 of Title 32) and the Army Renegotiation Manual par. 382.4.

(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 service 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 §§ 809.990 and 809.992 for lists 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 the contract.

(iii) Résumé 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) 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 in accordance with § 809.963.

(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 or of this subpart with respect to reimbursement of contractors in accordance with other laws and regulations are in no way affected by this subpart.

§ 809.963 *War Department relations with the National War Labor Board.* (a) For the purpose of coordinating War Department policy and action, the Industrial personnel Division, Headquarters, Army Service Forces will process all cases coming before the National War Labor Board in which the War Department has an interest. No other War Department representative or agency will make any statements of fact or recommendation, formally or informally, to the National War Labor Board or to any of its personnel respecting the merits of any case pending before that Board.

(b) No War Department representative or agency will make any statement of fact or recommendations to any regional war labor board or regional or area war labor panel or to any of their personnel respecting the merits of any cases pending before such board or panel except that in pending wage cases affecting War Department procurement, War Department representatives, through appropriate service command channels or as may otherwise be authorized, may request that such cases be expedited and may make statements of fact relating solely to the following issues:

(1) The importance of the product or service affected to the War Department procurement program,

(2) Where requested, the probable cost to the War Department resulting from any contemplated wage adjustment, and

(3) Whether production is on schedule, and if not, the extent to which manpower shortages, high turnover, or excessive absenteeism are a contributing factor.

(c) Certain "rare and unusual cases" specially involving "the critical needs of war production" have been excepted from the establishe l wage stabilization criteria when these needs are threatened by a manpower problem, the only solution to which entails the approval of wage rates or wage adjustments which will not be permissible under those criteria (see § 809.951–2 (a) (1) (iii)). Special procedures have been designed for the processing of these "rare and unusual" cases and adopted by the National War Labor Board, the War Production Board, the War Manpower Commission, the War Department, and other procurement or interested Government agencies. The Industrial Personnel Division, Headquarters, Army Service Forces, has been designated as the sole War Department agency with authority to certify and process such cases in which the War Department has an interest.

(d) (1) In the event that any War Department representative or agency believes that a case pending before the National War Labor Board or before an area or regional war labor board or panel should be considered within the "rare and unusual" exception, such representative or agency will advise the Industrial Personnel Division, Headquarters, Army Service Forces, and will forward to that Division, through appropriate channels, a report containing the factual foundation for its opinion. This report should include information respecting:

(i) The present wage rates, the wage adjustment being requested, and a complete statement of the nature of the request pending before the Board.

(ii) The relative importance of the product or service in the total procurement program;

(iii) The relative importance of the particular facility and the existence and location of alternative facilities, if any;

(iv) The relation of present deliveries to production schedules;

(v) The extent to which labor supply is the limiting factor in production;

(vi) The extent to which the wage schedule is responsible for labor supply problems in this facility; and

(vii) Any other pertinent information.

(2) In no event will any representative or agency of the War Department, other than the Industrial Personnel Division, Headquarters, Army Service Forces, state or recommend to the National War Labor Board that a case should be regarded as "rare and unusual."

(e) Nothing in this section shall be construed to affect the relationship between the War Department Wage Administration Agency and the Board arising out of General Orders Nos. 14 and 37 of the Board (see § 809.952–3 (d)).

SUBPART I—FORTY-EIGHT HOUR WORKWEEK

§ 809.968 *Executive Order No. 9301.* The following is the full text of Executive Order No. 9301 issued under date of February 9, 1943 (8 F.R. 1825):

EXECUTIVE ORDER 9301

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 Manpower 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 Manpower 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 Manpower 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,
Feb. 9, 1943.

§ 809.969 *Regulations of War Manpower Commission.* 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 Director 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.

§ 809.970 *Designation of areas subject to E.O. 9301.* 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.

§ 809.971 *Designation of activities subject to E. O. 9301.* (a) 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 non-ferrous 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, and 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 and wood pulp mills.

(b) 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.

§ 809.972 *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 obligations 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 overtime 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 (see § 809.952–6).

§ 809.973 *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.

§ 809.974 *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 technical 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 technical 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 technical 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 technical service involved to the Director, Industrial Personnel Division.

§ 809.975 *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:

(a) 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.

(b) 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.

(c) Accordingly, the following policy has been adopted by the War Department and Navy Department:

(1) 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.

(2) 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.

(3) 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.

(4) 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.

§ 809.975–1 *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.

§ 809.975–2 *Procedure for adjustment.* Requests for adjustment must be presented to the contracting officer of the technical 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 technical 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.

§ 809.975–3 *Nature of showing required for adjustment.* No adjustment will be made without a proper showing which must include the following:

(a) 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.

(b) The amount of the increased labor costs incurred because of premium overtime rates involved in compliance with the minimum wartime workweek.

(c) The amount of savings, through reduced overhead costs or otherwise, resulting from the adoption of the longer workweek.

(d) 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.

§ 809.975–4 *Authority to execute supplemental agreements.* Whenever the chief of the technical service, or such person within the technical service to whom the authority so to act has been delegated by the chief of the technical service, shall find in the light of the showing made by the contractor and verified to the extent feasible within the technical service:

(a) 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 subcontractor of a fair profit on the contract, or subcontract, and

(b) That it is appropriate, in the light of all the facts known to him, or reason-

ably 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 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 J—STATE LABOR LEGISLATION

§ 809.977 *War Department policy respecting State labor legislation.* It is the policy of the War Department to require its contractors to comply with all applicable State labor statutes, and the rules and regulations promulgated thereunder. This requirement applies even where a contractor, by reason of operating a government-owned facility located on territory owned by the United States, might otherwise be exempt.

§ 809.978 *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:

§ 809.978–1 *Procedure for requests.* (a) 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.

(b) In the event that the contractor's request for relaxation is denied, the technical service concerned may assist the contractor by supporting the request for relaxation by direct representation to the appropriate State official.

(c) The labor branches of the service commands may be called upon to render staff assistance relative to the foregoing.

(d) 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:

(1) Provision or provisions of law the relaxation of which is required.

(2) Extent of relaxation required.

(3) Criticalness or relative scarcity of the material.

(4) Circumstances necessitating the relaxation (such as, for example, a shortage in the local supply of skilled labor).

(5) Remedial action being taken by the manufacturer (such as, for example, training and upgrading).

(6) Efforts previously made to obtain the relaxation.

§ 809.978–2 *Refusal of requests.* Requests for assistance in obtaining a relaxation will be refused in cases in which:

(a) The contractor has not already requested the proper State authorities for such relaxation.

(b) Such relaxation is clearly unnecessary to maintain full production.

(c) 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—EMPLOYMENT OF ALIENS

§ 809.980 *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 subcontractors 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 subcontractors 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 subcontractors may employ aliens as freely as American citizens except under the specific conditions specified in paragraph 4, (a) and (b), above.

III. APPLICATION OF ANTIDISCRIMINATION CLAUSE

6. Pursuant to Executive Order No. 8802, dated June 25, 1941, an antidiscrimination clause (sometimes called "nondiscrimination" 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 noncitizens. For contractors or subcontractors of the War and 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 Department 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 Commission.

§ 809.980–1 *Form of contract provision.* For the form of provision relating to employment of aliens required by regulation to be included in all top secret, secret, confidential or restricted contracts, see § 803.337.

§ 809.981 *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 May 27, 1943 (see Subpart L 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.

§ 809.982 *Procedure.* It is to be noted that under Article IV of the Joint Statement set forth in § 809.980 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 L—FAIR EMPLOYMENT PRACTICE

§ 809.984 *Executive Order No. 9346.* (a) Executive Order No. 9346 issued under date of May 27, 1943 (sometimes hereinafter referred to as the order), reaffirmed 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 declared it to be "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." In addition the order provided 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.

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.

(b) The order also established, in the Office for Emergency Management of the Executive Office of the President, a Committee on Fair Employment Practice, and authorized this Committee, among other things, to formulate policies to achieve the purposes of the order, to receive and investigate complaints of discrimination forbidden by its terms and to promulgate such rules and regulations as might be appropriate or necessary, to carry out the provisions of the order.

(c) The "anti discrimination" clause to be included in War Department contracts, in compliance with the order, may be found in § 803.325.

§ 809.985 *Interpretations of Executive Order No. 9346 by the Committee on Fair Employment Practice.* Pursuant to the authority vested in it by Executive Order No. 9346, the Committee on Fair Employment Practice has issued the following interpretations under the order:

(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.

(10) The non-discrimination clause is not required in contracts renewed pursuant to an option to renew in accordance with the terms, conditions and provisions contained in the original contract.

(11) The requirement that parties to contracts with the Government of the United States (or agencies of said Government) include a non-discrimination clause "in all subcontracts" is not applicable to lessors of space in buildings except in cases where the Government of the United States (or any agency thereof) is the only tenant involved, or unless a sub-contract is entered into solely for the purpose of performing an obligation (or obligations) imposed by the Government lease.

(12) The requirement that parties to contracts with the Government of the United States (or agencies of said Government) in-

clude a non-discrimination clause "in all sub-contracts" is applicable only in those cases in which the sub-contract is entered into solely for the purpose of enabling the prime contractor to fulfill an obligation (or obligations) imposed by the Government contract.

§ 809.986 *Amendment of contracts and subcontracts not containing anti-discrimination clauses.* (a) The contract clause set forth in § 803.325 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 (b) and (c).

(b) 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 § 803.325, such supplemental agreement will provide that the contract or contracts are modified to include such a clause.

(c) Normally the provisions of paragraph (b) of this section will not be applicable to renegotiation agreements executed pursuant to the Renegotiation Act referred to in Procurement Regulation No. 12 (Part 812). If, however, the renegotiation agreement expressly purports to modify the terms of specified existing contracts with respect to future deliveries, the provisions of paragraph (b) of this section 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 § 803.325.

(d) When a prime contract is amended in accordance with paragraphs (a) and (b) of this section, 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) (1) of the clause set forth in § 803.325.

§ 809.987 *Employment of aliens.* See Subpart K of this part relating to employment of aliens, particularly § 809.981.

SUBPART M—MISCELLANEOUS

§ 809.989 *Division engineers; addresses and territorial jurisdictions.* Following is a list of the addresses of the Division Engineers of the Corps of Engineers with an indication of the service command in which each is located. The territorial jurisdiction of the Division Engineers is coextensive with that of the service commands.

New England Division: 75 Federal Street, Boston 10, Mass. First Service Command.

North Atlantic Division: 21st Floor, 270 Broadway, New York 7, N. Y. Second Service Command.

Middle Atlantic Division: Room 909, 101 E. Fayette Street, Baltimore 2, Md. Third Service Command.

South Atlantic Division: 50 Whitehall Street, P. O. Box 4114, Atlanta 2, Ga. Fourth Service Command.

Ohio River Division: 1120 Huntington Bank Building, Columbus 16, Ohio. Fifth Service Command.

Great Lakes Division: 20 North Wacker Drive, Chicago 6, Ill. Sixth Service Command.

Missouri River Division: Farm Credit Building, 19th and Douglas, Omaha 1, Nebr. Seventh Service Command.

Southwestern Division: Santa Fe Building, 1114 Commerce Street, Dallas 2, Tex. Eighth Service Command.

Pacific Division: 351 California Street, San Francisco, Calif. Ninth Service Command.

§ 809.990 *Regional War Labor Boards; geographical jurisdictions and addresses.*

Region I: Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island. 209 Washington Street, Boston 8, 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. Forty-second Street, New York 17, 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 So. 12th Street, Philadelphia 7, Pa.

Region IV: Virginia, Tennessee, North Carolina, Mississippi, Alabama, Georgia, South Carolina, Florida. P. O. Box 1322, Atlanta, Ga.

Region V: Ohio, Kentucky, West Virginia. Guardian Building, 629 Euclid Avenue, Cleveland 1, Ohio.

Region VI: Illinois, Indiana, Wisconsin, Minnesota, North Dakota, South Dakota. McCormick Building, 332 So. Michigan Avenue, Chicago 4, Ill.

Region VII: Missouri, Arkansas, Kansas, Iowa, Nebraska. 1100 Fidelity Building, 911 Walnut Street, Kansas City 6, Mo.

Region VIII: Texas, Oklahoma, Louisiana. Mercantile Bank Building, P. O. Box 6281, Dallas 2, Tex.

Region IX: Colorado, New Mexico, Utah, Wyoming, Idaho, Montana. 300 Paramount Building, Denver 2, Colo.

Region X: California, Nevada, Arizona. 1355 Market Street, San Francisco 3, Calif.

Region XI: Michigan. Room 230, Penobscot Building, Detroit 26, Mich.

Region XII: Washington, Oregon, Alaska. 1411—4th Avenue, Seattle 1, Wash.

Hawaii: Territorial War Labor Board. Building "E", Iolani Palace Grounds. Honolulu, T. H.

§ 809.991 *Wage and Hour and Public Contracts Divisions of the United States Department of Labor Regional Offices, geographical jurisdictions and addresses of Regional Directors.*

Region I: Massachusetts, New Hampshire, Maine, Vermont, Connecticut, Rhode Island. 294 Washington Street, Boston 8, Mass.

Region II: New York and New Jersey. 341 Ninth Avenue, New York 1, N. Y.

Region III: Pennsylvania and Delaware. 1216 Widener Building, Chestnut and Juniper Streets, Philadelphia 7, Pa.

Region IV: Virginia, West Virginia, Maryland, District of Columbia. 215 Richmond Trust Building, 627 East Main Street, Richmond 19, Va.

Region V: North Carolina, South Carolina, Georgia, Florida. 249 Peachtree Street, N. E., Atlanta 3, Ga.

Region VI: Alabama, Mississippi, Louisiana. 1007 Comer Building, 2nd Ave. and 21st St., Birmingham 3, Alabama.

Region VII: Tennessee and Kentucky. 509 Medical Arts Bldg., Nashville 3, Tenn.

Region VIII: Ohio and Michigan. 4034 Main Post Office, West Third and Prospect Avenue, Cleveland 13, Ohio.

Region IX: Illinois, Indiana, Wisconsin. 222 West North Bank Drive, Chicago 54, Ill.

Region X: North Dakota, South Dakota, Minnesota, Montana. 406 Pence Building, 730 Hennepin Avenue, Minneapolis 3, Minn.

Region XI: Kansas, Nebraska, Iowa, Missouri, Colorado, Wyoming. 911 Walnut Street, Kansas City 6, Mo.

Region XII: Texas, Oklahoma, Arkansas, New Mexico. 1100 Main Street, Dallas 2, Tex.

Region XIII: California, Arizona, Nevada, Washington, Oregon, Idaho, Utah, Hawaii, Alaska. 500 Humboldt Bank Building, 785 Market Street, San Francisco 3, Calif.

Alaska: Territorial Representative. 411 Territorial Post Office Building, Juneau, Alaska.

Puerto Rico: Territorial Representative. P. O. Box 112, San Juan 1, Puerto Rico.

§ 809.992 *Salary Stabilization Regional Offices of the Salary Stabilization Unit, Bureau of Internal Revenue, geographical jurisdictions and addresses.*

Boston: Room 1102, 44 School St., Boston 8, Mass. Serving the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island and Connecticut.

New York: 253 Broadway, New York 7, N. Y. Serving the State of New York and the Fifth Collection District of New Jersey which includes Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Passaic, Somerset, Sussex, Union and Warren Counties.

Philadelphia: Suite 1313, Market Street National Bank Building, NE. corner Market and Juniper Streets, Philadelphia 7, Pa. Serving the State of Pennsylvania and the First Collection District of New Jersey which includes Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Monmouth, Ocean and Salem Counties.

Washington: Room 2523, Internal Revenue Building, Twelfth and Constitution Ave. NW., Washington 25, D. C. Serving the District of Columbia, Puerto Rico and the States of Delaware, Maryland, Virginia, West Virginia and North Carolina.

Atlanta: Room 717, William Oliver Bldg., 32 Peachtree St. NW., Atlanta 3, Ga. Serving the States of South Carolina, Georgia, Florida, Alabama and Tennessee.

Cleveland: Williamson Bldg., 215 Euclid Avenue, Cleveland 14, Ohio. Serving the States of Ohio and Kentucky.

Detroit: Penobscot Bldg., 645 Griswald St., Detroit 26, Mich. Serving the State of Michigan.

Chicago: Utilities Building, 327 South LaSalle St., Chicago 4, Ill. Serving the States of Illinois, Wisconsin, Minnesota, North Dakota, South Dakota and Indiana.

Kansas City: 610 R. A. Long Bldg., 923 Grand Ave., Kansas City 6, Mo. Serving the States of Missouri, Iowa, Nebraska, Kansas and Colorado.

Dallas: 701 Cotton Exchange Bldg., 608 North St. Paul Street, Dallas 1, Tex. Serving the States of Arkansas, Oklahoma, Mississippi, Louisiana, Texas and New Mexico.

Seattle: Room 312, Smith Tower Annex, 157 Yesler Way, Seattle 4, Wash. Serving the States of Washington, Oregon, Idaho, Montana, Wyoming and the Territory of Alaska.

San Francisco: Room 204 Balboa Building, 593 Market St., San Francisco 5, Calif. Serving the States of Nevada, Utah, the Territory of Hawaii and the First Collection District of the State of California which includes Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, Eldorado, Fresno, Glenn, Humboldt, Inyo, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Napa, Ne-

vada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tulare, Tehama, Trinity, Tuolumne, Yolo, and Yuba Counties.

Los Angeles: Suite 902, Subway Terminal Building, 417 South Hill Street, Los Angeles 13, Calif. Serving the State of Arizona and the Sixth Collection District of the State of California which includes Imperial, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara and Ventura Counties.

Honolulu: Room 101, Federal Building, Honolulu 9, T. H.

§ 809.993 *Delegations of authority to War Department.*

§ 809.993–1 *General Order No. 14 of the National War Labor Board.* General Order No. 14, adopted by the National War Labor Board on November 24, 1942, as subsequently amended, reads 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 of the public, who shall act as co-chairmen, 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.

§ 809.993–2 *General Order No. 37 of the National War Labor Board.* The National War Labor Board hereby supplements General Order No. 36 by delegating to the Secretary of War, or to such agency as he may designate, subject to final review by the National War Labor Board, the authority to establish wage or salary schedules for civilian employees of the War Department in the various government-owned, government-operated installations located in the Territory of Hawaii, in accordance with the provisions of the Act of Congress of October 2, 1942, Executive Order 9250 dated October 3, 1942, Executive Order 9328 dated April 8, 1943, the Supplementary Directive of May 12, 1943 and all other Executive orders and regulations issued thereunder, subject to the following limitations:

(a) The June 6, 1944 level of wage and salary rates prevailing in army installations in the Territory of Hawaii shall be maintained in accordance with the directions subsequently set forth in this order.

(b) Exclusive of the Hawaiian Air Depot, the approval of any wage or salary schedules resulting from job reclassifications shall not cause an overall increase in the job rates as weighted by the number of employees in each job classification in all the establishments to which that schedule is applied, to exceed five percent.

(c) Wage rates to be established through job classifications for the Hawaiian Air Depot shall be in conformity with the schedules for other War Department installations established in the Territory.

(d) The rates for any new job classifications subsequently created in any War Department installation shall bear the proper relationship to the rates for immediately interrelated job classifications in that installation.

NOTE: Pursuant to the authority vested in him by General Order No. 37 of the National War Labor Board, the Secretary of War has designated the War Department Wage Administration Agency as the agency to exercise all powers delegated to him in that order. (See § 809.952–3(d).)

§ 809.993–3 *Delegation from the Commissioner of Internal Revenue.* 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 facili-

ties 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 of 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 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 facilities 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.

§ 809.994 *Minimum wage determinations.* Sections 809.994–1 to 809.994–44, inclusive, contain the minimum wage determinations of the Secretary of Labor under the Walsh-Healey Public Contracts Law.

§ 809.994–1 *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 (§ 809.994–34);

(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.

§ 809.994–2 *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.

§ 809.994–3 *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 sub-minimum 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.

§ 809.994–4 *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. March 2, 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 piecework 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, bows 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 over clips 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.

§ 809.994–5 *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 piecework 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.

§ 809.994–6 *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.

§ 809.994–7 *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 other workers in the same occupational classification.

§ 809.994–8 *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—40 cents per hour or $16.00 per week based on a 40-hour week, arrived at either on a time or piece work basis. Effective July 8, 1944.

In Pennsylvania, New Jersey, Delaware, Maryland, District of Columbia, West Virginia, Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota, Iowa, Missouri, Oklahoma, Kansas, Nebraska, South Dakota, North Dakota, Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, California, Oregon and Washington—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.

§ 809.994–9 *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	
Mocassins	

(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 (29 CFR, Cum. Supp., Part 522); Regulations Applicable to the Employment of Handicapped Persons (29 CFR, Cum. Supp., Part 524); Regulations Ap-

plicable to the Employment of Apprentices (29 CFR, Cum. Supp., Part 521); and the Regulations Applicable to the Employment of Handicapped Clients in Sheltered Workshops (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.

§ 809.994–10 *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.

§ 809.994–11 *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.

§ 809.994–12 *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."

§ 809.994–13 *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 is has been determined that sheep-lined aviation helmets and leather aviation helmets come within the purview of the above determination.

§ 809.994–14 *Flint glass industry.* 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.

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.

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.

§ 809.994–15 *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 paragraph (c) 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.

§ 809.994–16 *Fireworks industry.* Commercial fireworks, fusees, flares, and railroad torpedoes.

Date effective. September 8, 1944.

Wage. 40 cents an hour or $16.00 per week for a week of 40 hours, arrived at either upon a time or piece work basis.

§ 809.994–17 *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.

§ 809.994–18 *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.

§ 809.994–19 *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
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
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
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
Chock assemblies
Clubs, test
Cradle assemblies for servicing aircraft parts
Combination workstand-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.

§ 809.994–20 *Bobbinet industry* (See § 809.994–42 (Textile industry).)

§ 809.994–21 *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.
Bale 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.
Tube rounds.
Tubes—boiler.
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.—Note. 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.

§ 809.994–22 *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 piecework basis. Learners may be employed at sub-minimum 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.

§ 809.994–23 *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) *Definition.* 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) *Steel fabric springs.* 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, non-ferrous 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 ecclesiastical 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 piece work 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 piece work 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 piece work basis, for the States of California, Washington, and Oregon.

§ 809.994-24 *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 in 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.

§ 809.994-25 *Photographic supplies industry (excluding motion picture equipment 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): contract 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; dropknife 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 of $16.00 per week of 40 hours, arrived at either upon a time or piece work basis. 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.

§ 809.994-26 *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 § 809.994-25, has been extended to include the blueprint paper coating industry.

Allowances or tolerances. None.

§ 809.994-27 *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.

§ 809.994-28 *Fertilizer industry.* Superphosphates, concentrated superphosphates, and concentrated fertilizer from superphosphates, potash, and ammoniates.

Date effective. July 8, 1944.

Wage. 40 cents per hour or $16.00 per week of 40 hours, arrived at either upon a time or piece-work basis in all States and the District of Columbia other than New Mexico, Colorado, Wyoming, Montana, Idaho, Utah, Arizona, Nevada, California, Oregon, and Washington, in which eleven States the prevailing minimum wage shall continue to be 50 cents an hour or $20.00 per week of 40 hours arrived at either upon a time or piece-work basis, in accordance with the determination of August 15, 1939.

§ 809.994-29 *"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.

(i) Autographic registers may be further described as a machine or device for storing, alining, registering, and issuing copies of hand written records.

(ii) 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.

(iii) 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.

§ 809.994–30 *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 primers, 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.

§ 809.994–31 *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 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.

For all other States and the District of Columbia, 40 cents per hour or $16.00 per week of 40 hours, arrived at either upon a time or piece-work basis. Effective July 8, 1944.

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-finished 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, chip-board, lined boards (box, chip, marble-grained), newsboard, pressboard, red sulphite, tagboard, 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.

§ 809.994–32 *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 $22.50 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.

§ 809.994–33 *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. July 8, 1944.

Wage. 40 cents per hour or $16.00 per week of 40 hours arrived at either upon a time or piece-work basis.

§ 809.994–34 *Uniform and clothing industry*—(a) *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.

(b) *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.

(c) *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.

§ 809.994–35 *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.

§ 809.994–36 *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 lower 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.

(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. July 17, 1944.

Wage. 40 cents an hour or $16.00 per week of 40 hours, arrived at either upon a time or piece-work basis.

Learners may be employed as provided in paragraph (a) of this section.

§ 809.994–37 *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
Collimeters: binocular, octant
Compasses: direction, drafting, hull vehicular, gyroscope
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 noncorrective 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 instuments
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
Testing sets and equipment—Con.
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, airspeed
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 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 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.

§ 809.994–38 *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, mecurial 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

§ 809.994–39 *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 all other States and the District of Columbia, 40 cents per hour or $16.00 per week of 40 hours. Effective July 8, 1944.

§ 809.994–40 *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.

§ 809.994–41 *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.

§ 809.994–42 *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 paragraphs (g) and (h) of this section; except the chemical manufacturing of synthetic fiber and such related processing of yarn as is conducted in establishments manufacturing synthentic fiber;

(b) The manufacturing of batting, wadding, or filling and the processing of waste from the fibers enumerated in paragraph (a) of this section;

(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, lunch-cloths 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) of this section, containing not more than 45 percent 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 percent by weight of wool or animal fiber (other than silk), with any of the fibers designated in paragraph (a) of this section, 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.

§ 809.994–43 *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) (a) Heavy, industrial, and fine chemicals, including compressed and liquefied gases, and insecticides and fungicides (1939 Census of Manufactures industries Nos. 999, 985, 933 [1])

(b) 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
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)
Phenylcmthone
Photographic chemicals
Polish: auto, metal, stove
Polystyrene
Potash
Potassium perchlorate
Pyrethrum concentrate extract
Pyrethrum (insect powder)
Repellants: 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 23, 1942.

Wage. Arrived at either upon a time or piece work 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.

§ 809.994–44 *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 pieceswork 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 pieceswork 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.

[1] Except water-proofing compounds.

[Procurement Reg. 10]

PART 810—PLANT FACILITIES EXPANSIONS

SUBPART A—POLICY

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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 measures in the following sections will be observed in order to conserve critical materials.

§ 810.1001–1 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.

§ 810.1001–2 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.

§ 810.1001–3 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.

§ 810.1001–4 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.

§ 810.1001–5 Unless otherwise specifically provided, compliance with any provision of this part or of any amendment therto 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.

§ 810.1003a *Costs of removing and dismantling Government-owned facilities.* (a) The obligation to perform the operation of (1) dismantling Government owned facilities (and preparing them for shipment) and (2) removing the facilities from the contractor's plant, and the question of whether either or both of such operations shall be performed at Government expense, are not uniformly treated in War Department contracts. This is largely the result of periodic changes in standard forms. Many facilities articles and leases obligate the contractor to perform the operation of dismantling facilities at his own expense but obligate the Government to remove the facilities at the Government's expense. A few facilities contracts obligate the contractor to perform the operation of dismantling but provide for the reimbursement of his costs of doing so. Some contracts contain provisions obligating the Government to remove facilities from the contractor's plant or providing that the contractor's expense of removal will be reimbursed to it by the Government, and are silent on the dismantling, in which case "remove" and "removal" may be fairly interpreted to include dismantling.

(b) With the exception of the few instances in which it is necessary to comply with express covenants for reconversion, it is the policy of the War Department (see §§ 810.1003 and 802.238–2) that the Government will not bear any part of the cost of reconverting the contractor's plant to commercial production. In connection with the dismantling of facilities and their removal from the contractor's plant this policy is interpreted to prohibit reimbursement of the contractor (or the assumption by the Government of the obligation to perform the work) for any items of expense relating to the restoration, repair, or alteration of the premises in order to correct a condition which was created by or resulted from the installation of the facilities. (For example, reimbursement will not be made for the cost of removal of footings or filling of pits which were constructed for the installation of the facilities. Similarly, reimbursement will not be made for the costs of repairing or filling holes or apertures in floors, walls or roof which were made as an incident to installation and remain after dismantling and removal.)

(c) It is recognized, however, that incidental structural damage may in some cases be caused to the premises by the operations of dismantling the facilities or removing them from the plant. Wherever such damage is directly and intentionally caused in the process of performing an operation which the Government is obligated by the terms of the particular contract to perform (or for the performance of which the Government is obligated to reimburse the contractor) the obligation will be interpreted to include the repair of such incidental damage at Government expense. (For example, assuming the Government is obligated by the contract to remove facilities or to reimburse the contractor for doing so, the obligation would include the expense of opening or destruction and the subsequent rebuilding of a wall, partition or floor in cases where the removal of the facilities, as distinguished from their dismantling, required such opening or destruction. In case the contract obligates the Government to dismantle the facilities or to reimburse the contractor for doing so, the obligation would include the expense of the repair of any structural damage directly and intentionally caused in the process of dismantling.)

§ 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 § 802.238–1) 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.*

§ 810.1004a–1 *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:

(a) 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.

(b) 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.

(c) 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 paragraph (b) 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.

§ 810.1004a–2 *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.

§ 810.1004a–4 *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.

§ 810.1004a–5 *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.

(a) 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

(b) 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

(c) 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.

§ 810.1004a–6 *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 § 810.1004a–1 (c)) 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 § 810.1004a–1 (c) is to provide for the effective use of machine tools and other equipment (a) during the period of circularization and pending determination of its appropriate disposition, and (b) during intervals in war production in the plant of the contractor having custody of such machine tools and equipment.

SUBPART E—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, as determined by the following sections.

§ 810.1007–1 *Maintenance of facilities.* 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;

§ 810.1007–2 *Retention of title.* 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;

§ 810.1007–3 *No material alteration.* 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;

§ 810.1007–4 *Priority to Government orders.* Requirement that the contractor give priority to Government orders during said period;

§ 810.1007–5 *Depreciation or amortization.* 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;

§ 810.1007–6 *Release from requirements.* 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 sections 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 §§ 810.1008–3, 810.1010–2 and 810.1010–3, 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:

(a) Use of Expediting Production Funds, or

(b) 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.

§ 810.1008–1 *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.

§ 810.1008–2 *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.

§ 810.1008–3 *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 § 810.1009 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 and 810.1008–3 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 §§ 810.1010–2 and 810.1010–3 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.

(a) Name and location of project.

(b) Name and address of operator.

(c) Product and production rate to be created by this project.

(d) 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.

(e) General description of proposed construction or rehabilitation, if any. For new construction, state number of buildings and approximate floor space of each.

(f) Labor information as follows:

(1) Current employment in the entire plant.

(2) Expected peak employment as the result of expansions previously authorized and now under way, excluding this proposal.

(3) Labor presently engaged on production of item for which expansion is requested.

(4) 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.

(g) Maximum additional power required, in kilowatts, and sources of supply.

(h) Additional fuel required, quantity, and type.

(i) Statement of adequacy of water, sewage disposal, rail and highway transportation, and housing.

(j) Brief reasons for selection of this facility or site.

(k) 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.

(l) Statement of requirements for item to be produced and existing capacity for such production. Include under this heading:

(1) Total requirements for each year 1944 and 1945.

(2) List of existing producers, including those in process of expansion.

(3) Scheduled 1944 production from each.

(4) Maximum monthly capacity of each facility and month when that capacity will be reached.

(m) 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.

(n) (1) Estimated date of initial operation.

(2) Estimated date of completion of construction.

(3) Estimated date of full operation.

§ 810.1009–1 *Supplying missing information.* 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.

§ 810.1009–2 *Approval of applications.* Except for the projects of the Army Air Forces (see §§ 810.1010–2 and 810.1010–3), all applications by the technical services must be approved by the Director, Production Division, Headquarters, Army Service Forces.

§ 810.1009–3 *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 § 810.1008 for larger projects need not be furnished, but the following information will be furnished with respect to each project covered by the memorandum:

(a) Name and location of project.

(b) Total cost, including breakdown of cost into construction, machinery and equipment, etc.

(c) Purpose of project.

(d) Adequate information to establish essentiality.

§ 810.1010 *War Production Board clearance.* Except as provided in § 810.1011, 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.

§ 810.1010–1 *Procedure for obtaining approval of the Facilities Committee.* The following procedure is established for all projects requiring approval by the Facilities Committee:

(a) 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 Facilities Committee to expedite action on proposals which have been submitted.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

§ 810.1010–2 *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.

§ 810.1010–3 *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.*

§ 810.1011–1 *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 Division, Headquarters, Army Service Forces, except as indicated under § 810.1010–3.

§ 810.1011–2 *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:

(a) 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;

(b) The necessity for such continuing capital expenditures; and

(c) 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 § 810.1010–3, shall be subject to approval by the Division. Approval of the War Production Board of such application is not required, regardless of the amount.

§ 810.1011–3 *Conditions of approval.* Approval of applications for continuing capital expenditures shall be subject to the following terms and conditions:

(a) 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;

(b) 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;

(c) 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.

(d) 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 § 810.1008–3 above regardless of the other provisions of this section.

(e) 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 paragraphs (a) through (d) 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 § 810.1010–3 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 § 823.304 (b) except those which are (1) written on a standard form of contract for lease of equipment (see § 803.304–1), 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 sections.

§ 810.1016–1 *Transfer of authority to issue certificates to War Production Board.* Prior to December 17, 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."

§ 810.1016–2 *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 October 5, 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 October 5, 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 December 17, 1943, describing facilities, the beginning of the construction, reconstruction, erection, installation, or date of acquisition of which was prior to October 5, 1943. All other applications for certificates are to be filed with and pursuant to regulations of the War Production Board.

§ 810.1016–3 *Automatic ineligibility.* Any application for a necessity certificate which was filed after April 5, 1944 for facilities which were acquired prior to October 5, 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 October 5, 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, 3 CFR 1943 Supp.)

§ 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 Part 910 of Title 32. Copies of such regulations may be obtained from the War Production Board.

§ 810.1018 *Policy and procedure.* Sections 810.1018–1 through 810.1018–4, inclusive, summarize the policy and procedure with regard to Certificates of Necessity as prescribed in the War Production Board regulations referred to above. Sections 810.1018–5 and 810.1018–6, inclusive, set out the procedure within

the War Department except with regard to applicants with whom the Army Air Forces are principally concerned.

§ 810.1018–1 *General.* Certificates of Necessity will be issued only where the facilities to be constructed or acquired are (a) clearly necessary to the war effort and (b) 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.

§ 810.1018–2 *Applications for certificates.* Applications for Certificates of Necessity, from and after December 17, 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.

§ 810.1018–3 *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.

§ 810.1018–4 *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.

§ 810.1018–5 *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.

§ 810.1018–6 *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.

§ 810.1019–1 The need for this policy was emphasized by the Under Secretary of War on August 14, 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.

By a similar memorandum dated May 8, 1945, the Under Secretary of War has directed that, in view of the unconditional surrender of the German forces in Europe, particular attention be given to the foregoing provision that only in extraordinary cases will an affirmative recommendation for the issuance of a certificate be made.

[Procurement Reg. 11]

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SUBPART A—MARKINGS OF CONTAINERS

§ 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.

§ 811.1102–1 *Specifications of Interstate Commerce Commission.* Cylinders for compressed gases must be made under specifications of the Interstate Commerce Commission. Deviations from these specifications are permitted in certain cases. Those specifications require identification of the cylinders by a serial number and by an identification symbol.

§ 811.1102–2 *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.

§ 811.1102–3 *Identification symbol.* The registered identification symbol of the War Department is WD.

§ 811.1102–4 *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 § 811.1102–2. 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.

§ 811.1102–5 *Markings on cylinders.* Ordinary markings for a cylinder are illustrated by the following example:

ICC–3A480 (Specification mark)
KM1234H (Serial No.)
WD (Symbol)

Any special markings desired on cylinders are permissible but must be specified as "additional marks" and must not interfere 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.

§ 811.1102–6 *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.

§ 811.1102–7 *Types of cylinders*—(a) *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.

(b) *Chlorine.* Cylinders for chlorine will be type ICC–3A480.

(c) *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.

(d) *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.

(e) *Acetylene.* Cylinders for acetylene will be of type ICC–8.

(f) *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.

(g) *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.

(h) *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 § 811.1102–5.

§ 811.1102–8 *System of serial numbers.* The use of serial numbers, together with letters prefixed and suffixed thereto will conform with the following:

(a) *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.

(b) *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.

(c) *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.

(d) *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.

§ 811.1102–9 *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:

(a) 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.

(b) 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 § 811.1102–1); also statement that the

symbol WD has been applied. Example of such marking is as follows:

Original marks	*Added marks*
ICC-3A2015	WD
75678	
XYZ	

(c) 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	WD
17652	TF1234K
XYZ	

(d) 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.

(e) 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 paragraphs may be omitted.

§ 811.1102-10 *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.*

§ 811.1109-1 *General.* Under the Lend-Lease Act (55 Stat. 31) and the International Reciprocal Aid Agreements under the Act (see §§ 811.1111 and 811.1111-1 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 the war purposes and for the duration of the war.

§ 811.1109-2 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 § 811.1109-1 for use by our Allies should be on the same basis as procurement for such use by the United States.

§ 811.1109-3 Contractors who would be interested should be advised of the fact that under the Agreements referred to in §§ 811.1111 and 811.1111-1 below, licenses under United States patents and applications for patents owned by nationals of the signatories to the said Agreements can be secured.

§ 811.1109-4 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.*

§ 811.1110-1 *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).

§ 811.1110-2 *Terms of agreement.* The following is a summary of the terms of the agreement.

(a) 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.

(b) Each government will bear the cost of the procurement from its own nationals.

(c) All patent rights so acquired will be for the purposes of and until the termination of the war only.

(d) 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.

(e) The agreement is deemed to have been in effect and operation as from January 1, 1942.

(f) 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.

(g) Each government agrees to take such steps as it deems practicable to ensure the appropriate degree of military secrecy in manufacture and use.

(h) License agreements or other contractual obligations existing on January 1, 1942 are not deemed to be within the scope of the agreement.

(i) 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 § 811.1110-9 below.

§ 811.1110-3 *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:

(a) 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 § 811.1110-10 below.

(b) The International Division will refer the request to the appropriate technical service for procurement. Such procurement shall be effected pursuant to §§ 811.1103-2 and 811.1110-6 of this and otherwise, as may be directed by the chief of such technical service.

(c) 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.

(d) 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).

(e) A form of license to be used in procuring items under the agreement, together with certain conditions as to its use, is set forth in a Resolution adopted October 7, 1944, by the Joint British-American Patent Interchange Committee. Copies of this resolution may be obtained from the Legal Branch, Office of the Director of Matériel, Headquarters, Army Service Forces. Licenses substantially deviating from such form, or the conditions specified, will be cleared with the Legal Branch.

(f) The transfer of technical information to the United Kingdom government under the agreement is governed by the provisions of War Department Memorandum W 380-44, dated February 25, 1944, as amended July 24, 1944.

§ 811.1110-4 *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:

(a) 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.

(b) 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 § 811.1110–10.

(c) The International Division will follow up the request and arrange for the delivery to the requesting technical service of the item requested.

§ 811.1110–5 *Handling of requests for aeronautical items.* Requests by the United Kingdom and by the United States for aeronautical items will be handled as provided in §§ 811.1110–3 and 811.1110–4 except that the duties therein assigned to the Director, International Division, Headquarters, Army Service Forces will be performed by the Chief, International Branch, Matériel Division, Office of Assistant Chief of Air Staff, Matériel and Services, Headquarters, Army Air Forces.

§ 811.1110–6 *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 Division, Office of The Judge Advocate General.

§ 811.1110–7 *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.

§ 811.1110–8 *Questions of policy or procedure under agreements.* All questions of policy or procedure arising under the agreement as well as under the agreement referred to in §§ 811.1111 and 811.1111–1 below, shall be referred to the Director, Purchases Division, Headquarters, Army Service Forces.

§ 811.1110–9 *Notice of claim of infringement.* As stated in § 811.1110–2 (i), above, prompt notice of any claim of infringement should be given (a) to the Director, International Division, Headquarters, Army Service Forces, or to the Chief, International Branch, Matériel Division, Office of the Assistant Chief of Air Staff, Matériel and Services, Headquarters; Army Air Forces, as the case may be, for the purposes specified in § 811.1110–2 (i), and (b) to the Chief, Patents Division, Office of The Judge Advocate General for record purposes.

§ 811.1110–10 *Form of request by the United States to the United Kingdom.* The sample of the form referred to in the foregoing § 811.1110–4 (b) 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:

LEND-LEASE AGREEMENTS	Date
Australia	[1]
Belgium	June 16, 1942
Bolivia	Dec. 6, 1941
Brazil	Mar. 3, 1942
Canada	[2]
Chile	Mar. 2, 1943
China	June 2, 1942
Colombia	Mar. 17, 1942
Costa Rica	Jan. 16, 1942
Cuba	Nov. 7, 1941
Czechoslovakia	July 11, 1942
Dominican Republic	Aug. 2, 1941
Ecuador	Apr. 6, 1942
El Salvador	Feb. 2, 1942
Ethiopia	Aug. 9, 1943
French Committee of National Liberation [3]	Sept. 25, 1943
Greece	July 10, 1942
Guatemala	Nov. 16, 1942
Haiti	Sept. 16, 1941
Honduras	Feb. 28, 1942
Iceland	Nov. 21, 1941
Liberia	June 8, 1943
Mexico	Mar. 18, 1943
Netherlands	July 8, 1942
New Zealand	[1]
Nicaragua	Oct. 16, 1941
Norway	July 11, 1942
Paraguay	Sept. 20, 1941
Peru	Mar. 11, 1942
Poland	July 1, 1942
United Kingdom	Feb. 23, 1942
U. S. S. R.	June 11, 1942
Uruguay	Jan. 13, 1942
Venezuela	Mar. 18, 1942
Yugoslavia	July 24, 1942

RECIPROCAL AID AGREEMENTS	
Australia	Sept. 3, 1942
Belgium	Jan. 30, 1943
French Committee of National Liberation [3]	Sept. 3, 1942 Sept. 25, 1943
Liberia	Apr. 10, 1944
Netherlands	June 14, 1943
New Zealand	Sept. 3, 1942
United Kingdom	Sept. 3, 1942

[1] No master lend-lease agreement has been concluded with either Australia or New Zealand, but in the reciprocal aid agreements entered into with these countries, they accepted the principles of the lend-lease agreement with the United Kingdom as applicable to their lend-lease relations with the United States.

[2] In an exchange of notes dated November 30, 1942, Canada accepted the underlying principles of Article VII of the master agreement.

[3] Territory under the jurisdiction of the French National committee was declared eligible to receive lend-lease aid on 11 November 1941, and a reciprocal aid agreement was entered into with the Committee on 3 September 1942. French North and West Africa were declared eligible to receive lend-lease aid on 13 November 1942. On 25 September 1943, a lend-lease modus vivendi agreement governing lend-lease aid and reciprocal aid was entered into with the French Committee of National Liberation, successor to the French National Committee and to the Haut Commandement en Chef Civile et Militaire established in French North and West Africa after the events of November 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, 24 August 1942; Executive Agreement Series No. 268.

§ 811.1111–1 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.

§ 811.1111–2 *Claims or information concerning infringement of United States patents owned by nationals of lend-lease and reciprocal aid countries.* Where it appears that an invention covered by a patent or an application for a patent of the United States has without license been used or manufactured by the United States, or by any person, firm or corporation for the United States with its authorization and consent, and the patent owner is a national of any of the countries listed in this § 811.1111, or where claim of such use or manufacture is made by or on behalf of such national, the chief of the technical service to whose attention the matter comes will give prompt notice thereof to the Director, International Division, Headquarters, Army Service Forces, with a request to obtain as reciprocal aid from the government of which the patent owner is a national such release and license, assignment, waiver, authority or agreement concerning the matter or may be necessary to protect the interests of the United States. In cases of this nature arising in the Army Air Forces, the notice and request will be addressed to the Chief, International Branch, Matériel Division, Office of Assistant Chief of Air Staff, Matériel and Services, Headquarters, Army Air Forces.

§ 811.1112 *Adjustment of royalties for use of inventions.*

§ 811.1112–1 *Definitions.* Where used in §§ 811.1112 to 811.1114 hereof, inclusive, the following terms have the meanings here assigned to them:

(a) "The act" means the Royalty Adjustment Act 1942 (Public No. 768, 77th Congress; 35 U.S.C. 89–96).

(b) "Notice" means the written notice specified in section 1 of the act and described in § 811.1112–3.

(c) "Order" means the order of the Secretary of War specified in section 1 of the act and described in § 811.1112–4.

(d) "Director" means the Director (or in his absence the Acting Director), Purchases Division, Headquarters, Army Service Forces. In respect of any action taken by the Army Air Forces, the term "Director" means the Special Representative of the Under Secretary of War (see § 801.108–4 (b)).

(e) "Delegate" means the offices and boards specified in § 811.1112–10, together with any other office, board or individual to whom any of the powers, duties and authorities of the Secretary of War under the act have been or may be delegated.

(f) "Originating technical service" means (1) the technical service (as defined in § 801.108–4 (b)) of the delegate which has given notice under the act, or (2) the technical service which has been directed by the Director to take necessary action in relation to a notice contemplated or given.

(g) "Licensor" includes the grantor in a patent license agreement as well as the transferor of the entire right, title and interest in and to a patented or unpatented invention upon consideration including future payments based upon the extent of manufacture, use, sale or other disposition of the invention.

(h) "Licensee" includes the grantee in a patent license agreement as well as the transferee of the entire right, title and interest in and to a patented or unpatented invention upon consideration including future payments based upon the extent of manufacture, use, sale or other disposition of the invention.

§ 811.1112–2 *Basic statute.* The act makes provision 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. §§ 811.1112–3 to 811.1112–8, inclusive, contain a summary of the provisions of the act as applied to the war Department. Sections 811.1112–9 to 811.1115–22, inclusive, contain the rules and regulations prescribed thereunder for exercise of such of the powers, duties and authorities of the Secretary of War under the act as have been or may hereafter be delegated by him.

§ 811.1112–3 *Applicability and notice.* Whenever an invention, whether patented or unpatented, is manufactured, used, sold or otherwise disposed of for the United States under the conditions set forth in the act 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 fact 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.

§ 811.1112–4 *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 may, if he so requests within ten days from the effective date of the notice, 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 of 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.

§ 811.1112–5 *Prohibition against payment of excessive royalties.* The licensee shall not after the effective date of the notice (upon receipt of notice, or five days after the mailing thereof, whichever date is earlier) pay to the licensor, nor charge directly or indirectly to the United States, a royalty in excess of that subsequently specified in the order. It is provided that, whenever a reduction in the rates or amounts of royalties is effected 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.

§ 811.1112–6 *Remedies of licensor.* The act contains certain provisions as to the remedies of the licensor, which, in general, limit him to a suit against the United States in the Court of Claims or a District Court of the United States.

§ 811.1112–7 *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 or any other law, and for compensation to be paid such owner or licensor based upon future manufacture, use, sale, or other disposition of said invention.

§ 811.1112–8 *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 issued, the terms of which are set forth in §§ 811.1112–9 to 811.1115–22, inclusive.

§ 811.1112–9 *Powers, duties and authorities under the act which have been delegated.* The following powers, duties and authorities, conferred by the act upon the Secretary of War, have been delegated to the officers and boards listed in §811.1112–10 and may be delegated to such officers and civilian employees as are hereafter appointed to exercise the same by the Commanding General, Army Service Forces or the Commanding General, Army Air Forces, for exercise thereof, in matters properly before them, under the direction of the Under Secretary of War and pursuant to such rules and regulations under the act as may from time to time be prescribed by or in behalf of the Secretary of War:

(a) To determine that notice should be given and to give notice of the fact that the rates or amounts of royalties are believed to be unreasonable or excessive; and to withdraw any such notice previously given by the delegate or by a delegate of lower rank in his service: *Provided*, That no such notice shall be withdrawn unless the licensor(s) shall have first agreed substantially as follows:

> The undersigned hereby consents to the withdrawal of the notice issued * * * [date of notice] * * * under the Royalty Adjustment Act 1942 (Public No. 768, 77th Congress; 35 U.S.C. 89–96) and in consideration of such withdrawal hereby releases any and all claims or demands now held by the undersigned against the United States, or any officer or agent thereof, arising out of the issuance of said notice.

but in particular cases for good cause shown the Director may authorize substantial deviation from or omission of the foregoing consent and release.

(b) After notice, to receive and hear such facts and circumstances as may be presented by the licensee or licensor, and such other facts and circumstances as are relevant to an evaluation of the factors specified in § 811.1112–11, and to recommend appropriate action;

(c) To fix and specify, by order, fair and just rates or amounts of royalties, and to authorize the payment thereof, if any royalty be allowed, by the licensee to the licensor, subject, however, to the approval of such order by the Director;

(d) To execute contracts on behalf of the United States, before suit against the United States has been instituted, with the owner or licensor of an invention, or of the Letters Patent therefor, effecting a voluntary adjustment of royalties charged or chargeable to the United States, or in settlement and compromise of any claim against the United States accruing to such owner or licensor under the provisions of the act or any other law by reason of the manufacture, use, sale or other disposition of an invention or 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 the Director in each case where that approval is required by §§ 811.1113–3 (d) or (e), 811.1113–7 (a), 811.1114–1 or 811.1115–14 hereof.

The foregoing powers, duties and authorities shall not be redelegated by any delegate under the general authority to redelegate conferred in § 801.107–9.

§ 811.1112–10 *Delegations.* (a) The powers, duties and authorities described in (a), (b), (c) and (d) of § 811.1112–9 have been delegated to each of the following offices, boards, agents or persons as indicated in the following tabulation:

Delegate	Powers, duties and authorities described in subparagraphs—			
	(1)	(2)	(3)	(4)
Commanding General, Army Service Forces	X	X	X	X
Commanding General, Army Air Forces	X	X	X	X
Assistant Chief of Air Staff, M & S	X	X	X	X
Chief, Procurement Division, Office of Assistant Chief of Air Staff, M & S	X	X	X	X
Director, AAF, Air Technical Service Command	X	X	X	X
Director, Purchases Division, Headquarters, ASF	X	X	X	X
Royalty Adjustment Board, AAF, Air Technical Service Command	X	X	X	X
Assistant Air Judge Advocate, Headquarters, Army Air Forces	X	X	----	X
Chiefs of the Technical Services, ASF	X	X	X	X
Royalty Board, Office of the Chief of Ordnance	X	X	X	----
All District Chiefs of Ordnance Procurement Districts	----	----	----	X
All Deputy District Chiefs of Ordnance Procurement Districts	----	----	----	X
Commanding Officer, Frankford Ordnance Arsenal	----	----	----	X
Commanding Officer, Picatinny Ordnance Arsenal	----	----	----	X
Commanding Officer, Rock Island Ordnance Arsenal	----	----	----	X
Commanding Officer, Springfield Ordnance Armory	----	----	----	X
Commanding Officer, Watertown Ordnance Arsenal	----	----	----	X
Commanding Officer, Watervliet Ordnance Arsenal	----	----	----	X
Assistant Chief, Engineering and Technical Service, Office of the Chief Signal Officer	----	X	X	----
Patents and Inventions Counsel, Legal Division, Office of the Chief Signal Officer	X	----	----	X
Royalty Adjustment Board, Office of the Quartermaster General	X	X	X	X
Royalty Adjustment Board, Office of the Chief of Engineers	X	X	----	X
Chief, Patent Section, Legal Branch, Office of Chief of Chemical Warfare Service	X	----	----	----
Royalty Adjustment Board, Office of the Surgeon General	X	X	----	X
Chief, Legal Division, Office of the Chief of Transportation	X	X	----	----

(b) There have been delegated to the Commanding General, Army Service Forces, and to the Commanding General, Army Air Forces, the power, duty and authority to designate and appoint certain commissioned officers of the Army and civilian employees of the War Department, within their respective commands and jurisdictions, for the exercise by them, either individually or as a member of a board, of any of the powers, duties and authorities now or hereafter set forth in § 811.1112–9, and to amend, modify or revoke any such designation or appointment heretofore or hereafter made within their respective commands or jurisdictions. The foregoing powers of designation and appointment have been redelegated respectively to the Director (for the Army Service Forces) and to the Chief of Air Staff, the Assistant Chief of Air Staff Matériel and Services, and the Chief, Procurement Division, Office of Assistant Chief of Air Staff, Matériel and Services (for the Army Air Forces).

(c) If the Chief of a technical service desires that any of the powers, duties and authorities set forth in § 811.1112–9 be further delegated to any officer or employee within his command or jurisdiction, or that a board to receive such delegation be created within his service or command, a request to that effect may be transmitted to the appropriate delegate under paragraph (b) hereof.

(d) Where any of the powers, duties and authorities set forth in § 811.1112–9 have been or are hereafter delegated to a board, the said board shall, unless otherwise provided in the instrument of delegation, consist of three officers or employees of the service or command concerned, who shall be designated and appointed as provided in paragraph (b) hereof. Unless otherwise provided in the instrument of delegation, (1) a majority of said board shall determine its action, (2) any instrument or contract whatsoever evidencing action taken by the board may be signed in its name by any member of the board, and (3) any two members of such board shall constitute a quorum.

§ 811.1112–11 *Factors to be considered before notice is given and in the making of an order.* (a) Before notice is given there will be taken into account so far as practicable, and in the making of any order there will be taken into account, the following factors:

(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; and

(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.

(b) In determining fair and just rates or amounts with respect to royalties to which the act applies, there will be taken into account:

(1) The amounts of royalties (directly or indirectly charged or chargeable to the United States) which were paid to and received by the licensor when the conditions of wartime production affected the procurement in question during years or fractions thereof prior to the date when unpaid royalties began to accrue, except that such royalties which were or will be included in licensor's renegotiable receipts under the Renegotiation Act for any year or fraction thereof will not be regarded as having been excessive in amount for such prior year or years, but the result arrived at in renegotiation for such prior year or years shall not be binding upon the delegate in any way in determining fair and just rates or amounts under the act; and

(2) The fact that the royalty rates were agreed to in the absence of arm's-length dealing between licensor and licensee, except that the fact that the licensor is an officer, director or stockholder of a corporate licensee shall not warrant disregard of the licensee's separate corporate entity.

§ 811.1112–12 *Duties of the technical services.* Subject to the rules and regulations set forth in §§ 811.1112 to 811.1114–3, inclusive, the chiefs of the technical services are, in matters properly before them and acting under the direction of the Under Secretary of War, under the duty of causing the powers, duties and authorities delegated under the Act to be exercised in such manner and at such times as may be necessary to prevent unreasonable or excessive royalties from being charged to the War Department. This duty may be discharged pursuant to such instructions as may be issued by the chiefs of the technical services for the guidance of their respective services and delegates therein.

§ 811.1112–13 *Policy of the War Department in the administration of the act.* The policy of the War Department is (a) that, so far as practicable, a licensor shall not be subjected to duplicating interrogation by two or more technical services in relation to his royalty receipts from the use of a particular invention or series of related inventions; and (b) that, so far as practicable, each licensor shall, where such royalties are believed to be unreasonable or excessive, be given fair opportunity to effect a voluntary adjustment thereof before notice is given. The regulations set forth in § 811.1112–14 and in §§ 811.1113 to 811.1113–12, inclusive, are designed to effectuate this policy.

§ 811.1112–14 *Procedure in the giving of notice.* (a) An initial inquiry may be sent to a licensor or a licensee requesting all or any part of the following and no more: (1) The names and addresses of licensor and licensee(s), (2) a copy of the license agreement, (3) a list of patents and patent applications involved, and (4) a statement of the royalties or amounts per item as fees for technical services or engineering assistance received (or paid) under such license during each year for the years 1936 to date of inquiry. Such inquiry shall include a provision to relieve the addressee from compiling information previously supplied upon an inquiry of any other branch of the War Department or of any other department or agency of the Government by permitting the addressee to respond by sending a copy of the reply to the previous inquiry or the name and address of the person who made the previous inquiry. Such inquiry to a licensee shall not be sent to any contractor who has furnished the same information upon the War Department Standard Procurement Form.

(b) If, upon consideration of the reply to the initial inquiry, further investigation is believed to be advisable, a memorandum shall, before the licensor is further interrogated in relation to the matter, be transmitted to the Director requesting clearance to do so. The office of the Director may thereupon grant such clearance as appears proper in the light of the information which the records of that office contain regarding the issuance by any other technical service of the War Department or by any other department or agency of the Government of a notice in the same matter, or the consideration which has been or is being given to the issuance of such a notice. The request for clearance shall state the name and address of licensor, and the inventive subject matter, and so far as known and practicable the name(s) and address(es) of the licensee(s) and the numbers of the patent(s) and patent application(s) concerned. A clearance once given remains in force till modified or revoked by the Director.

(c) If, upon such investigation as appears proper (after clearance from the Director), the delegate having the matter in hand believes that the royalties in question are not unreasonable or excessive, he shall transmit to the Director a report (in triplicate) stating his findings and conclusions, including so far as practicable the data specified in § 811.1112-27.

(d) If, upon such investigation as appears proper (after clearance from the Director), the delegate having the matter in hand believes that the royalties are unreasonable or excessive, he shall (unless he has previously been expressly authorized by the Director to omit such action) afford licensor fair opportunity to effect a voluntary adjustment thereof. Where, in the opinion of the delegate, fair opportunity has been afforded and a satisfactory adjustment cannot be effected, such delegate thereupon may issue notice in respect of the royalties in question, subject however to the requirements of §§ 811.1112–15 and 811.1112–16 hereof. Where, however, the delegate believes that circumstances exist making it necessary or desirable in the interests of the War Department that notice should be given without first affording licensor an opportunity to effect a voluntary adjustment, the delegate may issue notice in such case provided he has first obtained from the Director authority to do so.

§ 811.1112–15 *Procedure when a department or agency, other than the War Department, is concerned.* Inasmuch as any order entered by or under the authority of the Secretary of War affects only those royalties which are charged or chargeable to the War Department, every reasonable effort shall be made before and after the giving of any notice, to determine what, if any, departments or agencies of the Government other than the War Department are or may be concerned in the payment of royalties for the same invention. If, at any time after clearance has been given as provided in § 811.1112–14 (b), it appears that a department or agency other than the War Department is so concerned, the service having the matter in hand shall forthwith communicate with such other department or agency and shall thereafter coordinate all further proceedings with such department or agency.

§ 811.1112–16 *Procedure when more than one technical service of the War Department is concerned.* Any delegate to whom the authority referred to in § 811.1112–9 (a) has been or may hereafter be delegated shall exercise such authority, under the direction of the Director, in respect to all such royalties which are charged or chargeable to any and all technical services of the War Department. If, at any time after clearance has been given to a technical service as provided in § 811.1112–14 (b), it appears that more than one technical service of the War Department is concerned, that fact shall be reported forthwith to the Director and shall be accompanied by a recommendation of the reporting service as to the service believed to be in the best position to carry on the proceeding. The Director may thereupon give directions as to how, and by whom, the authority referrred to in paragraphs (a), (b), (c), (d) and (e) of § 811.1112–9 shall be exercised on behalf of the Secretary of War.

§ 811.1112–17 *Form of the notice.* The following form of notice is approved for use subject to such deviations as may be necessary or appropriate in any given case:

[Letterhead of Delegate]

In the Matter of

_____, [et al.]
Licensor(s)

and

_____, [et al.]
Licensee(s)

NOTICE

To: Licensor(s) and Licensee(s): You and each of you will hereby take Notice, that:

Pursuant to the Royalty Adjustment Act 1942 (Public No. 768, 77th Congress; 35 U.S.C., 89–96), Notice is hereby given that the royalties which are charged or chargeable directly or indirectly to the War Department on account of the manufacture, use or sale to or for the United States of the alleged inventions relating to _____,
[subject-matter]
by virtue of the license agreement(s) between _____, as licensor, and the following licensees, are believed to be unreasonable or excessive:

[Names of all licensees]

_____

This Notice becomes effective upon its receipt by you or five (5) days after the mailing hereof, whichever dates is the earlier.

The licensor or any licensee, if he so requests within ten (10) days from the effective date of this Notice, may within thirty (30) 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 royalties, if any, to be determined, fixed and specified.

From and after the effective date of this notice and until the making of an order under said Act, each licensee is hereby directed (a) not to pay to licensor any royalties under said license(s) which are charged or chargeable directly or indirectly to the War Department and (b) to segregate said royalties from licensee's general funds and safely keep the same until such time as the disposition thereof is directed by such order.

The foregoing Notice is hereby given in behalf of the Secretary of War.

By direction of the Under Secretary of War:

_____
[Signature (and title) of delegate]

The foregoing Notice is directed to the following: [Names and addresses of all licensors and licensees] _____

_____

_____

_____

The foregoing notice shall be forwarded by registered mail, return receipt requested, to the last known address of each licensee and licensor named therein.

§ 811.1112–18 *Forwarding of copies of notice.* Copies of all notices issued shall be forwarded forthwith to:

(a) The Chief of each technical service of the War Department.

(b) The Director (in triplicate).

§ 811.1112–19 *Withdrawal of notice previously given.* (a) Notice under the act once given by any delegate shall not be vacated or withdrawn, in whole or in part, otherwise than under the provisions of and in the manner prescribed in § 811.1112–9 (a). Upon execution by a licensor of the form of consent and release specified in § 811.1112–9 (a), three copies of the instrument vacating and withdrawing the notice and one copy duly executed by the licensor of the said form of consent and release shall be promptly transmitted to the Director.

(b) In the event a licensor refuses to execute said form of consent and release or an approved deviation therefrom and the Director has not authorized the omission thereof, an order shall be made and submitted for approval in the manner hereinafter specified.

§ 811.1112–20 *Form of the order.* The following form of order is approved for use subject to such deviations as may be necessary or appropriate in any given case and subject to the instructions contained in § 811.1112–21:

WAR DEPARTMENT

WASHINGTON

Royalty Adjustment Order No. W—

In the Matter of

[Insert name of each Licensor]
Licensor(s),

and

[Insert name of each Licensee]
Licensee(s).

War Department Contract Nos.

[Insert the identifying number of each War Department contract, if ascertained, which it is believed will be affected by the order; if no contract is ascertained, omit the above heading]

Contractor:

[Insert names of Contractors in respect of each of the above identified contracts; if no contract is identified, omit the above heading]

Whereas, pursuant to authority contained in the Royalty Adjustment Act 1942, Public No. 768, 77th Cong.; 35 U.S.C., 89–96, written notice was given on or about the _____ [Insert date of notice] to _____[Insert name of each licensor]_____(individually and collectively hereinafter called "Licensor") and to _____[Insert name of each licensee]_____ (individually and collectively hereinafter called "Licensee") that the royalties, provision for the payment of which by Licensee to Licensor is included

in the [license(s) dated ----------] [licenses specified in Column 4 of Schedule A annexed hereto and by this reference made a part hereof],[1] and which said royalties are charged or chargeable directly or indirectly to the War Department for or on account of the manufacture, use or sale to or for the United States of certain alleged inventions [pertaining to ----------] [specified in Columns 1, 2 and 3 of said Schedule A], were believed to be unreasonable or excessive, and that until the making of an order herein no royalties were to be paid by Licensee to Licensor under the license(s) above referred to which are charged or chargeable directly or indirectly to the War Department, and

Whereas, Licensor and Licensee, upon their request, have presented in writing and in person such facts and circumstances as they desired having a bearing upon the rates or amounts of royalties to be determined, fixed and specified by order pursuant to said Act;

Now, therefore, pursuant to the authority of and for the purposes set forth in said Act, and upon taking into account the facts and circumstances presented as aforesaid, the conditions of wartime production, and such other facts and circumstances as are proper to be considered in determining a fair and just rate or amount of royalties in the premises, it is hereby ordered as follows, viz:

(1) That fair and just rates or amounts of royalties for the manufacture, use, sale or other disposition to or for the War Department of the said alleged inventions are hereby determined, fixed and specified to be [----------] [the rates or amounts set forth in Column 5 of said Schedule A];

(2) That, until further order, Licensee is hereby authorized to pay to Licensor, on account of the manufacture, use, sale or other disposition of said alleged inventions to or for the War Department heretofore occurred, or hereafter occurring while Sections 1 and 2 of said Act remain in force, royalties, if any, at the rates or in the amounts determined, fixed and specified in paragraph (1) hereof, and no more, under

(a) The said license(s) [dated ----------] [identified in Column 4 of said Schedule A], [and]

(b) Any license between them, entered into on or after the effective date of said notice and so long as Sections 1 and 2 of said Act remain in force, which in any respect continues, supplements, modifies or supersedes [the license] [any of the licenses] referred to in subparagraph (a) hereof, [and

(c) Any license between them, entered into on or after the effective date of said notice and prior to the date of this Order, which grants rights to practice the said alleged inventions;] [2]

[Alternate A]

(3) That Licensee is hereby directed to pay over to the Treasurer of the United States (through ----------), and at the same time and place to deliver a statement in writing signed by Licensee showing the amount and manner of computation thereof, the balance, in excess of the royalties authorized by paragraph (2) next above, of all royalties specified in the licenses referred to in said paragraph (2) which were due to Licensor and were unpaid on the effective date of said notice, and of all royalties which since said date have become and are now due to Licensor, and of all royalties which may hereafter become due to Licensor as and when the same fall due for payment to Licensor, for or on account of the manufacture, use, sale or other disposition of said alleged inventions to or for the War Department heretofore occurred or hereafter occurring while sections 1 and 2 of said Act remain in force, and demand is hereby made for payment forthwith of the monies now due which are so directed to be paid; and

[Alternate B]

(3) That Licensee is hereby directed

(a) To pay over to the Treasurer of the United States (through ----------), and at the same time and place to deliver a statement in writing signed by Licensee showing the amount and manner of computation thereof, the balance, in excess of the payments authorized by paragraph (2) next above, of all royalties specified in the licenses referred to in said paragraph (2) which were due to Licensor and were unpaid on the effective date of said notice, and of all royalties which since said date have accrued or may hereafter accrue in respect of supplies, equipment, materials or parts thereof delivered to or for the War Department prior to the tenth (10th) day next following the receipt of this order by the Licensee, and demand is hereby made for payment forthwith of the monies so directed to be paid; and

(b) To reduce the contract price of all supplies, equipment, materials and parts thereof delivered to or for the War Department on and after the tenth (10th) day next following the receipt of this order by the Licensee to the extent necessary to secure to the Government the full benefit of the reduction in royalties effected by this order; and

(4) That reservation is hereby expressly made of the right to amend, modify, revoke or extend this Order and of the right of the head of any department or agency of the Government, including but not limited to the War Department, to take such other, further and different action as may be authorized by any statute of the United States with respect to the subject matter

It is recommended that the Secretary of War make the foregoing Order.

[Signature (and title) of the delegate who recommends the making of the order, if different from the delegate who signs next below]

The foregoing Order is hereby made.

[Signature (and title) of a delegate under § 811.1112-9 (c)]

The foregoing Order is hereby approved in behalf of the Secretary of War.

By direction of the Under Secretary of War:

[Leave two lines blank]

Director, Purchases Division, Headquarters, Army Service Forces [3]

Dated: Washington, D. C. ----------, 194---.

NOTE: Schedule A appears in the following form:

SCHEDULE A

Column 1	Column 2	Column 3	Column 4			Column 5	
Title or short description of invention	Patent Nos. or app. ser. Nos.	Issue dates or filing dates	Instrument(s) in which royalties are stipulated			Fair and just royalties	
			Effective date	*Licensor*	*Licensee*	*Rate*	*Amount*

§ 811.1112-21 *Preparation of the order.* The following instructions are prescribed for use in the preparation of suitable orders in various types of cases, based upon use of the form of order set forth in § 811.1112-20, without prejudice to such other deviations from that form as may be necessary and appropriate in any given case.

(a) Schedule A is to be used only when it is impracticable to include the same information in the text of the order.

(b) To the extent that the licensee is a War Department prime contractor, the order shall (unless the Director otherwise directs) be drawn in such manner as to require that the benefits of any adjustment of royalties accruing after the date of the order will inure to the War Department in the form of a corresponding price reduction. To accomplish this purpose, Alternate B of clause (3) of the form of order as given in § 811.1112-20 would be used. Clauses (1), (2) and (4) would be used substantially as set forth.

(c) To the extent that the licensee is a subcontractor for the War Department, or for the War Department and other departments, the order may be drawn in such manner as either (1) to effect reduction of the price paid to the licensee for articles or services furnished by licensee to or for War Department contractors or subcontractors where by reason of contract provisions or otherwise there is assurance that the benefits of the order will be transmitted by such contractors or subcontractors to the War Department, or (2) to effect running recapture of excess royalties from the licensee by direct payment by him to the Treasurer of the United States when and as royalty payments fall due. In either case provision will be made requiring the licensee to pay over to the Treasurer of the United States the balance, in excess of royalty payments allowed by the order, of the accumulated fund in the hands of the licensee on the date of the order.

(d) In a case of the kind mentioned, in paragraph (c) above.

[1] As to use of Schedule A see § 811.1112-21 (a).

[2] As to use of subclause (c), see § 811.1112-21 (e).

[3] In the case of orders originating in the Army Air Forces the legend should be as follows:

[L-ave two lines blank]

Special Representative of the Under Secretary of War

(1) If it is believed preferable to effect price reductions, Alternate B of clause (3) of the form given in § 811.1112–20 would be used.

(e) If it is believed preferable to make running recapture of excess royalties from the licensee when and as royalty payments fall due, without price reduction, Alternate A of clause (3) of the form given in § 811.1112–20 would be used.

In either of these cases clauses (1), (2) and (4) of the form would be used substantially as set forth.

(e) Normally subclause (c) of clause (2) of the form given in § 811.1112–20 would be omitted. Subclause (c) is intended for use solely in those cases where the identified license specified in subclause (a) is limited by its terms so as to convey rights for the performance of one or more specified War Department contracts and no others, or is for a fixed term expiring during the pendency of proceedings, and where it is deemed likely that prior to issuance of the order another license has been or will be entered into between licensor and licensee conveying rights under the same inventions for the performance of subsequent War Department contracts.

(f) Appropriate provisions may be inserted in special cases, for example, where there are a plurality of licensees and the amount of royalties found to be fair and just is a fixed maximum sum to be received by licensor within each specified (e. g. annual) period, or where the War and Navy Departments make contemporaneous orders each referring to the other, etc.

§ 811.1112–22 *Submission of order for approval.* In submitting an order to the Director for approval, the delegate or originating technical service shall prepare and transmit to the Director the following papers:

(a) A memorandum or transmittal showing action taken in compliance with the applicable requirements of § 811.1112–14;

(b) Two copies of each notice issued (additional to any copies previously transmitted);

(c) Two copies of the transcript or minutes of the hearing if any held on the request of, and two copies of any papers not incorporated in such transcript submitted by, licensor or licensee;

(d) Two copies of any additional data basically relied upon;

(e) Three copies of an official report, statement or memorandum containing the following information:

(1) The date on which the notice is found to have become effective under the statute;

(2 The manner in which and the extent to which the invention is being utilized by or for the War Department;

(3) If the invention is patented, or the subject of a patent application, the number of all patents and patent applications pertaining thereto;

(4) The identifying number of each War Department contract, so far as known, whose price is reduced by the order;

(5) The parties, terms, date and a copy, if obtainable (unless a copy is included among the papers mentioned in paragraph (c), of each instrument of license which is affected by the order;

(6) Statements of:

(i) Total royalties received, preferably annually from 1936 to the latest period available.

(ii) Segregation of royalties between Government and non-Government during the period when the conditions of wartime production affected the procurement in question so far as readily ascertainable from the licensees concerned.

(iii) The amounts of royalties already paid to the licensor, if any, which were or will be included in licensor's renegotiable receipts under the Renegotiation Act and action taken or to be taken under the Renegotiation Act with respect thereto, so far as readily ascertainable from the Price Adjustment Section to which the licensor has been assigned for renegotiation.

(7) The facts and circumstances upon which are based the conclusion set forth in the order that the rates or amounts of royalty, if any, fixed in the order are deemed fair and just taking into account the conditions of wartime production and other pertinent facts and circumstances;

(8) A statement of estimated savings or benefits to the War Department if the order be approved; and

(9) A statement of reasons why it is deemed desirable under the circumstances that the future benefits of the order shall inure to the War Department in the form (as the case may be) of price reduction or running recapture of excess royalties from the licensee; and a statement of the methods proposed for supervision and control of the course adopted.

(f) The order signed by the delegate or delegates exercising authority in the matter.

§ 811.1112–23 *Copies to the Chief, Patents Division, Office of The Judge Advocate General.* One copy of each of the documents mentioned in § 811.1112–22 (a) to (f), inclusive, shall be forwarded to the Chief, Patents Division, Office of The Judge Advocate General, concurrently with the transmittal of copies of the same documents to the Director.

§ 811.1112–24 *Procedure upon approval of an order.* Upon approval and execution of an order by the Director, the following procedure will be observed subject to such deviation as may be necessary and proper:

(a) The Director will transmit to The Adjutant General the original order, and sufficient copies thereof for certification, together with one copy of each of the papers mentioned in § 811.1112–22 (b), (c) and (d).

(b) The Adjutant General will retain, as the War Department's permanent file in the matter, the original of the order (§ 811.1112–22 (f)), and the copies transmitted to him of the papers mentioned in § 811.1112–22 (b) to (e), inclusive; and he will certify the required number of copies of the order (one for each party named therein as licensor or licensee) and transmit the same to the Director, who will forward them to the originating technical service or delegate.

(c) The originating technical service or delegate will forward a certified copy of the order to each party named therein at his last known address, by registered mail, return receipt requested.

(d) The Director will cause to be distributed a copy of the order to each of the following:

The General Accounting Office.
Navy Department.
Treasury Department.
Maritime Commission.
Defense Plant Corporation.
Office of Strategic Services.
Director, Renegotiation Division, Headquarters, Army Service Forces.
Chief, Patents Division, Office of The Judge Advocate General.
Chief patent officer of each of the technical services.
Air Judge Advocate.
All Royalty Adjustment Boards.

§ 811.1112–25 *Monies recovered from licensees or licensors.* Monies received by any technical service of the War Department from any source, either as a result of an order or pursuant to an agreement effecting a voluntary adjustment of royalties, shall be paid to the Treasurer of the United States and deposited to the credit of Miscellaneous Receipts under Treasury Symbol No. 214238, "Refund of Royalties." Provision may be made in any order, or any contract adjusting royalties (see § 811.1113) for transmittal of remittances through any designated officer.

§ 811.1112–26 *Rehearing or reconsideration.* Any delegate who recommended or made an order may reconsider such order, permit the licensor or licensee to present further facts or circumstances having a bearing upon the matters dealt with therein, and recommend or make an order supplemental thereto within the scope of the delegate's existing authority as set forth in §§ 811.1112–9 or 811.1112–10.

§ 811.1112–27 *Action required upon a determination that royalties are fair and reasonable.* (a) In every case which has been cleared for investigation under § 811.1112–14 (b) where the delegate having the matter in hand finds upon investigation that the royalties in question are fair and reasonable, a closing report shall be transmitted to the Director (in triplicate), including so far as practicable the following information:

a. Name(s) and address(es) of licensor(s).
b. Name(s) and address(es) of licensee(s).
c. Identification of patents or applications for patent, or other rights involved.
d. Brief description of the subject matter of the invention involved.
e. If several patents or applications are involved, which, if any, dominate the Government procurement involved and which, if any, are not involved therein.
f. Date of the licence agreement, a copy thereof or a brief summary of its provisions, including the scope and limitations of grant, all royalty provisions and price fixing provisions, if any.
g. Summary of any pertinent interviews or correspondence with or statements submitted by the licensor, or a statement that the licensor was not interrogated.
h. Statements of:
(i) Total royalties received, preferably annually from 1936 to the latest period available.
(ii) Segregation of royalties between Government and non-Government, during the period when the conditions of wartime production affected the procurement in question so far as readily ascertainable from the licensees concerned.
(iii) The amounts of royalties already paid to the licensor, if any, which were or will be included in licensor's renegotiable receipts under the Renegotiation Act and action taken or to be taken under the Renegotiation Act with respect thereto, so far as readily ascertainable from the Price Adjustment Section to which the licensor has been assigned for renegotiation.
i. Reasons for concluding that royalties are fair and reasonable, and a statement of any relevant facts in support thereof.

§ 811.1113 *Voluntary adjustments of royalties effected before an order is made.*

§ 811.1113–1 *Available procedures for voluntary adjustments.* The delegate having the matter in hand may, subject to such rules and regulations governing the exercise of delegated powers under the act as have been or may from time to time be prescribed by or on behalf of the Secretary of War, negotiate a voluntary adjustment of royalties before an order is made, in any of the following manners:

(a) Before notice under the act has been given:

(1) By receiving a supplemental agreement entered into between licensor and licensee(s) and executed by each of them;

(2) By receiving a unilateral agreement executed by licensor (see § 811.1113–9); or

(3) By causing the United States to execute a contract with licensor alone, or with licensor and all licensees materially affected, in the manners provided in §§ 811.1113–3 to 811.1113–8.

(b) *After notice under the act has been given (but before an order is made).* In any of the manners above set forth provided, in addition, the notice is withdrawn in the manner provided in § 811.1112–9 (a).

§ 811.1113–2 *Delegate not to prejudice the Government's rights.* Where prior to the making of an order the licensor voluntarily agrees to reduce the rates or amounts of any royalties which are charged or chargeable to the War Department, and the Government does not execute the agreement which effects such reduction, the delegate or technical service having the matter in hand shall not, in correspondence or otherwise, purport to agree that the Secretary of War or the head of any other department or agency of the Government will for any period forbear to exercise his powers under the act.

§ 811.1113–3 *Voluntary adjustments executed by the Government.* (a) Contracts which effect a voluntary adjustment of royalties may, provided no order has been made under the act and under the conditions stated in the following subparagraphs, be executed on behalf of the United States. Such contracts may be prepared in substantial conformity with War Department Contract Form No. 29 (see § 813.1329 hereof). The following paragraphs apply whether or not that form is used.

(b) If entered into before a notice under the act has been given, such contract (1) may include as parties (in addition to the United States) either the licensor alone, or the licensor and all licensees materially affected, (2) shall be executed on behalf of the United States by a delegate having authority in the matter, and (3) does not require approval of the Director except where that approval is expressly required by paragraphs (d), (e) or (f) below or by § 811.1113–7 (a). If the contract is with licensor alone, the provisions of § 811.1113–8 apply; if the contract is with licensor and licensee(s), the provisions of § 811.1113–7 apply.

(c) If entered into after a notice under the act has been given (but before an order is made), such contract is subject to the provisions of paragraph (b) above, and in addition shall contain or be accompanied by a signed consent or release substantially conforming to the form thereof set forth in § 811.1112–9 (a), unless the Director has authorized a deviation from or omission of the same.

(d) No such contract shall, without the approval of the Director, contain any provision which would prejudice or impair in any way the right of the head of any department or agency of the Government to make other or further adjustment of the rate or amount of royalties specified in the original license or in the contract adjusting the royalties (see article 6 in § 813.1329).

(e) There is no power in the Secretary of War or any of his delegates to bind the head of any department of the Government other than the War Department to forbear from further adjusting the rates or amounts of royalties which are charged or chargeable to such other departments than the War Department. If such contract provides that no further adjustment of the rates or amounts of royalties will be made for any specified period after the date of the contract, the contract must be executed by or on behalf of the head of each department or agency to which such royalties may be charged or chargeable, must be approved in behalf of the War Department by the Director, and may be approved by him provided the total amount of royalties which will be charged to the War Department or to all departments or agencies thus bound is a fixed amount or an amount determinable at the time the contract is executed, and there is reason to believe that such amount is not and will not become unreasonable or excessive.

(f) The Director may exempt from renegotiation all royalties to be collected pursuant to the terms of such contract, in cases among others where the profits to be derived from the contract can be determined with reasonable certainty at the time of execution thereof in behalf of the Government and in the opinion of the Director the royalties to be retained by the licensor will not yield excessive profits to him. (See § 812.1205–5 (a)). In requesting the Director's approval of such a contract, the delegate shall state the profits to be derived from the contract by the licensor, his conclusion that such profits will not be excessive and his reasons for such conclusion.

§ 811.1113–4 *Contract articles providing for royalty, refund or price reduction.* (a) It is contemplated that, in the use of War Department Contract Form No. 29, the royalty adjustment would ordinarily take effect as of some convenient past date (for example, the beginning of one of the quarterly royalty periods provided in the license) and that the adjustment will apply to all government royalties accruing since that date. Provision is made in Form No. 29 for a definition of the term "subject royalties" in such manner that, when the agreed past date is inserted in one of the definitions forming a part of the contract (see especially subparagraphs (e) and (f) of § 813.1329, Art. 1), the term "subject royalties" may then be used in other articles of the contract without repeating the definition. The contract articles appearing below are intended for use only when accompanied by the definitions set forth in § 813.1329, Art. 1, with an agreed date inserted.

(b) The following contract articles providing for royalty refund or price reduction, when accompanied by the definitions of terms used therein as set forth in Article 1 of § 813.1329, are appropriate for use in the manner set forth in §§ 811.1113–7 to 811.1113–9 below:

ARTICLE _____. *Refund of royalties.*

A. Licensor agrees (i) forthwith to deliver to [name and address of officer or board] a written report signed by Licensor showing the amount and manner of computation of that part of the subject royalties which have prior to the date of this contract been received by Licensor and, (ii) to pay to the Treasurer of the United States, at the same time and place, so much of said part of the subject royalties as are in excess of the reduced royalties specified in Article 2 hereof.

B. Licensor agrees that, forthwith upon receipt by Licensor on or after the date of this contract of any of the subject royalties, Licensor shall (i) deliver to [name and address of officer or board] a written report signed by Licensor showing the amount and manner of computation of said royalties, and (ii) pay to the Treasurer of the United States, at the same time and place, so much of the said subject royalties as are in excess of the reduced royalties specified in Article 2 hereof.

C. Licensor agrees to and does hereby authorize and direct Licensee [or, the licensee named in said license] (i) to deliver to [name and address of officer or board] a written report signed by Licensee showing the amount and manner of computation of that part of the subject royalties which are due for payment by Licensee to Licensor and have not been paid prior to the date of this contract and, (ii) to pay to the Treasurer of the United States, at the same time and place, so much of said part of the subject royalties as are in excess of the reduced royalties specified in Article 2 hereof.

D. Licensor agrees to and does hereby authorize and direct Licensee [or, the licensee named in said license], as and when any of the subject royalties fall due for payment to Licensor on or after the date of this contract, (i) to deliver to [name and address of officer or board] a written report signed by Licensee showing the amount and manner of computation of the said subject royalties and (ii) to pay to the Treasurer of the United States, at the same time and place, so much of the said subject royalties as are in excess of the reduced royalties specified in Article 2 hereof.

E. Licensee agrees (i) forthwith to deliver to [name and address of officer or board] a written report signed by Licensee showing the amount and manner of computation of that part of the subject royalties which are due for payment to Licensor and have not been paid prior to the date of this contract and (ii) to pay to the Treasurer of the United States, at the same time and place, so much of said part of the subject royalties as are in excess of the reduced royalties specified in Article 2 hereof.

F. Licensee agrees that, as and when any of the subject royalties fall due for payment to Licensor on or after the date of this contract, licensee shall (i) forthwith deliver to [name and address of officer or board] a written report signed by Licensee showing the amount and manner of computation of the said subject royalties and (ii) pay to the Treasurer of the United States, at the same time and place, so much of the said subject

royalties as are in excess of the reduced royalties specified in Article 2 hereof.

ARTICLE _____. *Refund of royalties and price reduction.*

G. (a) Licensee agrees (i) to deliver to [name and address of officer or board] a written report signed by Licensee showing the amount and manner of computation of that part of the subject royalties not heretofore paid to Licensor, which have heretofore accrued or many hereafter accrue in respect of supplies, equipment, materials or parts thereof delivered prior to_____, 194__ [date when price reduction is to become effective] and (ii) to pay to the Treasurer of the United States, at the same time and place, so much of said part of the subject royalties as are in excess of the reduced royalties specified in Article 2 hereof.

(b) Licensee agrees (i) to reduce the contract price of all supplies, equipment, materials and parts thereof delivered to the Government on and after the date set forth in clause (a) of this Article, to the extent necessary to secure to the Government the full benefit of the reduced royalties specified in Article 2 hereof, and (ii) to pay or credit to the Government, as the Contracting Officer concerned may direct, the amount of such price reduction.

§ 811.1113–5 *Contract articles providing for release of infringement claims.* In preparing royalty adjustment contracts which contain a definition of the term "said inventions" (see clauses (a) and (b) of § 813.1329, Art. 1), the following contract articles are appropriate for release of infringement claims in the cases specified below:

(a) If the license whose royalties are being adjusted is *non-exclusive*, the following contract article is appropriate whether or not licensee is a party to the contract:

ARTICLE _____. *Release of past infringement.* Licensor hereby releases each and every claim and demand which Licensor now has or may hereafter have against the Government, its officers, agents, servants and employees, for infringement of any patent covering the said inventions by reason of the manufacture, use or sale of any article or material or the use of any process prior to the date of this contract or the use or sale thereafter of any article or material so manufactured.

(b) If the license, whose royalties are being adjusted is exclusive, the following contract article is appropriate provided both Licensor and Licensee are parties to the contract:

ARTICLE _____. *Release of past infringement.* Licensor and Licensee hereby jointly and severally release each and every claim and demand which they or either of them now have or may hereafter have against the Government, its officers, agents, servants and employees, for infringement of any patent covering the said inventions by reason of the manufacture, use or sale of any article or material or the use of any process prior to the date of this contract or the use or sale thereafter of any article or material so manufactured.

§ 811.1113–6 *Mandatory contract articles in royalty adjustment agreements executed by the Government.* (a) The "Officials not to Benefit" article (§ 803.322) and the "Covenant against Contingent Fees" article (§ 803.323) are required in every royalty adjustment contract which is executed by the Government.

(b) The "Anti-discrimination" article (§ 803.325) is required in contracts executed by the Government except where the performance of the contract does not involve the employment of persons.

(c) The "Assignment of Rights" article (§ 803.355) is required if the contract is executed by the Government and provides for payments by the Government aggregating $1,000 or more (see § 803.-355).

§ 811.1113–7 *Contracts between the Government, the licensor and the licensee.* (a) Where the licensee uses the licensed inventions solely in connection with articles which he sells directly to the Government, and the licensee is party to the contract adjusting the royalties, the contract shall (unless the Director otherwise directs) provide that the future benefits of the royalty adjustment shall inure to the Government in the form of a corresponding price reduction. In such case the appropriate contract articles are articles A and G of § 811.1113–4.

(b) Where the licensee uses the licensed inventions solely in connection with articles which he sells to contractors or subcontractors for the Government, the contract may provide either (1) for price reduction (using articles A and G of § 811.1113–4, the latter suitably modified in subclause (b) thereof to provide that the price reduction applies to deliveries "to contractors and subcontractors for the Government"), or (2) to effect running recapture from licensee of excess royalties (using articles A, E and F of § 811.1113–4.

(c) If licensee uses the licensed inventions in part in connection with articles which he sells directly to the Government and in part in connection with articles which he sells to contractors and subcontractors for the Government, the contract may provide either (1) for segregation by licensee of the two aspects of his business, with price reduction applied to the first-mentioned part and running recapture from licensee of excess royalties applied to the second-mentioned part, or (2) for running recapture from licensee of excess royalties in respect of both parts without price reduction or segregation. In such cases the appropriate contract articles are those mentioned in paragraphs (a) and (b) above, suitably modified as circumstances require.

(d) Attention is called to the provisions of §§ 811.1113–5 and 811.1113–6 relating to release of infringement claims and mandatory articles in royalty adjustment contracts to which both the licensee and the Government are party.

§ 811.1113–8 *Contracts between the Government and the licensor which are not executed by the licensee.* (a) Where the excessive portion of the future royalties is to be refunded by the licensor, and the licensee is not a party to the contract, the appropriate contract articles are articles A and B of § 811.1113–4.

(b) Where the excessive portion of future royalties is to be refunded by the licensee, and the licensee is not a party to the contract, the appropriate contract articles are articles A, C and D of § 811.1113–4.

(c) Contracts executed by the Government and the licensor, and not executed by the licensee, are not appropriate where the licence is exclusive and a release of past infringement claims is to be obtained, since an exclusive licensee should join in giving such a release.

(d) Attention is called to the provisions of § 811.1113–6 relating to the use of mandatory articles in royalty adjustment contracts to which the Government is a party.

§ 811.1113–9 *Unilateral agreements executed by licensor alone.* Voluntary adjustments of royalty may be informally and expeditiously accomplished by a form of unilateral agreement executed by the licensor alone and not by the licensee or the Government. Such agreements may be prepared using War Department Contract Form No. 29 as a basis, subject to the following modifications:

(a) The preamble and "Now, Therefore" clauses should be rewritten in form appropriate to a unilateral agreement.

(b) The first "Whereas" clause of § 813.1329 should be modified to substitute the name and address of licensee in place of the word "Licensee".

(c) The second and third "Whereas" clauses of § 813.1329 should be used without substantial change. It is advisable to recite (as in the third "Whereas" clause) that licensor has requested the Secretary of War to forebear from giving notice under the act, in order that there will be consideration for the licensor's promise.

(d) The fourth "Whereas" clause of § 813.1329 should be omitted.

(e) In § 813.1329, Art. 3 the appropriate articles would be those specified in paragraphs (a) or (b) of § 811.1113–3.

(f) The provisions of § 813.1329, Articles 5 and 7 should be omitted.

(g) Provision should be made at the foot of the contract for execution by licensor alone.

§ 811.1113–10 *Action required when royalties have been voluntarily adjusted.* When royalties chargeable to the War Department have been voluntarily adjusted with the participation of any delegate, he or the chief of the technical service concerned shall promptly report the adjustment to the Director. Such report is required whether or not the United States is party to any contract in connection therewith, and whether or not the Director's approval is required for such contract. The report shall include:

(a) A memorandum of facts (in triplicate), containing so far as practicable and appropriate the information listed in § 811.1112–27 and, in addition, a statement of:

(1) The nature and extent of the adjustment.

(2) Estimated benefits to the Government.

(3) Methods proposed for supervision or control of the Government's interest.

(4) Future action contemplated.

(b) Sufficient copies of the agreement for distribution by the Director to interested agencies (a total number equal to the number of licensors and licensees, plus three).

(c) Three copies of the withdrawal of notice (if a notice had previously been given) and three copies (one duly exe-

cuted by the licensor) of the consent and release specified in § 811.1112–9 (c).

(d) If the adjustment is embodied in a contract executed on behalf of the Government and requiring approval of the Director, the contract shall be transmitted in form ready for signature by the Director accompanied by the recommendations of the delegate or technical service having the matter in hand.

§ 811.1113–11 *Copies to the Chief, Patents Division, Office of The Judge Advocate General.* In the case only of an adjustment which is embodied in a contract executed on behalf of the Government and requiring approval of the Director, a copy of each document required in that case by § 811.1113–10 to be transmitted to the Director, shall be forwarded to the Chief, Patents Division, Office of The Judge Advocate General, concurrently with the transmittal of the originals thereof to the Director.

§ 811.1113–12 *Numbering and distribution.* (a) It is unnecessary to number royalty adjustment agreements, notwithstanding the provisions of § 803.309.

(b) The executed original of every royalty adjustment agreement (whether or not executed by the Government) will be forwarded to the Chief, Audit Division, Room 506, General Accounting Office, Washington 25, D. C., under the following conditions:

(1) If such agreement provides that the Government is to make or receive the payment of an amount determinable at the time of the execution of the contract (such as, for example, refund of royalties already accrued or received), the agreement will be forwarded immediately.

(2) If such agreement provides that the Government is to make or receive the payment of money upon the happening of or in an amount which is contingent upon a future event (such as, for example, refund of royalties to accrue or to be received), the agreement will be forwarded immediately or upon the happening of any event which requires the payment or receipt of moneys under the agreement.

(c) If such an agreement contains any provision granting to the Government an interest (such as an assignment or license) in or under patents or applications for patents, the agreement is required by Executive Order No. 9424, February 18, 1944, to be recorded in the United States Patent Office. Such recording will be carried out in the manner provided in paragraph 4 of AR 25–10. An agreement providing for a waiver of royalties under existing private licenses, even for a limited time, is subject to the foregoing.

(d) If a royalty adjustment agreement contains provisions such as to require both that it be forwarded to the General Accounting Office (paragraph (b) above) and that it be recorded in the Patent Office (paragraph (c) above), and the War Department has in its possession no more than one executed original thereof, such original shall first be transmitted for recording in the Patent Office (in compliance with paragraph 4 of AR 25–10) with a request that it be returned, and upon return thereof said original shall then be forwarded to the General Accounting Office. Hereafter the representative of the War Department shall, if possible, secure an executed original and an executed duplicate original of all documents required to be forwarded under paragraph (b) and recorded under paragraph (c) above, and the executed duplicate original shall be used for complying with paragraph 4 of AR 25–10.

§ 811.1114 *Agreements in settlement and compromise after an order is made and before suit against the United States has been instituted.* (See § 811.1112–7.)

§ 811.1114–1 *Approval required.* Every agreement in settlement and compromise of a claim against the United States accruing in consequence of the making of an order under the Act is subject to the approval of the Director.

§ 811.1114–2 *Submission for approval.* (a) The contract in an appropriate number of copies each executed by all necessary parties and by a delegate on behalf of the United States, shall be transmitted to the Director ready for execution by him, accompanied by a report containing:

(1) A full statement of all relevant facts and circumstances, and

(2) The recommendations of the chief or deputy chief of the originating technical service that the contract be approved.

(b) One copy of the proposed agreement and of the report accompanying the same shall be forwarded to the Chief, Patents Division, Office of The Judge Advocate General, concurrently with the transmittal of the originals thereof to the Director.

§ 811.1114–3 *Numbering and distribution.* (See § 811.1113–12.)

§ 811.1115 *Investigation of, and licenses, assignments and releases eliminating claims for, the unauthorized use of inventions.*[1]

§ 811.1115–1 *Applicable statutes.* (a) The act of June 25, 1910 as amended (35 U.S.C. 68, 94) (hereinafter called "the Act of 1910") provides that wherever 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 the United States and with its authorization and consent,[2] the patent owner's remedy shall (except as hereinafter stated) 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 benefits of the foregoing statute do not inure to any patentee or the assignee of any patentee, who when he makes such claim is in the employment or service of the Government, nor does the foregoing statute apply in respect of any patent based upon an invention made during the time the inventor was in the employment or service of the Government.

(b) Section 4900, Revised Statutes, as amended (35 U.S.C. 49) (hereinafter called "the Patent Marking Statute"), precludes the recovery by a patent owner of damages or profits for infringement occurring prior to (1) the date of marking the patented article with the word "Patent" together with the number of the patent or with the word "Patented" and the day and year the patent was granted or (2) the date on which the patent owner notified the alleged infringer of the claimed infringement (whichever date is earlier), except (i) in the case of a patent exclusively for a process or (ii) in the event neither the owner nor any licensee of the owner has made or sold the patented article.

(c) The act of October 6, 1917, as amended (35 U.S.C. 42) (hereinafter called "the Secrecy Order Act"), provides that the owner of a patent application, which has been ordered by the Commissioner of Patents to be kept secret, who has faithfully obeyed such order and who has tendered his invention to the Government for its use, shall, if and when he ultimately receives a patent, have the right to sue for compensation in the Court of Claims, such right to compensation to begin from the date of the use of the invention by the Government.

(d) The act of July 2, 1926, as amended (10 U.S.C. 310 (i)) (hereinafter called "the Air Corps Act"), provides that whenever a design, whether or not inventive in character, relating to aircraft or any components thereof is used or manufactured by or for any department of the Government without just compensation, the owner of such design may within four years from the date of such use file suit against the United States in the Court of Claims for recovery of his reasonable and entire compensation for such use and manufacture.

(e) Section 188, Revised Statutes (5 U.S.C. 91) (hereinafter called "the Act requiring reports to the Attorney General"), requires that a department, or the officer or agent of a department which is authorized to adjust a claim, shall, after suit has been brought in the Court of Claims and upon request by the Attorney General, without delay furnish the Attorney General with a full statement, in writing, of all facts, circumstances, and evidence touching the claim in the possession or knowledge of such department, officer, or agent.

(f) The act of October 31, 1942 (35 U.S.C. 91) (hereinafter called "the Royalty Adjustment Act"), provides that the head of any department or agency of the Government which has ordered, authorized, or consented to the manufacture, use, sale, or other disposition of an invention (whether patented or unpatented) by or for the Government is authorized to enter into an agreement with the owner thereof, before suit against the United States has been instituted, in full settlement and compromise of any claim against the United States accruing by reason of such manufacture, use, sale, or other disposition of the invention. This statute grants power and authority

[1] Section 811.1115 to 811.1115–22, inclusive, became effective December 12, 1944.

[2] See SPJGP 1943/881, Feb. 8, 1943, Page 75, Volume II, Bulletin of The Judge Advocate General, February 1943.

to settle claims or liabilities arising under the acts referred to in paragraphs (a) and (c) above, and to settle claims or liabilities arising under the act referred to in paragraph (d) above insofar as they are based upon a design which is believed to be inventive in character.

(g). Section 3477, Revised Statutes as amended (31 U.S.C. 203), provides that all transfers and assignments of any claim (except certain contract claims) upon the United States are absolutely null and void unless made, among other things, after the allowance of the claim, the ascertainment of the amount due and the issuing of a warrant for the payment thereof. In view of certain decisions construing this statute, its provisions will, so far only as concerns claims made under the statutes referred to in paragraphs (a), (c) and (d) of this section, be deemed:

(1) Inapplicable to claims arising under the Act of 1910 for compensation on account of articles manufactured for the United States, and articles and methods used in production for the United States (except articles made by the United States); and

(2) Applicable to all other claims arising under the statutes referred to in paragraphs (a), (c), and (d), such for example as claims under the act of 1910 for compensation on account of articles manufactured by the United States, or claims under the Secrecy Order Act or the Air Corps Act for compensation on account of articles manufactured by or for the United States.

§ 811.1115–2 *Definitions.* Where used in §§ 811.1115–3 to 811.1115–22 hereof, inclusive, the following terms have the meaning here assigned to them:

(a) "Director" means the Director (or in his absence the Acting Director), Purchases Division, Headquarters, Army Service Forces. In respect of any action taken by the Army Air Forces, the term "Director" means the Special Representative of the Under Secretary of War (see § 801.108–4 (b).

(b) "Chief, Patents Division" means the Chief, Patents Division, Office of The Judge Advocate General.

(c) "Delegate" means any officer, board, agent or person to whom the powers, duties and authorities set forth in paragraphs (d) and (e) of § 811.1112–9 have been delegated.

(d) "Such claim" and "such a claim" means a claim which has in fact been asserted or a claim which it may reasonably be anticipated will be asserted under the statutes or any of them referred to in paragraphs (a) and (c) of § 811.1115–1 and under the statute referred to in § 811.1115–1 (d) insofar as said claim is based upon a design which is believed to be inventive in character.

§ 811.1115–3 *Delegation of authority to and duties of delegates.* The Secretary of War has delegated (§ 811.1112–10) to certain officers, boards and persons (herein called "delegate") the duty and authority, before suit against the United States has been instituted, to negotiate and to enter into contracts of settlement and compromise of such a claim against the United States. Each delegate, in matters properly before him, is charged with the duty of taking appropriate action with respect to every case (i) where such a claim has been made or (ii) where such a claim may be reasonably anticipated under such statutes, promptly after knowledge thereof is brought to his attention. Such action includes the following:

(a) Writing the claimant or his representative acknowledging receipt of the communication in which such claim is asserted. An authorized form of acknowledgment is set forth in § 811.1115–10;

(b) Transmitting directly to the Chief, Patents Division, a copy of the communication in which any such claim is asserted or reported (delegates in the Army Air Forces shall, in addition, transmit a copy to the Air Judge Advocate);

(c) Requesting clearance from the Director to investigate and settle each such claim pursuant to § 811.1115–6;

(d) Investigating each such claim upon clearance from the Director, and if deemed appropriate by the delegate, settling the same pursuant to §§ 811.1115–4, 811.1115–7 and 811.1115–10 to 811.1115–22;

(e) Preparing and transmitting to the Chief, Patents Division, and to the Director, pursuant to § 811.1115–8, a report containing the full statements required by the act requiring reports to the Attorney General (§ 811.1115–1 (e)) with respect to each such claim in which no settlement is effected; and

(f) Making the required distribution of each contract of settlement or partial settlement of such claim pursuant to § 811.1115–15.

§ 811.1115–4 *Policy of the War Department.* The policy of the War Department is that so far as practicable (a) one delegate shall represent the War Department in the investigation or settlement of each such claim; (b) where a contract includes an obligation for the payment of a running royalty, no department other than the War Department shall be committed to such obligation unless the contract has been signed in behalf of each other department or agency of the Government similarly obligated (see §§ 811.1115–18 and 813.1331), (c) where a contract includes a release of such claim, the release shall whenever practicable, be for the benefit of all departments and agencies of the Government (see §§ 811.1113–5, 813.1330, Art. 3, 813.1331, Art. 5, 813.1332, Art. 2, 813.1333, Art. 1, and 813.1334, Art. 2; (d) where a contract includes a royalty-free or a paid-up license for future procurement, such license shall be for the benefit of all departments and agencies of the Government (see §§ 811.1115–17, 811.1115–21, 813.1330, Art. 1 and 813.1334, Art. 1); (e) where a contract includes a release of such a claim or a license, the effect of which is to release or discharge a contractor in whole or in part from an obligation to indemnify the Government (see § 803.335); such contractor shall be a party to the contract and appropriate action shall be taken to the end that the contractor shall pay all money consideration flowing to the claimant or potential claimant which is attributable to that part of the release or license which benefits the contractor; (f) each contract shall contain an appropriate "Non Estoppel" clause preserving to the Government all defenses in any infringement action unless all potential claims under the patent against the Government are disposed of by the contract (see §§ 811.1115–17 through 811.1115–21, inclusive; and (g) the investigation and report necessary for compliance with the Act requiring reports to the Attorney General (see §§ 811.1115–8 and 811.1115–9) shall be completed with respect to each such claim (whether or not covered by an agreement of indemnity) a complete settlement of which is not effected.

§ 811.1115–5 *Duties of the chiefs of the technical services.* The chief of each technical service shall issue necessary instructions to all officers and employees of his service to provide for prompt transmittal to the chief legal or patent officer in the headquarters of his service, or in the case of the Army Air Forces to the chief legal or patent officer in the headquarters of the Army Air Forces or in the headquarters of any of the major commands of the Army Air Forces charged with duties of procurement, of all reports of claims and of potential claims relating to the manufacture or use of inventions or designs by or for the Government. If such legal or patent officer is not a Delegate, he shall transmit each such report to a Delegate in his service or command together with his recommendations for appropriate action. Such reports may be received by contracting officers from contractors under clause (b) of §§ 803.335–5 and 803.335–6.

§ 811.1115–6 *Procedure for obtaining clearance.* Promptly after receipt of a notice or report of such claim the delegate shall request from the Director clearance to investigate and to settle the same, and shall contemporaneously forward a copy of such request to the Chief, Patents Division. Delegates in the Army Air Forces shall also forward a copy of such request to the Office of the Air Judge Advocate. The Chief, Patents Division, shall determine from his files, from the Government Register of Patent Rights (Executive Order No. 9424, Feb. 18, 1944) and from the Department of Justice whether any technical service or any other department or agency of the Government has investigated or settled, or received a report or notice of, a claim pertaining to the same subject-matter and shall notify the Director of the results of such determination. The Director shall then grant such clearance as appears proper upon consideration of the information received from the Chief, Patents Division, and any supplemental information contained in the Director's files. The Director shall send a copy of such clearance to the Chief, Patents Division, and to the chief patent officer of each of the technical services, and each such officer shall promptly investigate the procurement in his service and notify the Delegate to whom clearance has been issued of the interest, if any, of his service in the matter and of any pertinent information

contained in his files. Each request for clearance shall include, (a) the name and address of each claimant or prospective claimant, (b) the name and address of each contractor and subcontractor who is believed to have performed the alleged infringing acts (to the extent disclosed by a cursory search in the headquarters of the delegate), (c) the number of each patent and patent application concerned, (d) a description of the alleged infringing subject-matter (in sufficient detail to permit other technical services to determine therefrom whether they have an interest in the matter), and (e) a copy of the communication from the claimant, if any.

§ 811.1115–7 *Foreign claimants.* In cases where the claimant is a national of a Government which is party to a Mutual Aid Agreement with the United States Government, the delegate, after clearance has been obtained from the Director, shall promptly proceed as set forth in § 811.1111–2.

§ 811.1115–8 *Report where no settlement is made.* A final written report of investigation, including recommendations and conclusions of the delegate, will be made by him to the Chief, Patents Division, with respect to each such claim in which settlement is believed to be inadvisable or which the delegate has been unable to settle upon terms deemed reasonable by him. Each such report shall be clearly marked "Confidential—Legal Memorandum for the Guidance of Administrative Officials". Delegates in the Army Air Forces shall forward such report to the Chief, Patents Division, through the Office of the Air Judge Advocate. A copy of such report shall be forwarded by the delegate to the Director and to the chiefs of all interested technical services concurrently with transmittal of the original to the Chief, Patents Division. This final report, which is to serve as a basis for compliance with the act requiring reports to the Attorney General (§ 811.1115–1 (e)), will include so far as practicable and relevant all of the following information:

(a) Numbers and dates of all contracts and subcontracts for procurement of the item in question, together with the name and address of each contractor and subcontractor concerned, and the text of each contractor's agreement, if any, to indemnify the Government against liability for infringement, or a statement that there is no such indemnity agreement. This information is to include contracts of other technical services and other departments or agencies of the Government involved, if any.

(b) Extent and dates of alleged infringement.

(c) Statement of whether the Government by a duly authorized agent or official has given its authorization or consent to the manufacture or use of the article, material, design, or process upon which Such Claim is or will be based. (See SPJGP 1943/881 Feb. 8, 1943 page 75, Vol. II, Bulletin of The Judge Advocate General, Feb. 1943.)

(d) Statement of effective date of marking or of notice under the Patent Marking Statute, if pertinent (see § 811.1115–1 (b)).

(e) Copies of patents alleged to be infringed or, in case of Such a Claim which arises under the Air Corps Act (§ 811.1115–1 (d)), claimant's description of his design.

(f) Result of title search, including examination of Government Register of Patent Rights (Executive Order No. 9424, Feb. 18, 1944; par. 4, AR 25–10).

(g) A full and complete description of the alleged infringing device, material, design or process, accompanied where practicable with adequate specimens, photographs or drawing thereof.

(h) Report of date and extent of prior art searches in each of the following categories:

(1) Prior art patents and publications.

(2) Pending applications filed by the service conducting the investigation.

(3) Prior public uses.

(i) Copies of prior art patents and publications and full and complete description (and where practicable a specimen, photograph or sketch) of prior uses relied upon by the delegate.

(j) Statement of the extent to which royalties, if any, have been adjusted by the War Department under the Royalty Adjustment Act (§§ 811.1112, 811.1113 and 811.1114).

(k) Statement of whether or not the manufacture or use of the invention occurred while the owner of the patent was in the employment or service of the Government.

(l) Statement of whether or not the patent was based upon an invention made during the time the inventor was in the employment or service of the Government.

(m) Names and adresses of prospective witnesses (fact and expert) and, where pertinent to validity or infringement, signed statements of witnesses. Where a witness refuses to sign a statement, a statement of the interviewing officer setting forth the facts which the witness may be expected to state if called to testify.

(n) Conclusions regarding infringement and reasons therefor.

(o) Conclusions regarding validity and reasons therefor.

(p) Conclusions regarding Government liability, the estimated money value of the claim and an estimate of future procurement involving possible increase of the claim.

(q) Summary of unsuccessful negotiations for settlement, if any.

(r) Recommendations.

§ 811.1115–9 *Action of the Chief, Patents Division, upon receipt of the delegate's final report.* (a) Upon receipt from a delegate of a final report under § 811.1115–8, the Chief, Patents Division shall promptly review the same. In each case where a communication has been received in which such a claim is asserted, the Chief, Patents Division shall write a letter to the claimant or his representative stating the final conclusions of the War Department upon such claim and shall send copies thereof to the Director, the delegate and the chief of each interested technical service.

(b) If, upon reading the final report, the Chief, Patents Division, deems it advisable, he shall make a search of one or more of the following possible sources of additional prior art; and if the results of such search so indicate, he shall make a supplemental report, stating conclusions supplemental to the conclusions stated in the delegate's final report:

(1) Patent applications which are the subject of secrecy orders under the Secrecy Order Act (see § 811.1115–1 (c) in which the inventions have been tendered to the Government for its use.

(2) Patent applications filed by technical services other than the investigating service.

(3) To the extent available, patent applications filed by other departments or agencies of the Government.

Two copies (three copies in Army Air Forces cases) of such supplemental report shall be sent to the Director who shall transmit one of said copies to the Delegate and also, in cases arising in the Army Air Forces, one to the Air Judge Advocate.

(c) If, upon reading the Delegate's final report, the Chief, Patents Division, disagrees with the conclusions regarding infringement or validity, he shall make a supplemental report stating his supplemental conclusions. Two copies (three copies in Army Air Forces cases) of such report shall be transmitted to the Director who shall transmit copies thereof as provided in paragraph (b) above.

(d) Upon completion of the final report, the Chief, Patents Division, shall advise the Attorney General thereof.

§ 811.1115–10 *Correspondence with claimant.* No delegate shall concede in writing, addressed to any claimant, potential claimant, or the representative of either, the merit or value of such claim except insofar as such concession may be embodied in an agreement executed by the United States in settlement and compromise thereof in compliance with §§ 811.1115–4, 811.1115–7, and 811.115–12 to 811.1115–22, inclusive. Upon receipt of a notice of infringement, the delegate shall acknowledge receipt thereof. The following form of letter is authorized for that purpose, subject to such modifications as may be required by the nature of the claim presented:

[Letterhead of Delegate]

[Date]

JOHN DOE,
Title Guarantee Building,
Miami, Florida.

DEAR SIR: Your letter to ----------, dated ----------, 1944, stating that United States Letters Patent No. ----------, granted (date of patent), to (patentee's full name), of (city and state), for "(title of invention)", is (are) infringed by (item or process) allegedly being used by the (War Department), has been referred to this office for necessary action and reply.

I am directed by the Secretary of War to inform you that the matter presented in your letter will be carefully investigated and that you will be informed of the War Department's conclusions upon completion of such investigation.

To aid in such investigation, it is requested that you furnish this office as promptly as possible (if readily available)

(1) a copy of the file wrapper and contents of the patent(s) in question, (2) copies of all patents and publications cited by the Patent Office during the prosecution of the application(s) for such patent(s), (3) the names and addresses of licensees, if any, (4) copies of license agreements, (5) a brief statement of any litigation in which the patent(s) have been or are now involved, and (6) a list of all notices of infringement which you have sent to alleged infringers of the patent (except the alleged infringers included in your statement of litigation), including but not limited to any other departments and agencies of the Government.

Very truly yours,

[Signature of Delegate]

§ 811.1115–11 *Disclosure of information.* In order that settlements advantageous to the Government may be secured, any delegate holding the powers, duties, and authorities of § 811.1112–9 (d), and any authorized representative of such delegate, may, in the performance of his official duties and when he has reason to believe that such action would be to the advantage of the United States, disclose to the claimant, potential claimant, or authorized representative of either, any fact or matter of evidence which appears to bear upon his claim or its value, except as consideration of military security may indicate such disclosure to be inadvisable (SPJGA 1944/11256, Oct. 25, 1944, and SPJGA 1945/2553, Mar. 9, 1945).

§ 811.1115–12 *Available procedures for the settlement and partial settlement of such claims.* The delegate having the matter in hand may, subject to the availability of appropriations and allotments of funds in his service and subject to such rules and regulations governing the exercise of delegated powers as are or may from time to time be prescribed in this section and §§ 811.1113 and 811.1114 and 811.1115, settle such claim:

(a) By causing the United States to execute a contract of license, assignment, release, release and license or release and assignment with the legal and equitable owner(s) providing for a payment or payments aggregating more than one ($1.00) dollar to be made by the Government (see §§ 811.1115–17 to 811.1115–20, inclusive, and suggested forms contained in W. D. Contract Forms Nos. 30, 31, 32, and 33), or

(b) By receiving from the legal and equitable owners, or by causing the United States to execute a contract of license, assignment, release, release and license, or release and assignment which does not provide for payments aggregating more than one ($1.00) dollar to be made by the Government (see § 811.1115–21 and suggested form contained in W. D. Contract Form No. 34), or

(c) By receiving from the legal and equitable owner(s) a release of all claims against the Government for past infringement in connection with a voluntary adjustment of royalties under § 811.1113–5 (for use in W. D. Contract Form No. 29).

§ 811.1115–13 *Fiscal procedures.* (a) An agreement to pay a fixed amount for the purchase of a paid-up license (W. D. Contract Form No. 30) (with or without release), or an assignment (W. D. Contract Form No. 32) (with or without release), or a release (W. D. Contract Form No. 33) either by way of lump-sum payment or an amount determinable at the time of execution of the contract, is subject to the provisions of §§ 803.310–1 and 803.310–2.

(b) An agreement to pay running royalties on future procurement proportioned to use (W.D. Contract Form No. 31) is not subject to §§ 803.310–1 or 803.310–2, nor need the period of payment be limited to the period for which existing appropriations are available.[1]

(c) Funds are available for the fiscal year 1945 for the payment for releases, licenses and assignments entered into in accordance with the procedures authorized in §§ 811.1115–4, 811.1115–7 and 811.1115–10 to 811.1115–22, inclusive; *Provided, however,* That no payment shall be made for the release of such claim or any portion of such claim the liability for which is barred by the statute of limitations or by other statute. [Section 16, Public Law 374, 78th Congress (Military Appropriations Act, 1945)]

§ 811.1115–14 *Contracts requiring the Director's approval.* Any contract of the type mentioned in § 811.1115–12 may be executed or received on behalf of the Government by a delegate without approval of the director, except in the following cases where such approval is required:

(a) Where the contract provides for total payments by the Government aggregating $500,000 or more, or

(b) Where the approval of the Director is required by the provisions of §§ 811.1115–17, 811.1115–18, 811.1115–19, 811.1115–20 or 811.1115–21.

§ 811.1115–15 *Numbering and distribution.* (a) Licenses, assignments and releases shall be numbered in the circumstances specified in § 803.309.

(b) The original of every license, assignment and release except those which do not involve the payment of money to the contractor shall be forwarded by delegate to the Chief, Audit Division, Room 506, General Accounting Office, Washington 25, D. C.

(c) The original or executed duplicate original of every license, assignment and release shall be transmitted by the delegate to the Chief, Patents Division, for recording in the United States Patent Office in the manner specified in paragraphs (c) and (d) of § 811.1113–12.

(d) A copy of each license, assignment and release shall be transmitted by the delegate to the Director and a copy of each license which provides for the payment of running royalties shall also be transmitted by the delegate to each of the chiefs of the technical services for the attention of the chief legal or patent officer thereof. Receipt of such copy shall place the recipient chief of a technical service on notice that future procurement of the licensed subject-matter requires the payment of royalties to the licensor (see §§ 811.1115–18 (f) and 813.1231, Art. 2). Chiefs of the technical services shall notify or cause to be notified procurement and price analysis offices affected.

§ 811.1115–16 *Mandatory contract articles in licenses, assignments and releases.* (a) The "Officials Not to Benefit" article (§ 803.322) and the "Covenant against Contingent Fees" article (§ 803.323) are required in every license, assignment and release which is executed by the Government.

(b) The "Anti-Discrimination" article (§ 803.325) and the "Assignment of Rights" article (§ 803.355) are required as specified by § 811.1113–6 (b) and (c).

(c) The "Renegotiation" article (§ 803.342–1) is required if the contract is executed by the Government and if it involves an estimated amount of over $100,000 (§ 812.1203–2), unless the contractor's receipts are exempted from renegotiation under the provisions of the following paragraph (d).

(d) the chief of a technical service may exempt from renegotiation the receipts of a contractor under any individual license, assignment or release granted or conveyed to the Government if the aggregate payments under the contract for its duration or for any stated period is either (1) a fixed amount determinable at the time of execution of the contract, or (2) limited by the contract to a maximum amount determinable at the time of execution of the contract (see § 812.1205–5 (b)), and such aggregate receipts are less than $5,000,000. If the chief of a technical service decides under § 812.1205–5 (b) that the contractor's receipts under such a contract should be exempted from renegotiation, Alternate A of § 813.1330, Art. 5 shall be used without deviation. All contracts which contain the article of Alternate A of § 813.1330, Art. 5 must be executed or approved by a delegate who also holds delegated power to exempt from renegotiation under § 812.1205–5 (b) (see also § 812.1205–9 (b)).

§ 811.1115–17 *Paid-up licenses.* The following instructions apply to all paid-up licenses entered into in behalf of the War Department, the money payment for which is more than one dollar ($1.00) (War Department Contract Form No. 30 (§ 813.1330) is suggested as a form for use in such cases):

(a) In the event that the scope (but not term) of the license grant is substantially less than that contained in § 813.1330, Art. 1 (except for foreign rights) the license must be approved by the Director if it provides for payments by the Government aggregating $25,000 or more.

(b) In the event that the scope of the "Non Estoppel" article is substantially less than that contained in § 813.1330, Art. 2 the license must be approved by the Director unless (1) the scope of the license article is not substantially less than that contained in § 813.1330, Art. 1 (except for foreign rights), (2) the scope of the release is not substantially less

[1] The Comptroller General has ruled (MS Comp. Gen. A-70676, dated May 5, 1937) that such an agreement takes effect only in connection with and to the extent of future procurement under the license, and if such procurement is within appropriations and allotments then existing they will cover the royalty agreed to be paid in respect thereto.

than that contained in § 813.1330, Art. 3 (except for the words in brackets) and (3) the term of the license is not less than that contained in Alternate A of § 813.1330, Art. 1. (This is to prevent estoppel in the event of a later suit against the Government for alleged infringement of the licensed patents.)

(c) A release of past infringement may be omitted from the license and covered by a separate contract (see, for example, W. D. Contract Form No. 33). However, when a release of substantially less scope than that contained in § 813.1330, Art. 3 (except for the words in brackets) is included in a license, the contract must be approved by the Director if it provides for payments by the Government aggregating $25,000 or more.

(d) The term of the license as provided by Alternate A of § 813.1330, Art. 1 may be shortened to any extent deemed appropriate by the delegate (subject, however, to the director's approval, under paragraph (b) above, if the scope of the "Non Estoppel" article is substantially less than that contained in § 813.1330, Art. 2. Alternates B, C, D and E of § 813.1330, Art. 1. are suggested.

§ 811.1115–18 *Licenses providing for the payment of running royalties.* The following instructions apply to all licenses entered into in behalf of the War Department which provide for the payment of running royalties (War Department Contract Form No. 31, § 813.1331, is suggested as a form for use in such cases):

(a) In the event that the scope (but not term) of the license grant is substantially less than that contained in § 813.1331, Art. 1 (except for foreign rights) the license must be approved by the director if it contemplates or permits payments by the Government of $25,000 or more in any calendar year.

(b) In the event that the scope of the "Non Estoppel" article is substantially less than that contained in § 813.1331, Art. 4 the license must be approved by the Director. (This is because the license applies only to the War Department, it is terminable, and the article is required to prevent estoppel in the event of a later suit against the Government for alleged infringement.)

(c) The instructions of § 811.1115–17 (c) apply as to scope of the release.

(d) The instructions of § 811.1115–17 (d) apply as to the use of the alternate term articles except that the words "unless sooner terminated as elsewhere herein provided" must be added to the article selected from § 813.1330, Art. 1. The article at § 813.1331, Art. 1 corresponds to Alternate A of § 813.1330, Art. 1 with such addition.

(e) In the event that the scope of the "Protection against Unjust Payments" or the "Reserved Rights" articles are substantially less than that contained in § 813.1331, Art. 3 and Art. 8 respectively, the license must be approved by the Director if it contemplates or permits payment by the Government of $25,000 or more in any calendar year.

(f) The article which provides for the computation of royalties (see § 813.1331, Art. 2 may be of varying scope but it must contain a provision designating the chief of the technical service of the Delegate as the officer designated to make reports to the contractor of the extent of use of the licensed subject-matter by the entire War Department, and such chief shall be charged with the responsibility of obtaining from all technical services the information necessary to make the required reports and the corresponding vouchers to make the required payments (see § 813.1331, Art. 2 (b). This article must not commit departments other than the War Department to pay royalties except to the extent that the license is signed in behalf of such other departments so obligated (see § 811.1115–4). In the event military security prohibits the disclosure of the quantity of production by reports or payments to the Licensor the Delegate may negotiate an appropriate substitute for the suggested "Royalties" article, for example, agreed lump-sum yearly or half-yearly payments with final settlement in accordance with actual production to be made within six months after termination of hostilities. Alternate A of § 813.1331, Art. 2 is suggested for running royalties based upon a percentage of the cost of the articles or materials and Alternate B of § 813.1331, Art. 2 is suggested for running royalties based upon a fixed amount per item.

§ 811.1115–19 *Paid-up assignments.* The following instructions apply to all assignments entered into in behalf of the War Department, the money payment for which is more than one dollar ($1.00) (War Department Contract Form No. 32 (§ 813.1332) is suggested as a form for use in such cases):

(a) In the event that the scope of the assignment grant is substantially less than that contained in § 813.1332, Art. 1 (except for foreign rights) the assignment must be approved by the Director if it provides for payments by the Government aggregating $25,000 or more.

(b) When a release of substantially less scope than that contained in § 813.1332, Art. 2 (except for the words in brackets) is included in an assignment, the contract must be approved by the Director if it provides for payments by the Government aggregating $25,000 or more.

(c) In the event that the scope of the "Non Estoppel" article is substantially less than that contained in § 813.1332, Art. 3, the assignment must be approved by the Director unless (1) the scope of the assignment article is not substantially less than that contained in § 813.1332, Art. 1 (except for foreign rights) and (ii) the scope of the release article is not substantially less than that contained in § 813.1332, Art. 2 (except for the words in brackets). (This is to prevent estoppel in the event of a later suit against the Government for alleged infringement of the patents.)

(d) To facilitate proof of the contract the acknowledgment of each contractor should preferably be executed by a notary public or other officer authorized to administer oaths under section 1750 of the Revised Statutes (22 U.S.C. 131) (see Rule 185 of the rules of practice in the United States Patent Office).

§ 811.1115–20 *Paid-up releases.* The following instructions apply to all paid-up releases entered into in behalf of the War Department, the money payment for which is more than one dollar ($1.00) (War Department Contract Form No. 33 (§ 813.1333) is suggested as a form for use in such cases):

(a) In the event that the scope of the release is substantially less than that contained in § 813.1333, Art. 1 (except for the words in brackets) the contract must be approved by the Director if it provides for payments by the Government aggregating $15,000 or more.

(b) In the event that the scope of the "Non Estoppel" article is substantially less than that contained in § 813.1333, Art. 2 the release must be approved by the Director unless (1) the scope of the release is not substantially less than that contained in § 813.1333, Art. 1 (except for the words in brackets) and (2) the Government has secured in a separate document either (i) a license (for the full term of the licensed patents and patents issued on the licensed applications, see Alternate A of § 813.1330, Art. 1) the scope of which is not substantially less than that contained in Art. 1 (except for foreign rights) or (ii) an assignment the scope of which is not substantially less than that contained in § 813.1332, Art. 1 (except for foreign rights). (This is to prevent estoppel in the event of a later suit against the Government for alleged infringement.)

§ 811.1115–21 *Free licenses, assignments and releases.* The following instructions apply to all licenses, assignments and releases received or executed in behalf of the War Department, the money payments for which aggregates one dollar ($1.00) or less (War Department Contract Form No. 34 (§ 813.1334) is suggested as a form for use in such cases):

(a) It is unnecessary for the Government to execute such a contract but in the event that it is executed by the Government the appropriate mandatory articles must be included (see § 811.1115–16).

(b) In the event that the "Non Estoppel" article is omitted or its scope is substantially less than that contained in § 813.1334, Art. 2, the license, assignment or release must be submitted to the Director for approval (whether or not the contract is prepared for execution in behalf of the Government) unless the Government has secured (1) a release the scope of which is not substantially less than that contained in § 813.1334, Art. 2 (except for the words in brackets) and (2) a license for the full term of the licensed patents and patents issued on the licensed applications (see § 813.1334, Art. 1) or an assignment the scope of which is not substantially less (except for foreign rights) than that contained in §§ 813.1332, Art. 1, and 813.1334, Art. 1, respectively.

(c) In negotiating such contracts the Delegate will endeavor to obtain license, assignment and release grants of the scope of the grants contained in §§ 813.1332, Art. 1, and 813.1334, Art. 1, and Art. 2, respectively, but any deviations deemed necessary and appropriate

by the Delegate may be made without approval of the Director, except in the cases specified in paragraph (b) above.

(d) War Department Contract Form No. 34 (§ 813.1334) is recommended for a combined free release and license. This form may be readily amended to cover a license, an assignment, an assignment and release, or a release.

§ 811.1115–22 *Submission of contracts for approval by the Director.* When a license, release or assignment requires the Director's approval it shall be transmitted with a memorandum of facts (in triplicate) signed by the delegate. Such memorandum shall include the following:

(a) A copy of the patent(s) and patent application(s) involved (if practicable).

(b) A brief statement of the delegate's conclusions regarding validity and infringement and the reasons therefor.

(c) A statement of the extent of Government use of the invention(s) including the estimated money value of the claim, if any, and an estimate of future procurement, if any, involving possible increase of the claim.

(d) Reference to sections of the regulations in this chapter which require the Director's approval of the contract.

(e) Recommendation that the contract be approved and the reasons therefor.

§ 811.1116 *Patent rights provisions of a development contract.* The policy of the War Department in regard to the patent rights provisions of a development contract is set forth in §§ 811.1116–1 to 811.1116–13, inclusive, below. This policy is to be executed within the discretion of the chiefs of the technical services pursuant to the delegation of authority contained in § 811.1118. While the policy stated in § 811.1116–13 is applicable chiefly to a development contract, it is also applicable to a contract which is not a development contract.

§ 811.1116–1 The expression "development contract" as used in this section, means a contract, change order or commitment which contemplates that research or experimental testing or production or the development or further development of an item or method, is to be performed for the Government, either as the sole object of the contract or to an extent beyond that normally incident to the performance of a supply contract for the class of item involved.

§ 811.1116–2 In a development contract (except as described in §§ 811.1116–8 and 811.1116–11 below) the War Department normally requires the contractor to grant to the Government a royalty-free license under foreground patents (as described below). Such license will normally include all inventions, conceived or first actually reduced to practice in the performance of the contract or subcontract or of any research or development work done upon the understanding of the award thereof, made by persons employed by or working under the direction of the contractor or subcontractor who, by reason of the nature of their duties in connection with the performance of the contract or subcontract, would reasonably be expected to make inventions; and as to such inventions made by other persons the license will normally be only to the extent of the contractor's right to grant the same. Patents based upon all such inventions are here referred to as "foreground patents". It is recognized that certain inventions, otherwise falling within the foregoing category, which have been constructively (but not actually) reduced to practice before commencement of the "performance" above described, may be excluded from the category of foreground patents in appropriate cases, as for example where the development work contemplated by the contract is not necessary to demonstrate the practicability of such inventions.

§ 811.1116–3 So far as concerns domestic practice of the inventions of foreground patents, such license normally will extend for the life of any patent involved, will not be limited to any particular governmental purpose and will include rights of disposal for any purpose authorized by law (see § 811.1118 (d)); but as to foreign practice of such inventions the license will normally be only to the extent of the contractor's right to grant the same.

§ 811.1116–4 The foregoing policy applies regardless of the source of funds allotted to the contract, regardless of whether the contract is administratively known as a development contract, and regardless of whether it is in other respects a contract for supply, construction, architect-engineer services, management services, equipment rental, bailment, or the like; but it is recognized that exceptions may properly be made in special cases, for example, where license provisions adequate to protect the Government are included in other contractual arrangements, where the commitment consists of a Letter of Intent issued in contemplation of subsequent formalization of a definitive contract containing suitable license provisions, and so forth.

§ 811.1116–5 Where a development contract contains provision granting to the Government a license under foreground patents, the War Department will normally require the inclusion of provisions (a) requiring the contractor to report each invention subject to said license in such form and time as will enable the War Department to determine whether it is in the interests of the Government to have its license rights confirmed and protected by the filing of a patent application, (b) requiring the contractor to state whether or not he will file the application on such invention and, if such application is filed by him or on his behalf, obligating him to supply the War Department with the means of keeping itself informed as to the progress of the prosecution thereof, (c) requiring the contractor, if he states he will not file such application, to transfer to the Government the ownership of the invention and of the right to file and prosecute applications therefor, subject to a reserved license thereunder to the contractor, but as to inventions of this kind made by others than persons of the class described in § 811.1116–2 the said requirement will normally be only to the extent of the contractor's right to make such transfer, and (d) requiring the contractor to deliver confirmatory instruments of license when requested by the War Department.

§ 811.1116–6 If a development contract contemplates that reports, drawings, blueprints, data or other technical information are to be delivered by the contractor to the Government, the War Department will normally require assurance of its right to reproduce, use and disclose the same for governmental purposes.

§ 811.1116–7 An appropriate patent rights provision complying with the requirements contained in §§ 811.1116–2 to 811.1116–6, inclusive, is set forth in § 803.335–1.

§ 811.1116–8 Where a development contract requires the contractor to develop and produce the prototype of an item of equipment differing radically in structure or mode of operation from any item previously made, and the Government is to pay substantial sums for an expected major developmental program in building and testing such item (and the contract is not one where it would be appropriate to require the Contractor to assign to the Government title to the foreground patents, see § 811.1116–11), the War Department normally requires the contractor to grant to the Government, in addition to the license under foreground patents above mentioned, a limited royalty-free license under the contractor's background patents (as described below).

§ 811.1116–9 The license referred to in § 811.1116–8 normally will include all patents (other than foreground patents), under which the contractor has or prior to final settlement may acquire the right (without obligation to make payments to others) to grant the license in question, relating to or useful in connection with the manufacture or use of the subject matter of the contract (herein called "background patents"); and will be limited to the practice of the inventions thereof by or for the Government in the manufacture, use and disposition, according to law, of the subject-matter of the contract, and parts, modifications and improvements thereof.

§ 811.1116–10 An appropriate patent rights provision granting license rights under both foreground and background patents, as contemplated by §§ 811.1116–8 and 811.1116–9, is set forth in § 803.335–2.

§ 811.1116–11 In certain types of development contracts it is unfair to third parties, or contrary to the public interest, to permit the contractor to retain ownership of foreground patents. Examples are where the contractor has assembled a group of research scientists through the cooperation of other like manufacturers or institutions in furtherance of the war effort, and retention of foreground patents by the contractor would be unfair to cooperating manufacturers or institutions; where

the subject-matter is expected to be maintained in high classification in peacetime and no commercial applications are foreseen; and where the contractor, working in close cooperation with research personnel of the Government or of another contractor, is to produce the prototype of an item of equipment differing radically in structure or mode of operation from any item previously made, which said item of equipment has already been developed largely or wholly by research personnel not connected with the contractor. In such contracts the War Department normally requires the contractor to assign to the Government title to the foreground patents.

§ 811.1116–12 An appropriate patent rights provision meeting the requirements of contracts of the types mentioned in § 811.1116–11 is set forth in § 803.335–3.

§ 811.1116–13 Where a contract (whether or not a development contract) relates to subject-matter which is classified as top secret, secret or confidential, it will normally contain, the contract provision set forth in § 803.335–8.

§ 811.1117 *Patent risk provision.* A summary of the applicable statute governing the remedy of the patent owner where a patented invention is without license used or manufactured by or for the United States is set forth in § 811.1117–1. The policy of the War Department in regard to the allocation of ultimate risk of patent infringement liability is set forth in §§ 811.1117–2 to 811.1117–8. This policy is to be executed within the discretion of the chiefs of the technical services pursuant to the delegation of authority contained in § 811.1118.

§ 811.1117–1 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 provisions of §§ 803.335–4 to 803.335–7, inclusive, and §§ 811.1117–2 to 811.1117–8, 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.

§ 811.1117–2 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.

§ 811.1117–3 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 (except "performance" 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 § 803.335–4. It may, in addition, contain the contract article set forth in § 803.335–6.

§ 811.1117–4 Other items are, from the standpoint of structure or composition, in part made as described in § 811.1117–3 above and in some other part made to meet Government-furfurnished specifications (other than "performance" 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 (unless originating with the contractor) 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 § 803.335–5, and in addition, the contract article set forth in § 803.335–6.

§ 811.1117–5 Other items are in all respects made to meet Government-furnished specifications (other than "performance" 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 § 803.335–6, and normally will not contain either of the contract articles set forth in §§ 803.335–4 or 803.335–5.

§ 811.1117–6 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 §§ 803.335–4 or 803.335–5, or no indemnity clause), or may involve the payment of royalties, the contract will normally contain the contract article set forth in § 803.335–6 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.

§ 811.1117–7 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 § 811.1118 below), such action is necessary or appropriate to facilitate procurement.

§ 811.1117–8 Where the giving of bond in support of the contractor's indemnity obligation is deemed necessary (see § 804.406–5), the contract will normally contain the contract article set forth in § 803.335–7.

§ 811.1118 *Discretion of the chiefs of technical services.* In executing the policy stated in §§ 811.1116–1 to 811.1116–13, and §§ 811.1117–2 to 811.1117–8, inclusive, the chief of each technical service shall have the following authority:

(a) He may issue such instructions for the guidance of his service as may be appropriate to effectuate the policy above referred to.

(b) 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 § 803.335, whenever in his judgment such action is necessary or appropriate to facilitate procurement subject to the limitations set forth in paragraphs (c) and (d) below.

(c) 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 this paragraph does not apply to the use of contract articles, such as that set forth in § 803.335–6, specifying the conditions under which the Government's authorization and consent is to be given.

(d) No provision whereby the domestic practice by or for the Government of foreground patents is either (1) limited in term to less than the life of any patent involved, or (2) limited as respects user to any particular governmental purpose, or (3) limited as respects disposition otherwise than according to law, shall be included in any development contract, except with the express written approval of the Director, Purchases Division, Headquarters, Army Service Forces; but this subparagraph does not apply to the use in bailment contracts of a provision whereby such practice is limited to a term running at least for the duration of the war and six months.

(e) He may redelegate the powers granted to him under this paragraph 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.

SUBPART C—LITIGATION AND RELATED MATTERS

§ 811.1120 *Procedure for handling litigation involving cost-plus-a-fixed-fee contractors.*

§ 811.1120–1 *General.* It is of the utmost importance that The Judge Advocate General be promptly notified of the institution of all legal actions in which the interests of the United States are involved, including legal actions against cost-plus-a-fixed-fee contractors and subcontractors. This will make it possible to take steps to remove legal actions instituted in state courts to the federal courts and to otherwise protect the interests of the Government. Information furnished to The Judge Advocate General must be full and complete and not fragmentary.

§ 811.1120–2 *Procedure.* The following procedure is prescribed with respect to legal actions involving cost-plus-a-fixed-fee contractors and subcontractors:

(a) Such contractors should be advised that immediately upon receipt of process in any legal action filed against them, they must furnish a copy of all papers to the contracting officer or appropriate War Department representative. This will be in addition to any similar requirement of any outstanding insurance policy.

(b) Information and papers should be forwarded, as provided in paragraphs (c) through (e) below, with respect to each legal action against cost-plus-a-fixed-fee contractors and subcontractors, except

(1) Any legal action based upon an alleged liability that is fully covered by insurance, either under the usual type of insurance policy or under the War Department Insurance Rating Plan (see § 804.473), if the insurance company agrees to accept full responsibility for the defense of the action and for the payment of any judgment that may be rendered against the defendant, or

(2) Any legal action upon a claim which is within the provisions of a self-insurance plan approved pursuant to § 804.436–4, if the self-insurance plan provides for the handling of such action by an attorney compensated on an annual retainer basis.

(c) Immediate report of the legal action will be made direct to The Judge Advocate General, Washington, D. C., by the War Department representative in charge of the project or activity out of which the action arises. Such report will be expedited and, where necessary, will be made by telegraph or teletype with prompt confirmation by mail. Each report will give all pertinent facts concerning the action. In the usual case, these facts will include the following:

(1) Name of parties to the action.

(2) Its nature.

(3) Correct designation of the court in which the action is brought.

(4) When and on whom service was made.

(5) Time when answer must be filed or other action taken by the defense.

(6) Nature of the principal defense to the suit.

(7) The relation of the defendant to the United States.

(8) Amount claimed; to what extent, if any, such amount is covered by insurance.

(d) 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. Any other information in the possession of the chief of the technical service concerned, which may be requested by The Judge Advocate General, will be immediately transmitted to him. 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, who has the duty of maintaining all War Department legal liaison with the Department of Justice and other Government departments. Violations of this procedure will cause confusion and prevent proper coordination in the handling of litigation with the Department of Justice.

(e) An agreement for representation should be signed by the cost-plus-a-fixed-fee contractor or other defendant and three copies thereof should be forwarded to The Judge Advocate General, Washington, D. C. Such agreement should 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 agreed that the assumption by the Attorney General of the defense of said action does not alter or increase the obligations of the United States under United States Contract No. _____. 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.

§ 811.1120–3 *Procedure to determine legal position to be taken in suits based upon the Fair Labor Standards Act of 1938.* (a) 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.

(b) The Under Secretary of War by memorandum dated December 15, 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:

(1) 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.

(2) 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.

(c) 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.

(d) 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.

(e) 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 December 15, 1943 (B–38642) affirming such position).

(f) 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 December 15, 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 AND RATIONING REGULATIONS

CROSS REFERENCE: For tabulation of price and rationing regulations of the Office of Price Administration, see Appendix—Tabulation of Documents in Chapter XI of Title 32.

§ 811.1130 *General.*

§ 811.1130–1 *Scope of this subpart.* This subpart deals primarily with certain problems arising from or associated with the relation of the maximum price and rationing regulations issued by the Office of Price Administration (hereinafter sometimes referred to

as OPA) to War Department purchases and sales. It discusses separately (a) price regulations in general, (b) problems primarily associated with purchases, (c) information pertinent to sales, and (d) matters relating to rationing. (For a further discussion as to OPA matters primarily relating to War Department sales, see § 821.111 et seq.) The discussion is introductory and is not intended to be complete. Complete details and the text of OPA regulations and orders may be found in the FEDERAL REGISTER, or may be procured from any OPA office. Should these sources fail, inquiries should be sent through the chief of the technical service concerned to the OPA Branch, Purchases Division, Headquarters, Army Service Forces, Washington 25, D. C.

§ 811.1130–2 *Function of OPA Branch.* (a) Because of penalties imposed by the Emergency Price Control Act of 1942, as amended, upon contractors who violate price ceilings, contractors must proceed with caution in the acceptance of contracts. To expedite procurement and sales, it is important that War Department personnel be familiar with the problems involved and able, whenever possible, to be of assistance or guidance to contractors. It is an important function of the OPA Branch to undertake the solution of specific problems.

(b) 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, OPA Branch, Purchases Division.

§ 811.1131 *OPA price regulations in general.*

§ 811.1131–1 *General.* (a) The Office of Price Administration, pursuant to the Emergency Price Control Act of 1942, as amended, and appropriate delegations of authority, establishes ceiling prices for certain sales of commodities and services. These ceilings are established either by (1) Price Schedules; (2) Maximum Price Regulations; (3) Temporary Maximum Price Regulations; (4) the General Maximum Price Regulation; or (5) other directives. Certain exemptions from price control have been granted and methods for obtaining relief provided, as discussed more fully hereafter.

(b) Definition of commodity: By statutory definition, the term commodity, as to which a ceiling price may be established, includes, with certain exceptions set forth in the statute, commodities, articles, products, materials and services.

§ 811.1131–2 *Specific Price Regulations (Price Schedules and Maximum Price Regulations).* The distinction between price schedules and maximum price regulations is historical only. Both are price regulations, essentially similar in nature, and are hereafter referred to without distinction as specific price regulations. They establish ceiling prices for the commodities or services specified therein.

§ 811.1131–3 *The General Maximum Price Regulation (GMPR).* The General Maximum Price Regulation (hereafter referred to as GMPR) places 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 §§ 811.1131–5 and 811.1132–6 for exemptions). In general, ceiling prices on items covered by this regulation are based on the highest prices charged in March, 1942. Other formulae are used in the event the March 1942 method is inapplicable. Specific price regulations, as to the specific articles or services covered therein, take precedence over the GMPR, whether issued prior or subsequent to the GMPR.

§ 811.1131–4 *The service regulation: MPR 165.* As above noted (§ 811.1131–3) all services (along with commodities) were brought under control of the 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 § 811.1132–6).

§ 811.1131–5 *Exemptions*—(a) *General.* OPA has granted exemption of certain purchases and sales from price control. In some cases, specific commodities and services have been exempted from all price control. In other cases, though in general the commodities and services are subject to price ceilings, some purchases and sales thereof, depending on the identity of the buyer or seller, or on other special considerations, have been exempted.

(b) *How exemptions are effected.* (1) In the case of commodities and services covered by the GMPR, exemptions are granted respectively by OPA Revised Supplementary Regulation No. 1 and OPA Supplementary Regulation No. 11.

(2) In the case of commodities or services covered by specific price regulations, exemptions are granted by the terms of the regulation itself, either (i) by specific terms or (ii) by incorporating in the regulation by reference terms of other directives.

(3) In addition to the foregoing methods, exemptions may be granted in specific cases or otherwise by the terms of various OPA orders.

(4) When determining whether or not an exemption exists, the language apparently granting the exemption must be carefully examined, bearing in mind particularly that although certain transactions may be exempt from price control by the GMPR, they still may be subject to control by specific price regulations unless such regulations, or orders issued supplementary thereto, specifically exempt them.

(c) *Particular exemptions of interest.* Reference is made to certain exemptions of primary interest in connection with purchases (see §§ 811.1132–2 to 811.1132–6) and sales (see § 811.1134–2).

§ 811.1131–6 *Procedure for obtaining relief*—(a) *General.* The OPA has provided methods for obtaining relief with respect to price control, in proper cases, by way of elevation of ceiling prices, exemption, or otherwise.

(b) *Obtaining higher maximum price.* (1) OPA Procedural Regulation No. 6, effective July 3, 1942, as amended (§§ 1300.401–1300.414 of Title 32), sets forth the procedure to be followed (except where other OPA regulations specifically otherwise provide) to obtain higher maximum prices for commodities or services under Government contracts or subcontracts. In substance, the regulation provides that (i) any seller who has entered into or proposes to enter into a Government contract, or a subcontract thereunder, who believes that his maximum price or prices impedes or threatens to impede the production, manufacture or distribution of a commodity or the supply of a service which is essential to the war program and which is or will be the subject of such contract or subcontract, may apply for adjustment of his maximum price or prices; (ii) any government agency may appear as an interested party in the case of any such application; (iii) upon the filing of an application for adjustment, or within five days prior thereto and until final disposition of the application, contracts may be entered into or proposals and bids submitted at the higher price or prices requested in the application, and deliveries may be made under such contracts, except that the seller may not receive and the buyer may not pay the amount by which the price exceeds the maximum price unless and until an order granting a higher price has been issued: (iv) the seller shall include in any sale, contract to sell, or offer to sell at the price requested in the application the following: The maximum price for the commodity or service in question; a statement that the quoted price is subject to the approval of the Office of Price Administration; and a statement that an appropriate application has been filed, or will be filed within five days with the Office of Price Administration, and (v) applications involving War Department 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) Special procedure to obtain higher maximum prices is provided by amendments to MPR 136, (Machines and Parts and Machinery Services), effective April 12, 1943 and June 25, 1943, respectively, 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. Provision is also made for adjustments of the maximum prices of machinery services.

(c) *Certain specific cases.* For methods of obtaining relief in certain cases primarily relating to purchases (see §§ 811.1132–3 to 811.1132–5).

§ 811.1131–7 *Dissemination of information by chiefs of technical services.*

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.

§ 811.1132 *Purchases.*

§ 811.1132–1 *General.* Sections 811.1132 to 811.1132–10 deal with OPA matters primarily relating to purchases. (For a discussion as to sales see § 811.111 et seq.; §§ 811.1134–1 to 811.1134–3. Interested personnel should, in addition, be familiar with the preceding sections of this subpart.

§ 811.1132–2 *Exemptions of purchases by virtue of War Department-OPA Agreement, September 1942.* Among the exemptions from price control heretofore granted by the OPA by methods indicated in § 811.1131–5 are transactions involving certain so-called military items. By agreement between the OPA and the War Department, military items exempt in September 1942 will remain exempt. However, under this agreement, 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.

§ 811.1132–3 *Exemptions of secret contracts and subcontracts*—(a) *Exemption.* OPA Supplementary Order No. 42, which applies to all specific price regulations and to the GMPR, exempts from price control sales and deliveries of any commodity or service made under a contract or subcontract properly certified as secret to the OPA (see paragraph (c) of this section for proper certification).

(b) *Period of exemption.* 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 contractor or subcontractor and the OPA whenever the contract or subcontract ceases to be secret. Upon receipt of such notification by the contractor or subcontractor, the exemption will end. (See paragraph (c) of this section for proper notification.)

(c) *Procedure.* The certification mentioned in paragraph (a) of this section, made by a representative of the purchasing agency, shall set forth the date of the secret contract or subcontract and its number or other designation. It shall not name the commodity or service covered thereby or the name or address of the contractor. The notice mentioned in paragraph (b) of this section shall identify the contract and state that it is no longer secret. Both the certificate and the notice shall be sent to: The Security Officer, Office Services Division, Office of Price Administration, Federal Office Building No. 1, Washington 25, D. C.

§ 811.1132–4 *Exemption of developmental contracts*—(a) *Definition of developmental.* A contract or subcontract is deemed by the terms of OPA Revised Supplementary Regulation No. 1, to be "developmental" if the manufacturer or supplier thereunder 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 thereunder requires a period of time to select a product, or both.

(b) *Exemption.* OPA Revised Supplementary Regulation No. 1 (insofar as ceiling established by the GMPR are concerned) and many specific price regulations grant exemptions from price control in connection with developmental contracts and subcontracts properly certified as being "developmental". The exemptions are not automatic, but are conditioned on complying with the procedure set forth in paragraph (d) of this section. Also, not all developmental contracts are exempt, even when such procedure is followed, so in each case the pertinent OPA regulations should be consulted.

(c) *Period of exemption.* Any exemption of a developmental contract or subcontract applies only so long as the period necessary for development continues. The OPA reserves the right, after consultation with the certifying Government agency, to determine when the developmental period shall expire (for services, MPR 165 fixes a maximum time limit of 90 days).

(d) *Procedure.* (1) To obtain exemption of a developmental contract or subcontract, where exemption is provided for (see paragraph (b) of this section) it is necessary that the contract or sub-contract be certified by the War Department as being developmental and that the contractor or subcontractor file a report within ten days after entering into the contract or subcontract. The certificate, with blank spaces filled in appropriately may be in the following form:

In accordance with the provisions of Maximum Price Regulation No. _____ Section _____ [or the General Maximum Price Regulation] the following contract is hereby certified as developmental: Contract No. _____ Date of Contract _____ Name and address of supplier _____ Commodity covered _____

The report, to be filed by the contractor or subcontractor must describe the product or service, the terms of the contract or subcontract (including pricing provisions) and the production plans of which the contract or subcontract is a part, and must estimate the duration of the developmental work. Both the certificate and the contractor's report should be sent (the certificate in duplicate) to the Office of Price Administration, Washington 25, D. C. Attention: War Goods Price Coordinator.

§ 811.1132–5 *Exemption of emergency purchases*—(a) *Exemption.* OPA Revised Supplementary Regulation No. 1 (insofar as ceilings established by the GMPR are concerned) and many specific price regulations grant exemptions from price control of "emergency purchases" made by the War Department. The exemptions are not automatic, but are conditioned on complying with the procedure set forth in paragraph (c) of this section. Also, not all emergency purchases are exempt, even when such procedure is followed, so in each case, the pertinent OPA regulations should be consulted.

(b) *Definition.* To satisfy the definition of "emergency" for purposes of the exemption (1) the subject matter of the purchase must be needed at once, and (2) at least a portion of the purchase must be capable of immediate delivery (or performance in the case of services) 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.

(c) *Procedure.* To obtain exemption of an emergency purchase, where exemption is provided for (see paragraph (a) of this section, the purchasing officer 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 maximum price which would otherwise be applicable. The certificate must set forth, in addition, (1) the name and address of the seller, (2) the date of purchase, (3) the date of delivery, (4) a description of the commodity or service purchased, (5) the quantity purchased, (6) the price, and (7) a brief statement of the facts giving rise to the emergency situation which necessitated the purchase at a price higher than the applicable maximum price. The certificate must be filed with the OPA in Washington within five days (ten days in the case of services) after the purchase is made. It should be sent in duplicate to: Office of Price Administration, Washington 25, 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 price regulations to emergency purchases.)

§ 811.1132–6 *Other exemptions of primary interest in connection with purchases*—(a) *General.* Attention is called in this section to certain exemptions from price control by the GMPR (but not necessarily from control by specific price regulations: see § 811.1131–5 (b) (4)) not specified in preceding sections, of primary interest in connection with purchases.

(b) *Commodities.* The following exemptions as to commodities are established by OPA Revised Supplementary Regulation No. 1, which provides in part that the GMPR shall not apply to sales or deliveries of the following commodities or in the following transactions:

(1) 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.

(2) Sales and deliveries to the United States or its agencies of the following commodities:

(i) 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;

(ii) Amphibians, armed vehicles, automobiles, tanks, trailers and trucks, when sold for military purposes;

(iii) Component parts and subassemblies of any product excepted under (i) and (ii), regardless of the person to whom sold or delivered, including all metallic and non-metallic 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 (i) and (ii);

(iv) Military propellants and explosives;

(v) 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, and Ten-in-One.

(3) Dehydrated vegetables sold to the Armed Forces of the United States.

(4) The list of exemptions in this paragraph is not complete. Interested personnel are referred to the text of OPA Revised Supplementary Regulation No. 1.

(c) *Services.* The exemptions mentioned in paragraph (a) of this section are established, as to services, by OPA Supplementary Regulation No. 11 (which also has been incorporated by reference into the so-called Service Regulation MPR 165; see § 811.1131–4). It provides, in part, that the GMPR shall not apply to compensation for the following services:

(1) The lubrication, painting, rental, storage, washing, operation, repair, conversion, modification, maintenance or other services of aircraft, including maintenance of or repairs to engines, parts, accessories, instruments and other equipment used in connection with aircraft.

(2) The list of exemptions in paragraph (c) of this section is not complete. Interested personnel are referred to the texts of OPA Supplementary Regulation No. 11 and Maximum Price Regulation No. 165.

§ 811.1132–7 *Responsibility of contracting officers as to purchases.* (a) Contracting officers, in executing contracts covering procurement of commodities or purchases 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.

(b) 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:

(1) Try to negotiate a reduction in the price to conform to the OPA standard;

(2) 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 §§ 1300.401–1300.414 of Title 32 (see § 811.1131–6);

(3) 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 § 811.1132–5;

(4) 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 OPA Branch enlisted to remove the impediment.

(5) 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 Part 814.

§ 811.1132–8 *Acceptance of contractor's certification in connection with purchases.* 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.

§ 811.1132–9 *Exemption from liability of contracting and finance officers in connection with purchases.* 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 (a) any War Procurement Agency of the United States or any contracting or paying finance officer thereof or (b) 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.

§ 811.1132–10 *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, as amended, and are, therefore, subject to the prohibitions of that section.

§ 811.1132–11 *Procedure to recover amounts paid in excess of applicable OPA maximum prices.*—(a) *General.* It is possible, in view of the wide variety and large volume of War Department procurement, that on occasion the War Department inadvertently may pay prices in excess of applicable OPA maximum prices. The Emergency Price Control Act of 1942, as amended, gives the War Department, under such circumstances, certain rights of recovery against the contractors concerned. Likewise, in certain cases the War Department may have claims for refunds arising out of contracts entered into pursuant to OPA Procedural Regulation No. 6, prior to the

amendment thereof effective May 17, 1943, which then permitted payments in excess of current maximum prices pending OPA decision as to increases in such maximum prices. The succeeding paragraphs of this section set forth War Department procedure to be followed under any of these circumstances.

(b) *Payments in excess of OPA ceilings without OPA authorization.* Where it has been clearly determined that the War Department has paid a price in excess of an applicable OPA maximum price without OPA authorization, the contracting officer concerned (unless he has been advised that the OPA intends to seek recovery on account of the violation) will take the following action:

(1) Immediately seek a refund of the full amount of the overcharge from the contractor.

(2) If the contractor fails to make such refund, request the appropriate disbursing officer to offset the amount of the overcharge against any funds due the contractor by the War Department under the contract involved or any other appropriate contract of which the contracting officer or the disbursing officer has knowledge.

(3) The contracting officer may acknowledge receipt of a refund. However, in view of certain rights in connection with violations granted to the OPA by the act, the contracting officer, upon receiving a refund, shall not give the contractor concerned any instrument purporting to release the government's claim against the contractor.

In the event the contracting officer has been advised that the OPA intends to seek recovery on account of the violation, the War Department itself will take no action to effect recovery of the overcharge but will furnish the OPA with all pertinent information which the latter may request. If the contracting officer has attempted but has been unable to effect collection of the full amount of the overcharge, he will refer the matter, together with all pertinent information, to the nearest OPA office, with a request that recovery be sought by the OPA.

(c) *Claims for refunds arising out of contracts.* Where the War Department pursuant to OPA Procedural Regulation No. 6, prior to the amendment thereof effective May 17, 1943, paid a price in excess of an applicable OPA maximum price under the terms of a contract providing substantially that the contractor should refund to the War Department the excess paid over such applicable maximum price under certain conditions, and the claim of the War Department for a refund under such terms of the contract has matured, the contracting officer concerned will take the following action:

(1) Immediately seek payment from the contractor of the full amount of the refund owing to the War Department under the terms of the contract;

(2) If the contractor fails to make such payment, request the appropriate disbursing officer to offset the amount of such refund against any funds due the contractor by the War Department under the contract involved or any other appropriate contract of which the contracting officer or the disbursing officer has knowledge.

In the event the contracting officer is unable to effect collection of the full amount of such refund, the claim, together with all pertinent information, will be forwarded through the Purchases Division, Headquarters, Army Service Forces, to the Office of the Fiscal Director, Headquarters, Army Service Forces, pursuant to paragraph 15, AR 35–730.

(d) *Disposition of refunds.* Any refund received by a contracting officer pursuant to paragraph (b) (1) or (c) (1) of this section will be delivered by him to the nearest disbursing officer through the fiscal officer of the installation concerned for disposition as an expenditure refund in accordance with TM 14–702 "Fiscal Accounting for Field Installations." Similar disposition as expenditure refunds will be made of amounts collected by offset pursuant to paragraphs (b) (2) and (c) (2) of this section.

§ 811.1134 *Sales.*

§ 811.1134–1 *General.* For a general discussion of OPA matters primarily relating to War Department sales other than by Army stores, see § 821.111 *et seq.* (See §§ 811.1132 to 811.1132–11 for a discussion of purchases.) Interested personnel should in addition be familiar with §§ 811.1130 to 811.1131–6.

§ 811.1134–2 *Exemption of sales by Army Stores (OPA Supplementary Order No. 27).* OPA Supplementary Order No. 27, effective November 14, 1942, as amended, exempted sales and deliveries of any commodity or service by the War Department through its sales stores, including commissaries, Army canteens, and post exchanges, from all OPA price regulation. The OPA retained the right, however, to make price regulations applicable to such sales.

§ 811.1134–3 *Other OPA regulations pertaining to sales.* If officers making sales on behalf of the War Department have any problems with relation to ceiling prices in connection with such sales which are not covered by the provisions of these procurement regulations including § 821.111–2 *et seq.*, solution of such problems should be reached through contact with appropriate OPA officials or by reference of the problems to the Chief, OPA Branch, Purchases Division, as provided in § 811.1130–2.

§ 811.1135 *Rationing regulations—*(a) *General.* The OPA issues regulations covering the rationing of scarce consumer goods. These regulations do not restrict Army purchases of the goods concerned, but to control illegal sales ("black markets") sellers of rationed goods, whether sales are made to the Army or otherwise, are required by OPA, upon replacement of their stocks, to produce so-called "ration evidences" obtained from their customers. Accordingly, Army procurement officers, in purchasing rationed goods, furnish the seller with ration evidences for the goods purchased, or otherwise cooperate with OPA policies.

(b) *Applicable OPA directives.* Sugar (Ration Order 3), processed foods (Ration Order 13), meats, fish, fats, and cheese (Ration Order 16), gasoline (Ration Order 5c), fuel oil in part of the United States (Ration Order 11), and shoes (Ration Order 17), have been subjected to rationing. Procedures under the rationing system are established by OPA General Ration Orders 3, 3A, 3B, 5 and 11.

(c) *Where certain War Department instructions may be found.* Interested personnel may find instructions in the following War Department publications covering the general subjects indicated:

1. Circular Letter 30, OQMG, 13 February 1943 and supplements thereto—ration banking accounts;
2. Circular 36, W. D., 1945—food rationing;
3. Circular 291, W. D., 1943; Circular 59, W. D., 1944—non-rationed food items containing rationed commodities;
4. Circulars 246, 282, 363, 389, 482, W. D., 1944—Certain petroleum products; and
5. Circulars 255, 390, 399, W. D., 944 and 19 W. D., 1945—Shoes.

SUBPART E—CONTROLLED MATERIALS PLAN

CROSS REFERENCE: For tabulation of Controlled Materials Plan regulations of the War Production Board, see Appendix—Tabulation of Documents in Chapter IX of Title 32.

§ 811.1140 *Revision of existing supply contracts to conform to production schedules authorized under Controlled Materials Plan.*

§ 811.1140–1 *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.

§ 811.1140–2 *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 revision in schedules.

§ 811.1140–3 *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 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).

§ 811.1140–4 *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 803.351–3). Where a contract contains no provision permitting such an adjustment, the chief of the technical 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 803.351–3 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 § 812.1233).

§ 811.1140–5 *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).

§ 811.1140–6 *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 §812.1251–2).

§ 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.* (a) 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).

(b) In order to avoid the necessity of adjusting the outstanding contracts of the War Department and subcontracts thereunder 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.

(c) 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)	16½
GRM Synthetic (Neopreno 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.

(d) The War Department will pay Rubber Reserve Company the difference between these amounts and the prices fixed by Rubber Reserve Company specified in paragraph (a) 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, 1945, 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, 1945. 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 the price revision article contained in § 803.377–4 may be used in contracts involving natural or synthetic rubber.

SUBPART H—MISCELLANEOUS MATTERS

§ 811.1180 *Discounts in purchasing.*

§ 811.1180–1 *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.

§ 811.1180–2 *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 § 811.1180–1 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.

§ 811.1180–3 *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 § 811.1180–2, to omit from the contract any provision with respect to discounts. Their action in doing so is hereby ratified.

§ 811.1180–4 *Fiscal aspects of discounts.* Although as provided in § 811.1180–1, offers of discounts for cash or prompt payment are to be disregarded in deciding between two possible contractors, in many cases contracts awarded or invoices pursuant to such contracts will provide for such discounts. In such cases advantage should be taken of such discounts and procedures should be established to aid in reaching this result; provided interference does not result in the payment of accounts or transactions which do not provide for discounts. The preferred form of procedure for the taking of discounts is one in which originals and copies of purchase instruments involving discounts and used internally by the procurement office are suitably stamped "Discount—Expedite" by the initiating office and the discount terms shown on such instruments are underscored or circled in red to invite the attention of all concerned to the possible priority status of the instrument and allied documents. For fiscal aspects of cash discounts, see AR 35–6200.

§ 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 or, 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 AR 55–150 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.

§ 811.1182b *Notice of shipment by contractors.* (a) It is important that

proper notices of shipment be dispatched by contractors to consignee establishments (especially in the case of shipments destined for ports of embarkation) and, in certain cases, also to other persons, or installations. The "Notice of Shipments" article (§ 803.328) to be inserted in supply contracts requires a notice of shipment to be sent to whomever the contracting officer may designate, and in the form, by the means, and on the occasions required by him.

(b) The main sources of instructions concerning notices of shipment are paragraph 7 of AR 55–105, as amended, paragraph 33 of TM 38–415 and section V, Circular No. 379, War Department, 1944 (the latter two references relate to shipments to ports of embarkation). Other general and special instructions on the subject of notices of shipment are also issued from time to time by certain of the technical services. The chiefs of the technical services will bring to the attention of all contracting officers the requirements of the pertinent publications and instructions referred to above, and will implement them with such supplementary instructions as they deem advisable.

(c) Contracting officers should be fully informed concerning the notices of shipment to be required so that they may issue proper instructions to contractors which will avoid the sending of unnecessary notices by contractors and last-minute requests by contractors for instructions. For instance, since the contractor will not ordinarily be required to dispatch a notice in the case of shipments of less than one carload (or equivalent), proper instructions should be given sufficiently in advance so that contractors making such small shipments will not be required to make unnecessary and burdensome calls upon contracting officers for directions. It is suggested that form instructions to contractors, concerning the notices of shipment required to be given, be prepared and furnished by contracting officers to contractors sufficiently in advance of shipments. Where form instructions are not feasible, contractors should be instructed to notify the contracting officers at least 24 hours in advance of the scheduled delivery to a carrier, so that appropriate instructions may be given. Instructions to contractors should require that in the case of classified shipments all classified information be omitted from the notice and such general terminology substituted therefor as is permissible under security regulations, and may also require, in the case of classified shipments, that the contracting officer shall approve the exact form of notice before it is sent by the contractor. Since the types and details of notices to be sent may be subject to frequent change, it is not deemed desirable to specify in the contract article itself the details of when and by what method notices are to be sent and what information they should contain.

§ 811.1182c *Land grant deductions.* (a) Through land grant deductions (see section 65, Title 49, United States Code) and the "equalization" of such deductions by competing rail carriers and many motor carriers, the War Department is able to move a substantial portion of its freight and express traffic at rates considerably lower than corresponding commercial rates.

(b) In order that land grant deductions may legally be obtained on any shipment, the Government should be the owner thereof during the particular movement involved.

(1) Thus, in order to obtain the benefit of such deductions on deliveries by fixed price prime contractors, the contracts should be made so that the Government takes title at point of origin and pays transportation charges direct to the carrier.

(2) The provisions of cost-plus-a-fixed-fee prime contracts are generally adequate to insure that title to deliveries made thereunder may be taken in the name of the Government at origin. CPFF prime contracts also generally contain provisions under which title to materials and supplies shipped by subcontractors and suppliers to the prime contractor may be taken in the name of the Government at origin. See W.D. Contract Form No. 3, § 813.1303, Art. II, paragraph 3. Many CPFF prime contracts also contain provisions directing or authorizing the inclusion in CPFF subcontracts thereunder of provisions by which title to materials and supplies shipped to such subcontractors may be taken in the name of the Government at origin. See § 803.365–4. Care should be taken that CPFF prime contracts and CPFF subcontracts thereunder contain adequate contractual provisions on these points, and that where a right exists to take title in the name of the Government at origin, such right is exercised in appropriate cases.

(c) In cases where the benefits of land grant deductions are to be obtained, normally Government bills of lading should be furnished to the shippers. In exceptional cases (see AR 55–150) shippers may be instructed to use commercial collect bills of lading, marked "To be converted to Government bill of lading at destination."

(d) Attention is invited to the fact that an F.O.B. origin shipment is consistent with a right to inspect and reject at destination, if such right is reserved by proper contract language. See § 813.1301, Art. 4.

(e) It is the general policy of the War Department to take advantage of land grant deductions. However, since this policy rests upon the definite savings to be obtained, it is not necessary to seek land grant deductions where savings will not be realized, for example, where the difference between origin and destination prices is equal to or less than the freight charges which would be payable by the War Department, and in such cases delivery to destination within the United States at contractor's expense is permissible. Further, obtaining land grant deductions is not required where the administrative or other difficulties involved will definitely, demonstrably and materially interfere with or delay procurement.

(f) The Transportation Corps, ASF, is charged with the responsibility for transportation of War Department property and functions as in substance the "traffic department" of the War Department. When doubt arises as to the desirability or economy from a traffic standpoint of an F. O. B. origin versus F. O. B. destination basis, the matter should be referred to the Traffic Control Division, Office of the Chief of Transportation, for advice.

§ 811.1183 *Procurement of spare parts.* Certain restrictions and procedures have been prescribed with respect to the procurement of spare parts. Such restrictions and procedures are set forth in Circular No. 434, War Department, 1944.

§ 811.1184 *Contracts with foreign nationals.*

§ 811.1184–1 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.

§ 811.1184–2 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.

§ 811.1184–3 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.*

§ 811.1185–1 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.

§ 811.1185–2 No contract will be knowingly awarded to any person or organization so listed.

CROSS REFERENCE: For tabulation of Proclaimed Lists of Blocked Nationals filed with the Division of the Federal Register, see Chapter III of Title 22.

§ 811.1186 *Limitation on purchase of arms, ammunition and implements of war.*

§ 811.1186–1 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., 54 Stat. 10; 22 U. S. C. 452; M. L. 1939, sec. 2207a–12).

§ 811.1186–2 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 con-

tracting officers concerned and secure compliance with the above limitation.

§ 811.1187 *Restrictions on purchases of selected items.* The purchase of various items or classes of matériel and supplies has been restricted or prohibited due to shortages of such items or classes of equipment or of materials used in the construction thereof and for other reasons. Certain of these items or classes are mentioned below together with a reference to the War Department circulars setting forth the restrictions or prohibition. These circulars must be examined for a more detailed statement of the items and classes of matériel and supplies affected and of the nature of the restriction or prohibition.

1. Office furniture and equipment. See section IV, Circular No. 38, War Department, 1945.

2. Interoffice communication systems, sound recording equipment and public address systems. See section I, Circular No. 2, War Department, 1944.

3. Farm machinery and equipment. See section VI, Circular No. 204, War Department, 1944, as amended by section III, Circular No. 217, War Department, 1944.

4. Spare parts. See § 811.1183.

§ 811.1187a *Restrictions on local purchases.* (a) Detailed provisions respecting restrictions upon and procedures required to be followed in connection with local purchases (including local purchases from appropriated as well as unappropriated funds) are set forth in section VII, Circular 310, War Department, 1944.

(b) Reference is also made to Section IV, Circular No. 209, War Department, 1943, as amended by section I, Circular No. 361, War Department, 1944, dealing with local purchase of items of ordnance supply, such as spare parts, tools, accessories, shop equipment and supplies.

(c) It is essential that local purchases be kept to a minimum in order not to impinge on matériel and supplies intended for civilian economy. Local purchases are generally less economical, often result in an accumulation of nonstandard supplies which have limited use and tend to create excesses of standard items in depot stocks.

(d) Responsibility for controlling local purchases is a continuing command function in all echelons and at all installations. It shall be exercised vigorously and systematically.

§ 811.1188 *Advertising.*

§ 811.1188–1 *Basic statutes.* (a) 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., 1939, sec. 1772)

(b) 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., 1939, sec. 1770).

(c) First War Powers Act: The Judge Advocate General, in an opinion dated August 4, 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."

§ 811.1188–2 *Delegation of authority.* (a) The responsibility for authorizing advertising has been assigned by the Secretary of War to the Under Secretary of War (see § 801.107–3). Pursuant to section V, Circular 181, War Department, June 10, 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.

(b) The responsibility for authorizing advertising through the medium of newspapers or otherwise, which is delegated to the chiefs of the technical services by paragraph (a), 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 § 802.240–2).

§ 811.1188–3 *Ratification.* Prior to the promulgation on September 3, 1943, of § 811.1188–2, 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 § 811.1188–1 expressed the view that the delegations set forth in § 801.107–6 gave the Director, Purchases Division, Headquarters, Army Service Forces authority to approve advertising; and that the action of the chiefs of the technical services 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, and prior to September 3, 1943, 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. Advertising done on or subsequent to September 3, 1943, may be authorized or ratified by the Chiefs of the technical services, without the necessity of submission to the Director, Purchases Division, Headquarters, Army Service Forces.

§ 811.1189 *Certificate required in procurement with respect to motor-propelled passenger-carrying vehicles.* All procuring instruments covering the purchase of supplies, equipment, spare parts, accessories or services, for use in the operation, maintenance, or repair of motor-propelled passenger-carrying vehicles will bear the following certificate:

None of the supplies or services covered by this instrument are to be used in violation of the legal restrictions quoted in Circular No. 340, War Department, 1944.

[Procurement Reg. 12]

PART 812—RENEGOTIATION AND PRICE ADJUSTMENT

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§ 812.1200 *Scope of part.*

§ 812.1200–1 *General.* This part deals with policies, procedures and contract provisions relating to the adjustment of prices under War Department contracts and subcontracts thereunder pursuant to the Renegotiation Act of 1943 (Subpart A), price adjustments without contract provisions and relief under the First War Powers Act (Subpart E), audits and inspections under Title XIII of the Second War Powers Act (Subpart H) and Title VIII of the Revenue Act of 1943 (Subpart I). The material relating to the use and administration of price revision contract articles, which formerly appeared in Subparts B, C and D, has been revised and now appears in Subpart H of Part 803 of this chapter.

§ 812.1200–2 *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 July 1, 1942 have been rescinded (see § 801.103 of this chapter).

SUBPART A—STATUTORY RENEGOTIATION

§ 812.1201 *Definitions; scope of subpart.*

§ 812.1201–1 *Definitions.* As used in this part, the following terms have the meaning set forth below:

(a) "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;

(b) "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).)

(c) "Statutory renegotiation": This term means renegotiation pursuant to the provisions of the Renegotiation Act of 1943.

(d) "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.

(e) "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.

(f) "War Contracts Board": This term means the War Contracts Price Adjustment Board established by the Renegotiation Act of 1943.

§ 812.1201–2 *Scope of subpart.* This subpart A discusses the various aspects of statutory renegotiation. Sections 812.1202 to 812.1205–9 deal with the provisions of the Renegotiation Act of 1943 (§ 812.1201–1 (a)) 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 812.1214–5 deal generally with the policies and procedures governing statutory renegotiation. Renegotiation pursuant to the Renegotiation Act of 1942 (§ 812.1201–1 (b) 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 June 30, 1943.

Renegotiation Statute and Exemptions

§ 812.1202 *Statutory provisions.*

§ 812.1202–1 *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.

§ 812.1202–2 *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.*

§ 812.1203–1 *Coverage.* (a) The 1943 act applies to all contracts made by the Departments and subcontracts thereunder, with the exceptions stated under §§ 812.1203–4, 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)).

(b) 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, machinery, 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)).

§ 812.1203–2 *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 et seq., 803.242–1, 803.242–2, and 803.242–3. As stated in § 812.1203–1, 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.

§ 812.1203–3 *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.

§ 812.1203–4 *Exclusions.* (a) The 1943 act is inapplicable to any contract or subcontract on which final payment was made before April 28, 1942.

(b) 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.

(c) Certain contracts or subcontracts are exempt or may be exempted from the provisions of the 1943 act under subsec-

tion (i) of such act. These exemptions are discussed in §§ 812.1204 and 812.1205.

§ 812.1203–5 *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 section 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.

§ 812.1204–1 *Contracts with governmental agencies.* (a) In this section the term "other Government Agency" includes (1) any department, bureau, agency or governmental corporation of the United States, (2) any territory, possession or state or any agency thereof, and (3) any foreign government or any agency thereof.

(b) The 1943 act does not apply to (1) any contract between a Department and any other Government agency; (2) any contract between a contractor with a Department or a subcontractor thereunder, and any other Government agency; (3) 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).

(c) Accordingly, no article for statutory renegotiation under the 1943 act will be included in any such contract or subcontract.

(d) With respect to contracts with War Supplies Limited, see § 805.509–8.

(e) See § 812.1290–1 for ruling by the War Contracts Board relating to the governmental agency exemption.

§ 812.1204–2 *Contracts and subcontracts for products of natural deposits and timber.* (a) By subsection (i) (1) (B), the 1943 act does 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.

(b) 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.

(c) See § 812.1290–2 for ruling by the War Contracts Board relating to the raw material exemption.

§ 812.1204–3 *Contracts and subcontracts for agricultural commodities.* (a) 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.

(b) 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.

(c) See § 812.1290–2 for ruling by the War Contracts Board relating to the agricultural exemption.

§ 812.1204–4 *Contracts and subcontracts with certain religious, charitable and educational organizations.* (a) 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.

(b) 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.

§ 812.1204–5 *Construction contracts awarded as a result of competitive bidding.* (a) 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.

(b) The War Contracts Board has issued an interpretation and application of this exemption (see § 812.1290–3).

(c) 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.

§ 812.1204–6 *Subcontracts under exempt contracts or subcontracts.* (a) 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.

(b) 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 (§§ 812.1204–1 to 812.1204–5, inclusive) a provision requiring a renegotiation article to be inserted in subcontracts made thereunder.

(c) 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.

(d) See § 812.1290–4 for ruling by the War Contracts Board relating to the exemption of subcontracts under exempt contracts or subcontracts.

§ 812.1204–7 *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 § 812.1290–5 for ruling by the War Contracts Board relating to articles included within the term "office supplies".

§ 812.1204–8 *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 §§ 812.1204–1, 812.1204–2, 812.1204–3, 812.1204–5 and 812.1204–6 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 section, et seq., reference is made to

§ 812.1291 et seq. 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.

§ 812.1205–1 *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:

(a) Any contract or subcontract to be performed outside the United States or in Alaska;

(b) Any contracts or subcontracts, the profits from which can be determined with reasonable certainty when the contract price is established;

(c) Any contract or subcontract to the extent that the contract provisions are otherwise adequate to prevent excessive profits;

(d) 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;

(e) Any contract or subcontract if there is effective competition with respect to the contract or subcontract price;

(f) 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.

§ 812.1205–2 *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 except for certain limited authority primarily with respect to royalties (see § 812.1205–5 (a)).

§ 812.1205–3 *Discretionary power to exempt certain individual contracts or subcontracts.* (a) The Director, Purchases Division, Headquarters, Army Service Forces, may exempt from statutory renegotiation any individual contract or subcontract of the types specified in § 812.1205–1 in connection with the placement of such contract or subcontract or any amendment or revision thereof. Such authority of the Director, Purchases Division, relates to contracts entered into pursuant to the authority of the Secretary of War or the War Department and subcontracts under any such contracts (including in the case of the 1943 Act subcontracts under any such contracts which are also subcontracts under contracts with other Departments).

(b) 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 (1) by the provisions of the regulations in this chapter. (See e. g. §§ 812.1205–4 (a), 812.1205–5 (b), 812.1205–6, 812.1205–7 (a), 812.1205–8), or (2) by special delegation from the Director, Purchases Division, Headquarters, Army Service Forces.

(c) When an individual contract is to be exempted from renegotiation pursuant (1) to paragraphs (a) and (b) above or other provisions of regulations, in this chapter or (2) to any special delegation of authority, the renegotiation article (Form II) described in § 803.342–2 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.

(d) 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.

(e) 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:

(1) The name of the contractor or subcontractor;

(2) The number and date of the contract or subcontract;

(3) The contract price;

(4) The nature of the work, supplies, or other items furnished under the contract or subcontract;

(5) Sufficiently detailed information to indicate whether the requirements of the provisions of this part pursuant to which the exemption is granted, have been complied with.

§ 812.1205–4 *Contracts and subcontracts outside of the United States.* (a) 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 and includes subcontracts under any such contracts which are also subcontracts under contracts with other Departments or technical services.

(b) Reference is made to Circular No. 330, War Department, 1944, regarding delegation of exemption authority to commanding officers outside continental United States and in Alaska.

§ 812.1205–5 *Contracts and subcontracts relating to patents or inventions.* (a) The Director, Purchases Division, Headquarters, Army Service Forces, may exempt pursuant to subsection (i) (4) of the 1943 Act from some or all of the provisions of the 1943 Act any contracts or subcontracts with respect to patents or inventions, which contracts or subcontracts are license agreements, assignments, releases of, or covenants not to sue with respect to, claims for the manufacture or use of inventions, and any contracts or subcontracts for royalties charged or chargeable directly or indirectly to the United States which royalties are the subject of a royalty adjustment contract either pursuant to Public Law 768, 77th Congress, Chapter 634—2d Session, or otherwise: *Provided, however,* That each exemption made under paragraph which relates to general classes or types of contracts or subcontracts shall be limited to the contracts or subcontracts of specific contractors or subcontractors to whom amounts are or may be paid or payable under such contracts or subcontracts.

(b) The chief of a technical service may exempt from some or all of the provisions of the 1942 or 1943 Act any individual contract received or entered into by such technical service granting to the Government or its allies a license under a patent or an invention or transferring a patent or an invention to the Government, or releasing the Government or its allies from claims for the manufacture or use of inventions, if the aggregate payments under the contract for its duration or for any stated period are 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.

§ 812.1205–7 *Exemption of individual contracts and subcontracts for less than $5,000,000.* (a) 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 § 812.1205–1. Such authority of each chief of a technical service relates to contracts entered into pursuant to the authority of the Secretary of War or the War Department and subcontracts under any such contracts (including in the case of the 1943 Act subcontracts under any such contracts which are also subcontracts under contracts with other departments). 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 § 803.305–2) where it is proposed to exempt the contract from statutory renegotiation will disclose that fact.

(b) The authority conferred by paragraph (a) 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:

(1) 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;

(2) 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;

(3) 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;

(4) The contract contains no provision for price revision other than standard articles authorized in this chapter;

(5) If the contract contains any of the articles set forth in §§ 803.372–7 and 803.373–6 of this chapter or formerly set forth in §§ 803.341–1, 803.341–2, 803.360a (a) and 803.360–2 of this chapter, the initial period of production has been completed; and

(6) If the contract contains either of the articles set forth in § 803.375–4 (formerly § 803.342a) and § 803.376–4 of this chapter, the price is finally determined.

(c) In determining whether to grant exemption from renegotiation the person exercising such authority will normally consider the following further factors among others:

(1) 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;

(2) Whether in the light of circumstances known to the person exercising such authority, the contemplated profit margin and profit are relatively low;

(3) Whether in the light of the probable term of the contract the whole period of performance can properly be exempted from statutory renegotiation; and

(4) 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.

(d) If the contract involves a period of performance of over six months, the person exercising authority to exempt should consider whether some approved price revision provision (e. g. the article set out in §§ 803.372–5 or 803.373–5) should not be included in the contract and the exemption limited in length appropriately.

(e) Each proposed exemption should ordinarily be discussed informally with the Price Adjustment Section of the procurement office which is placing the contract.

(f) Where a contract contains a periodic pricing article (see §§ 803.372–5, 803.372–6 and 803.372–7) or an article like those set forth in §§ 803.373–5 and 803.373–6, exemption from renegotiation should not be granted with respect to the entire contract but only until the next succeeding price revision. At the conclusion of the first pricing period under the articles set forth in §§ 803.372–7 and 803.373–6, exemption from renegotiation for the initial pricing period may be granted retroactively at the time of the amendment of the contract to fix the price for the next succeeding period, if such exemption from renegotiation is warranted in accordance with this chapter.

§ 812.1205–8 *Exemptions of individual contracts within stated classifications where profits can be determined with reasonable certainty when the contract price is established.* (a) 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:

(1) *Foods:* contracts and subcontracts for such types of foods as the Quartermaster General may from time to time determine to be perishable (see § 812.–1292).

(2) *Clothing and equipage:* contracts and subcontracts for clothing and equipage, including footwear.

(3) *Textiles or textile products.* Contracts and subcontracts for textiles or textile products.

Such authority of each chief of a technical service relates to contracts entered into pursuant to the authority of the Secretary of War or the War Department and subcontracts under any such contracts (including in the case of the 1943 Act subcontracts under any such contracts which are also subcontracts under contracts with other departments).

(b) The authority conferred by paragraph (a) 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:

(1) That the profits to be derived from any such contract or subcontract can be determined with reasonable certainty when the contract price is established;

(2) 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

(3) That the price set or to be set is fair and reasonable.

(c) Attention is directed to the fact that this section 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 § 812.1204–8 (as amended November 12, 1943) are no longer in effect.

§ 812.1205–9 *Redelegation of authority to exempt individual contracts and subcontracts from renegotiation.* (a) The Director, Purchases Division, Headquarters, Army Service Forces, may delegate and authorize successive redelegations of the authority conferred upon him by §§ 812.1205–3 (a) and 812.1205–5 (a).

(b) The chief of a technical service may delegate and authorize successive redelegations of the authority conferred upon him by §§ 812.1205–3 (b), 812.1205–4 (a), 812.1205–5 (b), 812.1205–7 (a), and 812.1205–8.

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 § 803.342–1 (Form I), § 803.342–2 (Form II), § 803.342–3 (Form III) of this chapter. 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 March 26, 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 March 26, 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 (§§ 812.1204–1 to 812.1204–5, 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 (§§ 812.1204–1 to 812.–1204–5, 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 Subpart H of Part 803 of this chapter, designed to provide for revision 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.*

§ 812.1213–1 *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.

§ 812.1213–2 *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.*

§ 812.1214–1 *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, except as contemplated in § 812.1214–4, 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.

§ 812.1214–2 *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 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.

§ 812.1214–3 *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.

§ 812.1214–4 *Price adjustments not restricted.* Nothing herein contained shall preclude a contracting officer from at any time:

(a) Proposing and arranging adjustments in prices or fees in individual contracts containing express provision for revision, redetermination or renegotiation of prices or fees, other than a provision for statutory renegotiation, or

(b) Making price adjustments to compensate for changes made by the Government in specifications, design, quantities to be delivered, delivery schedules, or similar matters, or

(c) 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

(d) Negotiating with respect to the prices to be included in new contracts in connection with the making thereof, or

(e) 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.

§ 812.1214–5 *Provision in supplemental agreements making price adjustment.* The contract price as revised, 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. Unless the revised, renegotiated or redetermined price is expressly exempted from statutory renegotiation pursuant to § 812.1205 through § 812.1205–9, 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 E—PRICE ADJUSTMENTS WITHOUT CONTRACT PROVISIONS

§ 812.1250 *Scope of subpart.*

§ 812.1250–1 *Amendment of contract term.* As is emphasized in Parts 802 and 803 of this chapter, war conditions frequently require adjustment of contract terms to prevent unfairness to the contractor or the Government. While the provisions discussed in Subpart H of Part 803 of this chapter are 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.

§ 812.1250–2 *Sources of amendments of contract terms.* Such amendments arise from two main sources: (a) 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; (b) 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.*

§ 812.1251–1 *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:

(a) Whenever the amendment changes the contract specifications, delivery schedules, conditions of manufacture or similar contract terms.

(b) 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, § 802.225–6).

(c) Wherever the amendment modifies the volume or rate of production so as to affect adversely the contractor's costs (see, for example, § 803.307).

(d) 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 § 803.308–3 and following without the approval of higher authority, except as expressly required in those sections.

§ 812.1251–2 *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.*

§ 812.1252–1 *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 §§ 803.306–4, 803.308a and 803.308b or express authority conferred by other provisions of this chapter (such as § 803.380).

§ 812.1252–2 *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 (a) assist in obtaining close prices and reasonable cost estimates without excessive allowances in the price for contingencies against unforeseen risks, and (b) 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 sections.

§ 812.1252–3 *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.

§ 812.1252–4 *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:

(a) 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 of this chapter.

(b) 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.

(1) 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 contribtues to difficulty encountered by the contractor, considerations of fairness may make appropriate some equitable adjustment of the price or terms.

(2) 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.

(3) 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.

(c) 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.

(d) 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.

(e) 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 and 803.324–1).

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.

§ 812.1252–5 *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.

§ 812.1252–6 *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:

(a) Brief description of the contract involved:

(1) Date and length of contract; items, delivery schedules, and prices.

(2) Special clauses for price adjustments; for partial or advance payments; or other special clauses.

(3) Government-owned, Emergency Plant, or Defense Plant facilities involved, and methods employed to protect any Government interest in facilities of contractor.

(b) Factors creating need for relief:

(1) Nature of item (standard, new or experimental).

(2) Previous experience of contractor with similar production.

(3) Changes in conditions or Government action affecting contractor's costs.

(4) Cost experience of the contractor under the contract, and relation to original estimates.

(5) Reserves or allowances against such contingencies included in original price.

(c) Extent of relief needed;

(1) Financial position of contractor, with supporting balance sheets and profit and loss statements.

(2) Estimates of future costs under contract.

(3) Extent of completion, and amounts paid.

(4) Other war contracts and business of contractor.

(5) Views of contractor on relief appropriate.

(6) Effect of granting relief on profits of the contractor, and comparison with prices and contracts of other contractors.

(7) Effect of refusing relief.

(d) Importance of contract or contractor to the prosecution of the war:

(1) Size of contract and need for item.

(2) Other available sources of supply in comparison with contractor.

(3) Quality of performance by contractor (rate of production, delays, rejections).

(4) Probable future orders to contractor; or other war work.

(e) A statement showing whether or not any claim relating to the case is pending before the General Accounting Office.

(f) 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:

(1) The exact relief recommended.

(2) That in his opinion the granting of the relief recommended will facilitate the prosecution of the war (see §812.1252–3).

(3) The scope of the investigation of the circumstances made by the technical service.

(4) The extent of his own review of the facts.

(5) The name, address, and telephone number of the person in the War Department with detailed knowledge of the facts of the case.

§ 812.1252–7 *Approvals by Purchases Division, Headquarters.* All necessary approval by higher authority will be obtained in each instance in accordance with §§ 803.306–4, 803.308a, 803.308b and other sections of this chapter.

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 May 2, 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 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, SW., Washington 25, D. C. It is the intent of this notification to prevent conflict and duplication of audit with other Departments. 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.

§ 812.1271–1 Under date of May 17, 1944, the Under Secretary of War issued the following memoranda:

(a) 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.

(b) 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.

§ 812.1271–2 *Authority delegated by these procurement regulations.* Subject to any restrictions provided by these procurement regulations (see § 812.1271–3) or by manuals, rules or regulations issued pursuant to paragraph 3 of the memorandum for the Commanding General, Army Service Forces, dated May 17, 1944 (see § 812.1271–1 (a)) upon the exercise of the authority delegated in this section, 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 § 812.1271–1 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.

§ 812.1271–3 *Limitation upon redelegation of authority.* All redelegations of the authority delegated by § 812.1271–2 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:

(a) Redelegations to persons in the headquarters offices of the Army Air Forces,

(b) Redelegations to persons in the headquarters offices of the major commands within the Army Air Forces, and

(c) 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:

(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 §§ 801.107–9, 801.108–4, 801.108–5, except that delegations of the authority conferred by section 801 shall be subject to the limitations and restrictions stated in §§ 812.1271–2 and 812.1271–3 and shall include any person to whom he has delegated, with the approval provided for in § 812.1271–3, 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.*

§ 812.1273–1 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 (a) to require the person furnishing or offering to furnish such article or service to negotiate to fix a fair and reasonable price therefor and (b), 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.

§ 812.1273–2 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 (a) generally; or (b) under the terms or circumstances of a particular contract, subcontract or procurement; or (c) of a particular type or quality or in a particular quantity; or (d) under other particular circumstances.

§ 812.1273–3 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 (February 25, 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 March 25, 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)."

§ 812.1273–4 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.

§ 812.1273–5 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.

§ 812.1273–6 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.).

§ 812.1273–7 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 (a) as are furnished after the effective date of the order and (b) as to which the order is stated to be applicable.

§ 812.1273–8 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 delegations 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.*

§ 812.1274–1 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.

§ 812.1274–2 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.

§ 812.1274–3 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:

(a) Further information as to comparative or individual prices or costs, or price or cost trends;

(b) The results of statutory renegotiation of the contractor or subcontractor;

(c) A review of prices as result of voluntary repricing of a contract;

(d) Information received as to subcontractors' prices upon negotiation of prime contracts; and

(e) 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.

§ 812.1274–4 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.

§ 812.1274–5 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.*

§ 812.1276–1 *By prime contractors.* (a) 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 (1) the reasons why the existing price is deemed to be unfair or unreasonable for future deliveries; (2) the extent of the efforts made voluntarily to negotiate a fair and reasonable price therefor; (3) 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; (4) 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.

(b) 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.

(c) Service of the Requirement to Negotiate, when approved by the Director, Purchases Division, will be made in the manner provided in § 812.1281.

(d) 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 § 812.1274–5.

§ 812.2176–2 *By subcontractors.* (a) 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 § 812.1276–1, 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.

(b) 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 § 812.1276–1 (d).

(c) 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.

§ 812.1276–3 *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 § 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 (a) should desire and be willing to agree to all the other desired terms of the procurement, and (b) be further willing to agree in writing that the price shall be fixed by a section 801 order and (c) 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 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)

[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.

§ 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.*

§ 812.1290–1 *Interpretation and application of the mandatory exemption relating to contracts and subcontracts with other Governmental agencies.* RR 334.1 and 343.2 provide as follows:

343.1 *Statutory exemption.* Subsection (1) (1) (A) of the 1943 Act provides that it shall not apply to:

(A) any contract by a Department with any other department, bureau, agency, or governmental corporation of the United States or with any Territory, possession, or State, or any agency thereof or with any foreign government or any agency thereof;

343.2 *Interpretation and application of exemption.* The War Contracts Board has adopted the following interpretation:

(1) Under this provision of the act [subsection (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 of 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.

§ 812.1290–2 *Interpretation and application of the mandatory exemption relating to contracts for certain raw materials and agricultural commodities.* RR 344.1 and 344.2 provide 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 disposal 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 treatment 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 inapplicable 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.

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 (i) (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.
Bentonite, dried, crushed, granulated and pulverized.
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 other than kaolin, china and fire clay.
Chlorine and hydrogen produced directly by electrolysis of salt brine.
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.
Dolomite, crushed dolomite.
Feldspar, crude and ground.
Ferrosilicon.
Fluorspar ore; fluorspar fluxing gravel; lump ceramic ground fluorspar; acid grades of fluorspar.
Fuller's earth.
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; refined 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.
Monel ore; monel matte; monel ingots, pigs, and shot, produced from monel matte.
Natural gasoline; casinghead gasoline; residue gas.
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.
Quartz crystal, raw.
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; oyster shells; clam and reef shells.
Selenium metal.
Silver, refined, including bars, shot, powder and grains.
Sodium aluminate.
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; tungstic acid.
Uranium ores and concentrates; uranium oxide.
Vanadium ores and concentrates; sodium vanadate; vanadium pentoxide; ferrovanadium.
Whiting; chalk lump.
Zeolites derived from Glauconite.
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 (i) (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.

RR 344.2 provides as follows:

344.2 *Agricultural commodities*—(1) *Statutory exemption.* Subsection (i) (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.* This provision 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.* The purpose of this provision is to exempt from renegotiation farmers, fruit growers, livestock raisers, fishermen and other basic producers of agriculturer commodities and those who trade in such products or handle or transport them without processing them; it is not intended to exempt canners, processors, manufacturers and others who acquire products of this type from the basic producer and process them to a higher form or state. In order to qualify for exemption the product contracted for must be an agricultural commodity in its raw or natural state, or if such a commodity is not customarily sold or does not have 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.

(c) *Application.* A commodity will be deemed to be an agricultural commodity in its raw or natural state only so long as it has not undergone some process of treatment or fabrication. In the case of fruits, vegetables, and other like products this state does not ordinarily extend beyond the state in which such products are harvested. In the case of livestock, it terminates at the time the animal is slaughtered. Where an agricultural commodity is not customarily sold or does not have an established market in its raw or natural state as above defined and is no longer in such state the exempt status of such commodity will terminate with the state in which the commodity is first customarily sold or has an established market, and, with the exception of the produce of live animals which are specifically exempted, the exemption will not apply to any derivative products which are derived from such commodity in the state in which it is first sold, whether as a result of division, separation or further treatment or processing. For the purposes of determining whether an agricultural commodity is customarily sold or has an established market, regard will be given to the entire field in which such commodity is produced or marketed rather than to sectional

or local practices; and varieties, types or classes of the commodity will be disregarded. Profits or losses from sales of agricultural commodities in their exempt form or state, including sales of futures in such commodities, are excluded from consideration in renegotiation. The War Contracts Price Adjustment Board has determined the form or state at which the exemption terminates in the case of each of the agricultural commodities set forth [below] in [RR] paragraph 844 and will continue to determine and publish from time to time additions to this list.

RR 844 provides as follows:

844. *List of exempted agricultural commodities.* Determination of the War Contracts Price Adjustment Board of the exemption from renegotiation of contracts and subcontracts for agricultural commodities under section 403 (i) (1) (C) of the Renegotiation Act of 1943.

1. Pursuant to the authority conferred upon the War Contracts Price Adjustment Board by Section 403 (i) (2) of the Renegotiation Act of 1943, the Board hereby determines that under subsection (i) (1) (C) of such section, relating to the exemption of contracts or subcontracts for agricultural commodities, the form or state indicated in the following list, is the last form or state at which the exemption applies:

Agricultural Commodity and Last Form or State at Which Exemption Is To Apply

Beans and peas, dry: Threshed.
Beeswax: In the comb, or in bulk (not packed).
Berries, edible: Fresh.
Cinchona bark: As bark (unprocessed).
Coffee: Beans (green).
Corn: As grain (shelled).
Cotton: Ginned (in the bale).
Cottonseed: Unprocessed (as they come from the gin).
Cream, fluid: As sold from farms (not pasteurized).
Drugs (botanical): Crude (unground, unprocessed, unstandardized, unpurified) as customarily sold by the basic producer.
Eggs: In the shell (raw).
Fiber flax straw: Deseeded (baled or unbaled).
Flaxseed (linseed): As seed (unprocessed).
Fruits, edible: Fresh.
Gum opium: As gum in its natural state.
Hay: Baled or unbaled.
Hemp fiber: In bales.
Honey: Crude or "country run."
Jute and sisal fiber: In bales.
Livestock: On the hoof.
Milk, raw fluid: As sold from farms (not pasteurized).
Peanuts: In the shell (raw).
Pine gum: Not distilled or purified.
Poultry: Alive.
Rice: Rough, unpolished (as it comes from the thresher).
Sugar beets: As beets.
Sugar cane: As cane.
Tobacco: Not processed beyond the form or state at which farmers ordinarily sell it.
Tree nuts, edible: In the shell (raw).
Vegetables: Fresh.
Vegetable seeds: Not processed beyond the form or state at which they may be used as seeds.
Wheat, rye, oats and barley: As threshed grain.
Wool: In the grease (as clipped from live animals).

2. This determination is made under the the principles set forth in paragraph 344.2 of the Renegotiation Regulations including subdivision (2) (b) thereof.

3. This determination applies to all receipts or accruals under any contract or subcontract for the commodities listed in paragraph 1 of this Regulation regardless of the date when such contract or subcontract was made.

4. This Regulation may be amended from time to time, revising, amending or supplementing the list of exempted commodities contained in paragraph 1 hereof.

RR 344.5 provides as follows:

344.5 *Packaging materials and containers.* If there are delivered to a Department end products, contracts for which are exempted from renegotiation under subsections (i) (1) (B) or (C) of the 1943 Act relating to certain raw materials or agricultural commodities, the exemption of the end products extends to and includes the packages or containers in which the end products are delivered to the Department.

§ 812.1290-3 *Interpretation and application of the mandatory exemption relating to construction contracts.* This section deals with the mandatory exemption relating to construction contracts. For the discretionary exemption relating to construction contracts, see § 812.1291-4.

RR 346.1 and 346.2 provide as follows:

346.1 *Statutory exemption.* Subsection (i) (1) (E) of the 1943 Act provides that it shall 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.

346.2 *Interpretation and application of exemption.*

(1) This section of the 1943 Act is applicable only to amounts received or accrued for fiscal years ending after June 30, 1943 (regardless of the date when the contract was made) under any contract which meets all of the following conditions:

(a) The contract is a contract with a Department (i e., is a prime contract). The exemption has no direct applicability to subcontracts—but see [RR] paragraphs 347 [reprinted in § 812.1290-4] and 350.2 [reprinted in § 812.1291-5] for the principles governing exemption of subcontracts under prime contracts as to which this exemption is applicable.

(b) The contract is for the construction of a building, structure, improvement or other similar facility. A contract will be deemed to be for the construction of a building, structure, improvement or similar facility if the subject matter of the contract is the construction or installation of the whole or any integral part of a building, structure, improvement or similar facility. The exemption has, however, no applicability to contracts for the furnishing of materials or supplies, as such, even if such materials or supplies are to be used in the construction of a building, structure, improvement or similar facility; nor has the exemption any applicability to contracts for the furnishing of machinery or equipment which has or may have a productive function in connection with processing.

(c) The contract was awarded as a result of competitive bidding. A contract will be deemed to have been awarded as a result of competitive bidding only if (i) there has been published advertising or such other solicitation for bids as would open the bidding to all qualified bidders who could have been reasonably expected to bid on a job of the size, character and location concerned, (ii) bids are received from two or more independent, responsible and qualified bidders in actual competition with each other, (iii) the contract is let to the lowest qualified bidder, and (iv) the contract price was not in excess of the low bid received.

(2) In distinguishing a contract for the construction of a building, structure, improvement or similar facility from a contract for the furnishing of machinery or equipment as described in subdivision (1) (b) of this paragraph, regard is to be had to the subject matter of the contract. To the extent that the subject matter of the contract involves the furnishing or the furnishing and installation of machinery or equipment which has or may have use in processing, within the principles stated in [RR] paragraph 333.3, the contract will not be deemed to be a contract for the construction of a building, structure, improvement or similar facility, but will be regarded as a contract for the furnishing of machinery or equipment, in accordance with the principles set forth in paragraphs 335.2 (2) and 335.2 (5) of these [Renegotiation] Regulations. In a case where the construction or installation of the whole or any integral part of a building, structure, improvement or similar facility and the furnishing of machinery or equipment are embraced within a single contract, the undertaking for the construction or installation of the whole or any integral part of the building, structure, improvement or similar facility may be severed from the undertaking to furnish the machinery or equipment and an appropriate finding made as to that portion of the entire contract which may properly be deemed exempt.

(3) If a construction contract is exempt from renegotiation under the provisions of this paragraph 346.2, all modifying instruments thereto providing for additional or different construction of buildings, structures, improvements or facilities to be performed at or adjacent to the site of the original project are considered a part of the original construction contract and therefore are exempt from renegotiation: *Provided, however,* That the aggregate contract prices of all such modifying instruments do not exceed one-third of the contract price of the original construction contract.

(4) Determination whether this exemption is applicable to any particular prime contract shall be made, upon the basis of the principles referred to in the preceding subdivisions of this paragraph, by the renegotiation agency of the Department or Service conducting the renegotiation in which such contract is involved, except as provided in 347.2 (2). The renegotiation agency of each Department or Service shall maintain a central file with respect to determinations made by it as to the exempt or non-exempt status of prime contracts.

§ 812.1290-4 *Interpretation and application of the mandatory exemption relating to subcontracts under exempt contracts or subcontracts.* RR 347.1 and 347.2 provide as follows:

347.1 *Statutory exemption.* Subsection (i) (1) (F) of the 1943 Act provides that it 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.

347.2 *Interpretation and application of exemption.* (1) 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.

* * * * *

(3) Subcontracts for the furnishing of packaging materials and containers in which there are delivered materials or products which are exempt from renegotiation under the provisions of subsections (i) (1) (B) or

(C) of the 1943 Act relating to certain raw materials or agricultural commodities or which are otherwise exempt under paragraph (1) (1) of the 1943 Act (see [RR] paragraphs 333.3 (1), 333.4 (1), 344.5 and 347.2 (1)) constitute subcontracts under exempt prime contracts and are exempt from renegotiation under the provisions of subsection (1) (1) (F) of the 1943 Act.

§ 812.1290–5 *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.*

§ 812.1291–1 *Discretionary exemption relating to contracts and subcontracts to be performed outside of the United States.* RR 351.1 and 351.2 provide as follows:

351.1 *Statutory authority.* Subsection (1) (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

(A) Any contract or subcontract to be performed outside of the territorial limits of the continental United States or in Alaska.

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 inter sts 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.

§ 812.1291–2 *Discretionary exemption relating to contracts and subcontracts for profits determinable when price established; real estate, public utilities, perishable goods.* (1) RR 352.1 and 352.2 provide as follows:

352.1 *Statutory authority.* Subsection (1) (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

(B) any contracts or subcontracts under which, in the opinion of the Board, the profits can be determined with reasonable certainty when the contract price is established, such as certain classes of agreements for personal services, for the purchase of real property, perishable goods, or commodities the minimum price for the sale of which has been fixed by a public regulatory body, of leases and license agreements, and of agreements where the period of performance under such contract or subcontract will not be in excess of thirty days;

352.2 *Exemptions.* (1) In the opinion of the War Contracts Price Adjustment Board, the profits from the following contracts or portions thereof can be determined with reasonable certainty when the contract price is established, and such contracts or portions thereof are accordingly exempted from the provisions of the Renegotiation Act to the extent herein provided:

(a) Contracts and subcontracts for the sale or lease of any interest in real estate (see [RR] paragraph 335.1), or

(b) Contracts and subcontracts for the sale or exchange of tangible property used in the trade or business of the vendor, with respect to which depreciation is allowable under section 23 (1), or amortization is allowable under section 124, of the Internal Revenut Code (not including stock in trade of the vendor or other property which would properly be included in the inventory of the vendor if on hand at the close of his fiscal year, or property held by the vendor primarily for sale in his trade or business), or

(c) Contracts for the sale of vessels and their equipment, other than contracts for the construction of vessels,

(d) Such portion of contracts for the lease of vessels and their equipment, which provides (as in bareboat charters), for a rental for the bare use of the vessel and its equipment (herein called the "use rate"), or which provides (as in time charters) for a use rate, as distinguished from compensation for the services to be rendered by the contractor under the time charter (herein called the "service rate"): *Provided,* That where the time charter contains no segregation of the contract price between the use rate and the service rate, the apportionment of the contract price between the use rate and the service rate may be made by the Department conducting the renegotiation. In connection with such apportionment consideration may be given to the Report of the Advisory Board on Just Compensation, established by the President on October 15, 1943, by Executive Order 9387, which report dated December 7, 1943, established rules of general applicability for the guidance of the War Shipping Administration in determining just compensation to be paid for all vessels requisitioned, purchased, chartered or insured by the said Administration and General Order 37 of the War Shipping Administration (8 F.R. 3806), and any supplements and amendments thereto, to the extent the same may be applicable to such vessels and their equipment. Nothing contained in this subparagraph (d) shall be deemed to exempt from renegotiation contracts commonly known as "space charters" or the service rate in time charters, regardless of whether the vessel involved was requisitioned by the Government or any agency thereof.

(2) The words "when the contract price is established" in subsection (1) (4) (B) of the Renegotiation Act and in the preceding subdivision of this paragraph are a qualification upon the scope of the exemption, and contemplate that the contract or subcontract price shall be established at the time the contract or subcontract is entered into. Accordingly, this exemption extends only to contracts and subcontracts under which the price is a fixed or determinable amount at the time the contract or subcontract is entered into, and does not apply to any contract or subcontract under which the price, at the time the contract or subcontract is entered into, is contingent upon a subsequent event or is thereafter to be determined by reference to a variable element (as, for example, the lessee's sales or profits).

(3) For an exemption relating to certain contracts and subcontracts involving public utilities, see [RR] paragraph 842 [reprinted in subparagraph (2) below]. For an exemption relating to perishable foods, see [RR] paragraph 843 [reprinted in subparagraph (3) below].

(2) RR 842 provides as follows:

842 *Public utility exemptions.*

842.1 *Public utilities; electric power.* (1) Pursuant to subsection (1) (4) of the Renegotiation Act of 1943 (including subsection (1) (4) (B) and (1) (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 substantially all 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 substantially all amounts payable under such subcontract 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 (1) (4) of the Renegotiation Act of 1943 (including subsection (1) (4) (B) and (1) (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 substantially all costs of the contractor incurred under such subcontract for gas, or

(ii) If a Department has contracted to pay or guarantee the payment of substantially all 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, pipe line 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.

(2) Contracts and subcontracts with common carriers to furnish inland or coastal transportation by water, when made at published rates or charges, fixed, approved or subject to regulation as to the reasonableness thereof by the Interstate Commerce Commission, 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.

(3) Contracts and subcontracts with freight forwarders when made at published rates or charges, fixed, approved or subject to regulation as to the reasonableness thereof by the Interstate Commerce Commission.

824.4 *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, other communications services or communications facilities, 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 services or facilities of a comparable character.

842.5 *Public utilities. Furnishing of water or removal of sewage.* (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 furnishing of water, steam or the removal of sewage, except that if the amounts received or accrued under any such contract or subcontract during any particular fiscal year were $10,000 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 $10,000 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 furnishing of water, steam or the removal of sewage without regard to the amounts received or accrued thereunder during any fiscal year, except that:

(i) If such subcontract for water, steam or the removal of sewage is with a contractor having a contract with a Department providing for the reimbursement by a Department of substantially all costs of the contractor incurred under such subcontract for water, steam or the removal of sewage, or

(ii) If a Department has contracted to pay or guarantee payment of substantially all amounts payable under such subcontract for water, steam or the removal of sewage, then in either such case such subcontract for water, steam or the removal of sewage shall not be exempt from renegotiation by reason of this subparagraph (b).

842.6 *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 842.5 inclusive.

842.7 *Scope of exemptions.* All of the exemptions made under paragraphs 842.1 through 842.6, 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, and 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, potatoes, sweet, radishes, spinach, squash, tomatoes, turnips and rutabagas, mushrooms, rhubarb, and other miscellaneous fresh vegetables.

Dairy products: Butter (except canned), cheese (except processed canned), ice cream; ice cream mix in unsealed containers, fresh fluid milk and fresh fluid cream.

Poultry: Chicken (except canned), turkey (except canned) and 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 and offals (except canned and dehydrated).

Fish and sea foods: Fresh or frozen and 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.

§ 812.1291–3 *Discretionary exemption relating to contracts and subcontracts for standard commercial articles.* RR 845 provides as follows:

845. *Standard commercial article exemption.*

845.1 *Fiscal years ending after June 30, 1943 and prior to July 1, 1944.* (RR 845.1 is omitted from Procurement Regulations.)

845.2 *Fiscal years ending after June 30, 1944 and prior to July 1, 1945.* (1) Pursuant to the authority given to the War Contracts Price Adjustment Board by subsection (i) (4) of the Renegotiation Act of 1943, the Board, under the provisions of subsection (i) (4) (D) of the 1943 Act, has exempted from renegotiation amounts received or accrued during fiscal years ending after June 30, 1944 and prior to July 1, 1945 under contracts or subcontracts for the making or furnishing of the following articles:

(a) Iron scrap and steel scrap; non-ferrous metal scrap; woolen waste, including woolen rags and clips, new and old; scrap rubber; waste paper; cotton or linen rags, including old bagging and old rope; and textile waste; sold by dealers or brokers.

(Comment: The exemption of these articles as standard commercial articles applies only to dealers and brokers in these articles and is not to be construed as affecting, in any way, users of these articles (in particular, manufacturers who use these articles), nor does it affect manufacturers who may produce and sell these articles as a by-product in the course of their operation. Neither does the exemption cover sales of these articles in any form other than as scrap or waste.)

(b) Reserved.

(c) Reserved.

(d) Reserved.

(e) Paper of the following types and grades, sold by paper mills; Groundwood and free sheet uncoated and coated book papers (including but not limited to free sheet and groundwood offset, envelope and tablet papers); Mimeograph and duplicating (both groundwood and free sheet); Bond, writing and ledger, including opaque circular; Manifold and onion skin; Cover and text; Index and Bristol; Map paper (except wet-strength map paper); Post card paper; Blue print base stock.

(f) Paper and paper products sold by merchants.

(COMMENT: This exemption does not apply to sales of paper or paper products which have been manufactured, converted or processed by the seller or by any person under the control of or controlling or under common control with the seller.)

(g) Ready mixed concrete.

(h) Portland cement.

(i) Wheat flour.

(COMMENT: This exemption applies only to sales by the person milling the flour. Wheat flour includes granular flour and farina; whole wheat flour; products of the milling of durum wheat including whole durum flour and semolina; and blends of the foregoing. Bleached, bromated, enriched, phosphated and self-rising flour are considered flour for purposes of this exemption.)

(j) Quick and hydrated lime.

(k) Dead-burned dolomite.

(l) Dead-burned magnesite made from dolomite stone, seawater or brine.

The Board had previously exempted these same articles from renegotiation for fiscal years ending after June 30, 1943 and prior to July 1, 1944. However, the exemption of "paper of the following types and grades, sold by paper mills * * *" for the fiscal years ending 1944–1945 now includes a parenthetical limitation on map paper reading "* * * (except wet-strength map paper) * * *" which limitation was not in effect for the preceding fiscal years ending 1943–1944.

§ 812.1291–4 *Discretionary exemption relating to contracts and subcontracts when effective competition is likely to exist; construction contracts.* This section deals with the discretionary exemption. For the mandatory exemption relating to construction contracts, see § 812.1290–3.

RR 355 provides as follows:

355 *Contracts and subcontracts when effective competition is likely to exist.*

355.1 *Statutory authority.* Subsection (1) (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 and subcontracts entered into subsequent to June 30, 1943, and before January 1, 1944.* (1) The War Contracts 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,

(a) The contract or subcontract is for the construction of a building, structure, improvement or similar facility. A contract or subcontract will be deemed to be for the construction of a building, structure, improvement or similar facility if the subject matter thereof is the construction or installation of the whole or any integral part of a building, structure, improvement or similar facility. The exemption has, however, no applicability to contracts or subcontracts for the furnishing of materials or supplies, as such, even if such materials or supplies are to be used in the construction of a building, structure, improvement or similar facility; nor has the exemption any applicability to contracts or subcontracts for the furnishing of machinery or equipment which has or may have a productive function in connection with processing;

(b) The contract or subcontract did not constitute a substitute for or a revision or extension of an existing contract or subcontract entered into on or before June 30, 1943;

(c) The work covered by the contract was substantially the same as the work for which the bids were requested;

(d) Bids were received from two or more independent, responsible and qualified bidders in actual competition with each other; and

(e) The contract or subcontract was let to the lowest qualified bidder, at a price not in excess of the low bid;

or where the subcontract is a construction contract which (i) meets the conditions prescribed in subparagraph (a) above, and (ii) is a subcontract under a contract or subcontract exempt from renegotiation under the foregoing provisions of this paragraph 355.3. Accordingly, the War Contracts Price Adjustment Board, in accordance with subsection (1) (4) of the Renegotiation Act, has exempted such contracts and subcontracts from all of the provisions of the Act.

(2) In distinguishing a contract or subcontract for the construction of a building, structure, improvement or facility from a contract or subcontract for the furnishing or installation of machinery or equipment, the principles of [RR] paragraph 346.2 (2) [reprinted in § 812.1290–3] will be followed.

(3) If a construction contract or subcontract is exempt from renegotiation under the provisions of this paragraph 355.3, all modifying instruments thereto providing for additional or different construction of buildings, structures, improvements or similar facilities at or adjacent to the site of the original project are considered a part of the original construction contract or subcontract and therefore are exempt from renegotiation, *Provided, however,* That the aggregate contract prices of all such modifying instruments do not exceed one-third of the contract price of the original construction contract or subcontract.

(4) Determination whether this exemption is applicable to any particular prime contract shall be made, upon the basis of the principles referred to in the preceding subdivisions of this paragraph, by the renegotiation agency of the Department or Service conducting the renegotiation in which such prime contract is involved. The renegotiation agency of each Department or Service shall maintain a central file with respect to determinations made by it as to the exempt or non-exempt status of prime contracts. In any case in which the renegotiable status of a construction subcontract is dependent upon the applicability or nonapplicability of the provisions of this paragraph 355.3 to a prime contract, the procedure to be followed shall be the same as is provided in [RR] paragraph 347.2 (2). If the exempt or non-exempt status of a construction subcontract is not dependent upon the status of a prime contract, then the renegotiation agency of the Department or Service conducting the renegotiation in which such subcontract is involved shall determine the exempt or non-exempt status of such subcontract.

355.4 *Application of exemption to construction contracts and subcontracts entered into subsequent to December 31, 1943.* The War Contracts Board has found that competitive conditions affecting the making of construction contracts and subcontracts entered into subsequent to December 31, 1943, were such as to result in effective competition with respect to the contract or subcontract price, and accordingly, the Board, in accordance with subsection (1) (4) of the 1943 Act, has exempted such contracts and subcontracts from all of the provisions of the 1943 Act. The term "construction contracts and subcontracts" as used herein shall be construed in accordance with the principles set forth in subparagraphs (1) (a) and (2) of [RR] paragraph 355.3.

§ 812.1291–5 *Discretionary exemption relating to subcontracts where not administratively feasible to determine and segregate profits.* RR 356.1 and 356.2 provide as follows:

356.1 *Statutory authority.* Subsection (1) (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.

(F) Any subcontract or group of subcontracts not otherwise exempt from the provisions of this section, if, in the opinion of the Board, it is not administratively feasible in the case of such subcontract or in the case of such group of subcontracts to determine and segregate the profits attributable to such subcontract or group of subcontracts from the profits attributable to activities not subject to renegotiation.

356.2 *Exemption.* (1) The War Contracts Board has found that it is not administratively feasible to determine and segregate the profits attributable to activities subject to renegotiation from those not so subject in the case of the following subcontracts:

(a) Subcontracts directly or indirectly under a prime contract to which the provisions of [RR] paragraph 346.2 [reprinted in § 812.1290–3] are applicable as to only a portion of the amounts received or accrued therefrom, due to the fact that a portion of such amounts were received or accrued in a fiscal year ending prior to July 1, 1943;

(b) Subcontracts directly or indirectly under any modifying instrument of the general type described in [RR] paragraph 346.2 (3) [reprinted in § 812.1290–3] (regardless of whether such modifying instrument is exempted under that paragraph) which modifies a contract to which the provisions of [RR] paragraph 346.2 are applicable; and

(c) Subcontracts for the construction of a building, structure, improvement or other similar facility directly or indirectly under any modifying instrument of the general type described in [RR] paragraph 355.3 (3) [reprinted in § 812.1291–4] (regardless of whether such modifying instrument is exempted from renegotiation under [RR] paragraph 355.3).

The War Contracts Board has therefore exempted the foregoing subcontracts from all the provisions of the 1943 Act.

(2) Since the powers of the War Contracts Board under subsection (1) (4) (F) ([RR] paragraph 356.1) are applicable only to amounts received or accrued for fiscal years ending after June 30, 1943, the exemptions made by this paragraph 356.2 are applicable only to amounts received or accrued under such subcontracts for fiscal years ending after June 30, 1943.

(3) In determining whether a subcontract is one for the construction of a building, structure, improvement or other similar facility, the principles of [RR] paragraph 346.2 shall be applied.

Reference is also made to RR 842 set forth in § 812.1291–2 (b).

§ 812.1292 *Determination by the Quartermaster General of perishable commodities.* Under date of April 13, 1944, The Quartermaster General issued

a list of foods determined to be perishable pursuant to the authority conferred upon him by § 812.1205–8. 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 § 812.1291–2 (c).

[Procurement Reg. 13]

PART 813—FORMS OF CONTRACTS

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.
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813.1306 W.D. Contract Form No. 6.
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813.1308 W.D. Contract Form No. 8.
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813.1311 W.D. Contract Form No. 13A.
813.1311a W.D. Contract Form No. 13B.
813.1311b W.D. Contract Form No. 13C.
813.1311c W.D. Contract Form No. 13D.
813.1312 W.D. Contract Form No. 12.
813.1313 W.D. Contract Form No. 13.
813.1314 W.D. Contract Form No. 14.
813.1315 Utility contract forms.
813.1315a W.D. Contract Form No. 15.
813.1315b W.D. Contract Form No. 27.
813.1316 W.D. Contract Form No. 16.
813.1317 Short forms.
813.1317a W.D. Contract Form No. 383, revised June 26, 1944 (W.D. Forms Nos. 383, 383a, 383b and 383c); Short Form.
813.1317b W.D. Contract Form No. 18 (W.D. Form No. 18); Short Form, revised November 11, 1944.
813.1317c W.D. Contract Form No. 47 (W.D. Forms Nos. 47 and 47–a); Short Form, revised April 1, 1944.
813.1317d W.D. Contract Form No. 5; Short Form.
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.
813.1326a W.D. Contract Form No. 26A.
813.1327 Standard Procurement Form No. 3 and related forms (W.D., A.G.O. Forms Nos. 299, 299–1, 299–2).
813.1327a Standard Procurement Form No. 4.
813.1328 W.D. Contract Form No. 28.
813.1329 W.D. Contract Form No. 29.
813.1330 W.D. Contract Form No. 30 (Paid-Up Release and License).
813.1331 W.D. Contract Form No 31 (Release and License, running royalty basis).
813.1332 W.D. Contract Form No. 32 (Release and Assignment Involving a Money Payment).
813.1333 W.D. Contract Form No. 33 (Release Involving a Money Payment).
813.1334 W.D. Contract Form No. 34 (Royalty-Free Release and License Involving No Money Payment) (See § 811.1115 (u).)

NOTE: See Part 803, Subparts B and G, 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:

_____

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 § 803.323a.

(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.

[1] Delete all lines which do not apply.

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 803.353–4)

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 paragraph (a) of this section, 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 $_____ 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:

[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.

"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.

§ 813.1302 *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

_____

_____

_____

[1] a corporation organized and existing under the laws of the State of_____
[1] 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. *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

[1] Delete all lines which do not apply.

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. 10.[1] *Permits and responsibility for work.* The Contractor shall obtain all required licenses and permits. He shall be responsible for all damages to persons that occur as a result of his fault or negligence in connection with the prosecution of the work. Except for "Government property", as defined in Article—(Liability for Government-owned Property), the responsibility for which is as stated in said article, the Contractor shall be responsible for all loss or destruction of or damage to property that occurs 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 803.343–1.)

ART. 18. *Termination for convenience of the Government.* (Insert clause in § 803.324–1.)

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:

[1] This Alternate Article 10 will be inserted instead of the standard Article 10 when the contract contains § 803.365–1a. In such event, § 803.365–1a will be modified to commence as follows:

"Except as otherwise specifically provided, the Contractor shall not be liable for loss or destruction of or damage to "Government property," (i. e., property of the Government in the possession or control of the Contractor in connection with this contract, other than property furnished by the Contractor title to which is vested in the Government by reason of the provisions of Article 16 (c) hereof entitled "Payments to Contractor") (1) caused by any peril * * *".

[1] Clause (b) will be omitted in all contracts for the construction, alteration, or repair of vessels and floating equipment.

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 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

[1] Delete all lines which do not apply.

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, or 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.

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 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*, § 803.365–2.)

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 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 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.

[1] This contract will bear same date as letter contract.

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 § 803.365–1)

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 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.

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 § 803.365–3).

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 8, 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, without additional compensation therefor, shall preserve such papers to such extent and for such period as may be required by law.

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 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 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 where-

[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.

in 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 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 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 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.
July Fourth.
Labor Day
Thanksgiving Day.
Christmas 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	$130.00	$400.00	$560.00
Architect Supt., Chief	44.31	103.85	192.00	450.00
Architect Supt.	33.64	67.23	154.00	292.00
Architect Supt., Asst.	31.15	53.31	135.00	231.00
Computer	33.64	92.31	154.00	400.00
Designer, Chief	67.23	115.23	292.00	500.00
Designer, Architectural	44.31	103.85	192.00	450.00
Designer, Landscaping	44.31	103.85	192.00	450.00
Draftsman, Chief	53.31	103.85	231.00	450.00
Draftsman	33.64	53.31	115.00	231.00
Engineer, Chief	92.31	130.00	400.00	560.00
Engineer, Asst. Chief	92.31	138.46	400.00	600.00
Engineer, Departmental	92.31	138.46	400.00	600.00
Engineer, Office	67.23	115.23	292.00	500.00
Engineer, Junior	33.64	44.31	115.00	192.00
Specification Writer, Chief	67.23	115.23	292.00	500.00
Specification Writer	44.31	92.31	192.00	400.00
Field engineers:				
Axeman	18.64	19.62	80.00	85.00
Chainman	17.77	26.54	77.00	115.00
Chief of Party	33.64	67.23	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	33.64	67.23	154.00	292.00
Inspector	33.64	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	33.64	53.31	154.00	231.00
Expediter, Chief	44.31	103.85	192.00	450.00
Expediter	33.64	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	35.64	96.00	154.00
Paymaster	33.64	92.31	154.00	400.00
Paymaster, Asst.	33.64	53.31	115.00	231.00
Personnel Manager	33.64	103.85	154.00	450.00
Priorities Manager	33.64	103.85	154.00	450.00
Priorities Manager, Asst.	33.64	53.31	154.00	231.00
Project Manager	115.23	173.03	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.	33.64	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.	33.64	53.31	115.00	231.00
Superintendent, General	115.38	173.03	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	33.64	92.31	154.00	400.00
Timekeeper, Asst. Chief	33.64	44.31	115.00	192.00
Timekeeper	17.77	35.64	77.00	154.00
Traffic Manager	53.31	92.31	231.00	400.00
Traffic Manager, Asst.	33.64	53.31	154.00	231.00
Office and miscellaneous personnel:				
Accountant	33.64	92.31	154.00	400.00
Accountant, Asst.	33.64	53.31	154.00	231.00
Attorney and Notary	44.31	67.23	192.00	292.00
Auditor	53.31	138.46	231.00	600.00
Auditor, Asst.	53.31	92.31	231.00	400.00
Blue Print Operator	31.15	39.62	135.00	172.00
Bookkeeper	20.64	48.92	115.00	212.00
Cashier	33.64	53.31	154.00	231.00
Chauffeur	17.77	26.54	77.00	115.00
Chief Clerk	53.64	53.31	115.00	231.00
Clerk	17.77	35.64	77.00	154.00
Doctor	44.31	92.31	192.00	400.00

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.				
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:

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

[1] Delete all lines which do not apply.

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, without additional compensation therefor, shall preserve such papers to such extent and for such period as may be required by law. 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]

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.

[1] Where payrolls are prepared by the Government the audit thereof by the Government will be concurrent with such preparation.

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 structures 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 § 803.365-2).

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 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-

[1] This contract will bear same date as letter contract.

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 progress 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 § 803.365–3)

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.	Office Machine Operators.
Architects.	Office Managers.
Auditors.	Project Managers.
Axemen.	Purchasing Agents.
Bookkeepers.	Rodmen.
Chainmen.	Stenographers.
Checkers.	Stewards.
Chiefs of Party.	Storekeepers.
Clerks.	Superintendents.
Cooks.	Telephone Operators.
Draftsmen.	Timecheckers.
Engineers.	Timekeepers.
Executives of any kind.	Tool Checkers.
Guards.	Transitmen.
Levelmen.	Typists.
Material Checkers.	Waiters.
Material Clerks.	Watchmen.
Messengers.	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 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	[illegible]
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	138.40	400.00	600.00
Engineer, Departmental	92.31	138.40	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	138.40	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	138.40	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	138.40	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	138.40	400.00	600.00
Superintendent	92.31	138.40	400.00	600.00

NON-MANUAL EMPLOYEES OF COST-PLUS-A-FIXED-FEE PRINCIPAL AND SUBCONTRACTORS—Con.

Job classification	Salary range: Weekly From	Weekly To	Monthly From	Monthly 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	67.38	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
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

§ 813.1305 *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 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.* 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.

(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 to be 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*) will be treated and resolved as a dispute under the "Disputes" article[3] 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

[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 § 810.1008.

[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.

[3] 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 § 803.320). 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 § 803.528 or that contained in General Provision 12 of W.D. Contract Form No. 18 (§ 813.1317b (b)).

Powers Act, 1941, and Executive Order No. 9001.

[SEAL] UNITED STATES OF AMERICA,
By _____
_____
(Official Title)
Accepted _____, 19____.
_____
(Contractor)
By _____
(Title)
_____
(Address)

§ 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 ($_____) will be subject to the written approval of the Contracting Officer, and you are not authorized to expend or obligate, in furtherance of your performance hereunder, more than _____ Dollars ($_____) 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.* 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.

(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*) will be treated and resolved as a dispute under the "Disputes" article[1] 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)

§ 813.1309 *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

[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.

[1] 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 (b)).

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 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.* 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.

(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*) will be treated and resolved as a dispute under the "Disputes" article[1] 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)

[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.

§ 813.1310 *W. D. Contract Form No. 10.*

LETTER ORDER FOR LUMP SUM CONSTRUCTION

Contract No. _____

(Negotiated)

Date _____

Place _____

(Address)

Contractor _____

Address _____

GENTLEMEN: 1. 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[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 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 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.* 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 expenditures made by you in settling any of your obligations for commitments, the Government, in the dis-

[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. 16.

cretion 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.

(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*) will be treated and resolved as a dispute under the "Disputes" article[1] 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.

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[1] 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 (b)).

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 *W. D. 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 § 803.323)

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, § 813.1313)

ART. 15. *Anti-discrimination.* (Insert clause in § 803.325)

ART. 16. *Convict labor.* (Insert clause in § 803.345)

ART. 17. *Definitions.* (Insert § 813.1301, Art. 23.)

ART. 18. *Alterations.* (Insert § 813.1301, Art. 24.)

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)

§ 813.1311a *W. D. Contract Form No. 13B.*

Contract No. _____

CONTRACT (SUPPLIES) WAR DEPARTMENT AND METALS RESERVE COMPANY

(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

Subject and pursuant to the terms and conditions hereinafter stated and contained in the Exhibit hereto attached and made a part hereof:

Seller: Metals Reserve Company, 811 Vermont Avenue, N.W., Washington 25, D. C. (hereinafter called "Contractor"), agrees to sell and deliver,

Buyer: United States of America (hereinafter called "Government"), represented by the Contracting Officer executing this contract, agrees to buy and receive,

Material: _____
_____

Quantity: _____
_____

Quality: _____
_____

Price and Delivery: _____ per _____ f. o. b. railroad cars or trucks at _____ in accordance with delivery schedule attached. The Government is to prepare bills of lading, except where the material is sold on a delivered basis at destination designated by the Government.

Weighing, Sampling and Analysis: _____

Payment: Promptly upon receipt of Contractor's invoice with certificates of weights and analysis, if any, attached.

Cancellation: Notwithstanding any other provision hereof, the obligation of the Contractor to deliver any balance of _____ which might be undelivered after _____ may be canceled by Contractor after _____, upon written notice to the Government, provided the Contractor is not in default. Such can-

cellation shall be effective upon receipt of such notice.

Executed in Quadruplicate.

Dated:

METALS RESERVE COMPANY,
Contractor.

By _____

UNITED STATES OF AMERICA.

By _____

_____
(Official title)

NOTE: Exhibit to be attached to W. D. Contract Form No. 13B (§ 813.1311a).

EXHIBIT

ART. 1. *Changes.* (Insert § 803.329a.)
ART. 2. *Extras.* (Insert § 813.1301, Art. 3.)
ART. 3. *Inspection.* (Insert § 813.1301, Art. 4.)
ART. 4. *Delays—Damages.* (Insert § 803.-352.)
ART. 5. *Responsibility for supplies tendered.* (Insert § 813.1301, Art. 6.)
ART. 6. *Payments.* (Insert § 813.1301, Art. 8.)
ART. 7. *Officials not to benefit.* (Insert § 803.322.)
ART. 8. *Covenant against contingent fees.* (Insert § 803.323.)
ART. 9. *Disputes.* (Insert § 803.326.)
ART. 10. *Termination at the option of the Government.* (Insert article from § 803.324.)
ART. 11. *Notice of shipments.* (Insert § 803.328.)
ART. 12. *Subcontracting.* (Insert § 803.-367.)
ART. 13. *Anti-discrimination.* (Insert § 803.325.)
ART. 14. *Convict labor.* (Insert § 803.345.)
ART. 15. *Assignment of rights hereunder.* No claim under this contract shall be assigned.
ART. 16. *Disclosure of information.* (Insert § 803.336.)
ART. 17. *Employment of aliens.* (Insert § 803.337.)
ART. 18. *Definitions.* (Insert § 813.1301, Art. 23.)
ART. 19. *Alterations.* (Insert § 813.1301, Art. 24.)

§ 813.1311b *W. D. Contract Form No. 13C.* Sale of property by Defense Plant Corporation to War Department.

Contract No. _____

CONTRACT
(SUPPLIES)
WAR DEPARTMENT
and
DEFENSE PLANT CORPORATION

Contract for _____
Amount _____
Location _____
Payment: To be made by _____
_____

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: _____
_____
_____
_____

This contract, entered into this _____ day of _____, 194__, by and between the United States of America (hereinafter called the Government), represented by the Contracting Officer executing this contract, and Defense Plant Corporation (hereinafter called the Seller), a corporation created by Reconstruction Finance Corporation pursuant to section 5d of the Reconstruction Finance Corporation Act, as amended, witnesseth that the parties hereto do mutually agree as follows:

ARTICLE 1. *Scope of this contract.* The Seller shall sell and deliver and the Government shall buy and accept the property listed in the following schedule, in consideration of the price stated therefor: *Provided, however,* That if at the time of delivery of any such property to the Government a maximum price lower than that stated below shall have been established by the Office of Price Administration and shall be in effect and expressly applicable to such deliveries notwithstanding the existence of a prior contract calling for a higher price, the price hereunder for the items so delivered shall be reduced to such maximum price.

[Schedule of Property and Price]

ARTICLE 2. *Delivery.* Delivery to the Government shall be f. o. b. point of origin, and the Government shall remove the property within _____ days after notification to it of the approval of the sale by the Seller.

ARTICLE 3. *Payment.* Payment by check to the order of the Seller will be made to the Seller as follows: Within thirty (30) days after receipt by the Government of invoice therefor.

ARTICLE 4. *Responsibility for property sold.* (a) The Government has had ample opportunity for full inspection of the property prior to the execution of this sales agreement and agrees to accept the property "as is". The Seller makes no guarantee, warranty, or representation as to the number, quantity, kind, size, weight, quality, character, description, or condition of the property, or its fitness for any particular purpose.

(b) The Government assumes all liability for the property after notification to it of approval of the sale. The seller will exercise its usual care for protection of the property up to the time limit of removal but will not be responsible for any loss or damage for any cause whatsoever. Title to the property shall vest in the Government immediately upon notification to it of approval of the sale.

ARTICLE 5. *Officials not to benefit.* (Insert § 803.322.)

ARTICLE 6. *Covenant against contingent fees.* (Insert § 803.323, substituting "Seller" for "Contractor").

ARTICLE 7. *Definitions.* The term "Contracting Officer" as used herein shall include his duly appointed successor or his authorized representative.

In witness whereof, the parties hereto have executed this contract as of the day and year first written.

THE UNITED STATES OF AMERICA,

By _____

_____
(Official Title)

DEFENSE PLANT CORPORATION,

By _____

Two witnesses:

_____

_____
(Address)

_____

_____
(Address)

I, _____, certify that I am the _____ of the Corporation named as Seller herein; that _____, who signed this contract on behalf of the Seller 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.

_____

§ 813.1311c *W. D. Contract Form No. 13D.* Sale of property to Defense Plant Corporation.

Contract No. _____

CONTRACT OF SALE OF PROPERTY
WAR DEPARTMENT
and
DEFENSE PLANT CORPORATION

Contract for Sale of: _____
Amount: _____
Location of Property: _____

This contract, entered into this _____ day of _____, 194__, by and between the United States of America (hereinafter called the Government), represented by the Contracting Officer executing this contract, and _____, acting for and on behalf of the Defense Plant Corporation (hereinafter called the Purchaser), a corporation created by Reconstruction Finance Corporation, pursuant to section 5d of the Reconstruction Finance Corporation Act, as amended, witnesseth that the parties hereto do mutually agree as follows:

ARTICLE 1. *Scope of this contract.* The Government shall sell and deliver and the Purchaser shall buy and accept the property listed in the following schedule, in consideration of the price stated therefor: *Provided, however,* That if at the time of delivery of any such property to the Purchaser a maximum price lower than that stated below shall have been established by the Office of Price Administration and shall be in effect and expressly applicable to such deliveries notwithstanding the existence of a prior contract calling for a higher price, the price hereunder for the items so delivered shall be reduced to such maximum price.

[Schedule of Property and Price]

ARTICLE 2. *Delivery.* Delivery to the Purchaser shall be f. o. b. point of origin, and the Purchaser shall remove the property within _____ days after notification to it of the approval of the sale by the Government.

ARTICLE 3. *Payment.* Payment will be made within thirty (30) days after receipt by the Purchaser of bill, invoice, or voucher, by check to the order of the Treasurer of the United States or as otherwise directed in said bill, invoice, or voucher.

ARTICLE 4. *Responsibility for property sold.* (a) The Purchaser has had ample opportunity for full inspection of the property prior to the execution of this sales agreement, and agrees to accept the material "as is." The Government makes no guarantee, warranty, or representation as to the number, quantity, kind, size, weight, quality, character, description, or condition of the property, or its fitness for any particular purpose.

(b) The Purchaser assumes all liability for the property after notification to it of approval of the sale. The Government will exercise its usual care for protection of the property up to the time limit of removal, but will not be responsible for any loss or damage for any cause whatsoever. Title to the property shall vest in the Purchaser immediately upon notification to it of approval of the sale.

ARTICLE 5. *Officials not to benefit.* (Insert §§ 803.322 or 813.1326a (b), Article 13).

ARTICLE 6. *Covenant against contingent fees.* (Insert § 813.1326a (b), Article 12).

ARTICLE 7. *Definitions.* The term "Contracting Officer" as used herein shall include his duly appointed successor or his authorized representative.

In witness whereof, the parties hereto have executed this contract as of the day and year first written.

THE UNITED STATES OF AMERICA,
By _____
(Official Title)
Acting for and on behalf of Defense Plant Corporation
By _____
Two witnesses:
_____
_____
(Address)
_____
_____
(Address)

I, _____ certify that I am the _____ of the corporation executing this contract; that _____ who signed this contract on behalf of said corporation, was then _____ of said corporation; that said contract was duly signed by said corporation by authority of its governing body and is within the scope of its corporate powers, and that said corporation is acting for and on behalf of Defense Plant Corporation.

_____

§ 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

[1] Delete all lines which do not apply.

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 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:

_____
_____
_____

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 as 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.-365–2).

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

[1] This contract will bear same date as letter contract.

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 change shall be made in the rental rate in accordance with said "Uniform Rental Rates for Constructor-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 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 § 803.305–1).

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, to such extent and for such period as may be required by law. 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 § 803.365–3.)

2. (Insert clause c in § 803.365–3.)

3. The A-E-M hereby agrees that he will:

a. (Insert clause in § 803.365–6.)

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 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 and 803.343–1)

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.

[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.

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 Machine Operators.
Architects.	Office Managers.
Auditors.	Project Managers.
Axemen.	Purchasing Agents.
Bookkeepers.	Rodmen.
Chainmen.	Stenographers.
Checkers.	Stewards.
Chiefs of Party.	Storekeepers.
Clerks.	Superintendents.
Cooks.	Telephone Operators.
Draftsmen.	Timecheckers.
Engineers.	Timekeepers.
Executives of any kind.	Tool Checkers.
Guards.	Transitmen.
Levelmen.	Typists.
Material Checkers.	Waiters.
Material Clerks.	Watchmen.
Messengers.	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 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	67.38	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	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

NON-MANUAL EMPLOYEES OF COST-PLUS-A-FIXED-FEE PRINCIPAL AND SUBCONTRACTORS—Continued

Job classification	Salary ranges			
	Weekly		Monthly	
	From	To	From	To
Office and miscellaneous personnel—Con.				
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 *W. D. 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 purposes set forth in, and are chargeable to the following allotments, the available balances of which are 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 at the option of the Government.* (a) The performance of work under this contract may be terminated by the Government in whole, or from time to time in part, whenever the Contracting Officer shall determine that any such termination is for the best interests of the Government. Termination 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.

(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 per-

formance of any work terminated by the Notice of Termination; (4) settle all claims arising out of such termination of orders and subcontracts to the extent provided in and in accordance with the principles and procedures agreed upon between the War and Navy Departments and the Contractor by letter dated January 8, 1945, as the same may from time to time be amended; (5) 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 any of the orders or subcontracts so terminated with respect to which it may have been determined that the termination claims thereunder will be settled and paid by the Government; (6) deliver to the Government any plans, drawings, information and other property which, if the contract had been completed, would be required to be furnished to the Government; and (7) complete performance of such part of the work as shall not have been terminated by the Notice of Termination.

(c) The amount or amounts to be paid to the Contractor by reason of the total or partial termination of work under this contract shall be determined in accordance with the principles laid down in the agreement dated January 8, 1945, as the same may be from time to time amended, between the War and Navy Departments and the Contractor relating to the settlement of termination claims under contracts between the War or Navy Departments and the Contractor, or under orders or subcontracts relating to the performance of any such contracts, and the Government shall pay to the Contractor the amount or amounts so determined.

(d) 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, 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.

(e) The obligation of the Government to make any payments under this Article shall be subject to deductions in respect of any claim which the Government may have against the Contractor in connection with this contract.

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.

---

[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.

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 expense 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]

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 § 803.320, 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.

[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—1. Such deviation has been specifically authorized.

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.]

§ 813.1315 *Utility contract forms.*

§ 813.1315a *W. D. Contract Form No. 15*—(a) *Explanatory notes.* (1) The form set out in this section is available for use by Procuring Agencies for the procurement of electric, gas, water or sewage service when a connection charge to cover additional facilities necessary to furnish such services is included. Particular attention is directed to the footnotes accompanying the form.

(2) In cases where the amount of a connection charge cannot be agreed upon or where a contractor refuses to install additional facilities on other than an actual cost basis, a provision may be substituted for provision 4 of Article I of the form, reading as follows:

4. *Reimbursement for cost of facilities.* (a) The Government agrees to pay the contractor, as a connection charge, after receipt of satisfactory evidence of completion of the facilities, the costs thereof, without profit to the contractor, after deducting the agreed net salvage value of said facilities which is ------ Dollars. The Government is to receive a refund of the amount so paid as provided in paragraph 5 of this Article.

(b) The costs of the facilities shall include all items of costs and expenses properly chargeable to the work, including but not limited to acquisition of any necessary rights of way, easements or other interests in real property, labor, materials, transportation, insurance, overhead charges properly allocable to the work, supervision, surveys, permits, rental of tools, equipment and machinery employed in the work, together with such other items of expense as should, in the opinion of the Contracting Officer be included in the cost of the work. The Government shall promptly reimburse the contractor as provided herein upon receipt of properly certified invoices, in quadruplicate, approved by the Contracting Officer: *Provided, however,* That in no event shall the total amount paid by the Government to the contractor exceed the sum of ------ Dollars.

(c) In so far as practicable, all original time cards or pay rolls, material records and accounts, for all charges and expenditures for which reimbursement will be claimed from the Government, shall be made available to the Government on request for the purpose of checking and auditing the cost invoice. Also, in so far as practicable, separate records shall be maintained by the contractor of all items and accounts which will constitute the basis of information from which invoices for reimbursement will be prepared.

(d) The Government reserves the right to terminate this contract at any time prior to completion of the facilities herein provided for. In the event the Government exercises such right, fair compensation with respect to such facilities, exclusive of profit, within the meaning of the Contract Settlement Act of 1944 (Public No. 395, 78th Cong.), as the same may be amended from time to time, will be provided for the Contractor.

(3) In the blank space in provision 5 of Article I, insert the highest percentage of refund which can be negotiated. In all cases such percentage should be sufficient to provide for an estimated complete refund in not to exceed five years and should not be less than 10% in any case. If a percentage of 10% or more is unobtainable, such will constitute a material deviation from the contract form.

(4) In the case of electric and gas service, Special Provisions A and B (§ 813.1315b (b)), to be attached to and made a part of the contract in accordance with provision 1 (a) of Article II of the form, will be modified as follows:

(i) *Electric service.* Revise provision 7 of Special Provision A of § 813.1315b (b) to read:

7. *Renegotiation.* (a) Unless the provisions of subparagraph (b) or (c) 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 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).

(ii) *Gas service.* Revise provision 8 of Special Provision B § 813.1315b (b) to read:

8. *Renegotiation.* (a) Unless the provisions of subparagraphs (b), (c) or (d) 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, as amended February 25, 1944); and (2) in compliance with said subsection (b) of the Renegotiation Act, the Contractor shall insert in the subcontracts 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 gas, shall be exempt from statutory renegotiation if 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.

(d) This contract, but only as to amounts received under it for the delivery of gas, shall be exempt from statutory renegotiation if it is made with a public utility, except that if the amounts received or accrued hereunder for the delivery of gas 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 (d). 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 purpose hereof.

(5) In the case of electric, gas, water and sewage service provisions 5, 7, 6 and 4, respectively, of Special Provisions A, B, C and D (§ 813.1315b (b)) to be attached to and made a part of the contract in accordance with Provision 1 (a) of Article II of the form, will be modified to read:

Notice of intention to terminate service under 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 (30) days in advance of the effective date of termination.

(b) *Contract form.*

W. D. contract form No. 15. (Caption Sheet)

Contract No. W.----------
Date----------

WAR DEPARTMENT

Negotiated Service Contract[1]

(Including a connection charge)

Contractor and address----------

(Station or Premises to be served)

(City) (County) (State)

Premises are:
( ) Government-owned.
( ) Government-leased.
Symbol Number of Lease----------
Name of Lessor----------
Estimated annual service cost----------
Connection charge----------
Estimated annual refund----------
Bills will be rendered to----------
Payment will be made by Finance Officer, United States Army, at ----------

[1] Insert designation of service involved, that is, either electric, gas, water or sewage.

The facilities, supplies and services to be obtained by this instrument are authorized by, are for the purposes set forth in, and are chargeable to allotments below enumerated, the available balances of which are sufficient to cover the cost thereof:

Applicable allotments, having available balances sufficient to cover the cost will be stated on the procuring instruments or invoices.

Contract No. W ---

This contract, entered into this ---- day of ----, 194--, by and between The United States of America (hereinafter called the "Government"), represented by the Contracting Officer executing this contract and [1] ---- (hereinafter called the "Contractor"),

Witnesseth that:

Whereas, the Contractor is engaged in the business of supplying [2] ---- service to private and public consumers; and

Whereas, the Government and the Contractor are entering into this contract for the supply by the Contractor to the Government of the above service for the operation of ---- known as ---- (hereinafter called the "Project"); and

Whereas, in order that the Contractor may supply the above 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 such service which the 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, CONNECTION CHARGE AND REFUND PROVISIONS

1. *Facilities to be provided.* 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 on or before ----. 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. *License for facilities.* 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, 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 may be required to 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. *Contractor's employees.* Upon request the names of the employees of the Contractor whose services Contractor proposes 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 the employment of such persons within the confines of the Project as he may deem proper in the interests of the Government. Employees so approved shall be designated as such by a method to be agreed upon by the Contractor and the Commanding Officer of the Project.

4. *Payment for cost of facilities.* (a) In consideration of the estimated costs to be incurred by the Contractor and the uncertain duration of the Project the Government agrees to pay the Contractor, as a connection charge, after receipt of satisfactory evidence of completion of the facilities, the sum of $---- less the net salvage value of said facilities in the amount of $----. The net connection charge to be paid by the Government is $----. The Government is to receive a refund of the amount so paid as provided in paragraph 5 of this article.

(b) The Government reserves the right to terminate this contract at any time prior to completion of the facilities herein provided for. In the event the Government exercises such right, fair compensation with respect to such facilities, exclusive of profit, within the meaning of the Contract Settlement Act of 1944 (Public No. 395, 78th Cong.), as the same may be amended from time to time, will be provided for the Contractor.

5. *Refund agreement.* (a) In consideration of the fact that the Contractor is to be paid a connection charge for the facilities provided hereunder, 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 service supplied as hereinafter provided, a credit of [3] ---- 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 such 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.

(b) 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.

6. *Ownership, operation, maintenance, and removal of facilities to be provided hereunder.* (a) The facilities to be supplied by the Contractor as hereinbefore provided, notwithstanding the payment by the Government therefor less the net salvage thereof, shall be and remain the 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 the obligation of the Contractor.

(b) 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 paragraph 2 of this Article.

ARTICLE II—SERVICE PROVISIONS

1. *Service.* (a) The Contractor agrees to furnish the service required hereunder at the Project, beginning on ---- 19----, and thereafter until further notice, and at the rates and other terms set forth in provision 2 of the Article or attached hereto and, in accordance with Special Provisions numbered 1 to ---- inclusive, attached hereto and made a part hereof.[4]

(b) The Government agrees that the 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.

2. *Rates.*

ARTICLE III—GENERAL PROVISIONS

1. *Convict labor.* (Insert § 803.345.)

2. *Eight-hour law.* (Insert § 803.346) with proviso at end reading: *"Provided further,* That this stipulation is only applicable to laborers or mechanics engaged in installation of the facilities provided for in Article I hereof."[5]

3. *Officials not to benefit.* (Insert § 803.322).

4. *Disputes.* (Insert General Provision 12 of W. D. Contract Form No. 383, § 813.1317a (b).)

5. *Covenant against contingent fees.* (Insert § 803.323.)

6. *Anti-discrimination.* (Insert § 803.325.)

7. *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

---

[1] Insert name of Contractor. If a corporation, the name should be followed by "a Corporation organized and existing under the laws of the State of ----, with principal office at ----". If other than a corporation, the name should be followed by appropriate descriptive matter; e. g. see § 813.1301.

[2] Insert designation of service involved, that is, either electric, gas, water or sewage.

[3] Insert negotiated percentage of credit. See § 813.1315a, explanatory note (3).

[4] Attach whichever of Special Provisions A, B, C, or D set forth in § 813.1315b (b) is applicable to the service involved, modified when necessary as indicated in paragraph (a) (4) of this section and, in all cases, as indicated in paragraph (a) (5) of this section.

[5] If the contract is with any one of the several states of the Union or the political subdivisions thereof, Provision 2 of Article III will be changed to read "Eight-Hour Law—The Contractor agrees to incorporate in any subcontract entered into for furnishing the facilities covered by Article I of this contract the following provision: (here insert the contract provision required by § 803.346)." In this connection see § 809.905–1 (c).

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.

8. *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.

9. *Change of rates.* If during the life of this contract the public regulatory body 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 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. Such revised rate schedule, in sextuplicate, shall be promptly furnished to the Contracting Officer by the Contractor for attachment to this contract.

10. *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 June 30. 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.

11. *Definitions.* (Insert Article 23, § 813.1301.)

12. *Changes.* 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.

13. *War Powers Act.* This contract is authorized by and negotiated under the First War Powers Act and Executive Order 9001.

14. *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)

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 this section are available for use by Procuring Agencies for the procurement of 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 paragraph (b) of this section 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 paragraph (b) of this section 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 forms.*

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.

[1] Delete inapplicable words.

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 I 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

GOVERNMENT'S ACCEPTANCE

The foregoing Proposal is accepted this _____ day of _____, 194__.

UNITED STATES OF AMERICA,
By _____
Title _____
Contracting Officer

_____

RATES

[Reverse side of § 803.1315b (b)]

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.

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 hav-

[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.

ing 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 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. Such revised rate schedule, in sextuplicate, shall be promptly furnished to the Contracting Office by the Contractor for attachment to this contract.

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 § 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 § 803.323.)

8. *Anti-discrimination.* (Insert § 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:
Billed separately.[1]
Combined for billing purposes.[1]

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 sub-section (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. 383, § 813.1317a (b).)

9. *Alterations and additions.*

SPECIAL PROVISIONS 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 is it restricted to the above estimated requirements.)

2. *Point of 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 foot. Deduction for failure to provide gas at the agreed heat value shall be made as follows: One per cent net of the average price per 1000 cubic feet of gas for each one per cent 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, installed, maintained, calibrated and read by the Contractor. The readings of the meters will be:
(number and type).
Billed separately.[1]
Combined for billing purposes.[1]

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 such period and to such extent as may be required by law.

6. *Pressure.* [1] Contractor will maintain at the point of delivery a regulated pressure within ten per cent 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, 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. 383, § 813.1317a (b).)

10. *Alterations and additions.*

SPECIAL PROVISIONS C: WATER SERVICE

Attached to and made part of Contract No. W_____

1. *Estimated service requirements.* Estimated daily maximum demand: _____

[1] Delete inapplicable language.

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 readings of the meters will be:
Billed separately.[1]
Combined for billing purposes.[1]

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:

(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 furnishing of water, except that if the amounts received or accrued hereunder during any particular fiscal year were $10,000 or more, amounts received or acrued hereunder for such fiscal year shall not be exempt from renegotiation by reason of anything contained in this subparagraph (b) (2). (If such fiscal year is a fractional part of twelve months, the $10,000 amount shall be reduced to the same fractional part thereof for the purposes hereof.)

8. *Disputes.* (Insert General Provision 12 of W. D. Contract Form No. 383, § 813.1317a (b).)

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:

(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 removal of sewage, except that if the amounts received or accrued hereunder during any particular fiscal year were $10,000 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) (2). (If such fiscal year is a fractional part of twelve months, the $10,000 amount shall be reduced to the same fractional part thereof for the purposes hereof.)

6. *Disputes.* (Insert General Provision 12 of W. D. Contract Form No. 393, § 813.1317a (b)).

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 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

[1] Delete all lines which do not apply.

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 90% 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 § 803.356)

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 § 803.332–1).

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 and immediately following, 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, revised June 26, 1944 (W. D. Forms Nos. 383, 383a, 383b and 383c); Short Form—(a) Explanatory note.* W. D. Contract Form No. 383, revised 26 June 1944, comprising W. D. Forms Nos. 383, 383a, 383b and 383c, will be used in compliance with instructions appearing in TM 38–403 (Station Supply Procedure), which supersedes ASF Manual M403; and in ASF Manual M403 (Depot Supply Procedure).

(b) *Contract forms.*

War Department Form No. 383
Form Prescribed by Comptroller General, U. S. June 23, 1944.

PURCHASE ORDER ☐ OR DELIVERY ORDER ☐ (Indicate by X)
AND VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL
WAR DEPARTMENT

Date _____ Insert Name and Address of Procuring Office _____

Delivery order No.	Contract No.	Purchase order No.	Requisition No.	Purchase authority	D. O. Voc. No.

TO:	SHIP TO:	Paid by
Vendor: Return white copy with vendor's certificate completed or white copy with certified or original and two copies of your invoice	Payment will be made by Finance Officer	
To:	At:	(For use of paying office)

F. o. b.	(Del. date(s))	Discount terms	The officer(s) whose signature(s) appear below certify that the available balance or funds chargeable (indicated below unless accounting classification) is sufficient.

If purchase order: This instrument is negotiated under authority of the First War Powers Act, 1941, and Executive Order No. 9001, of December, 1941. In accordance with your price list/formal quotation written quotation of _____ 194__, please furnish the following, subject to the terms and conditions stated on both sides of this form. If delivery order: Please furnish the following in accordance with the terms of purchase agreement identified above. The provisions on the reverse side of this form do not apply when used as delivery order.

Item No.	Articles or services	Quantity ordered	Unit	Unit price	Amount	Quantity received
	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) [1]

Per ..... Title .....

(This certificate not required when a like certificate is made by payee on attached bill or bills)

Vendor's invoice No.

(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, or as indicated above 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

Appropriation (including limitation) symbol	Appropriation title	Station code	Limitation or project amount	Appropriation amount

Check No. ..... dated ..... 19.. for $..... on Treasurer of the United States in favor of Payee named above.
Cash, $..... on ..... 19.... Payee .....

[1] 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.

Per .....

Title .....

[Reverse side of W. D. Form No. 383]

GENERAL PROVISIONS APPLYING TO THIS ORDER

1. *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. If the Contracting Officer permits, (a) payments may be made on partial deliveries accepted by the Government when the amount due on such deliveries so warrants; or, (b) when requested by the Contractor, payments for accepted partial deliveries may be made whenever such payments would equal or exceed either $1,000 or 50% of the total amount of the contract.

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 § 803.329)

4. *Notice of shipments.* (Insert § 803.328)

5. *Taxes.* (Insert § 803.357–2)

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 exemptions 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 § 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 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 § 803.355.)

14. *Officials not to benefit.* Insert § 803.322.)

15. *Covenant against contingent fees.* (Insert § 803.323.)

16. *Termination at the option of the Government.* The performance of work under this contract may be terminated by the Government whenever the Contracting Officer shall determine that such action is for the best interests of the Government. If this contract is so terminated, fair compensation, within the meaning of the Contract Settlement Act of 1944 (Public No. 395, 78th Cong.), as the same may from time to time be amended, will be provided for contractor.

17. *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.

SHIPPING INSTRUCTIONS

A. Mark each package with complete destination, Delivery Order or Purchase Order number, name of Contractor, commodity, quantity, Delivery Order or Purchase Order item number, package number.

B. Packing list must accompany each shipment, showing package number and contents.

C. If purchase is f. o. b. destination, delivery charges are absorbed in the prices. If purchase is f. o. b. origin, delivery charges are excluded from the prices and Government bill of lading will be used, or commercial bill of lading will be used and exchanged for Government bill of lading at destination.

War Department Form No. 383a
Form Prescribed by Comptroller General, U. S.
June 26, 1944.

PURCHASE ORDER ☐ OR DELIVERY ORDER ☐ (Indicate by X)

AND VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL

WAR DEPARTMENT

Date ..... Insert Name and Address of Procuring Office .....

Delivery order No.	Contract No.	Purchase order No.	Requisition No.	Purchase authority	D. O. Vou. No.

To:	Ship to:	Paid by
Vendor: Return white copy with vendor's certificate completed or white copy with certified original and two copies of your invoice. To:	Payment will be made by Finance Officer At:	(For use of paying office)

F. o. b.	Del. date(s)	Discount terms

If purchase order: This instrument is negotiated under authority of the First War Powers Act, 1941, and Executive Order No. 9001, 27 December, 1941. In accordance with your price list, oral quotation, written quotation of ..... 194.., please furnish the following, subject to the terms and conditions stated on both sides of this form.
If delivery order: Please furnish the following in accordance with the purchase agreement identified above. The provisions on the reverse side of this form do not apply when used as delivery order.

The officer(s) whose signature(s) appear below certify that the available balance of funds chargeable (indicated below under accounting classification) is sufficient.

.....

.....

Item No.	Articles or services	Quantity ordered	Unit	Unit price	Amount	Quantity received
	Total.....					

Memorandum:

(Vendor must NOT use this space)

Differences .....

.....

.....

Vendor's Invoice No.

Account Verified: correct for .....

(Signature or initials)

Inspection report: I certify that the items listed in Quantity Received column above were inspected by me, and that they conform to the contract requirements, and/or that the services specified in the contract were actually rendered.

(Date) Inspecting Officer

Receiving report: 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(s) received Accountable Officer

Accounting classification

Appropriation (including limitation) symbol	Appropriation title	Station code	Limitation or project amount	Appropriation amount

Check No. ..... dated ..... 19 ..., for $..... on Treasurer of the United States in favor of Payee named above.

Cash, $ ..... on ....., 19... Payee..... (Sign original only) ..... Property Vou. No.

.....

Title .....

[Reverse side of W. D. Form No. 383a]

This is the same as the reverse side of W. D. Form No. 383.

War Department Form No. 383b
Form Prescribed by Comptroller General, U. S., June 26, 1944.

PURCHASE ORDER ☐ OR DELIVERY ORDER ☐ (Indicate by X)

AND VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL

WAR DEPARTMENT

Date.....

(Continuation sheet—Original)

Delivery Order No.	Contract No.	Purchase order No.	Requisition No.	Purchase authority	Sheet of

Item No.	Articles or services	Quantity ordered	Unit	Unit price	Amount	Quantity received
	Total.....					

War Department Form No. 333c
Form prescribed by Comptroller General, U. S., June 26, 1944.

PURCHASE ORDER ☐ OR DELIVERY ORDER ☐ (indicate by X)

AND VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL

WAR DEPARTMENT

Date.....

(Continuation sheet—Memorandum)

Delivery Order No.	Contract No.	Purchase order No.	Requisition No.	Purchase authority	Sheet of

Item No.	Articles or services	Quantity ordered	Unit	Unit price	Amount	Quantity received
	Total.....					

§ 813.1317b *W. D. Contract Form No. 18 (W. D. Form No. 18); Short Form, Revised 11 November 1944*—(a) *Explanatory notes.* (1) W. D. Contract Form No. 18 has been revised as of 11 November 1944 and is now printed by the War Department as W. D. Form No. 18, and distributed in accordance with AR 310–200.

(2) 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 purchases 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 (*a*) the amount of the order is not in excess of $5,000 or (*b*) 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.

(3) Where the price is not in excess of $5,000 the line reading "In accordance with your price list /oral quotation/ written quotation of _____", appearing on the front side of the form, will be deleted by the contracting officer. Otherwise the contracting officer will delete those words which do not apply, and insert the date.

(4) Each technical service may insert (either on continuation sheets or in the blank space provided on the reverse side of W. D. Form No. 18, or in any other space on the form) special provisions covering (i) methods of presenting invoices or vouchers, and (ii) methods of packing, shipping, and marking. Continuation sheets may also be used as extensions of columns on the form.

(5) If the uniform article concerning "Termination at the Option of the Government" (§ 803.324) or the statutory renegotiation article (§ 803.342–1) is necessary or desirable, W. D. Form No. 47–a (see § 813.1317c (b)) may be used as a continuation sheet to W. D. Form No. 18. If the uniform termination article (§ 803.324) is included, General Provision 16 (short-form "Termination at the Option of the Government") on the reverse side of W. D. Form No. 18 should be deleted.

(6) W. D. Form No. 18 will be requisitioned as prescribed in AR 310–200. Requisitioning agencies should specify bond, tissue, or ditto in requisitioning the form.

(b) *Contract form.*

W. D. FORM NO. 18—REVISED 11 NOVEMBER 1944 (FRONT)

NOTE: Forms printed in the FEDERAL REGISTER are for information only, and do not follow the exact format prescribed by the issuing agency.

W. D. Form No. 18
11 November 1944

WAR DEPARTMENT PURCHASE ORDER

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 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 .....
Please furnish the following on the terms specified on both sides of this page and on the attached sheets including delivery f. o. b. .....
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.
Schedule of deliveries .....

Item No.	Supplies or services	Quantity	Unit	Unit price	Amount
	Inspection points:	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).
Attached sheets numbered .....

UNITED STATES OF AMERICA

By .....
Title .....
Contracting Officer.

[Reverse side of W. D. Form No. 18—Revised 11 November 1944]

GENERAL PROVISIONS

The General Provisions of W.D. Form No. 18 are the same as the General Provisions appearing on the reverse side of W.D. Form No. 383 (see § 813.1317a (b)).

§ 813.1317c *W. D. Contract Form No. 47 (W. D Forms Nos. 47 and 47–a); Short Form, Revised April 1, 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:

(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.

(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) constitutes 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 blank 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 initialed 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 § 803.523). NOTE: Certain outstanding printed forms contain an earlier form of Notice of Shipments article which is authorized for use on such forms so long as the stock lasts.

5. *Taxes.* (Insert clause in § 803.357–2.)

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 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 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 the article from § 803.324).

B. *Renegotiation.* (Insert article in 803.342.342–1.)

§ 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 ____ Contract No. (if any) W. ____

W. D. establishment, office or station, and address:

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 § 803.366)

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 W. D. Contract Form No. 383 (see § 813.1317a).

[Sheet to be added when applicable]

This is the same as the added sheet for W. D. Contract Form No. 47 (see W. D. Contract Form No. 47–a (§ 813.1317c)).

§ 813.1317e *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 _____

§ 813.1317f *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 W.D. Contract Form No. 333 (see § 813.1317a).

[Sheet to be added when applicable]

This is the same as the added sheet for W.D. Contract Form No. 47 (see W.D. Contract Form No. 47-a (§ 813.1317c)).

§ 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 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, 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 on 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 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.

[1] This proviso to be used where agreement is supplemental to two or more contracts.

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 _____ or his duly author-
(Chief of supply service)
ized 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)

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 _____ was en-
(Insert number of original contract)
tered 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 _____ or his duly au-
(Chief of technical service)
thorized 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 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

[1] The bracketed provision may be inserted in the case of experimental contracts or other cases where deemed especially appropriate.

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, 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 _____ 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 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 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 _____, a letter purchase order, purchase order)
numbered _____, was
(Insert number of purchase order)
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)
(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 _____ by the units or 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__, 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 _____ or his duly authorized of supply 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
(Chief of supply service)
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, 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 au-
(Chief of supply service)
thorized representative, the amount of such excess shall, upon demand by the _____ (Chief of _____ or his duly authorized rep-
supply service)
resentative, 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 amount of equipment purchased)
_____) by the Contractor, and[1]

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:

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%)

[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.

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 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, 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 his duly authorized representative.
(Chief of technical service)

[1] This proviso to be used where agreement is supplemental to two or more contracts.

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 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 _____
(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 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 arti-

cles 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)

[1] The bracketed provision may be inserted in the case of experimental contracts or other cases where deemed especially appropriate.

§ 813.1324 *W. D. Contract Form No. 24.*

WAR DEPARTMENT

Supplemental Contract to Contract No ____
_____
(Name of technical service)

Whereas, under date of _____
(Insert date of
_____, a contract numbered, original contract)
_____, was entered into between the United States of America by _____
(Insert name, rank and Branch
_____ as Contracting Officer, of 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 of 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, 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 _____, 10__.

[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 said 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 author-
(Chief of supply service)
ized 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 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 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
_____ or his duly authorized rep-
of supply service)
resentative, 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 rep-
supply service)
resentative, the amount of such excess shall, upon demand made by the _____
(Chief of supply
_____ or his duly authorized representa-
service)
tive, 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 use for sales by the Government of all types of Government-owned property (except sales of real estate or of buildings or improvements to be severed from real estate) where formal or informal competitive bids are desired or required. The form is intended for use in sales of scrap, waste, and salvage material as well as serviceable and repairable property.

(2) W. D. Contract Form No. 26 may be reproduced by the technical services. It is designed so that the Invitation, Bid and Government's Acceptance can be reproduced on one side of the page, and the General Provisions on the other. The Alternate and Additional Provisions and the Schedule of Property to be Sold may be reproduced on continuation sheets. No physical change or deletion need be made in the General Provisions in cases in which changes or omissions in the articles of the General Provisions are desired; such changes and omissions need only be noted in paragraph 4 of the Invitation. Additional and Alternate Articles should be designated by letters (rather than numbers) and specified in the appropriate place in paragraph 1 of the Invitation.

(3) The use of W. D. Contract Form No. 26 is mandatory for all sales of salvage, scrap, and waste material in place of W. D. Q.M.C. Form No. 327, wherever the securing of bids is authorized or required; to the extent required to conform herewith, TM 38–505 ("Salvage in Zone of Interior"), paragraph 55 and Appendices III and IV are rescinded. The form is available for use in cases of other sales, in accordance with § 821.113, and it is highly desirable that it be used wherever practicable. Subject to Procurement Regulations (e.g. § 803.306), Army Regulations, Technical Manuals (e.g. TM 38–505), and other War Department publications, the technical services (including the service commands) are authorized to permit or require changes or omissions in the General Provisions and the Alternate and Additional Provisions of the form, and to add appropriate Additional Provisions.

(4) It is suggested that the "Instructions to Contracting Officers" be reproduced as part of the form, with such additions and changes as may be required by the needs of the particular technical service. It is also suggested that General Provision 21 (Certificate of Compliance with OPA Regulations) be reproduced on a separate sheet and called to the attention of bidders where applicable, since the certificate requires the bidder's signature.

(b) *Contract form.*

WAR DEPARTMENT

INVITATION, BID AND ACCEPTANCE (SALE OF PROPERTY AND WASTE MATERIAL)

W. D. establishment, office or station, and address:

_____
Invitation No. _____
Contract No. _____
Office Ident. No. _____
Order No. (if any) _____

This contract is authorized by and negotiated under Public No. 703, 76th Congress, as extended, First War Powers Act, 1941, Executive Order No. 9001, Surplus Property Act of 1944, and other statutes.

INVITATION

Date _____

1. Written bids in _____ subject to the terms and conditions specified in this Invitation, in the General Provisions on the reverse side hereof, and in the alternate and additional provisions lettered _____ _____ will be received at this office until _____ o'clock _____ M. _____ 194____, for the purchase of the property listed in the schedule of property to be sold on the accompanying sheets numbered _____.

Bids[1] will be inclosed in a sealed envelope plainly marked "Bid for Sale of Government Material, Invitation No. _____ to be opened at _____."
(Time and date)

Bids[2] will be opened publicly at _____
(place)
at _____.
(time)

2. Payment will be delivered or mailed to:
_____
_____

3. Inspection dates (See General Provision 5): _____
_____

4. Changes made in general provisions:

BID

Date _____

In compliance with the above invitation for bids, and subject to all the terms and conditions thereof, the undersigned offers and agrees to purchase any or all of the items upon which the undersigned has quoted prices, at the price set opposite each item. Bid guarantee in the amount of _____ (See General Provision 1) is inclosed herewith.

Bidder _____ Address _____
By _____ _____
(Signature of person authorized to sign this bid)
Title _____ _____

GOVERNMENT'S ACCEPTANCE

Date _____
Accepted as to items numbered _____
_____
_____
UNITED STATES OF AMERICA,
By _____
Title _____
(Contracting Officer)

Total (Estimated) Amount of Receipts $1_____

GENERAL PROVISIONS

1. *Deposits to accompany bid.* Unless otherwise specified, bids must be accompanied by cash, certified check, bond, or postal money order made payable to the Treasurer of the United States in the amount of at least twenty per cent (20%) of the total sum of the bid. If the bidder does not receive an award, or if the deposit exceeds the total sum bid on the items accepted by the Government, such remittance or the excess thereof will be promptly returned to the bidder of Purchaser. In other cases, the amount inclosed with the bid will be retained as guarantee for the faithful performance of all the terms and conditions of the purchase: *Provided, however,* That if the contract, by its terms, cannot be performed in less than thirty (30) days the Purchaser shall have the option of substituting a performance bond, acceptable to the Contracting Officer, for the deposit being held as a performance guarantee.

2. *Rejection of bids.* The Government reserves the right to reject any or all bids, regardless of whether the same constitute the highest bids, to waive any informality in bids, and unless otherwise specified by the bidder, to accept any item or items in the bid.

3. *Time for Government's acceptance.* Unless otherwise specified herein, the bidder will allow thirty (30) days from the last date for the receiving of bids (as specified in the Invitation) for acceptance of its bid by the Government.

4. *Terms of bid.* Unless otherwise specified, bids must be submitted on the basis of the unit specified for the item in the Schedule, and bids may be submitted on any or all items. In case of error in the extension of prices in the bid, the unit prices will govern. Each sheet of the bid should show the name of the bidder.

5. *Inspection.* Bidders are invited and urged to inspect the property to be sold prior to submitting bids. Property will be available for inspection at the times specified in the Invitation. No labor will be furnished for such purpose. In no case will failure to inspect be considered ground for a claim.

6. *Sale of property "as is".* Unless otherwise specified, all property is sold "as is"; the Government makes no guaranty, warranty or representation, express or implied, as to the kind, size, weight, quality, character, description or condition of any of the property, or its fitness for any use or purpose; this is not a sale by sample.

7. *Sale of property "where is"; delivery.* Unless otherwise specified, the property is sold "where is", delivery shall be at the present location of the property, and removal shall be accomplished by the Purchaser at its expense; unless the Purchaser removes the property from such location within 10 days (or such other time as may be specified herein) after the date of the Government's Acceptance, the Government shall have the right to dispose of the property and hold the Purchaser responsible for any loss incurred by the Government as a result of the failure to pay for or remove the property; the time of removal, and such other details of removal as may not be provided for herein, shall be arranged with the Contracting Officer. Unless otherwise specified herein, payment in full must be made prior to removal of any property or immediately subsequent to weighing if weighing is necessary pursuant to General Provision 9.

8. *Adjustment for variation in quantity.* Unless otherwise specified, the quantities of the various items listed in the Schedule of Property to be Sold are approximate only. Any variation between the quantity stated for any item and the quantity of such item actually delivered to the Purchaser will be adjusted on the basis of the unit price quoted for such item prior to final payment.

9. *Weighing.* Where weighing is necessary to determine price hereunder, the Purchaser shall arrange for, and pay all expenses of weighing material, whether removal is by truck or by rail, including all switching charges incurred. In case of removal by truck, weighing shall be on (a) Government scales, or (b) other certified scales in the vicinity of present location or (c) certified scales in the vicinity of Purchaser's establishment, at the option of the Contracting

[1] Delete if sealed bids are not desired.

[2] Delete if a public opening is not appropriate.

Officer, and under his supervision. When removal is by rail, weighing shall be on railroad track scales or by other means acceptable to railroad for freight charge purposes. The weights thus determined shall govern payment.

10. *Responsibility for property sold.* The Purchaser assumes all responsibility and liability for the property after the date of the Government's Acceptance. The Government will exercise its usual care for protection of the property up to the time limit of removal, but will not be responsible for any loss or damage from any cause whatsoever.

11. *Title.* Title to the items of property sold hereunder shall vest in the Purchaser as and when full payment is made therefor.

12. *Payment.* If a deposit has been made, it will be applied against the total balance due. Payment of the balance, or of the full amount due from the Purchaser where no deposit has been required, shall be made by cash, or by certified check, bank draft, postal money order, or irrevocable letter of credit, payable to the Treasurer of the United States, in accordance with the Delivery provisions hereof.

13. *Covenant against contingent fees.* The Purchaser warrants that it 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.

14. *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.

15. *Anti-discrimination.* (a) The Purchaser, 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 Purchaser agrees that the provisions of paragraph (a) 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 Purchaser 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 sale of property under this contract: *Provided, however,* That a contract for the furnishing of standard or commercial articles or raw materials shall not be considered as a subcontract.

16. *Price adjustment.* If at the time of payment for any of the property by the Purchaser, a maximum price lower than that quoted shall have been established by the Office of Price Administration or other duly constituted authority and shall be in effect and expressly applicable to this sale, the price of such property shall be reduced to such maximum price.

17. *Compliance with OPA and WPB orders and regulations, etc.* The Purchaser warrants and represents that this transaction is, and all of its future transactions with the property sold hereunder will be, in compliance with applicable orders and regulations of the Office of Price Administration and the War Production Board or similar authority. The Purchaser also warrants and represents that it has not directly or indirectly entered into any agreement or arrangement, express or implied, of any nature which will affect full and free competitive bidding upon any of the items of property sold hereunder.

18. *Scrap warranty.* The Purchaser agrees that as to any item awarded to it at prices not in excess of applicable Office of Price Administration ceiling prices for scrap it will sell and ship or use the same only as scrap, either in its existing condition or after further preparation and only in conformity with all applicable orders and regulations of the Office of Price Administration and the War Production Board.

19. *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 Purchaser. Within thirty (30) days from said mailing the Purchaser 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 Purchaser shall diligently proceed with the performance of this contract.

20. *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.

21. *Certificate of compliance with OPA regulations.* No bid will be considered unless the following certificate is completed and executed by the bidder. Bidders will strike out inapplicable words.

Certificate: The bidder represents and certifies to the United States of America:

That the prices to be paid for the goods purchased under this bid and contract do not exceed one of the following:

(a) The maximum price applicable to purchases by the bidder, from usual sources of supply, of the goods in the quantity and at the place of delivery specified in this bid, or

(b) The maximum selling price applicable to sales by the bidder, in its capacity as a manufacturer, producer or processor of the same goods, disregarding minor differences in specifications or design, in the quantity and at the place of delivery specified in this bid.

ALTERNATE AND ADDITIONAL PROVISIONS

(NOTE: Explanatory notes do not form any part of this contract.)

A. *Adjustment for variation in quantity.* As to any item for which a price per unit is specified in the Schedule of Property to be Sold, the Purchaser agrees to accept and pay at the quoted unit price for any number of units delivered or offered for delivery by the Government, up to and including _____ per cent (%) more or less than the estimated quantity stated in the schedule.

NOTE: The foregoing article, properly completed, may be included, in substitution for Article 8 of the General Provisions, where it is deemed desirable and is authorized by applicable regulations, technical manuals, and other War Department publications. The contract should *not* contain both Article 8 of the General Provisions and the foregoing Article A of the Alternate and Additional Provisions.

B. *Delivery.* Delivery to Purchaser shall be f. o. b. (cars) (truck) (wharf) at present location. Unless the Purchaser shall remove the property within _____ days after date of the Government's acceptance, or unless proper shipping instructions are received within the same time limit, the Government shall have the right to dispose of the property and to hold the Purchaser responsible for any loss incurred by the Government as a result of the Purchaser's failure to comply with the contract. If necessary, the time of removal, and other details of removal, shall be arranged with the Contracting Officer. Unless otherwise specified herein, payment in full must be made prior to removal of the property, or immediately subsequent to weighing, if weighing is necessary pursuant to General Provision 9.

NOTE: The foregoing article, properly completed, may be included, in substitution for Article 7 of the General Provisions, where it is deemed desirable and is authorized by applicable regulations, technical manuals, and other War Department publications. The contract should *not* contain both Article 7 of the General Provisions and the foregoing Article B of the Alternate and Additional Provisions.

C. *Sales of an indefinite quantity of scrap, waste or salvage*—(1) *Contract period.* This contract will extend from _____ (or from the date of the Government's Acceptance if subsequent thereto) through _____, both dates inclusive, unless sooner terminated under the provisions of this contract.

(2) *Quantity.* The quantities of the various items listed are based upon the best information available and in each case represent the estimated and not the actual amounts which will be available for delivery during the period stated herein. Except as otherwise stated herein, the fact that specific quantities available for delivery vary from the quantities listed herein will not relieve the Government of its obligation to deliver to the Purchaser the actual amount to be sold hereunder and will not release the Purchaser from his obligation to purchase all such amounts.

(3) *Termination.* This contract shall remain effective until date of expiration, provided that it may be earlier terminated at the convenience of the Government upon thirty (30) days' notice in writing given by the contracting officer to the Purchaser.

(4) *Delivery.* Delivery hereunder shall be as follows: _____

(5) *Payment.* Payment will be made on or before the _____ day of each month for the materials received during the preceding month.

(6) *Changes in maximum prices.* In the event that the schedule of maximum prices prescribed by the Office of Price Administration or similar authority covering any of the items sold hereunder is changed during the life of the contract, the prices to be paid thereafter by the Purchaser shall be increased or decreased by a percentage equivalent to the percentage of increase or decrease in the maximum price for such items.

NOTE: (1) The foregoing clauses, properly completed, will be included in sales of an indefinite quantity of scrap, waste or salvage to be delivered over a given period of time.

(2) General Provisions 16 (*Price adjustment*) will be omitted whenever Article C (6) (*Changes in maximum prices*) is included.

(3) Care should be taken to delete or change other General Provisions (e.g. *Delivery*) which may be inapplicable or inconsistent.

(4) Additional clauses may be inserted, as required by local conditions, and authorized by applicable regulations, technical manuals, and other War Department publications.

D. *Use warranty.* The Purchaser represents and warrants that it will use or consume the property included in Items _____ in the United States for manufacturing, construction, maintenance or repair purposes, and the

Purchaser agrees that if it does not use or consume any of the items, it will not resell them at a profit.

NOTE: This provision, properly completed, must be included where such a warranty is required by Parts 823 or 844.

E. *Additional provisions.*

NOTE: Sufficient space should be left for this article.

SCHEDULE OF PROPERTY TO BE SOLD

Location _____

Item No.	Article and description	Quantity	Unit	Price bid per unit	Total price bid	Remarks

Sheet No.

Bidder's signature _____
Invitation No. _____

INSTRUCTIONS TO CONTRACTING OFFICERS

1. This form may be used for sales by the Government of all types of Government-owned property (except sales of real estate or of buildings or improvements to be severed from real estate) where competitive bids are desired or required.

2. No changes should be made in any of the General Provisions except as authorized by the technical services or other appropriate authority. All changes made in the General Provisions or articles omitted therefrom, should be noted in Paragraph 4 of the Invitation. Articles of the Alternate and Additional Provisions to be inserted or added must be listed in Paragraph 1 of the Invitation.

3. Subject to War Department Procurement Regulations, instructions as to the inclusion or addition of articles in particular types of sales may be issued by the technical services, service commands, and other commands having jurisdiction over sales by the Government of Government-owned property. These sources, as well as applicable technical manuals (e.g. TM 38-505, "Salvage in Zone of Interior") and other War Department publications, should be consulted.

4. Article E (Additional provisions) of the alternate and additional provisions may be used for such authorized additional clauses, e.g. special clauses used in the sale of scrap returned to the United State from overseas, explosive scrap, greases and kitchen wastes, tin cans, tires, waste paper, etc.

5. If the sale is by a salvage officer of surplus property, as authorized in certain cases by Subchapter B and Part 844 of Subchapter C, and TM 38-505 ("Salvage in Zone of Interior"), the description of the items of such property on the Schedule of Property to be Sold will clearly state that the sale pertains to the sale of surplus property, and the words "Sale of Surplus Property" will also be stamped, printed or written on the Invitation.

6. General provision 21 (Certificate of compliance with OPA regulations) must be completed and signed by the bidder, where applicable (see Subchapter B and Part 844 of Subchapter C).

§ 813.1326a *W. D. Contract Form No. 26A—(a) Explanatory notes.* (1) W. D. Contract Form No. 26A is available for use for negotiated sales by the Government of all types of Government-owned property, except (i) sales to the Defense Plant Corporation or other Government agencies and departments, and (ii) sales of real estate or of holdings or improvements to be severed from real estate. It is highly desirable in cases in which a negotiated sales form is desired that W. D. Contract Form No. 26A be used wherever practicable.

(2) W. D. Contract Form No. 26A may be reproduced by the technical services. Subject to Procurement Regulations (e. g. § 803.306), Army Regulations, technical manuals, and other War Department publications, the technical services are authorized to permit or require changes or omissions in the articles of the form and to add additional provisions.

(3) It is suggested that the "Instructions to Contracting Officers" be reproduced as part of the form, with such additions and changes as may be required by the needs of the particular technical service.

(b) *Contract form.*

Contract No. _____
Office Ident. No. _____

CONTRACT OF SALE OF PROPERTY
WAR DEPARTMENT

War Department establishment, office or station

Address

Purchaser: _____
Purchaser's address: _____
Contract for sale of _____
Amount: $ _____
Location of property: _____

This contract is authorized by and negotiated under Public No. 703, 76th Congress, as extended, First War Powers Act, 1941, Executive Order No. 9001, Surplus Property Act of 1944, and other statutes.

This contract, entered into this _____ day of _____ 194__, by and between the United States of America (hereinafter called the Government) represented by the Contracting Officer executing this contract, and

(Name of Corporation, Firm or Individual)

*a corporation organized and existing under the laws of the State of _____
*a partnership consisting of _____
*an individual trading as _____
of the city of _____
in the State of _____
(hereinafter called the Purchaser) witnesseth that the parties hereto do mutually agree as follows:

NOTE: Reference numerals 1 to 11 are to the numbered Instructions to Contracting Officers following.

[1] *Article 1. Property to be sold.* The Government agrees to sell and the Purchaser to buy and accept the following items of property, described and located as set forth below or in attached sheets numbered _____ (and incorporated herein), in the quantities and at the unit prices set forth below or in the attached sheets and for the estimated total price of _____.

Article 2. Price adjustment. If at the time of payment for any of the property by the Purchaser, a maximum price lower than that stated herein shall have been established by the Office of Price Administration or other duly constituted authority and shall be in effect and expressly applicable to this sale, the price of such property shall be reduced to such maximum price.

[2] *Article 3. Adjustments for variation in quantity.* The quantities of the various items listed in Article 1 or the attached sheets are approximate only. Any variation between the quantity stated for any item and the quantity of such item actually delivered to the Purchaser will be adjusted on the basis of the unit price for such item, either prior to final payment, or thereafter, provided notice of such variation is communicated to the Contracting Officer within thirty (30) days after delivery of the property.

[2] *Article 3A. Adjustment for variation in quantity.* If a price of an item per unit is stated in Article 1 or the attached sheets, the Purchaser agrees to accept and pay at the stated unit price for any number of units delivered or offered for delivery by the Government up to and including _____ per cent (%) more or less than the estimated quantity stated in Article 1 or the attached sheets.

[3] *Article 4. Delivery.* All property is sold "where is" and delivery to the Purchaser shall be at the present location of the property. If the property is not already in the custody of the Purchaser, the Purchaser shall remove it from such location within _____ days after receipt of notification of execution of this contract by the Contracting Officer (or if approval of this contract by higher authority is required by the terms hereof, within _____ days after receipt of notification of such approval) and removal shall be accomplished by the Purchaser at its expense. If the property is not so removed the Government shall have the right to dispose of the property and to hold the Purchaser responsible for any loss incurred by the Government as a result of the failure to pay for or remove the property. The time of removal, and other details of removal will be arranged with the Contracting Officer if not otherwise specified herein. If the property is already in the custody of the Purchaser, delivery will be deemed to take place upon the date of execution of this contract by the Contracting Officer, or, if approval of this contract by higher authority is required by the terms hereof, on the date of such approval. Full payment shall be made prior to delivery to or removal by the Purchaser, or immediately subsequent to weighing if weighing is necessary pursuant to Article 7.

[3] *Article 4A. Delivery.* Delivery to the Purchaser shall be f. o. b. (cars) (truck) (wharf) at present location. Unless the Purchaser shall remove the property from such location within _____ days after receipt of notification of execution of this contract by the Contracting Officer (or if approval of the contract by higher authority is required by the terms hereof, within _____ days after receipt of notification of such approval), or unless proper shipping instructions are received within the above-specified time limits, the Government shall have the right to dispose of the property and to hold the Purchaser responsible for any loss incurred by the Government as a result of the failure to pay for or to remove the property, or to provide proper shipping instructions. If necessary, the time of removal, and other details of removal, will be arranged with the Contracting Officer. Full payment shall be made prior to delivery to or removal by the Purchaser, or immediately subsequent to weighing if weighing is necessary under Article 7.

[4] *Article 5. Sale of property "as is".* Unless otherwise expressly provided herein, the purchaser agrees to accept the property "as is"; the Government makes no guaranty, warranty, or representation, express or implied, as to the 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.

*Delete lines which do not apply.

[4] *Article 5A. Inspection by purchaser prior to acceptance.* All property shall be subject to inspection and acceptance by the Purchaser within a period of _____ days after delivery. In the event any such property is found not to conform to (Government) (standard commercial) specifications, the Purchaser shall have the right to reject any of such property. Any of such property rejected by the Purchaser because of failure to conform with (Government) (standard commercial) specifications will be subject to the following disposition at the discretion of the Government after a confirming inspection has been made by a Government inspector:

1. To be replaced by the Government, at Government expense, by similar or other items meeting (Government) (standard commercial) specifications;

2. To be returned at Government expense and an equitable adjustment made in the purchase price;

3. To be retained by Purchaser and an equitable adjustment made in the purchase price.

If upon the expiration of the required _____ day period allowed the Purchaser for the rejection of the property, as provided above, there has been no communication of notice in writing to the Contracting Officer of any rejections, the Purchaser will be considered as having made final inspection and acceptance, and Purchaser will have no right to reject any item thereafter. Any dispute as to failure of any property to conform to specifications will be determined in accordance with Article 18 (*Disputes*).

Article 6. Responsibility for property sold. The Purchaser assumes all responsibility and liability for the property after notification of execution of the contract by the Contracting Officer, or of approval of the contract by higher authority if such approval is required by the terms hereof. The Government will exercise its usual care for protection of the property up to the time limit of removal, but will not be responsible for any loss or damage from any cause whatsoever.

Article 7. Weighing. Where weighing is necessary to determine price hereunder, Purchaser shall arrange for, and pay all expenses of weighing material, whether removal is by truck or by rail, including all switching charges incurred. In case of removal by truck, weighing shall be on (a) Government scales, or (b) other certified scales in the vicinity of present location or (c) certified scales in the vicinity of Purchaser's establishment, at the option of the Contracting Officer and under his supervision. When removal is by rail, weighing shall be on railroad track scales or by other means acceptable to railroad for freight charge purposes. The weights thus determined shall govern payment.

Article 8. Title. Title to the property shall vest in the Purchaser upon full payment therefor, or upon execution of this contract by the Contracting Officer or, if such approval is necessary, upon approval of this contract by higher authority, whichever date is latest.

[5] *Article 9. Payment.* Payment shall be made as follows:_____

_____

_____

Payment will be made by cash or by certified check, cashier's check, bank draft or postal money order made payable to the Treasurer of the United States. Payment will be made to_____

Article 10. Compliance with OPA and WPB orders and regulations. The Purchaser warrants and represents that this transaction is, and all of its future transactions with the property covered hereby will be, in compliance with applicable orders and regulations of the Office of Price Administration and the War Production Board or similar authority.

[6] *Article 11. Certificate of compliance with OPA regulations.* The Purchaser represents and certifies to the United States of America that the prices paid or to be paid for the goods purchased or to be purchased under this contract do not exceed one of the following:

(a) The maximum price applicable to purchases by the Purchaser from usual sources of supply, of the goods in the quantity and at the place of delivery specified in this contract; or

(b) The maximum selling price applicable to sales by the Purchaser, in its capacity as a manufacturer, producer or processor of the same goods, disregarding minor differences in specifications or design, in the quantity and at the place of delivery specified in this contract.

Article 12. Covenant against contingent fees. The Purchaser warrants that it 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.

Article 13. 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.

Article 14. Anti-discrimination. (a) The Purchaser, 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 Purchaser agrees that the provisions of paragraph (a) 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 Purchaser 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 sale of property under this contract; *Provided, however,* That a contract for the furnishing of standard or commercial articles or new material shall not be considered as a subcontract.

[7] *Article 15. Scrap warranty.* With respect to all scrap covered by this contract, the Purchaser represents and warrants to the United States that such property was offered as scrap, purchased by it as scrap, and that it 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.

[8] *Article 16. Sale to war contractors.* (a) The Purchaser represents and warrants that it is either (1) a manufacturer or supplier having one or more war contracts or subcontracts thereunder and that the sale will be for the purpose of facilitating the performance of such war contracts or war production, or (2) a supplier of war contractors who certifies that such property will be channelled directly into use by a war contractor to facilitate the performance of such contract or contracts or war production.

(b) The Government, acting through its authorized representatives, has determined that the sale to the Purchaser to be made hereunder will facilitate the prosecution of the war.

[9] *Article 17. Use warranty.* The Purchaser represents and warrants that it will use or consume the property covered hereby in the United States for manufacturing, construction, maintenance or repair purposes, and the Purchaser agrees that if it does not use or consume any of the items, it will not resell them at a profit.

Article 18. 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 Purchaser. Within 30 days from said mailing the Purchaser 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 Purchaser shall diligently proceed with the performance of this contract.

Article 19. 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.

[10, 11] *Article 20. Alterations and additions.* (1) This contract consists of Articles _____

(2) The following changes in and additions to the contract were made 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)

_____

(Purchaser)

By _____

_____

(Business Address)

Two Witnesses:

_____ _____

_____ _____

(Address) (Address)

NOTE: Type or print names under all signatures.

I _____, certify that I am the Secretary of the corporation named as Purchaser herein; that _____ who signed this contract on behalf of the Purchaser 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___.

[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)

INSTRUCTIONS TO CONTRACTING OFFICERS

A. This form may be used for negotiated sales by the Government of *all* types of Government-owned property, except (a) sales to the Defense Plant Corporation or other Government agencies and departments, and (b) sales of real estate or of buildings or improvements to be severed from real estate.

B. No changes should be made in any of the contract articles except as authorized by Procurement Regulations, the technical services or other appropriate authority. Articles which are inapplicable and are not to be included in the contract should be deleted (See e. g. Instructions 2–9). Inapplicable portions of printed articles should be lined out or deleted (See e. g. Instruction 4). Both the printed and the additional articles included in the contract should be expressly listed in Article 20.

C. Subject to War Department Procurement Regulations, instructions as to the inclusion or addition of articles in particular types of sales may be issued by the technical services, service commands and other commands, having jurisdiction over sales by the Government of Government-owned property. These sources, as well as applicable technical manuals (e. g. TM 38–505 "Salvage in Zone of Interior") and other War Department publications, should be consulted.

* * * * * *

1. If the sale is by a salvage officer of surplus property, in the cases authorized by Subchapter B or Part 844 of Subchapter C, or TM 38–505 ("Salvage in Zone of Interior"), Article 1 will clearly state that the contract pertains to the sale of surplus property.

2. Either Article 3 or Article 3A, or neither, but not both, may be incuded, subject to the instructions mentioned in paragraph C of these instructions.

3. Either Article 4 or Article 4A, but not both, may be included, subject to the instructions mentioned in paragraph C. Both may be omitted if other provisions concerning delivery are included in the contract.

4. Either Article 5 or Article 5A, or neither, but not both, may be included, subject to the instructions mentioned in paragraph C. If some or all warranties of description or quality are not to be negatived, appropriate portions of Article 5 may be omitted or deleted.

5. Care should be taken to insert Payment provisions which do not conflict with other provisions of the contract, e. g. the applicable Delivery article.

6. Article 11 should be included in all sales to which the certificate set forth in §§ 821.-111–4 or 844.436–4 is applicable.

7. Article 15 should be included in sales of scrap, in accordance with Parts 824 and 844.

8. Article 16 must be included in sales to war contractors authorized by Part 823.

9. Article 17 must be included where required by Parts 823 or 844.

10. Article 20 should be used (1) for indicating the printed articles and the additional articles included in the contract (2) for inserting additional articles, and (3) for recording alterations made in the standard articles.

11. If approval of higher authority is to be obtained before the contract becomes effective, an additional provision to this effect should be inserted.

§ 813.1327 *Standard Procurement Form No. 3 and related forms (WD AGO Forms 299, 299–1, 299–2).* The instructions for the use of these forms, which formerly appeared in this section, are now set forth at § 802.243–2. These forms are no longer reproduced in procurement regulations. WD AGO Form 299 was revised on March 1, 1945; Form 299–1 was revised on February 1, 1945; and Form 299–2 was revised on March 1, 1945. Form 299 (July 12, 1944) and Form 299–2 (August 31, 1944) will not be used after the revised forms are available. Since revised Forms 299 and 299–2 differ materially from the earlier versions, the revised forms should always be used together; that is to say, the August 31, 1944 edition of Form 299–2 should not be used with the March 1, 1945 edition of Form 299 and the March 1, 1945 edition of Form 299–2 should not be used with the July 12, 1944 edition of Form 299. Form 299–1 (July 12, 1944) may be used until existing stocks are exhausted. The revised forms will be requisitioned and distributed as prescribed in AR 310–200. They will be identified as follows for requisition purposes:

WD Standard Procurement Form No. 3—WD AGO Form 299, Mar. 1, 1945;

Continuation Sheet, Title V, WD AGO Form 299–1;

Instructions for Completing WD Standard Procurement Form No. 3–WD AGO Form 299–2, March 1, 1945.

Detailed instructions to procurement offices as to the use of these forms are set forth in § 802.243–2b.

§ 813.1327a *Standard Procurement Form No. 4.* See § 802.243, which prescribes the use of this form in certain cases. This form is no longer reproduced in procurement regulations. It was revised on February 1, 1945, but the edition of July 20, 1944 may be used until existing stocks are exhausted. The form will be requisitioned and distributed as prescribed in AR 310–200. It will be identified as WD AGO Form 293 for requisition purposes.

§ 813.1328 *W. D. Contract Form No. 28.*

CROSS REFERENCE: See § 802.222–7.

LETTER OF COMMITMENT (RAW MATERIALS 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)

§ 813.1329 *W. D. Contract Form No. 29.*

WAR DEPARTMENT CONTRACT ADJUSTING ROYALTIES

Contract No. _____
Negotiated

This contract, entered into this _____ day of _____, 194____, by the United States of America (hereinafter called the Government), represented by the officer executing this contract, and_____ _____ (hereinafter called Licensor), 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 _____, and _____ _____ (hereinafter called Licensee), 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 _____ witnesseth that

Whereas, on or about the _____ day of _____, 19____, Licensor and Licensee entered into an instrument of license, providing in part as follows:

[Quote clause granting license and royalty provisions of license.]

Whereas, said royalties are charged or chargeable to the Government in connection with procurement of supplies, equipment or materials delivered or to be delivered to or for the War Department, and the Secretary of War has made inquiry whether said royalties are unreasonable or excessive and contemplates giving notice under the Royalty Adjustment Act in respect thereto [*or*, the Secretary of War believing said royalties to be unreasonable and excessive has, on or about the _____ day of _____, 19____, given notice in respect thereto under the Royalty Adjustment Act];

Whereas, Licensor has [or Licensor and Licensee have] requested the Secretary of War to forebear from giving notice under the Act [*or*, has requested the Secretary of War to forebear, from making an order under the Act] and, in consideration of and during the continuance of such forebearance, Licensor is [or Licensor and Licensee are] willing to adjust the rates or amounts of said royalties in the manner and to the extent herein set forth; and

Whereas, this contract is authorized by Sec. 3 of the Royalty Adjustment Act;

Now, therefore, the parties have agreed as follows:

ARTICLE 1. *Definitions.* Where used in this contract, the following terms have the meanings here assigned to them, viz.:

(a) "Said license" means the instrument of license dated _____, 19__ above mentioned;

(b) "Said inventions" means each and all of the inventions whose practice is licensed in and by said license;

(c) "The Act" and "the Royalty Adjustment Act" means the Royalty Adjustment Act 1942 (Public No. 768, 77th Congress; 35 U.S.C. 89–96);

(d) "Notice under the Act" means the notice contemplated by Section 1 of the Act;

(e) "Period of this contract" means the period of time beginning the _____ day of _____, 19____ [insert date as of which the royalty adjustment is to take effect] and e ding when the head of any department or agency of the Government gives notice under the Act that the reduced royalties specified in this contract are believed to be unreasonable or excessive, but in any event ending six months after the termination of all wars in which the United States are now engaged;

(f) "Subject royalties" means royalties at the rates or in the amounts specified in said license, and in any other license heretofore granted by _____, accrued and hereafter accruing in respect to the practice of said inventions during the period of this contract, which said royalties are charged or chargeable directly or indirectly to the Government; and

(g) "Secretary of War" includes any officer or board exercising the powers, duties and authorities of the Secretary of War under the Act in respect of said license or said inventions.

ART. 2. *Royalty reduction.* [Use following in case of reduction in royalty rates]:

Licensor agrees that the subject royalties shall be and they are hereby reduced to _____% in lieu of the rates specified in said license.

[Use following in case of a ceiling upon future receipts and refund by Licensor]:

Licensor agrees that the subject royalties shall be and they are hereby continued at the rates set forth in said license; *Provided, however,* That the maximum of subject royalties to be retained by Licensor shall not exceed the sum of _____[ceiling]_____ for each quarter year period commencing _____[date]_____ and that all excess of subject royalties over said maximum for each quarter year shall be paid to the Treasurer of the United States as hereinafter provided.

ART. 3. *Royalty refund* (see §§ 811.1113–4, 811.1113–7 and 811.1113–8).

ART. 4. *Release of past infringements* (see § 811.1113–5).

ART. 5. *Withdrawal of notice and release* (for use only if a notice under the Act has previously been given).

The notice under the Act, heretofore on or about the _____ day of _____, 19____ issued on behalf of the Secretary of War in respect of the royalties specified in said license, is hereby withdrawn and Licensor consents to such withdrawal and, in consideration thereof, hereby releases any and all claims or demands now held by the Licensor against the United States, or any officer or agent thereof, arising out of the issuance of said notice.

ART. 6. *Reserved Rights.* Nothing herein contained shall limit the right of the head of any department or agency of the Government, including but not limited to the Secretary of War, to give notice [*or*, further notice] under the Act if at any time it is believed that the reduced royalties specified in Article 2 hereof are unreasonable or excessive, nor shall the Government be deemed to have approved the rates or amounts of said reduced royalties or be estopped at any time to contest the enforceability, validity or scope of, or the title to, any patent in respect of which said royalties are payable.

ART. 7. *General provisions.*

(a) *Officials not to benefit* (see § 811.1113–6 (a)).

(b) *Covenant against contingent fees* (see § 811.1113–6 (a)).

(c) *Anti-discrimination* (see § 811.1113–6 (b)).

(d) *Assignment of rights hereunder* (see § 811.1113–6 (c)).

ART. 8. *Successors and assigns.* This contract shall be binding upon the parties, their successors and assigns, and shall not be affected in the event that any provision of the act or the application thereof to any person or circumstances is held invalid.

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 _____
(Signature (and title) of delegate)
Two witnesses:

_____	_____ (Licensor)
_____ (Address)	_____ (Business address)
_____	_____ (Licensee)
_____ (Address)	_____ (Business address)

The foregoing contract is hereby approved in behalf of the Secretary of War.[2]

By direction of the Under Secretary of War:

_____
_____
[Leave two lines blank]
[2] Director, Purchases
Division Headquarters, Army
Service Forces.

§ 813.1330 *W. D. Contract Form No. 30 (Paid-up Release and License).*

Contract No._____
Negotiated

WAR DEPARTMENT

PATENT RELEASE AND LICENSE CONTRACT

This contract, entered into this _____ day of _____ 194__, by the United States of America (hereinafter called the Government), represented by the officer executing this contract, and _____ _____ (hereinafter called Contractor),[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 _____ witnesseth that

Whereas, Contractor warrants that it has the right to grant the within license and release, and the Government desires to procure the same,

Whereas, this contract is authorized by Section 3 of the Act of October 31, 1942 (Public No. 768, 77th Congress, 35 U. S. C. 89–96).

Now, therefore, in consideration of the grant, release and agreements hereinafter recited the parties have agreed as follows:

ARTICLE 1. *License.* (See § 811.1115–17 (a).)

Contractor agrees to and does hereby grant and convey to the Government, an irrevocable, non-exclusive, non-transferable and paid-up license under the following patent(s) (and application(s) for patent) to practice and cause to be practiced for the Government any and all of the inventions

[1] Delete all lines which do not apply.

[2] To be added if the contract is subject to approval by the Director, see § 811.1113–3 (b). Agreements originating in the Army Air Forces should carry the legend specified for an order, see § 812.1112–20.

thereof in the manufacture, use and disposition of any article or material, and in the use of any method, in accordance with law:

U. S. Patent No.	Date	Application Serial No.	Filing Date

[together with corresponding foreign patents and applications for patent, insofar as Contractor has the right to grant licenses thereunder]

Term. (See § 811.1115–17 (d))

[Alternate A]

The license hereby granted shall remain in full force and effect for the full term of the patent(s) referred to above [and any and all patents hereafter issued on applications for patent referred to above].

[Alternate B]

The license hereby granted shall terminate on the _____ day of _____, 19____; *Provided, however,* That said termination shall be without prejudice to the completion of any contract entered into by the Government prior to said date of termination or to the use or disposition thereafter of any articles or materials manufactured by or for the Government under this license.

[Alternate C]

The license hereby granted shall terminate on the date six months after the cessation of hostilities in all wars in which the United States are now engaged; *Provided, however,* That said termination shall be without prejudice to the completion of any contract entered into by the Government prior to said date of termination or to the use or disposition thereafter of any articles or materials manufactured by or for the Government under this license.

[Alternate D]

The license hereby granted shall remain in full force and effect for the full term(s) of the patent(s) referred to above (and any and all patents hereafter issued on applications for patent referred to above) except that said license shall, as respects solely the right to manufacture and to use in manufacture in foreign countries, and not any other rights under said license, terminate on the date six months after the cessation of hostilities in all wars in which the United States are now engaged; *Provided, however,* That said termination shall be without prejudice to the completion of any contract entered into by the Government prior to said date of termination or to the use or disposition thereafter of any articles or materials manufactured by or for the Government under this license.

[Alternate E]

The license hereby granted shall remain in full force and effect for the full term(s) of the patent(s) referred to above (and any and all patents hereafter issued on applications for patent referred to above) except that said license shall, as respects foreign countries, terminate on the date six months after the cessation of hostilities, in all wars in which the United States are now engaged; *Provided, however,* That said termination shall be without prejudice to the completion of any contract entered into by the Government prior to said date of termination or to the use or disposition thereafter of any articles or materials manufactured by or for the Government under this license.

ARTICLE 2. *Non-Estoppel.* (See § 811.1115–17 (b)).

Contractor agrees that the Government shall not be estopped at any time to contest the enforceability, validity or scope of, or the title to any patent or patent application herein licensed.

ARTICLE 3. *Release of past infringement.* (See § 811.1115–17 (c)).

Contractor agrees to and does hereby release each and every claim and demand to which the Government, its officers, agents, servants and employees are now or may hereafter be liable on account of infringement by or for the Government, occurring prior to the date of this contract, of [(1)] any of the patents and applications for patent specifically identified in this contract [, and (2) any other patent or application for patent now owned or hereafter acquired by Contractor, insofar as and to the extent only that such other patent or application covers the manufacture, use or disposition of (description of subject matter)].

ARTICLE 4. *Payment.*

Contractor shall be paid the sum of _____ _____ ($_____) Dollars in full compensation for the rights herein granted and agreed to be granted.

ARTICLE 5. *Renegotiation.* (Use § 803.342–1 or the following, see § 811.1115–16 (c) and (d)).

[Alternate A]

The Government agrees that all amounts now or hereafter received or accrued under this contract shall be exempt from statutory renegotiation under the Renegotiation Act of 1943, as amended. This exemption is granted by the officer executing this contract in behalf of the Government pursuant to authority contained in section 403 (i) (4) of the Renegotiation Act of 1943 and duly delegated to him. It is found that the profits to be derived from this contract can be determined with reasonable certainty at the time of execution hereof in behalf of the Government. In the opinion of the officer executing this contract in behalf of the Government the contract price established hereby will not yield excessive profits to the Contractor.

ARTICLE 6. *General provisions*—(a) *Officials not to benefit.* (Use § 803.322, see § 811.1115–16 (a)).

(b) *Covenant against contingent fees.* (Use § 803.323, see § 811.1115–16 (a)).

(c) *Anti-discrimination.* (See § 811.1115–16 (b)).

(d) *Assignments of rights.* (Use § 803.305 if the Government is to pay $1,000 or more, see § 811.1115–16 (b)).

ARTICLE 7. *Successors and assigns.* This agreement shall be binding upon Contractor, its successors and assigns, but nothing contained in this Article shall authorize an assignment of any claim upon the Government otherwise than as permitted by law.

In witness whereof, the parties hereto have executed this contract as of the day and year first above written.

[SEAL] THE UNITED STATES OF AMERICA,

By _____
[Signature (and title) of delegate]

_____

By _____

_____
(Business Address)

Two witnesses

_____
_____
(Address)

_____
_____
(Address)

[1] The foregoing contract is hereby approved in behalf of the Secretary of War.

[1] By direction of the Under Secretary of War:

_____
[Leave two lines blank]

[1] Director, Purchases Division, Headquarters, Army Service Forces.

[1] To be added if the contract is subject to approval by the Director, see § 811.1115–14. In contracts originating in the Army Air Forces, substitute "Special Representative of the Under Secretary of War" for "Director, Purchases Division, Headquarters, Army Service Forces."

§ 813.1331 *W. D. Contract Form No. 31 (Release and License, running royalty basis).*

Contract No._____
Negotiated

WAR DEPARTMENT

PATENT RELEASE AND LICENSE CONTRACT

This contract, entered into this _____ day of _____ 194__, by the United States of America (hereinafter called the Government), represented by the officer executing this contract, and_____ _____ (hereinafter called the Contractor), [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 _____ witnesseth that

Whereas, Contractor warrants that it has the right to grant the within license and release, and the War Department desires to procure the same.

Whereas, this contract is authorized by Section 3 of the Act of October 31, 1942 (Public No. 703, 77th Congress, 35 U.S.C. 89–96).

Now, therefore, the parties have agreed as follows:

ARTICLE 1. *License.* (See § 811.1115–18 (a)).

Contractor agrees to and does hereby grant and convey to the Government, as represented by the Secretary of War, an irrevocable, non-exclusive, non-transferable license under the following patent(s) [and application(s) for patent] to practice by the War Department and cause to be practiced for the War Department any and all of the inventions thereof in the manufacture, use and disposition of any article or material, and in the use of any method, in accordance with law:

U. S. Patent No.	Date	Application Serial No.	Filing Date

[together with corresponding foreign patents and applications for patent, insofar as Contractor has the right to grant licenses thereunder].

Term. (See §§ 811.1115–18 (d) and second paragraph of Article 1, § 813.1330).

[Alternate A]

The license hereby granted shall remain in full force and effect for the full term(s) of the patent(s) referred to above [and any and all patents hereafter issued on applications for patent referred to above], unless sooner terminated as elsewhere herein provided.

ARTICLE 2. *Royalties.* (See § 811.1115–18 (f)).

[Alternate A]

(a) Royalties shall accrue under this contract in favor of Contractor, subject to payment thereof at the times and subject to the limitation hereinafter stated on all articles or materials embodying or manufactured by the use of any or all of the inventions licensed herein, upon acceptance thereof by the War Department (whether made by or for the War Department), at the rate of _____% of the Cost (as hereinafter defined) of such articles or materials to the Government. "Cost", as used in this paragraph means (1) in respect of articles or materials purchased by or for the War Department, the purchase price of such articles or materials, except that in cost-plus-a-fixed-fee contracts it means the estimated cost as defined in such contract, and (2) in respect of articles or materials made by the War Department, the actual cost of direct labor and materials without allowance for overhead or supervision.

(b) The [chief of technical service] shall, on or before the 60th day next following the end of each half-yearly period ending June 30 and December 31 during which royalties

[1] Delete all lines which do not apply.

have accrued under this license, deliver to Contractor a report in writing stating the number of articles and the amounts of materials accepted by the War Department during said half-yearly period on which royalties have accrued under this contract, and the Cost thereof.

(c) Royalties which have accrued under this contract during each half-yearly period ending June 30 and December 31 shall be paid to Contractor, provided appropriations therefor are available, within 60 days next following the end of each such period; *Provided, however*, That the Government shall not be obligated to pay, in respect of any such half-yearly period, an amount greater than _____ ($_____) Dollars.

(d) Each department and agency of the Government other than the War Department shall have the right to adopt this license at any time by sending written notice of such adoption to the Contractor and to the [Chief of Technical Service] and royalties which accrue by practice by or for such department or agency of the inventions licensed herein shall be included in the reports and payments made under paragraphs (b) and (c) above, such royalties to be at the rate specified in paragraph (b) above and to be included in computing the Government's total half-yearly obligation as set forth in paragraph (c) above.

[Alternate B]

(a) Royalties shall accrue under this contract in favor of Licensor, subject to payment thereof at the times and subject to the limitation hereinafter stated, on all articles and materials embodying or made by the use of any or all of the inventions licensed herein, upon acceptance thereof of the War Department (whether made by or for the War Department), at the rate of _____ (___¢) cents per [name of item].

(b) The [chief of technical service] shall, on or before the 60th day next following the end of each half-yearly period ending June 30 and December 31 during which royalties have accrued under this license, deliver to Licensor a report in writing stating the number of articles and the amounts of materials accepted by the War Department during said half-yearly period on which royalties have accrued under this contract.

(c) Royalties which have accrued under this contract during each half-yearly period ending June 30 and December 31 shall be paid to Licensor, provided appropriations therefor are available within 60 days next following the end of each such period: *Provided, however*, That the Government shall not be obligated to pay, in respect of any such half-yearly period, an amount greater than _____ ($_____) Dollars.

(d) Each department and agency of the Government other than the War Department shall have the right to adopt this license at any time by sending written notice of such adoption to the Contractor and to the [Chief of Technical Service] and royalties which accrue by practice by or for such department or agency of the inventions licensed herein shall be included in the reports and payments made under paragraphs (b) and (c) above, such royalties to be at the rate specified in paragraph (b) above and to be included in computing the Government's total half-yearly obligation as set forth in paragraph (c) above.

ARTICLE 3. *Protection against unjust payments.* (See § 811.1115–18 (e)).

(a) If any license has been or shall hereafter be granted under substantially the same patents and authorizing substantially the same acts which are authorized under this contract within the United States, on royalty terms which are in any respect more favorable to the licensee than those contained herein, the Government shall be entitled to the benefit of such more favorable terms with respect to all royalties accruing under this license after the date such more favorable terms become effective, and Contractor shall promptly notify the Secretary of War in writing of the granting of such more favorable terms.

(b) The Government shall have the right, notwithstanding any other provision of this contract, to terminate the within license by giving notice in writing to Contractor specifying a date when such termination is to be effective; termination of said license in the manner aforesaid may, as specified in such notice, take effect either in whole or insofar as said license applies to any specified service or command of the War Department, or to any specified article, material or method, or to the extent that rights are granted under any specified patent or the specified claims of any patent; and if any part of the said license is thus terminated the rights of the Government to enjoy or to terminate other parts thereof shall be in no wise prejudiced thereby.

(c) In the event any claim of any patent hereby licensed is construed or held invalid by decision of a court of competent jurisdiction, the requirement to pay royalties under this contract insofar as it arises solely by reason of such claim, and any other claim not materially different therefrom, shall be interpreted in conformity with the court's decision as to the scope or validity of such claims: *Provided, however*, That in the event such decision is modified or reversed on appeal, the requirement to pay royalties under this license shall be interpreted in conformity with the final decision rendered on such appeal.

ARTICLE 4. *Non-Estoppel.* (See § 811.1115–18 (b)).

Contractor agrees that the Government shall not be estopped at any time to contest the enforceability, validity or scope of, or the title to, any patent or patent application herein licensed, but this provision shall not be deemed to modify or avoid the obligation of the Government to pay royalties as elsewhere herein provided.

ARTICLE 5. *Release of past infringement.* (See § 811.1115–18 (c)).

Contractor agrees to and does hereby release each and every claim and demand to which the Government, its officers, agents, servants and employees are now or may hereafter be liable on account of infringement by or for the Government, occurring prior to the date of this contract, of [(1)] any of the patents and applications for patent specifically identified in this contract [, and (2) any other patent or application for patent now owned or hereafter acquired by Contractor, insofar as and to the extent only that such other patent or application covers the manufacture, use or disposition of (description of subject-matter)].

ARTICLE 6. *General provisions.* (a) *Officials not to benefit.* (Use § 803.322, see § 811.1115–16 (a)).

(b) *Covenant against contingent fees.* (Use § 803.323, see § 811.1115–16 (a)).

(c) *Anti-discrimination.* (See § 811.1115–16 (b)).

(d) *Assignment of rights.* (Use § 803.355 if the Government is to pay $1,000 or more, see § 811.1115–16 (b)).

ARTICLE 7. *Renegotiation.* (Use § 803.342–1 or Article 5, § 813.1330, see § 811.1115–16 (c) and (d)).

ARTICLE 8. *Reserved rights.* (See § 811.1115–18 (e)).

Nothing herein contained shall limit the right of the head of any other department (as hereinafter defined) to give notice under the Royalty Adjustment Act (Public Law No. 768, 77th Congress; 35 U.S.C., 89–96) if at any time it is believed that royalties payable by others under the patents herein licensed, and which are charged or chargeable to the Government in connection with the procurement of supplies, equipment, or materials by any other department are unreasonable or excessive, nor shall the head of any other department be deemed to have approved the rates or amounts of royalties specified herein. "Any other department" as used in this paragraph means all departments and agencies of the Government other than the War Department.

ARTICLE 9. *Successors and assigns.*

This agreement shall be binding upon Contractor, its successors and assigns, but nothing contained in this Article shall authorize an assignment of any claim upon the Government otherwise than as permitted by law.

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 _____
[Signature (and title) of delegate]

_____

By _____

_____
(Business Address)

Two witnesses

_____

_____
(Address)

_____

_____
(Address)

[1] The foregoing contract is hereby approved in behalf of the Secretary of War.

[1] By direction of the Under Secretary of War:

_____
[Leave two lines blank]
[1] Director, Purchases Division, Headquarters, Army Service Forces

§ 813.1332 *W.D. Contract Form No. 32 (Release and Assignment Involving a Money Payment).*

Contract No. _____
Negotiated

WAR DEPARTMENT

PATENT RELEASE AND ASSIGNMENT CONTRACT

This contract, entered into this _____ day of _____, 194__ by the United States of America (hereinafter called the Government), represented by the officer executing this contract, and _____ _____ (hereinafter called Contractor) [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 _____ witnesseth that

Whereas, Contractor warrants that it has the right to grant the within assignment and release, and the Government desires to procure the same,

Whereas, this contract is authorized by Section 3 of the Act of October 31, 1942 (Public No. 768, 77th Congress, 35 U.S.C. 89–96).

Now, therefore, in consideration of the assignment, release and agreements hereinafter recited the parties have agreed as follows:

ARTICLE 1. *Assignment.* (See § 811.1115–19 (a)).

Contractor agrees to and does hereby sell, assign, and transfer to the Government and its assigns, as represented by the Secretary of War, the entire right, title and interest in and to the following patent(s) [and ap-

[1] To be added if the contract is subject to approval by the Director, see § 811.1115–14. In contracts originating in the Army Air Forces, substitute "Special Representative of the Under Secretary of War" for "Director, Purchases Division, Headquarters, Army Service Forces".

[2] Delete all lines which do not apply.

plication(s) for patent], in and to the invention(s) thereof, and in and to all claims and demands whatsoever for infringement thereof heretofore occurred, the same to be held and enjoyed by the Government through its duly appointed represntatives to the full end of the term of said patent(s) [and to the full end of the term(s) of all patents which may be granted upon said application(s) for patent or upon any division, renewal or continuation thereof] as fully and entirely as the same would have been held by Contractor had this assignment not been made:

U. S. Patent No.	Date	Name of Inventor

U. S. Application Serial No.	Filing Date	Name of Inventor

[together with corresponding foreign patents and applications for patent, insofar as Contractor has the right to assign the same].

ARTICLE 2. *Release of past infringement.* (See § 811.1115–19 (b).)

Contractor agrees to and does hereby release each and every claim and demand to which the Government, its officers, agents, servants and employees are now or may hereafter be liable on account of infringement by or for the Government, occurring prior to the date of this contract, of [(1)] any of the patents and applications for patent specifically identified in this contract [, and (2) any other patent or application for patent now owned or hereafter acquired by Contractor, insofar as and to the extent only that such other patent or application covers the manufacture, use or disposition of (description of subject-matter)].

ARTICLE 3. *Non-Estoppel.* (See § 811.1115–19 (c)).

Contractor agrees that the Government shall not be estopped at any time to contest the enforceability, validity or scope of, or the title to any patent or patent application herein assigned.

ARTICLE 4. *Payment.*

Contractor shall be paid the sum of_____ _____ ($_____) Dollars in full compensation for the rights herein granted and agreed to be granted.

ARTICLE 5. *Renegotiation.* (Use § 803.342–1 or Article 5 § 813.1330, see § 811.1115–16 (c) and (d)).

ARTICLE 6. *General provisions.* (a) *Officials not to benefit.* (Use § 803.322, see § 811.1115–16 (a)).

(b) *Covenant against contingent fees.* (Use § 803.323, see § 811.1115–16 (a)).

(c) *Anti-discrimination.* (See § 811.1115–16 (b)).

(d) *Assignment of rights.* (Use § 803.355 if the Government is to pay $1,000 or more, see § 811.1115–16 (b)).

ARTICLE 7. *Successors and assigns.*

This agreement shall be binding upon Contractor, its successors and assigns, but nothing contained in this article shall authorize an assignment of any claim upon the Government otherwise than as permitted by law.

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 _____
[Signature (and title) of delegate]
_____
By _____
_____
(Business Address)

Two Witnesses
_____
_____
(Address)
_____
_____
(Address)

[1] The foregoing contract is hereby approved in behalf of the Secretary of War.

[1] By direction of the Under Secretary of War:

_____
[Leave two lines blank]
[1] Director, Purchases Division, Headquarters, Army Service Forces

§ 813.1333 *W. D. Contract Form No. 33 (Release Involving a Money Payment).*

Contract No._____
Negotiated

WAR DEPARTMENT

PATENT RELEASE CONTRACT

This contract, entered into this _____ day of _____, 194_ by the United States of America (hereinafter called the Government), represented by the officer executing this contract, and _____ _____ (hereinafter called Contractor) [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 _____ witnesseth that

Whereas, Contractor is the owner of the entire right, title and interest in, to and under the following patent(s) [and application(s) for patent] (hereinafter called Contractor's Patents) and in, to and under all rights of action for infringement thereof:

U. S. Patent No.	Date	Application Serial No.	Filing Date

Whereas, Contractor warrants that it has the right to grant the within release, and the Government desires to procure the same.

Whereas, this contract is authorized by Section 3 of the act of October 31, 1942 (Public, No. 768, 77th Congress, 35 U.S.C. 89–96).

Now, therefore, in consideration of the release and agreements hereinafter recited the parties have agreed as follows:

ARTICLE 1. *Release.* (See § 811.1115–20 (a)).

Contractor agrees to and does hereby release each and every claim and demand to which the Government, its officers, agents, servants and employees are now or may hereafter be liable on account of infringement by or for the Government, occurring prior to the date of this contract, of [(1)] any of the patents and applications for patent specifically identified in this contract [, and (2) any other patent or application for patent now owned or hereafter acquired by Contractor, insofar as and to the extent only that such other patent or application covers the manufacture, use or disposition of (description of subject-matter)].

ARTICLE 2. *Non-Estoppel.* (See § 811.1115–20 (b)).

Contractor agrees that the Government shall not be estopped at any time to contest the enforceability, validity or scope of, or the title to any patent or patent application covered by this release.

ARTICLE 3. *Payment.*

Contractor shall be paid the sum of_____ _____ ($_____) Dollars in full compensation for the release herein granted.

ARTICLE 4. *Renegotiation.* (Use § 803.342–1 or Article 5, § 813.1330, see § 811.1115–16 (c) and (d))

ARTICLE 5. *General provisions.*

(a) *Officials not to benefit.* (Use § 803.322, see § 811.1115–16 (a)).

(b) *Covenant against contingent fees.* (Use § 803.323, see § 811.1115–16 (a)).

(c) *Assignment of rights.* (Use § 803.355 if the Government is to pay $1,000 or more, (See § 811.1115–16 (b)).

ARTICLE 6. *Successors and assigns.*

This agreement shall be binding upon Contractor, its successors and assigns, but nothing contained in this Article shall authorize an assignment of any claim upon the Government otherwise than as permitted by law.

In witness whereof, the parties hereto have executed this contract as of the day and year first above written.

[SEAL] THE UNITED STATES OF AMERICA,
By _____
[Signature (and title) of delegate]
_____
By _____
_____
(Business Address)

Two witnesses
_____
_____
(Address)
_____
_____
(Address)

[1] The foregoing contract is hereby approved in behalf of the Secretary of War.

[1] By direction of the Under Secretary of War:

_____
[Leave two lines blank]
[1] Director, Purchases Division, Headquarters, Army Service Forces

§ 813.1334 *W. D. Contract Form No. 34 (Royalty-Free Release and License Involving No Money Payment.)* (See § 811.1115–21.)

WAR DEPARTMENT

PATENT RELEASE AND LICENSE CONTRACT

This contract, made this_____ day of_____, 194_, by_____ _____ (hereinafter called Contractor), [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_____in favor of the United States of America (hereinafter called the Government), as Promisee, witnesseth that

Whereas, to further the prosecution of the war, aid the national defense and promote the common welfare, numerous patent owners have, upon request of the Government, granted and are continuing to grant releases and royalty-free licenses to the Government to practice the inventions secured by their patents and applications for patents (hereinafter called "such inventions"),

Whereas, the Government has utilized many such inventions for the purposes aforesaid and is desirous of obtaining further releases and royalty-free licenses including this release and license, and

Whereas, this contract is authorized by Section 3 of the Act of October 31, 1942 (Public No. 703, 77th Congress, 35 U. S. C. 89–96).

Now, therefore, in consideration of the premises and of the grant by other patent owners of like releases and licenses to the Government, Contractor has agreed as follows:

ARTICLE 1. *License.* (See § 811.1115–21 (b)).

[Without limiting any rights which the Government may have obtained by virtue of prior contracts or by operation of law or otherwise,] Contractor agrees to and does hereby grant and convey to the Government

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[1] To be added if the contract is subject to approval by the Director, see § 811.1115–14. In contracts originating in the Army Air Forces, substitute "Special Representative of the Under Secretary of War" for "Director, Purchases Division, Headquarters, Army Service Forces."

[2] Delete all lines which do not apply.

an irrevocable, non-exclusive, non-transferable and royalty-free license under the following patent(s) [and application(s) for patent] to practice and cause to be practiced for the Government any and all of the inventions thereof in the manufacture, use and disposition of any article or material, and in the use of any method, in accordance with law:

U. S. Patent No.	Date	Application Serial No.	Filing Date

[together with corresponding foreign patents and applications for patent, insofar as Contractor has the right to grant licenses thereunder].

Term. (See §§ 811.1115–21 (b) and second paragraph of Article 1, § 813.1330).

The license hereby granted shall remain in full force and effect for the full term of the patent(s) referred to above [and any and all patents hereafter itssued on applications for patent referred to above].

ARTICLE 2. *Release of past infringement.* (See § 811.1115–21 (b))

Contractor agrees to and does hereby release each and every claim and demand which Contractor now has or may hereafter have against the Government, its officers, agents, servants and employees, on account of infringement by or for the Government, occurring prior to the date of this contract, of [(1)] any of the patents and applications for patent specifically identified in this contract [, and (2) any other patent or application for patent now owned or hereafter acquired by Contractor, insofar as and to the extent only that such other patent or application covers the manufacture, use or disposition of (description of subject matter)].

Non-Estoppel. (See § 811.1115–21 (b))

Contractor agrees that the Government shall not be estopped at any time to contest the enforceability, validity or scope of, or the title to, any patent or patent application herein licensed.

Successors and assigns. This contract shall be binding upon Contractor, its successors and asigns.

In witness whereof, Contractor has executed this contract as of the day and year first above written.

[SEAL] _____
(Name of Contractor)
By _____
Its _____
_____
(Business Address)

Two Witnesses
_____
_____
(Address)
_____
_____
(Address)

[Procurement Reg. 14]

PART 814—REQUISITIONING OF PERSONAL PROPERTY

SUBPART A—GENERAL

Sec.
814.1401 Authority to requisition.
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814.1424 Form of Notice to Present Claims.
814.1425 Instructions for the preparation and submission of documents.
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SUBPART H—MANDATORY ORDERS

814.1450 Authority to place mandatory orders.
814.1451 Definitions.
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814.1453 Placing of mandatory orders.
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SUBPART A—GENERAL

§ 814.1401 *Authority to requisition.* Authority to requisition personal property is conferred under (a) the act of October 10, 1940 (54 Stat. 1090), as amended by the act of July 2, 1942 (56 Stat. 467) and by the act of June 28, 1944 (Public Law 379, 78th Congress); (b) the act of October 16, 1941 (55 Stat. 742), as amended by the act of March 27, 1942 (56 Stat. 181), by the act of June 30, 1943 (Pub. Law 104, 78th Congress) and by the act of June 28, 1944 (Public Law 378, 78th Congress) and (c) 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 or 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.

(f) "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 by the Act of June 30, 1942 (56 Stat 463, 50 U.S.C. App. 701), by the Act of July 1, 1944 (Public Law 397; 78th Congress) or by 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.*

§ 814.1406–1 *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:

(a) 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.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

§ 814.1406–2 *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.

§ 814.1406–3 *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 (a) six copies of a proposed Requisition for signature, (b) 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 (c) 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.*

§ 814.1408–1 *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 (a) a copy of the Requisition, with the Receipt on the reverse thereof duly completed and executed, and (b) 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.

§ 814.1408–2 *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.

§ 814.1408–3 *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 (a) the original manually signed Requisition, with the receipt and return on the reverse thereof duly completed, and (b) 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 (1) the Legal Branch, Director of Matériel, and (2) 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 Initiating 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 § 814.1408–2 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.*

§ 814.1412–1 *Preliminary 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.

§ 814.1412–2 *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.

§ 814.1412–3 *Report of Initial Compensation Officer.* The Initial Compensation Officer promptly will transmit to the Chief Requisition Officer (a) 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 (b) 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.

§ 814.1412–4 *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 § 814.1412–3. 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.

§ 814.1412–5 *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.

§ 814.1412–6 *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.

§ 814.1412–7 *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 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.

§ 814.1412–8 *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 Matériel, 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 Matériel.

§ 814.1412–9 *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.

§ 814.1412–10 *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.

§ 814.1412–11 *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 property 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, 1945. 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.

SUBPART E—REQUISITION FORMS

§ 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.*

§ 814.1427–1 *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 _____.

§ 814.1427–2 *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_____.

§ 814.1427–3 *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.)

§ 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)

[1] Omit if not a corporation.

§ 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.*

§ 814.1450–1 *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.

§ 814.1450–2 *Delegation of statutory authority.* (a) 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.

(b) The Secretary of War has assigned his powers, functions and duties under section 9 to the Under Secretary of War.

(c) 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.

(d) Under date of May 22, 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.

§ 814.1450–3 *Authority delegated by this chapter.* Subject to any restrictions provided by this chapter (see e.g. § 814.1450–4) or by manuals, rules or regulations issued pursuant to paragraph 5 of the memorandum of the Under Secretary of War set forth in § 814.1450–2 upon the exercise of the authority delegated in this section, 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 § 814.1450–2). 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.

[1] § 801.107–4.

§ 814.1450–4 *Limitation upon redelegation of authority.* All redelegations of the authority delegated by § 814.1450–3 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:

(a) Redelegations to persons in the headquarters offices of the Army Air Forces;

(b) Redelegations to persons in the headquarters offices of the major commands within the Army Air Forces; and

(c) 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 §§ 801.107–3, 801.103–4 and 801.103–5, except that further delegations of the authority granted by § 814.1450–3 shall be subject to the limitations and restrictions stated in §§ 814.1450–3 and 814.1450–4;

(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.*

§ 814.1453–1 *Placing of mandatory orders.* (a) Any person who has been delegated authority to place mandatory orders (see §§ 814.1450–3 and 814.1450–4 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:

(1) 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:

(i) That (a) every reasonable effort to negotiate a voluntary order or contract with the proposed producer for the required product or material has been made; (b) that the terms of such voluntary order or contract were fair and reasonable under the ascertainable circumstances of the particular procurement; and (c) 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;

(ii) That the proposed producer owns or operates a plant within the United States which is equipped, without transformation, (see subparagraph (2) of this paragraph and paragraph (b) of this section) 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));

(iii) 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

(iv) 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.

(2) 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 subparagraph (1) of this paragraph.

(b) Requests for the approval required by paragraph (a) (2) of this section 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.

(c) Requests for the approval required by paragraph (a) (2) of this section 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.

(d) Approval of the Director, Purchases Division, of the placing of any mandatory order under paragraph (a) (2) of this section, 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.

§ 814.1453–2 *Placing of change orders.* Any person who has been delegated authority to place mandatory orders (see §§ 814.1450–3 and 814.450–4) 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 quantites, or change the specifications 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 (a) that the provisions of the change order are necessary in the interest of the war effort, and (b) 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.*

§ 814.1454–1 *General.* (a) Mandatory orders will be in the form of order set forth in § 814.1460–1 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.

(b) Change orders will be substantially in the form set forth in § 814.1460–2.

(c) 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.

§ 814.1454–2 *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 item 4 of § 814.1460–1).

§ 814.1454–3 *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 this chapter.

§ 814.1456 *Service of mandatory orders.*

§ 814.1456–1 *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.

§ 814.1456–2 *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.

§ 814.1456–3 *Report of service.* Promptly after service of a mandatory

order or change order there will be transmitted through channels to the Director, Purchases Division, (a) a copy of the order as served, (b) a copy of such certificate of service and (c) unless already transmitted under § 814.1453–1 (b), a report containing the data called for by that section. 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.*

§ 814.1457–1 *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 § 814.1450–1 (a)), 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.

§ 814.1457–2 *Determination by agreement.* All reasonable attempts will be made promptly upon the placing of a mandatory order voluntarily to negotiate with the producer, in accordance with any applicable principles set forth in this chapter 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, (a) setting forth such agreement as to prices, (b) stating that such prices constitute fair and just compensation for the products or materials delivered or to be delivered under the order and (c) containing a waiver by the producer of a determination of reasonable price by the Secretary of War.

§ 814.1457–3 *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.

§ 814.1457–4 *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.

§ 814.1457–5 *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.

§ 814.1457–6 *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 § 814.1457–2, 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 § 814.1457–2; 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 § 814.1457–3 and the producer will be advised of the redetermined prices, as provided in § 814.1457–5.

§ 814.1457–7 *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, (a) 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 (b) fair and just compensation for the work done in connection with the uncompleted portion of the order as far as terminated, including reasonable termination costs (see item 15 of § 814.1460–1), 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 § 814.1457–5.

§ 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.*

§ 814.1460–1 *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. 832, as amended by 57 Stat. 164; 50 U. S. C. 309); pursuant to [Executive Order Nos. 9024 (7 F.R. 329), 9200 (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 na-

[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.

ture and kind usually produced or capable of being produced by you, and which are required by the War Department.

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 superseded 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)

§ 814.1460–2 *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. 16]

PART 816—PRIORITIES

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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 February 18, 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 con-

tractor 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 § 801.108-4 and 801-108-5 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.

§ 816.1614 *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 specifically 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) *AMMB 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.*

§ 816.1641–1 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.

§ 816.1641–2 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.

§ 816.1641–3 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.

§ 816.1641–4 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.

§ 816.1641–5 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 prime 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 his 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 shipments 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, "Priorities", obtainable from the War Production Board Publications Section, Washington, D. C.

SUBPART P—PREFERENCE RATINGS FOR PROCUREMENT FROM NONAPPROPRIATED FUNDS

§ 816.1695 *Procurement of items purchased with nonappropriated funds.* See section IV, Circular No. 459, W. D., 1944 dealing with the issue of Preference Rating Certificates, WPB Form PD-3A, for the procurement of items being purchased with nonappropriated funds.

Subchapter B—Disposition of Property

[Procurement Reg. 7]

PART 821—GENERAL

Sec.

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§ 821.100 *Rescission of instructions.* This subchapter 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, except termination inventory as defined in § 841.121–21 and property which is treated as termination inventory under the provisions of § 844.400–2. All other instructions are hereby rescinded. Instructions of the technical services are not affected hereby, but will be promptly conformed to this subchapter.

§ 821.101 *Subjects not covered.* This subchapter 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 Circular No. 8, W.D., 1944 as amended by Circular No. 306, W.D., 1944 and Section II, ASF Circular No. 28, 1944. Apart from the provisions of Part 827, regarding action in connection with surplus property reported to disposal agencies, it does not relate to the disposition of termination inventory as defined in § 841.121–21, or to property which is treated as termination inventory under the provisions of § 844.400–2, which disposition is governed by Subchapter C of this chapter. It does not relate to the repair or reclamation of personal property which is governed by Circular No. 7, W.D., 1944 as amended by section IV, Circular No. 90, W.D., 1944 and Section IV, Circular No. 239, W.D. 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 nor to dispositions to foreign governments. The policies and procedures governing the disposition of property which has been turned over to a salvage officer or salvage organization are covered by §§ 824.4 to 824.9 [1] and TM 38–505.

[1] 9 F.R. 5034, 14045; 10 CFR, 1944 Supp., 824.4 to 824.9.

§ 821.102 *Definitions.* The following terms, when used in this subchapter, 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, termination inventory as defined in § 841.121–21 and property which is treated as termination inventory under the provisions of § 844.400–2.

"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 forseeable 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 subchapter, in excess of the immediate or definitely foreseeable needs of the entire War Department.

"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).

§ 821.103 *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. The guiding policy of the War Department is to em-

ploy 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 Part 823. 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 ASF Manual M-413, Supply Control System, July 20, 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.

§ 821.103–1 *War Department policy on direct sales.* Under regulations prescribed by the Surplus Property Board, general responsibility for disposal of surplus Government property has been assigned to certain disposal agencies, as more fully explained in Part 827 of this chapter. It is the policy of the War Department to have these disposal agencies dispose of surplus War Department property to the fullest extent provided by the regulations of the Surplus Property Board, and to limit direct disposal by the War Department to those categories for which the War Department is clearly responsible. Accordingly, sales by the War Department will be limited to the following:

(a) Sales of termination inventories and other property in hands of war contractors as provided in Subchapter C of this chapter.

(b) Sales of nominal quantities of surplus property as provided in § 827.701 of this chapter.

(c) Sales to war contractors, other government agencies and other limited classes of transferees as provided in Part 823 of this chapter.

(d) Sales of salvage, scrap and waste.

§ 821.104 *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.

§ 821.105 *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 subchapter.

(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.

(d) Disposal boards are not authorized to waive or to modify the price policies of the Surplus War Property Administration relating to the disposition of property made under this regulation, and will not approve sales which are not in conformity with the price policies.

§ 821.106 *Disposal board at chief of service level.* Disposal boards may be established in the offices of the chiefs of technical services, or in the case of the Army Air Forces, in the headquarters office of a command, to review and take appropriate action with respect to property transactions as to which review at that level is authorized by this subchapter (see §§ 823.301–4 (b) and 824.401–2) or by Subchapter C of this chapter.

§ 821.107 *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.

§ 821.108 *Reports.*

§ 821.108–1 *Monthly report of redistribution and disposal of excess and surplus serviceable property.* (a) 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.

(b) 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.

(c) 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.

§ 821.108–2 *Report form.* Reports will be submitted on W. D., A. G. O. Form No. 256, revised December 1, 1944. Control Approval Symbol RCS–5 has been assigned to this report. This form will be used by all echelons required to submit the report.

§ 821.108–3 *Date for submitting report.* Report will be 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.

§ 821.108–4 *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 §§ 829.910 and 829.910–1.

§ 821.109 *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 subchapter.

§ 821.110 *Methods of sale.* All sales of property under this subchapter, including sales made by cost-plus-a-fixed-fee contractors pursuant to § 823.306, 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 § 823.301 need not be delayed for the purpose of soliciting competitive bids.

§ 821.111 *Compliance with OPA and WPB regulations.*

§ 821.111–1 *General.* All sales or other transfers (except transfers within the Government) of property made under the authority of this subchapter or otherwise, shall conform to applicable orders and regulations of the War Production Board and the Office of Price Administration.

§ 821.111–2 *WPB regulations.* 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.

§ 821.111–3 *Exemptions from OPA price ceilings.* Price ceilings established by the Office of Price Administration do not apply to a sale (other than a sale of food or of a commodity originally purchased solely for the purpose of resale in substantially the same form or for stockpiling) where the sale is:

(a) To another Government agency (§§ 823.307 to 823.310–1);

(b) To any foreign government or agency thereof;

(c) To a contractor (but not to a subcontractor) for use in carrying out his price contract with a Government agency (§ 823.301);

(d) To any relief organization for donation or export sale (§ 823.302);

(e) Of a single item or group of items where the sales price estimated to be obtainable for all substantially similar items available for sale at the place of sale does not exceed $300 (§ 827.701);

(f) Of personal property when sold together with an interest in land or buildings in a single transaction;

(g) Of all or substantially all the Government-owned contents of a factory or plant to the owner, lessee, or operator; or to any other single buyer purchasing for use;

(h) Of building installations, facilities, appurtenances, equipment and personal property attached to the land (except standing timber);

(i) Of scrap metal to a dealer in such material purchasing solely for resale, *Provided:*

(1) That the dealer certifies that he is purchasing such material for resale and that in reselling he will not exceed the applicable OPA maximum prices, and

(2) That the seller has no reason to doubt the accuracy of the dealer's certificate.

§ 821.111–4 *Reliance on buyers' certificates.* Unless contracting officers have reason to doubt the accuracy of the certificate hereinafter set forth, they may make any sale (other than of food or of a commodity originally purchased solely for the purpose of resale in substantially the same form or for stockpiling), without verifying OPA ceiling prices, in reliance upon a certificate in the following form executed by the buyer:

The undersigned hereby certifies that the price paid (to be paid) (to be credited to the Government) for the goods purchased (to be purchased) (to be retained by the undersigned) under (identify contract, bid or quotation) does not exceed one of the following:

(a) The maximum price applicable to purchases by the undersigned, from usual sources of supply, of the goods in the quantity and at the place of delivery specified in such contract (bid, quotation), or

(b) The maximum selling price applicable to sales by the undersigned, in its capacity as a manufacturer, producer or processor of the same goods, disregarding minor differences in specifications or design, in the quantity and at the place of delivery specified in such contract (bid, quotation).

§ 821.111–6 *OPA assistance.* In the event a proposed sale is not exempt from OPA price ceilings (see § 821.111–3), and is not to be made in reliance upon a certificate (see § 821.111–4), contracting officers may call upon the members of the price staff of any OPA office for aid in determining the OPA maximum price, if any, applicable thereto.

§ 821.111–7 *Information obtainable.* If assistance of OPA officials is not available, interested personnel may refer to the terms of OPA Supplementary Order No. 94 for a recital of various exemptions not discussed and various instructions as to methods of determining OPA price ceilings too numerous to set forth in detail in this chapter.

§ 821.111–8 *Liability for violations.* The OPA grants exemption to War Department officials and employees and to contractors making sales in reliance upon certificates, as set forth in § 821.111–4, from any liability for the violation of any OPA maximum price ceilings, unless the seller has reason to doubt the accuracy of such certificates.

§ 821.112 *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 808 will be observed.

§ 821.113 *Contract formalities including numbering and distribution.* (a) All contracts for the sale of property made under the authority of Part 823, 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 813.1326a, 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 (1) by any such written contract or (2) 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 to 803.309–3 and 803.318b–5 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.

§ 821.114 *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.

§ 821.115 *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.

§ 821.115–1 *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.

§ 821.115–2 *Information as to declarations of surplus.* (a) Information as to declarations of surplus property by the War Department, including the reasons why the property became surplus, is a matter of public interest and such information must be made available to the public to the fullest extent practicable.

(b) Under no circumstances will the War Department ask or expect a Disposal Agency to dispose of property declared surplus by the War Department under any conditions other than normal full publicity.

(c) In those cases where the Readjustment Division, Headquarters, Army Service Forces, upon the basis of information received from the chiefs of the technical services, considers that proposed declarations of surplus involve substantial or unusual amounts or types of property, Readjustment Division will prepare the statement of the pertinent facts, including the reasons why the property became surplus, which it will process through normal channels for release by the Bureau of Public Relations. Chiefs of technical services will cooperate with Readjustment Division in the preparation of such statements.

§ 821.115–3 *Advance information.* (a) War Department personnel, military and civilian, will refrain from furnishing prospective buyers advance information as to surplus property, and from any other action tending to prefer any buyer or class of buyers over other buyers. In-

formation which should not be divulged includes information that property is excess at a certain locality, or will shortly be declared surplus or be reported to a given disposal agency, or that it has been so reported. Information which may properly be divulged includes such information as that a certain disposal agency has been designated to dispose of particular types of property, that certain property is being advertised for sale by a certain agency, or that a salvage officer is currently accepting bids for specified property. Negative information, such as that no property of a type in question has been declared surplus, may also be given.

(b) The foregoing is not to be construed as limiting the provisions of § 821.115–2 as to furnishing disposal agencies with information on declarations of surplus; or as to the official release of such information through the Bureau of Public Relations. Furnishing information to War Department personnel for use in connection with their official duties is not prohibited.

§ 821.116 *Sales to War Department personnel.* Except as authorized by Part 823, or by AR 30–2290, §§ 824.4 to 824.9[1], 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.

§ 821.117 *Assistance in obtaining surplus property.* War Department personnel, military and civilian, whether or not engaged in surplus property activities, will not render assistance to individuals in obtaining surplus property, except (a) Such assistance as is incident to making authorized War Department sales or to the disposal of termination inventories and (b) Such assistance as is involved in making proper response to inquiries, as provided in § 821.115–3 (a).

PART 823—DISPOSITION OF PROPERTY FOR PURPOSES DIRECTLY RELATED TO THE PROSECUTION OF THE WAR

823.300	Scope of part.
823.301	Sale to contractors.
823.302	Sales to Red Cross and U.S.O.
823.303	Other sales in aid of war production.
823.304	Leases.
823.305	Leases under other statutes.
823.306	Disposition by contractors.
823.307	Transfer to other Federal agencies.
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823.309	Transfers to and from Navy.
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823.311	Transfers with reimbursement.
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823.313	Procedure for transfers without reimbursement.
823.314	Gifts and loans of drawings and other property.
823.315	Exchange of property.
823.316	Donations to schools engaged in pre-induction or aeronautical industrial training.
823.317	Sales to contractors for return in kind.
823.318	Miscellaneous sales under specific statutes and Army Regulations.

[1] 9 F.R. 5034, 14045; 10 CFR, 1944 Supp., 824.4 to 824.9.

§ 823.300 *Scope of part.* This part 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 part is subject to the provisions of Part 827 which limit the disposition of property after reporting to a disposal agency as surplus.

§ 823.301 *Sales to contractors.*

§ 823.301–1 *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, however, shall be made only for the purpose of facilitating the performance of war contracts or war production. Sales to war contractors ordinarily will be made for cash. However, property (except non-repairable property) may be sold to war contractors on credit not exceeding sixty days. Contracts executed in accordance with this paragraph will recite that they are entered into pursuant to the First War Powers Act and Executive Order 9001.

§ 823.301–3 *Pricing policy.* (a) Sales under § 823.301–1 of all property, other than the property referred to in paragraph (b) hereof, will be made at prices that are fair and reasonable, having due regard for the circumstances of the sale and the nature, condition, quantity, and location of the property.

(b) Sales under § 823.301–1 of all used standard general-purpose machine tools and all used standard machines included in the following classifications of the Standard Commodity Classification (excluding special machines), will be made at prices determined in accordance with Surplus War Property Administration Regulation No. 3 and Surplus Property Board Special Order No. 2 (see § 829.905–4):

Major Group 34, Code 34—40,000 to, but not including, 47,000.
Major Group 34, Code 34—43,000 to, but not including, 70,000.
Major Group 34, Code 34—71,000 to, but not including, 74,900.
Major Group 33, Code 33—6300 through 6620, inclusive.
Major Group 33, Code 33—6300.
Major Group 33, Code 33—6910.
Major Group 33, Code 33—6920.
Major Group 33, Code 33—7210.
Major Group 33, Code 33—7220.
Major Group 33, Code 33—7300.

§ 823.301–4 *Review of sale.* (a) Sales made under § 823.301–1, other than sales made in accordance with § 823.301–3 (b) and sales made to a cost-plus-a-fixed-fee contractor for the account of the Government, will be subject to prior review and approval of a Disposal Board, established in accordance with § 821.105 in all cases where the cost (estimated if not known) of the property to be disposed of in the sale (1) exceeds $100,000 and it is proposed to sell below such cost, less freight and handling charges, or (2) exceeds $10,000 and it is proposed to sell at more than 25 percent below such cost, less freight and handling charges.

(b) Chiefs of technical services may require or permit review by Disposal Boards established pursuant to § 821.105 where the cost (estimated if not known) of the property to be disposed of exceeds $300,000 and it is proposed to sell at more than 25 percent below such cost.

§ 823.302 *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 (Distribution 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.

§ 823.303 *Other sales in aid of war production.*

§ 823.303–1 *Aircraft and related property.* The Commanding General, Army Air Forces, is authorized to effect sales of aircraft and related property whenever it is determined by him that such sales are incident to war production or to the rendition of services which facilitate war production; *Provided,* That such sales are made in accordance with allocations or assignments of the Munitions Assignment Board or the Joint Munitions Allocations Committee or its subcommittee, Joint Allocation (Air).

§ 823.303–2 *Other property.* The chiefs of technical services are authorized to effect sales other than those authorized by §§ 823.301, 823.302 or 823.303–1, whenever it is determined by them that such sales are incident to war production or to the rendition of services which facilitate war production; *Provided,* That such determination is approved by the Director, Readjustment Division, Headquarters, Army Service Forces.

§ 823.303–3 *Pricing policy and review.* When a determination and allocation have been made pursuant to § 823.303–1 or a determination has been made and approved pursuant to § 823.303–2, the

sale will be made in accordance with the pricing policy established by § 823.301–3 and will be subject to prior review and approval by a disposal board, in the same manner and in the same situations as required in the case of sales made under § 823.301 by the provisions of § 823.301–4.

§ 823.304 *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 the regulations in this chapter. (See Part 810 of this chapter 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 of this chapter.

§ 823.305 *Leases under other statutes.* Authority for the execution of lease agreements may be found in certain statutes other than those mentioned in § 823.304. See AR 850–30 for the terms of those statutes.

§ 823.306 *Disposition by contractors.* (a) 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.

(b) Sales pursuant to the clause set forth in § 803.363 ordinarily will be made for cash. However, a contractor may sell property (except non-repairable property) on credit, not exceeding 60 days, at the risk of the Government, if the approval of the contracting officer is first obtained. Such authorization to sell on credit shall be subject to the condition that the contracting officer obtain in advance from the contractor an assignment or a written agreement to assign to the Government at any time on the request of the contracting officer, but in any event before approval of the final voucher of the contract, all the contractor's right, title and interest in claims against buyers arising out of such sale. (See § 844.445 for credit sales of termination inventory.)

§ 823.307 *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 (Distribution Division), or, in the case of the Army Air Forces, the Commanding General, Army Air Forces, or his delegate or delegates.

§ 823.308 *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 (Distribution 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 (November 13, 1943) OB-P-SPDDP-MB-A, November 18, 1943, Subject: Policy Governing Transfer of Military Property between Technical Services.

§ 823.309 *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 (Distribution 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.

§ 823.310 *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. 756). Such transfers will be made only with the approval or pursuant to regulations of the Commanding General, Army Service Forces (Distribution 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.

§ 823.310–1 *Transfers to the Veterans' Administration.* Any property may, by direction of the chief of the technical service having control thereof, be transferred to the Veterans' Administration upon written request, stating that the property is needed for authorized hospital care for veterans. (See Title I, Public Law 346, 78th Congress.) Such transfers will be made only with the approval or pursuant to regulations of the Commanding General, Army Service Forces, Distribution 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.

§ 823.311 *Transfers with reimbursement.* Transfers of property under § 823.307 will be effected with reimbursement pursuant to the statutes therein cited. Transfers of property permitted under §§ 823.308 and 823.309 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.

§ 823.312 *Transfers without reimbursement.* Transfers of property permitted under § § 823.308 and 823.309 under circumstances other than those specified under § 823.311, and transfers of property permitted under § § 823.310 and 823.310–1, 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.

§ 823.313 *Procedure for transfers without reimbursement.* Officers authorized to transfer or direct the transfer of property without reimbursement under § 823.312 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.

§ 823.314 *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.

§ 823.315 *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; section 203 of the act approved June 27, 1944, Public Law 358, 78th Congress. Any other exchanges will be submitted for the approval of the Director, Readjustment Division, Headquarters, Army Service Forces.

§ 823.316 *Donations to schools engaged in pre-induction or aeronautical industrial training.* Under the authority conferred upon the Secretary of War by the act of May 26, 1928 (45 Stat. 753, 20 U.S.C. 94) and the act of February 28, 1936 (49 Stat. 1147, 10 U.S.C. 1258), the chiefs of the technical services have been authorized to donate property of the classes specified in paragraph (d) to educational institutions under the following conditions:

(a) To be eligible for donations, an institution must:

(1) Be operated by a State or political subdivision thereof, or must be certified by a State department of education, State board for vocational education, or a similar State authority responsible for the supervision of education, to be an institution not operated for profit and having a standard curriculum in the fields for which it offers training;

(2) Provide a regular course of instruction which will require the use of the property;

(3) Use the property in a pre-induction training program recommended by the Director of Military Training, Army Service Forces or an aeronautical industrial training program recommended by the Assistant Chief, Air Staff, Personnel, Headquarters, Army Air Forces; and

(4) Provide adequate facilities to maintain the property.

(b) Requests for the donation of property to educational institutions will be forwarded, in the case of property to be used in pre-induction training, to the commanding general of the service command in which the institution is located (attention: Pre-Induction Training Officer) and, in the case of property to be used in aeronautical industrial training, to the commanding general of the area air technical service command in which the institution is located. The commanding general of the service command or the area air technical service command may approve the request if he determines that:

(1) All efforts to supply the property from salvage have been exhausted;

(2) The request is reasonable and proper in view of the training to be given; and

(3) The institution meets the standards set forth in paragraph (a) above.

(c) If the commanding general of the service command or the area air technical service command approves the request, he shall prepare the specific findings required by paragraph (b) above and shall forward them, together with his recommendation, to the chief of the technical service having control of the property to be donated (attention: Redistribution and Salvage Officer), when such property is to be donated by the Army Service Forces, and to the Director, Air Technical Service Command, Wright Field, Ohio, when such property is to be donated by the Army Air Forces. The chief of the technical service or the Director, Air Technical Service Command, if the request is approved by him, will direct the appropriate installations to ship the property to the educational institution concerned and will include in such direction a citation of this section.

(d) The following property may be donated under the authority of this section:

(1) Obsolete or excess machinery, mechanical equipment and tools;

(2) Aircraft, aircraft parts, instruments or engines which are obsolete or impaired to the extent that repair would not be economical.

However, under no circumstances will any donation be made which will result in current procurement to replace the property donated, nor will property be considered available for donation after it has been reported as surplus to a Disposal Agency. Aircraft, aircraft parts, instruments or engines will be donated only upon the execution of an agreement by the donee that the property donated will not be used in actual flying.

(e) No property will be shipped until receipt of payment by the donee of all expenses necessary for packing, handling and delivery to the carrier. Property shipped by carrier will be on commercial bill of lading with transportation charges collect. Copies of shipping documents listing the property supported by shipping directions described in paragraph (c) above will constitute valid credit vouchers to the property accounts. No further accounting for the property will be required. Two lists of the property donated will be forwarded to the commanding general of the service command or the area air technical service command who recommended the donation.

§ 823.317 *Sales to contractors for return in kind.* (a) The chiefs of technical services are authorized to sell property from War Department stocks to prime contractors for the purpose of maintaining or expediting production, under agreements by such contractors to replace the items delivered with identical articles procured by the contractors or to make payment therefor, in the form prescribed in this section. Property from War Department stocks will be made available to prime contractors under the authority of this section only when the property is needed by the contractor to maintain or expedite the production rate under the prime contract, and when the contractor has outstanding subcontracts for the acquisition of identical articles which can be used to replace the War Department stock. The property sold to a contractor under the authority of this section will not exceed in estimated value an amount equal to 5% of the total amount of the principal contract.

(b) The following procedure will be followed in making property available to contractors under the authority of this section:

(1) Requests for the delivery of property under this section will be addressed to the chief of the technical service or his delegate, and signed by the contracting officer for the contract involved. The request will state the specific quantity or number of articles desired, and will give technical service number and nomenclature, and will specify the time within which the articles will be replaced. The request will also state fully the reasons and circumstances under which the request is made.

(2) The chief of technical service will notify the contracting officer of the approval or disapproval of the request, and will advise him of the depot from which the property will be delivered, if the request is approved. The chief of the technical service will direct the depot from which the property is to be delivered to make delivery to the contractor, upon receipt of notice from the contracting officer as provided in subparagraph (5) below. The instructions to the depot will require that a special property record be maintained for each such transaction, and that the depot arrange for adequate inspection of the property at the time of its delivery at the contractor's plant, and for inspection of the replacement items upon their delivery to the War Department by the contractor.

(3) Upon approval by the chief of technical service, the contracting officer will arrange with the contractor for the execution of a supplemental agreement in the following form, which agreement will recite that it is executed pursuant to the First War Powers Act and Executive Order No. 9001:

AMERICA _____ In consideration of the sale and delivery by the United States to

the contractor of the articles listed on Exhibit A, the contractor agrees:

(1) to replace said articles by delivery to the United States of identical articles at the place or places designated by the contracting officer on or before _____, or
(Date)

(2) failing the replacement of said articles on said date, to pay to the United States an amount to be determined by the contracting officer, which will include the cost to the government of the articles, and all packing, handling and other costs.

(3) that said articles will be used by the contractor only for the performance of the contract; and

(4) that the amount of $_____ shall be withheld by the United States until said articles are replaced or the value thereof determined by the contracting officer in accordance with this agreement.

(5) that if an advance payment is outstanding under the prime contract, the advance payment lien shall attach to the said articles listed in Exhibit A, and any amounts to be withheld as provided in (4) above, shall be withheld only from amounts remaining due after the deduction of liquidation payments required by the advance payment article.

(4) The contracting officer will specify an amount, not exceeding 5% of the total amount of the principal contract, to be withheld which in his opinion is adequate to cover the cost to the government of the articles to be delivered to the contractor.

(5) Upon the execution of such supplemental agreement, the contracting officer will (i) promptly transmit a copy thereof to the finance officer, with a request that the specified amount be withheld until receipt of notice of replacement or instructions to make a final deduction, and (ii) notify the Depot Supply Officer that he is authorized to deliver the articles.

(6) Three copies of the shipping document covering the property delivered to the contractor will be forwarded by the depot to the contracting officer. Two copies will be signed by the contractor acknowledging receipt of the property. One copy will be retained by the contracting officer and the other forwarded to the Depot Supply Officer. The third copy will be retained by the contractor.

(7) The following notation will be typed on the shipping document and signed by the contractor:

Receipt from the United States Government of the property listed hereon for use on Contract No. _____ is hereby acknowledged. It is agreed that replacement of this property will be made in kind on or before _____ (date) or payment made therefor in accordance with said contract.

_____ _____
(Date) (Signature of the contractor)

(8) The Depot Supply Officer will notify the contracting officer when the replacement has been made and accepted, and the contracting officer will transmit such notice to the finance officer.

(9) If the property is not replaced in kind by the contractor on or before the date specified in the supplemental agreement, the Depot Supply Officer will report such fact to the contracting officer who will take action to obtain the replacement of the property or will notify the finance officer of the amount payable to the government under the agreement, advising the Depot Supply Officer of the completed action. In the event of payment by the contractor in lieu of replacement, the written advice of the contracting officer to the Depot Supply Officer that settlement has been effected will constitute a valid credit voucher to the Depot Supply Officer's property account.

§ 823.318 *Miscellaneous sales under specific statutes and Army regulations.* The chiefs of the technical services are authorized to sell or otherwise dispose of any property which is not determined to be surplus pursuant to this regulation, in accordance with the provisions of AR 45–75, AR 45–80, AR 30–2280, AR 30–2290, AR 500–60, and AR 850–100. Property determined to be surplus will be disposed of only in accordance with this subchapter.

PART 824—DISPOSITION OF NON-REPAIRABLE PROPERTY

Sec.

824.400 Scope of part.
824.401 Non-military property other than current production scrap.
824.402 Current production scrap.
824.403 Sale of non-repairable property by or to contractors.
824.404 Military property, and non-military property not certified under § 824.401.
824.405 Designation of salvage officer.
824.406 Disposition by salvage officers.
824.407 Sale of certain additions and improvements.
824.408 Aluminum scrap.
824.409 Scrap (other than aluminum) after VE-Day.
824.410 Preparation for shipment.

§ 824.400 *Scope of part.* This part provides the authority and procedures for disposing of non-repairable property.

§ 824.401 *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 § 824.403, 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 contractor may be either (1) sold to or by the contractor when authorized pursuant to the provisions of § 824.403, below, or (2) turned over to a salvage officer for disposal. In either case, if the property is required to be accounted for under War Department Technical Manuals 14–910, "Manual for Cost-Plus-A-Fixed-Fee Supply Contracts," and 14–911, "Accounting for Government Property Furnished Under Fixed-Price Contracts," 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 103 of TM 14–910 and paragraph 80 of TM 14–911, respectively, or if there is no question as to the responsibility of the contractor for the condition of the property, supported by a written order of the contracting officer directing transfer to the salvage officer or approving the sale by the contractor.

(e) Non-repairable property will not be mutilated except when such mutilation is required for reasons of security or safety.

§ 824.401–1 *Review and approval of scrapping.* Government-owned non-military property (other than that worn out through fair wear and tear) will not be classified as non-repairable property under § 824.401 without the prior review and approval of a local disposal board if the cost (estimated if not known) of the property so classified exceeds $50,000. Property will not be subdivided for the purpose of avoiding this limitation.

§ 824.401–2 *Review at chief of service level.* Disposal boards established pursuant to § 821.106 may review classification of Government-owned non-repairable property under § 824.401, where the cost of such property (estimated if not known) exceeds $500,000.

§ 824.402 *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 § 824.401.

§ 824.403 *Sale of non-repairable property by or to contractors.* Any non-

military property in the possession of a cost-plus-a-fixed-fee or fixed price contractor, which has been classified as non-repairable pursuant to § 824.401, may be sold by the contracting officer to the contractor, or retained or sold by the contractor with the approval of the contracting officer.

§ 824.404 *Military property, and non-military property not certified under § 824.401.* Military property, and non-military property which cannot be certified under § 824.401, 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.

§ 824.405 *Designation of salvage officer.* Chiefs of technical services may designate the salvage officer to receive and dispose of non-repairable non-military property.

§ 824.406 *Disposition by salvage officers.* All property turned over to a salvage officer in accordance with this part will be disposed of in accordance with AR 700-25 §§ 824.4 to 824.9,[1] TM 38-505, and any other applicable regulations.

§ 824.407 *Sale of certain additions and improvements.*

§ 824.407-1 *Property salable as scrap or salvage after removal.* (a) The chief of a technical service may negotiate contracts for the sale of, and may sell to the contractor in possession, conduits, wiring, fencing, partitions, connections, fixtures, foundations and other additions and improvements which the Government, presently or at some future date, is authorized or required to remove from the contractor's premises, or is obligated to reimburse the contractor for such removal, whenever such property would be salable only as scrap or salvage after removal.

(b) Where the estimated costs of removal which the Government is required to bear (including any costs of dismantling or preparation for shipment and any cost of repairing damage to the contractor's plant to the extent that the Government may be liable therefor in accordance with § 810.1003a of this chapter) exceeds the estimated recoverable scrap of salvage value after removal, the contract of sale may provide for leaving the property in place in consideration of the contractor's releasing the Government of all obligation to remove the property or make reimbursement therefor. When property is left in place pursuant to any such agreement, the transaction will be subject to prior review by a local disposal board, and will be accomplished by a supplement to the contract under which the obligation to remove arises. The supplement will recite that it is executed under the First War Powers Act and Executive Order 9001.

§ 824.407-2 *Other property.* The authorization contained in § 824.407 extends to connections, fixtures, and similar property, which may be salable other than as scrap or salvage after removal, whenever:

(a) Such property is attached to or used in connection with additions and improvements salable under § 824.407-1; and

(b) It is impracticable or against the best interests of the Government to sever the connections, fixtures, and similar property, as, for example, where such property is an integral part of the addition or improvement, or physically so attached to the addition or improvement that severance would not be feasible or would affect adversely the sales price; and

(c) The cost of such connections, fixtures, and similar property represents a relatively minor part of the total cost of all the property to be sold, the entirety of which would be regarded substantially as scrap or salvage after removal. (Costs may be estimated if not known.)

§ 824.407-3 *Limitations on authorization.* The authorization contained in § 824.407 is subject to the following limitations:

(a) Sales will be made at the best price obtainable, with due regard to the value of the items to the contractor, the probable cost of removing the items, and the estimated proceeds of sale to any other buyer after deducting the estimated cost of removal.

(b) Where the total cost, estimated if not known, of the items involved in any proposed sale exceeds $1,000, such sale will not be made without the prior approval of a disposal board.

(c) Machine tools and other production equipment may not be sold under the authority contained in § 824.407.

§ 824.408 *Aluminum scrap.*

§ 824.408-1 *Minimum prices.* (a) Surplus War Property Administration Regulation No. 5 prescribes minimum prices for the sale of various grades of aluminum scrap, except: (1) quantities of 10,000 lbs. or less available for sale at any one place; (2) scrap resulting from termination inventories, where the total claim of the contractor or subcontractor, before disposal credits, is less than $10,000; (3) borings and turnings, regardless of quantity.

(b) The following minimum prices are prescribed, f. o. b. shipping point, for the grades indicated:

	Cents per lb.
(1) All segregated solids	6
(2) All mixed solids	5
(3) Any scrap solids mixed with foreign materials	4
(4) Obsolete aircraft; completed or partially completed subassemblies	2½
(5) Wrecked aircraft	1¾

(c) Aluminum scrap which is not exempt from the minimum price provisions referred to in paragraph (a) of this section and which cannot be sold at or above the minimum prices provided in paragraph (b) of this section, will be shipped to aluminum scrap storage areas operated by Metals Reserve Company, a subsidiary of Reconstruction Finance Corporation. Shipments will be made in accordance with the instructions contained in § 824.408-2.

§ 824.408-2 *Shipment to storage areas.* (a) Prior to making shipments of aluminum scrap to storage areas pursuant to § 824.408-1 (c), shipping instructions, will be requested by mail, telephone or telegraph from the regional office of Reconstruction Finance Corporation for the region in which the scrap is located. A list of these offices is contained in § 829.-907. Requests will be addressed to the attention of Metals Reserve Company Agent and will indicate the approximate weight of the scrap for which shipping instructions are sought. The Metals Reserve Company Agent will issue appropriate shipping instructions upon receipt of such request.

(b) Each shipment will be evidenced by War Department shipping documents, indicating the total weight shipped, and will be accomplished on government Bills of Lading. If shipments are made by rail, flat bottom gondola cars will be used.

§ 824.409 *Scrap (other than aluminum) after VE-Day.* (a) It is anticipated that on VE-Day, scrap other than aluminum, resulting from contract terminations only, may not be salable at contractors' plants in time to assure prompt plant clearance. In order to relieve this situation certain emergency storage areas are being prepared and will be ready to receive such scrap on VE-Day.

(b) On and after VE-Day, scrap, other than aluminum, resulting from contract terminations, which cannot be sold within the 60-day limit prescribed by § 844.413 will be reported to the commanding general of the service command in which it is located. The commanding general of the service command will issue shipping instructions for shipment of such scrap to one of its emergency scrap storage areas.

(c) The commanding general of the service command will establish informal liaison with the local procurement offices of the technical services to estimate the probable rate of scrap shipment to emergency scrap storage areas.

(d) Establishment of these emergency storage areas does not relieve contracting officers or contractors of the responsibility for taking all reasonable action to dispose of termination inventory scrap during the 60-day limit referred to in paragraph (b).

§ 824.410 *Preparation for shipment.* Non-repairable property shipped to storage areas under §§ 824.403 and 824.409 will be loaded and shipped as such and will not be crated, skidded or otherwise prepared for shipment.

PART 825—DISPOSITION OF SERVICEABLE MILITARY PROPERTY

Sec.
825.500 Scope of part.
825.501 Declaration of surplus.
825.502 Mutilation and disposition of certain military property that is unsuitable for civilian use.
825.503 Disposition of surplus.

§ 825.500 *Scope of part.* This part provides authority and procedures in addition to those in Parts 823 and 824 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 § 821.103.

[1] 9 F.R. 5034, 14045; 10 CFR, 1944 Supp., 824.4 to 824.9.

§ 825.501 *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 and Stock Control 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 part 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 Services Forces, governing the declaration of military property as surplus are set forth in Section II, ASF Circular No. 407, 1944, and ASF Manual M–416, "Stock Control Manual for Depots", November 17, 1944.

§ 825.502 *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 non-military 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. 17b, 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.

§ 825.503 *Disposition of surplus.* Military property declared surplus and not directed to be disposed of as scrap will be disposed of in accordance with Part 827. (See AR 35–6520, Par. 17a for accounting procedure.)

PART 826—DISPOSITION OF SERVICEABLE NON-MILITARY PROPERTY

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§ 826.600 *Scope of part.* This part provides authority and procedures for disposing of nonmilitary property in addition to those set forth in Parts 823 and 824. In this connection attention is called to the policy of the War Department set forth in § 821.103 requiring constant and active review of non-military property on hand and in the process of manufacture and prompt disposition of excess property.

§ 826.601 *Redistribution.* Non-military property is composed largely of production and construction equipment and materials used in the manufacture of items of issue, and in construction. When such property becomes idle or excess, it can most effectively be returned to productive use through vigorous effort of the local establishment having jurisdiction of the property, with assistance of the chief of the technical service concerned when local effort has not resulted in redistribution within a reasonable period. Property that cannot be redistributed by such means within a reasonable period (which should not exceed 60 days) after it becomes idle or excess should be reported to a disposal agency, in order that it may be offered for disposal in the broadest industrial market. Accordingly, when it has been determined that items of non-military property are not required for immediate or definitely foreseeable 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 Part 823. When such items cannot be redistributed immediately to fill known requirements the procedures established in this part will be promptly instituted and vigorously pursued.

§ 826.602 *Circularization.* Although circularization of non-military property, other than part 3 property, is not required, it may be used in those cases where it is considered to be an effective aid to redistribution. When so used, circularization should be accomplished on a selective basis; only important and substantial items of property should be included and only those offices likely to have requirements for the particular property should be circularized. In no event should circularization be permitted to limit local redistribution efforts or delay the disposal as surplus of property that cannot promptly be redistributed.

§ 826.603 *Deviation from procedures.* The Director, Readjustment Division, is authorized to permit deviation from the procedures established in this part.

SUBPART A—PRODUCTION EQUIPMENT AND UTILITY EQUIPMENT

§ 826.610 *Application.* The procedures established in this subpart are applicable to idle production and utility equipment. However, such procedures will not apply to property comprised in complete War Department owned industrial installations that have been placed in stand-by or reported as excess under WD Circular 8, 1944, as amended by WD Circular 89, 1945.

§ 826.610–1 *Production and utility equipment.* Production and utility equipment (hereinafter referred to as Part 1 property) 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 exchanges.
Optical machinery.
Industrial cranes and hoists.
Thermal driers and dehydrators.
Fans, blowers, and exhausters, industrial types.
Pressure and vacuum filters.
Power boilers and pressure vessels.
Electric motors, integral horsepower, and electric motor controls.
Power conversion equipment.
Foundry equipment.
Heat treating equipment.
Packaging machinery.
Industrial scale and weighing equipment.
Industrial laboratory equipment.
Industrial trucks, tractors, trailers, and stackers.
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).
Major items of equipment used in the generating, processing, transmission, or distribution of electricity, gas, and water, and in the disposal of sewage.

§ 826.610–2 *Surveys of Part 1 property.* The chief of the technical services will make energetic and continuous surveys of Part 1 property in order to ascertain promptly when such property is idle. Part 1 property will be considered idle when it is no longer required for war purposes by the contractor or the War Department installation in possession thereof; however, mere lack of immediate use will not constitute idleness if there is a definitely foreseeable need for

the item in connection with the prosecution of the war. Efforts should be made to consolidate production on as few items of Part 1 property as possible consistent with production efficiency, in order to render other items idle and available for redistribution.

§ 826.611 *Part 1 property owned by War Department.*

§ 826.611–1 *Applicability.* The procedures prescribed by § 826.611 will apply to Part 1 property except any item (a) the cost of which (estimated if not known) is less than $350; (b) which is classified as "X" in accordance with the classification of condition prescribed by the Surplus Property Board; or (c) which was manufactured prior to 1930.

§ 826.611–2 *Industrial Equipment Redistribution Board.* The Industrial Equipment Redistribution Board (hereinafter in this Subpart A referred to as "the Board") has been established by a memorandum between the War and Navy Departments and the Defense Plant Corporation, April 24, 1945. The chiefs of the technical services (except The Quartermaster General and The Surgeon General) will each designate one representative (and one alternate to act in his absence) stationed in the Military District of Washington to serve as members of the Board. The Quartermaster General and The Surgeon General may, if they desire, each designate one officer to serve on the Board. The Director, Readjustment Division, Headquarters Army Service Forces, will designate one officer to act as vice chairman of the Board.

§ 826.611–3 *Duties of the Board.* The Board will study operating procedures, forms and practices in connection with the redistribution and reporting of Part 1 property and will take necessary action or make appropriate recommendations to assure the maximum utilization of such property in war production or for national defense. It will direct its efforts toward eliminating the purchase by the Government of new Part 1 property when requirements can be supplied from Government-owned idle property.

§ 826.611–4 *Redistribution.* The chief of the owning technical service will determine and take whatever action is necessary to redistribute idle War Department owned Part 1 property (other than items excepted by § 826.611–1) within the technical service. The period of such redistribution will be limited to 20 days from the time when such property was determined to be idle. Circularization, if any, will not be made to other technical services.

§ 826.611–5 *"War Available" reports.* If War Department owned Part 1 property is not redistributed or definitely assigned for immediate transfer to war production by the owning technical service within the 20 day period prescribed by § 826.611–4, it will be reported to the Board as "War Available" on suitable Kardex forms approved by the Board (address: Industrial Equipment Redistribution Board, % Defense Plant Corporation, 811 Vermont Avenue, NW., Washington 25, D. C.). Each such form shall include only one item of Part 1 property and its accessories, and shall be prepared as fully and accurately as possible with particular attention to matters of description and condition. Redistribution efforts may be continued after reporting property to the Board as "War Available": *Provided, however,* That no property so reported may be transferred, except to storage, or returned to production without the approval of the Board. When Part 1 property is reported to the Board, the owning technical service will indicate which, if any, items it requires for future modernization, stand-by, or War Department industrial reserve, in the event that such items are not redistributed by the Board for immediate war use. If a technical service moves any property to storage after it has been reported to the Board as "War Available," it will notify the Board promptly of the change in location.

§ 826.611–6 *War Available Equipment File.* The Board will maintain a War Available Equipment File of Part 1 property reported to it by the technical services. Property reported to the Board as "War Available" will be available for redistribution through the Board for a period not to exceed 40 days from the date of its receipt of such report: *Provided, however,* That the Board may extend such redistribution period for an additional period not to exceed 20 days.

§ 826.611–7 *Screening requirements.* The Board member of each technical service will screen his service's requirements for Part 1 property against the War Available Equipment File and such records of surplus equipment as are maintained centrally by the Reconstruction Finance Corporation. Under the jurisdiction of the Board, the Joint Army-Navy Screening Staff will review War Production Board 542 (formerly PD–3A) certificates, as provided in WPB Directive 23 as amended, and available order boards of equipment manufacturers, and will screen these war equipment requirements against the War Available Equipment File and such records of surplus equipment as are maintained centrally by the Reconstruction Finance Corporation.

§ 826.611–8 *Requests for transfer.* When the Board ascertains a requirement for items which can be supplied from the War Available Equipment File, it will direct that the member representing the requiring technical service submit in behalf of his service a written request for transfer of the items, together with appropriate instructions, to the owning technical service or Bureau via the Board. If any item selected from the War Available Equipment File proves, upon inspection by the requiring service not to be in satisfactory condition, the Board will be so advised. Upon receipt of a request for transfer of an item, indorsed by the Board, the owning technical service will promptly transfer the item in accordance with Part 823 of this subchapter, even though the owning technical service or Bureau has earmarked the item for future modernization, stand-by or War Department industrial reserve.

§ 826.611–9 *Release of Part 1 property.* If any Part 1 property reported to the Board as "War Available" has not been redistributed by the Board within the designated period, it will be released by the Board and reported back to the owning technical service.

§ 826.611–10 *Idle Part 1 property.* Idle Part 1 property need not be reported to the Board as "War Available" when:

(a) The contractor submits an application for removal of the property pursuant to § 843.663 and the technical service reports the property promptly to a disposal agency as surplus; however, in such cases, the technical service will forward to the Board a copy of the surplus report transmitted to the disposal agency; or

(b) The technical service agrees to sell the property to the contractor pursuant to § 843.661–3 or § 843.664–4.

If, subsequent to its report of property to the Board as "War Available", a technical service receives an application from the contractor for removal of the property and it wishes to report such property promptly as surplus to a disposal agency, or if the contractor agrees to purchase the property, the Board will be notified thereof, and will immediately release any of the property covered by such removal or purchase application for which redistribution instructions cannot be furnished.

§ 826.611–11 *"Freezing" idle Part 1 property.* When a technical service contemplates that a facility should be maintained intact for possible further war production or, where appropriate, for disposal as an integrated unit, it may "freeze" idle Part 1 property and need not report it to the Board as "War Available"; however the "freeze" will not constitute actual "stand-by", which requires other action in accordance with WD Circular 8, 1944, as amended. Where Part 1 property is thus "frozen," the owning technical service will report to the Board the name and address of the plant or installation in which such property is located, together with information as to the nature of the property and purposes for which its retention intact is desired.

§ 826.612 *Determination of surplus.* When Part 1 property, excluded from the Board's redistribution procedure as set forth in § 862.611, becomes idle and is determined to be excess to the needs of the owning service, it will be deemed surplus without further action and will be disposed of by the technical service in accordance with Part 827. When Part 1 property subject to redistribution by the Board is released by the Board and reported back to the owning technical service in accordance with § 826.611–9, it will be disposed of by the technical service in accordance with Part 827.

§ 826.613 *Interim procedure.* Part 1 property which has not been reported as surplus to a disposal agency prior to the issuance of this regulation will not be so reported unless it has first been reported to the Board as "War Available"

and released by the Board in accordance with § 826.611–9: *Provided, however,* That Part 1 property which has already been circularized may be reported as surplus without being reported to the Board as "War Available", if the technical service forwards a copy of such surplus report to the Board.

§ 826.614 *Authorized stand-by and War Department industrial reserve.* Prior to the cessation of hostilities, items of Part 1 property, other than those suitable solely for production of purely military items, will not be held in stand-by or War Department industrial reserve without the prior approval of the Director, Production Division, Headquarters Army Service Forces, or, in the case of Part 1 property of the Army Air Forces, the Commanding General, Army Air Forces.

§ 826.615 *Part 1 property owned by Defense Plant Corporation.*

§ 826.615–1 *Applicability.* The provisions of §§ 826.615 to 826.615–3 will not apply to complete Defense Plant Corporation projects for which redistribution procedures are established by paragraph 4*b*, WD Memorandum W5–44, January 25, 1944.

§ 826.615–2 *Procedure.* The following procedure has been agreed upon between the War Department and the Defense Plant Corporation with respect to Part 1 property owned by Defense Plant Corporation and sponsored by a technical service (including Production Division, Headquarters Army Service Forces (referred to in this § 826.615 as Production Division) when it is the sponsor):

(a) The DPC Supervising Engineer will cooperate with the local representative of the sponsoring service (in the case of a technical service) or the Director, Production Division, to ascertain when such property is idle.

(b) The Defense Plant Corporation will prescribe a standard form upon which contractors will indicate such idle property. The standard form will be filed by the contractor with the DPC Supervising Engineer who will inform the contractor as to the number of copies to be made. The Supervising Engineer will deliver the original and two copies of the form to the local representative of the sponsoring service (in the case of a technical service) or to the Director, Production Division.

(c) Upon receipt of a duly executed standard form, the local representative will forward the original and two copies to the chief of the technical service, who will determine whether such property is required by the service or may be released to the Defense Plant Corporation as no longer required by such service. When Production Division is the sponsor, the determination will be made by the Director, Production Division. The determination will be made within a period of 20 days from the time when the form is submitted to the local representative of the service or to the Director, Production Division. If the property is not redistributed or definitely assigned for immediate war production by the sponsoring technical service or the Production Division, the chief of the technical service or the Director, Production Division, will acknowledge its release on the original copy of the form and will forward the original to the Defense Plant Corporation through the Board. The Board will attempt to redistribute the property in accordance with the procedures prescribed in § 826.611 so far as they are applicable. If redistribution cannot be accomplished, the form will be turned over to the Defense Plant Corporation and will constitute a formal release by the War Department.

(d) When the property is not required by the sponsoring technical service or the Production Division for an immediate war production requirement but is required for authorized future modernization, stand-by, or War Department industrial reserve, the release prescribed by paragraph (c) above will not be executed; however, the forms will nevertheless be forwarded to Defense Plant Corporation through the Board with notation to indicate the intention to withhold the property for future modernization, stand-by, or War Department industrial reserve. The Board will attempt to redistribute the property for immediate war production and, if thus redistributed, it will so notify the sponsoring technical service or the Production Division.

§ 826.615–3 *Determination of requirements pursuant to § 826.615–2.* The chief of a sponsoring technical service and the Director, Production Division, will expedite the determination of requirements pursuant to § 826.615–2 when notified by the Defense Plant Corporation that the contractor in possession has:

(a) Offered to purchase of Part 1 property; or

(b) Requested removal of such property pursuant to section 12 (g) of the Contractor Settlement Act of 1944.

In such cases, the chief of the sponsoring service and the Director, Production Division, will not defer action upon a release for a period in excess of 10 days from receipt by the local representative of the service or by the Director, Production Division, of a request for release accompanied by a schedule of the property and by a notification from Defense Plant Corporation as aforesaid.

SUBPART B—CONSTRUCTION EQUIPMENT

§ 826.620 *Application.* The procedures established in this subpart are applicable to construction equipment, which includes 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 borers 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. Such property will be referred to as "part 2 property".

§ 826.621 *Local redistribution.* When part 2 property is determined to be excess, the local establishment having jurisdiction thereof will promptly initiate action to redistribute the property for military supply requirements or current construction needs, or other purposes in accordance with Part 823.

§ 826.622 *Redistribution assistance by chief of service and Chief of Engineers.* When local efforts have not resulted in redistribution of an item of part 2 property within 30 days after it is determined to be excess, the local establishment will immediately refer it to the chief of the technical service concerned and to the Chief of Engineers (attention: Redistribution and Salvage Officer) for redistribution assistance. The chief of the technical service of origin, if he so desires, may direct that such reference be made prior to the expiration of 30 days after the property is determined to be excess. Redistribution efforts of the local establishment will be continued after such reference, and the reference will not be permitted to delay or limit local redistribution efforts. The Chief of Engineers is specifically charged with acquiring items of part 2 property that are not redistributed within the technical service of origin which are suitable for troop use or tactical operations.

§ 826.623 *Determination of surplus.* Items of part 2 property that have not been redistributed within 60 days after they have been determined to be excess will be deemed surplus, without further action, and will be immediately disposed of by the local establishment in accordance with Part 827. If, at any time prior to the expiration of such 60-day period, the chief of the technical service of origin, with the concurrence of the Chief of Engineers, considers that further redistribution efforts are not warranted, he may direct the local establishment to dispose of the property in accordance with Part 827, without awaiting the expiration of the 60-day period.

§ 826.624 *Storage of surplus part 2 property.* After it has been reported to a disposal agency as surplus, part 2 property may be turned over to the Corps of Engineers for storage pending disposal. When a technical service desires to turn over part 2 property to the Corps of Engineers, the local establishment having jurisdiction of the equipment will notify the division engineer of the Corps of Engineers nearest to the location of the equipment, who will issue shipping in-

structions. The technical service requesting storage will prepare and ship the property in accordance with such shipping instructions. All costs of packing, handling and transportation will be borne by the technical service requesting storage. When unserviceable property is shipped to the Corps of Engineers, the property must be listed on a separate shipping document bearing the following statement on all copies thereof:

All property listed hereon is in an unserviceable condition.

Appropriate inspection by those concerned with determination of responsibility for its condition has been made.

Signed_____
Accountable shipping officer.

Accountability will be transferred to the Corps of Engineers without transfer of funds. Transfer will be coordinated with the interested accountable property officer for compliance with applicable regulations in regard to the transfer of accountability for property. The technical service requesting storage will notify the disposal agency of the change of location of the property, and will submit a copy of such notification, together with a copy of the report of surplus, to the storing establishment.

SUBPART C—PROPERTY OTHER THAN PRODUCTION AND UTILITY EQUIPMENT, CONSTRUCTION EQUIPMENT AND CONTROLLED MATERIALS

§ 826.630 *Application.* The procedures established in this subpart are applicable to property other than production and utility equipment (part 1 property), construction equipment (part 2 property), and Controlled Materials (part 4 property). Such property will be referred to as "part 3 property".

§ 826.630–1 *Certain property excepted.* This subpart does not apply to property peculiar to aircraft production to the extent that any of the provisions hereof may be inconsistent with the procedures established for the redistribution of such property by or under the direction of the Aircraft Resources Control Offices of the Aircraft Production Board or the Surplus War Property Administration.

§ 826.631 *Local redistribution.* When part 3 property is determined to be excess, the local establishment having jurisdiction thereof will promptly initiate action to redistribute the property for military supply requirements or current production or construction needs, or other purposes in accordance with Part 823.

§ 826.631–1 *Nominal quantities.* Unless requirements therefor are known to exist, or can be quickly ascertained, 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, will be deemed surplus, without further action, and disposed of in accordance with § 827.701.

§ 826.632 *Circularization.* When local efforts have not resulted in redistribution of part 3 property within 30 days after it is determined to be excess, circularization will be immediately initiated, except as hereinafter provided. The chief of the technical service concerned, if he so desires, may waive circularization, or may direct that circularization be initiated prior to the expiration of the 30 days after the property is determined to be excess.

§ 826.632–1 *Preparation of circularization lists.* (a) Circularization lists will be on 8 x 10½ paper and will contain the following information:

(1) Name of issuing office together with the station identification number and appropriate letter symbol of the technical service concerned.

(2) Serial number of list. Each issuing office will serially number each list circularized beginning with the number 1.

(3) Date of circularization, which will be the date of transmittal required under § 626.632–2.

(4) Serial number of items or lots. Each item or lot will be serially numbered.

(5) Description of items or lots. Description 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, estimated, if not known.

(6) 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, will be included in each list circularized.

(b) 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, serial number of item. For example a particular lot of valves listed as the second item of the third list circularized by an office of Ordnance Department, having station identification number "12345" would be identified as "12345–Ord–3–2".

§ 826.632–2 *Transmittal of lists.* Circularization lists of part 3 property will be transmitted to the offices listed in § 829.902. As soon as practicable, the chiefs of technical services will ascertain informally from each other and from the Navy Department the type and kinds of property likely to be included in part 3 property circularization lists in which each has an interest and thereafter circularization will be limited to those services which have indicated an interest in the type of property being circularized.

§ 826.632–3 *Items not to be circularized.* (a) Nominal quantities, as specified in § 826.631–1, will not be included in circularization lists of part 3 property.

(b) Items that are peculiar to the technical service of origin will not be circularized. Determination as to what items are peculiar to the technical service and its contractors will be made by the chief of the technical service concerned. In those cases where the peculiarity of the item is not obvious, determination should be based upon informal inquiry as outlined in § 823.632–2. The chief of the technical service will advise the offices responsible for circularization of part 3 property as to the items or classes of items that are to be withheld from circularization under this paragraph. Such items, and items not circularized pursuant to § 626.632, will be deemed surplus, without further action, when determined to be excess to the technical service concerned, and will be disposed of in accordance with part 827 of this chapter.

§ 826.633 *Determination of surplus.* Items of part 3 property, other than items of materials listed in § 829.909 (herein referred to as "stockpile materials") in excess of the minimum quantities therein indicated at any one location, that have not been redistributed within 30 days after the transmittal of circularization lists under § 826.632–2, will be deemed surplus, without further action, and will be immediately disposed of by the local establishment having jurisdiction thereof in accordance with Part 827.

§ 826.634. *Action to be taken on stockpile materials.*

§ 826.634–1 *Report of stockpile materials.* Stockpile materials in excess of the minimum quantities indicated in § 829.909 at any one location, that have not been redistributed within 30 days after the transmittal of circularization lists under § 826.632–2, will be immediately reported to the chief of the technical service having jurisdiction thereof and will be held for disposition instructions. Such request for instructions will be made in triplicate by the local establishment having jurisdiction over the property on W. D., A. G. O. Form 257. A sample of this form, together with instructions for its preparation, is set forth in § 829.909–1. Copies of the form may be requisitioned from Adjutant General depots.

NOTE: On W.D., A.G.O. Form 257, as now printed, the reference in the 3d line at the top of the page to §§ 822.210, 826.603 and 829.903 should be read as §§ 826.634, 826.644 and 829.909; and in the space provided for Second Indorsement, the reference to §§ 822.210–2 (b) and 822.210–2 (c) should be changed to §§ 826.634–2 (b) and 826.634–2 (c), respectively.

§ 826.634–2 *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:

(a) 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.

(b) If the Director, Production Division, issues instructions to hold the material for stockpile, the chief of technical service concerned will:

(1) Arrange for permanent storage of the material;

(2) Issue appropriate instructions to the field installation concerned to accomplish permanent storage;

(3) Advise the Director, Production Division, of the location and manner of storage;

(4) Dispose of the material only upon specific authorization of the Director, Production Division.

(c) If the Director, Production Division, issues instructions not to hold the material for stockpile, it will be deemed surplus, without further action, and the chief of technical service concerned will issue instructions to the local establishment of origin to dispose of the material in accordance with Part 827.

SUBPART D—CONTROLLED MATERIALS

§ 826.640 *Application.* The procedures established in this subpart are applicable to Controlled Materials; that is, steel, copper, copper-base alloy and aluminum, in mill-product forms, as listed in War Production Board CMP Regulation No. 1. Such property will be referred to as "part 4 property".

§ 826.640–1 *Certain property excepted.* This subpart does not apply to property peculiar to aircraft production to the extent that any of the provisions hereof may be inconsistent with the 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.

§ 826.641 *Local redistribution.* When part 4 property is determined to be excess, the local establishment having jurisdiction thereof will promptly initiate action to redistribute the property for military supply requirements or current production or construction needs, or other purposes in accordance with Part 823.

§ 826.641–1 *Nominal quantities.* Unless requirements therefor are known to exist, or can be quickly ascertained, single items or groups of items, where the cost, estimated if not known, of all substantially similar items (e. g., all tool steel, all structural shapes, all carbon steel bars, all copper strip, all aluminum tubing) in excess at any one time and at any one place does not exceed $100, will be deemed surplus, without further action, and disposed of in accordance with § 827.701.

§ 826.642 *Redistribution assistance by chief of service.* When local efforts have not resulted in redistribution of part 4 property within 30 days after it is determined to be excess, the local establishment will immediately refer the property to the chief of the technical service concerned for redistribution assistance. The chief of the technical service concerned, if he so desires, may direct that such reference be made prior to the expiration of 30 days after the property is determined to be excess. For the purpose of such reference, the property will be listed in substantially the form set forth in § 829.901–1 for steel, § 829.901–2 for copper and copper-base alloy, and § 829.901–3 for aluminum. Nominal quantities, as specified in § 826.641–1, will not be referred to the chief of service. Redistribution efforts of the local establishment will be continued after such reference, and the reference will not be permitted to delay or limit local redistribution efforts.

§ 826.643 *Determination of surplus.* Items of part 4 property, other than stockpile materials in excess of the minimum quantities indicated in § 829.909 at any one location, that have not been redistributed within 30 days after reference to the chief of the service under § 826.642, will be deemed surplus, without further action, and will be immediately disposed of by the local establishment having jurisdiction thereof in accordance with Part 827.

§ 826.644 *Action to be taken on stockpile materials.* Stockpile materials in excess of the minimum quantity indicated in § 829.909 at any one location that have not been redistributed within 30 days after reference to the chief of service under § 826.642, will be immediately reported to the chief of the technical service having jurisdiction thereof and held for disposition instructions. Such request for instructions will be made in triplicate by the local establishment having jurisdiction over the property on W. D., A. G. O. Form 257. Upon receipt of such request, further action will be taken in accordance with the provisions of § 826.634–2.

PART 827—DISPOSAL OF SURPLUS PROPERTY

Sec.

827.700 General.
827.701 Disposal of nominal quantities.
827.702 Reporting to Disposal Agency.
827.703 Report forms.
827.704 Transmittal of reports.
827.705 Action after reporting.
827.706 Withdrawals and adjustments in prior reports.
827.707 Disposal by Disposal Agency.
827.708 Shipment after disposal.
827.709 Fiscal procedures.
827.710 Clearance for sale by War Department.

§ 827.700 *General.* Under its Regulation No. 1, as amended, effective May 1, 1945, the Surplus Property Board has assigned responsibility for disposal of surplus property among disposal agencies as indicated in § 829.904 of this chapter, 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 Parts 825 and 826 of this chapter, action will be promptly taken to dispose of nominal quantities of property in accordance with § 827.701 and to report the remaining surplus property to the appropriate disposal agencies in accordance with § 827.702.

§ 827.701 *Disposal of nominal quantities.* (a) 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, are termed "nominal quantities". Nominal quantities will ordinarily be turned over to the local salvage officer (or to the contracting officer where there is no salvage officer) for disposition, except that nominal quantities may be reported and turned over to a disposal agency with the prior approval of the Regional Office of the disposal agency concerned if the disposal agency is in position to effect expeditious disposition without delaying disposition of other property.

(b) Disposition of such property by the local salvage officer will be made in accordance with these regulations and with regulations applicable to the disposition of salvage; however, all documents relating to sales will be marked clearly to indicate sale of surplus property. Disposition of such property by the contracting officer will be made in accordance with these regulations and with regulations prescribed by the chief of the technical service concerned.

§ 827.701–1 *Standard for determination of substantially similar items.* (a) Determinations as to what are "substantially similar items" are not the responsibility of the salvage officer but of the agency directing the transfer to salvage. The standards to be applied in making such determinations are as follows:

(1) Property will not be subdivided or subjected to refined classifications for the purpose of avoiding reporting to disposal agencies.

(2) "Substantially similar items" are items which are used or are usable for the same immediate purpose. Items may be substantially similar although not interchangeable in use; and they may not be substantially similar although they have the same general use. Items may be substantially similar although they differ in size, weight, color, capacity, composition, quality, or design. Additional evidence of substantial similarity exists if the items are commonly considered in ordinary business practice as being in the same class, or if the items are normally salable through the same channels, or if the trade names of the items are the same, or if the items are interchangeable in use. Examples: All shoes are substantially similar items. Raincoats are not substantially similar to shoes, for, while both are items of clothing and serve the same general purpose, they are not employed for the same immediate purpose. All AC motors under 1 hp. are substantially similar items. All AC motors over 1 hp. are substantially similar items (the same grouping would apply to DC motors). All fixed resistors are substantially similar. All variable resistors are substantially similar.

(b) The phrase "at any one time" used in paragraph (a) should be construed to mean the time at which the responsible officer has determined the items to be turned over to a salvage officer or reported to the disposal agency. Developments subsequent to the time of the decision need not influence a determination of nominal quantities.

(c) The phrase "at any one place" used in paragraph (a) should be construed to mean one installation, plant, factory, or location.

§ 827.701–2 *Assistance to be rendered by Service Commands.* When requested,

the Commanding Generals of Service Commands should, to the extent considered practicable by them and within the limits of their existing facilities, assist the technical services in the disposition of nominal quantities and salvage originating at nearby industrial plants and installations under the jurisdiction of the technical services. Where convenient this assistance will include physical receipt of the nominal quantities and salvage.

§ 827.701–3 *Accountability.* Accountability for nominal quantities will terminate when the accountable officer is in possession of a copy of a property turn-in slip listing the property and which copy has been signed by the salvage officer. The property turn-in slip will describe the property in sufficient detail to furnish a commercial description. Records of surplus property will be maintained by salvage officers by items (Technical Service or Army Air Forces classification) and quantity, either by keeping jacket-files or by posting to detailed records.

§ 827.702 *Reporting to disposal agency.* Surplus property other than that required to be disposed of under § 827.701 will be promptly reported to disposal agencies. Reports of surplus property shall fully set forth any legal restrictions upon the authority of the Government affecting its disposition, including any restrictions upon the disposal or use thereof arising from any patents or any contract relating thereto. Reports of surplus property shall designate any such property known to have been processed, produced or donated by the American Red Cross. The removal, in accordance with applicable directives regulations, technical orders or other instructions, of needed parts, components and appliances from items deemed surplus, and any mutilation thereof pursuant to § 825.502 of this chapter will be accomplished prior to the reporting thereof to the disposal agency, and thereafter only with the concurrence of the disposal agency. Reports will be made as follows:

§ 827.702–1 *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: Commodore E. 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 § 829.904 will be reported to the United States Maritime Commission, Attention: Mr. E. W. Gorman, Assistant to the Director of the Procurement Division, Washington 25, D. C.

§ 827.702–2 *Aircraft and related property.* (a) Surplus aircraft, gliders and Link trainers which have been reported to Headquarters, Army Air Forces, in accordance with Army Air Force Regulation No. 65–86, dated June 14, 1944, or any amendments thereto, will be reported by Headquarters, Army Air Forces to Reconstruction Finance Corporation, Attention: Surplus Property Director, Washington 25, D. C.

(b) Surplus Aircraft Equipment, Components and Parts in supply (as distinguished from items of Government Furnished Equipment in Government Furnished Equipment warehouses and items included in termination inventories) included in the following classes listed in Army Air Forces T.O. No. 00–35A–1, and supplements thereto, will be reported to Reconstruction Finance Corporation, Surplus Property Division, Chamber of Commerce Building, Springfield, Ohio.

01–B.	05–E.
01–C.	03–B—Only items peculiar to aircraft.
01–D.	11–A.
01–E.	11–B.
01–F.	11–D.
01–G.	11–E.
01–H.	15.
01–I.	16.
01–J.	19–A—Only aircraft towing gear, (excluding tractors), special maintenance dollies, stands, slings, clamps and supports. Engine transportation cradles, chocks, and wheel blocks. Hydraulic wings, nose and axle and tail jacks. Special airplane ladders. Ground type aircraft engine heaters. Mooring kits.
01–K.	
01–L.	
01–M.	
01–N.	
01–P.	
01–Q.	
01–R.	
01–S.	
01–T.	
01–U.	
02–A.	
02–B.	
02–C.	
02–D.	
02–E.	
02–F.	
02–G.	
02–H.	
02–I.	26—Only items originally in classes which are reportable to Reconstruction Finance Corporation in accordance with par. 7–804.
02–J.	
02–K.	
02–L.	
02–M.	
02–N.	
02–P.	
02–Q.	
03–A.	28–A, all except Link trainers.
03–B.	28–B.
03–C.	28–C.
03–D.	
03–E.	30–A—Only instructional aids for equipment assigned to Surplus War Aircraft Division, RFC.
03–G.	
03–H.	
03–I.	
03–J all except batteries.	30–B.
04–A.	30–C.
04–B.	30–D.
04–D.	30–E.
05–C.	

(c) Surplus items listed hereunder, whether they are government furnished equipment in government furnished equipment warehouses or items included in termination inventories, will be reported to Reconstruction Finance Corporation, Surplus Property Division, Chamber of Commerce Building, Springfield, Ohio.

1. Engines.
2. Propellers.
3. Brakes.
4. Wheels.
5. Skis.
6. Floats.
7. Carburetors.
8. Struts.
9. Magnetos.
10. Pumps—(other than fuel and oil).
11. Valves—(other than AN, AC and NAF standard part numbers).
12. Flight instruments.
13. Engine instruments.
14. Automatic flight control equipment.
15. Instrument and navigation training equipment.
16. Aircraft towing gear.

(e) Except as otherwise provided above, surplus property in supply or in Government furnished equipment warehouses will be reported to the Regional Office of the Reconstruction Finance Corporation or Department of Commerce, for the region in which the property is located in accordance with the assignments set forth in § 829.904 of this chapter and surplus property included in termination inventories will be reported to the Regional Office of the Reconstruction Finance Corporation for the region in which the property is located.

§ 827.702–3 *Food and related property.* Surplus food and related property assigned to War Food Administration as set forth in § 829.904 will be reported to the Office of Distribution, War Food Administration, Washington 25, D. C.

§ 827.702–4 *Military property other than aircraft, food and ships.* Military property other than aircraft and related property, food, ships and maritime property will be reported to Reconstruction Finance Corporation or Department of Commerce, in accordance with the assignments set forth in § 829.904 of this chapter, except that housing of a portable, demountable or prefabricated nature (except house trailers) will be reported to the National Housing Agency, Washington 25, D. C. (Structures of a portable, demountable, or prefabricated nature, including quonset and similar huts, when declared surplus separate from any sites thereof, will be reported to Reconstruction Finance Corporation.) By far the greater part of such property will consist of items of the type assigned to Department of Commerce 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 Department of Commerce.

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 Department of Commerce, respectively, and the territories within their jurisdiction, are set forth in §§ 829.907 and 829.908 of this chapter.

Surplus military property under the jurisdiction of technical services of Army Service Forces (see ASF Manual M–416, November 17, 1944) which is in stock at depots and at installations below depot level will be reported by the depot. The station at which the property is located will be notified promptly of this action. 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 Section II, ASF Circular No. 407, 1944) will be reported by the service commander.

§ 827.702–5 *Non-military property*—(a) *Subpart A property (Production and utility equipment) and Subpart D property (Controlled materials).* Subpart A property (other than industrial trucks, tractors, trailers and stackers) and Subpart D property will be reported to the Regional Office of Reconstruction Finance Corporation for the region in which the property is located. Industrial trucks, tractors, trailers and stackers will be reported to the Regional Office of Department of Commerce, for the region in which the property is located.

(b) *Subpart B property; construction equipment.* Surplus Subpart B property will be reported to the Regional Office of the Department of Commerce for the region in which the property is located.

(c) *Subpart C property.* Surplus Subpart C property other than aircraft and related property, food, ships and maritime property, and housing property will be reported to Reconstruction Finance Corporation or to the Department of Commerce in accordance with the assignments set forth in § 829.904 of this chapter. Reports will be transmitted to the Regional Office of the appropriate disposal agency for the region in which the property is located. The assignment of those items likely to be included in Subpart C are as follows:

Department of Commerce

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.
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.
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 metalwork.
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.

§ 827.703 *Report forms.* All reports of surplus property to disposal agencies will be made on Form SPB–1, titled, "Declaration of Surplus Personal Property to Disposal Agency". Copies of this form, together with instructions for its preparation, are set forth in § 829.905 of this chapter. This form is available in Adjutant General Depots. Existing stocks of Forms SWPA–1 and SWPA–1 (A) may be used, in lieu of Form SPB–1, until May 31, 1945.

§ 827.704 *Transmittal of reports.* Reports of surplus property made to disposal agencies on Form SPB–1 will be filed in triplicate at the office of the appropriate disposal agency. An information copy of each report covering machine tools or production equipment (as defined in § 826.610–1 of this chapter), regardless of cost, and of each report covering other types of property where the total cost of the property included in the report is $25,000 or more, will be transmitted at the time of declaration to the Director, Readjustment Division, Headquarters, Army Service Forces. The information copy to the Readjustment Division need not be accompanied by a letter of transmittal. Where the total cost of the property included in a report is $25,000 or more, an additional copy of the report will be sent to Readjustment Division, attached to the report required by § 829.910 of this chapter.

§ 827.705 *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. The disposal agency will send one copy of the disposition instructions to the custodian, and one copy to the reporting agency shown on the declaration.

§ 827.706 *Withdrawals, and adjustments in prior reports.* (a) 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 or to another Government agency to which transfer without reimbursement is permitted under § 823.312 of this chapter, with the consent of the disposal agency to which the property was reported. Transfer between Government agencies of property already reported to a disposal agency as surplus may be accomplished without reimbursement or transfer of funds under the circumstances outlined in Special Order 6 of the Surplus Property Board, dated May 1, 1945.

(b) Withdrawal of property under this paragraph will be effected by transmitting to the disposal agency Form SPB–1.1 titled, "Adjustment of Prior Declaration of Surplus Personal Property". This form will also be used in reporting any modifications or adjustments in prior declarations. Form SPB–1.1 will be prepared and transmitted in the same manner as Form SPB–1. If a withdrawal covers all the items included in a previous declaration, the phrase "All items to be withdrawn" may be inserted in Column (b) instead of listing the items.

(c) Any approved withdrawals, corrections, adjustments or modifications involving a change in total cost of $25,000 or more, will be reported to Readjustment Division, Headquarters, Army Service Forces, by attaching a copy of Form SPB–1.1 to the report required by § 829.910 of this chapter.

§ 827.707 *Disposal by disposal agency.* The disposal agencies will dispose of all property reported as surplus that is not withdrawn under § 827.706 (except as provided in § 827.710). 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.

§ 827.708 *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, sending one copy to the custodian and one copy to the reporting agency as indicated in § 827.705. Upon receipt of shipping instructions, the field installation concerned will prepare and load the property for shipment, and arrange for shipment of the property, as directed by the disposal agency. The expense of preparation and loading for shipment will be borne by the field installation concerned, without reimbursement by the disposal agency. The use of War Department transportation facilities in moving surplus property into storage facilities of a disposal agency is authorized when the use of such transportation facilities will not interfere with the normal military functions of the installation concerned. Payment of transportation expenses incurred in moving surplus property into storage facilities of a disposal agency by means other than War Department transportation facilities is authorized where transfer to a disposal agency will be expedited or is otherwise required. Expenses of transportation direct to a purchaser from a disposal agency will not be borne by the War Department. When requested by the disposal agency, copies of bills of lading and other shipping documents and advice as to date of shipping will be furnished to disposal agencies. The War Department is not required to, and should not, repair, recondition or reprocess surplus property. Where, however, parts, attachments or accessories have been removed temporarily from an

item of production equipment, reassembly will be accomplished prior to reporting, if the parts, attachments or accessories are excess to the needs of the owning agency and are on hand or readily available, and if the cost of reassembly is not excessive.

§ 827.709 *Fiscal procedures.* The War Department will not be reimbursed for surplus property delivered to or upon the direction of a disposal agency. Where, at the direction of a disposal agency, surplus property is delivered to a disposal agency, other Government agency, or buyer, an authenticated copy of the delivery order received from the disposal agency together with the receipt of the common carrier or transportation agency will constitute a valid credit voucher to the property account for the material so delivered; or, in those cases where bills of lading are not prepared in sufficient quantity to provide the property officer with a memorandum copy bearing receipt of the carrier, or transportation agency, the authenticated copy of the delivery order from the disposal agency may be cross referenced to receipt of common carrier or transportation agency on file at the station. In the case of direct delivery to the buyer, his written acknowledgment of receipt on the delivery order will constitute a valid credit voucher to the property account for the material so delivered. Whenever the delivery order is not complete in detail as to quantity and nomenclature of the items ordered to be delivered, a shipping document will be originated and a copy filed in support of the delivery order.

§ 827.710 *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.

§ 827.710–1 *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.

PART 829—APPENDIX

Sec.
829.901–1 Form of circularization list for Part 4A property.
829.901–2 Form of circularization list for Part 4B property.
829.901–3 Form of circularization list for Part 4C property.
829.902 Offices to receive Part 1 and 3 circularization lists.
829.904 Assignment of property to disposal agencies.
829.905 Surplus Property Board Report Forms.
829.907 Reconstruction Finance Corporation—offices of Disposing Loan Agencies and regions covered.
829.908 Regional offices of Department of Commerce.
829.909 Stockpile materials.
829.910 Monthly report of redistribution and disposal of excess and surplus serviceable property.

§ 829.901–1 *Form of circularization list for part 4A property.*

Report of excess steel, Part 4A — List No._____ Page_____
Reporting station_____ Date transmitted to WPB_____
Station No._____ Address_____ Reported to_____
_____ (Regional Office, WPB)
Officer in charge of disposition_____ 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	Alloy, 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).

§ 829.901–2 *Form of circularization list for part 4B property.*

Report of excess copper and copper base alloy, Part 4B — List No._____ Page_____
Reporting station_____ Date transmitted to WPB_____
Station No._____ Address_____ Reported to_____
_____ (Regional Office, WPB)
Officer in charge of disposition_____ 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	Length (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.

§ 829.901–3 *Form of circularization list for part 4C property.*

Report of excess Aluminum, Part 4C — List No._____ Page_____
Reporting station_____ Date transmitted to WPB_____
Station No._____ Address_____ Reported to_____
_____ (Regional Office, WPB)
Officer in charge of disposition_____ 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 dib 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.

§ 829.902 *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, Ala.	1
Boston Ordnance District, Room 1501–1516 Federal St., Boston 10, Mass.	1
Chicago Ordnance District, 38 South Dearborn St., Chicago 3, Ill.	1
Cincinnati Ordnance District, The Big Four Bldg., Cincinnati 1, Ohio.	1
Cleveland Ordnance District, 1006 Terminal Tower Bldg., Cleveland 13, Ohio.	1
Detroit Ordnance District, 1832 National Bank Bldg., Detroit 32, Mich.	1
New York Ordnance District, Room 1815, 80 Broadway, New York 5, N. Y.	1
Philadelphia Ordnance District, 150 South Broad St., Philadelphia 2, Pa.	1
Pittsburgh Ordnance District, 1202 Chamber of Commerce Bldg., Pittsburgh 19, Pa.	1
Rochester Ordnance District, 1238 Mercantile Bldg., Rochester, N. Y.	1
San Francisco Ordnance District, 402 Empire Hotel, San Francisco, Calif.	1
St. Louis Ordnance District, 3663 Lindell Blvd., St. Louis 8, Mo.	1
Springfield Ordnance District, 95 State St., Springfield 3, Mass.	1
Commanding Officer, Frankford Arsenal, Philadelphia 2, Pa.	1
Commanding Officer, Picatinny Arsenal, Dover, N. J.	1
Commanding Officer, Redstone Arsenal, Huntsville, Ala.	1
Commanding General, Rock Island Arsenal, Rock Island, Ill.	1
Commanding Officer, Springfield Armory, Springfield 1, Mass.	1
Commanding Officer, Watertown Arsenal, Watertown, Mass.	1
Commanding General, Watervliet Arsenal, Watervliet, N. Y.	1
Office, Chief of Ordnance-Detroit, Attn.; Redistribution Division (SPOMC-M), Union Guardian Building, Detroit 32, Mich.	2
Field Director of Ammunition Plants, 3637 Lindell Blvd., St. Louis 8, Mo.	1
Small Arms Ammunition Sub-Office, N. Y. Ayer Bldg., West Washington Square, Philadelphia 6, Pa.	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 Ave. NW., Washington 25, D. C.	3
Division Engineer, Great Lakes Division, 20 North Wacker Drive, Chicago 6, Ill.	1
Division Engineer, Lower Mississippi Valley Division, P. O. Box 80, Vicksburg, Miss.	1
Division Engineer, Middle Atlantic Division, Room 909, 101 East Fayette St., Baltimore 2, Md.	1
Division Engineer, Missouri River Division, Farm Credit Bldg., 19th and Douglas, Omaha 1, Nebr.	1
Division Engineer, New England Division, 75 Federal St., Boston 10, Mass.	1
Division Engineer, North Atlantic Division, 21st Floor, 270 Broadway, New York 7, N. Y.	1
Division Engineer, Northwest Division, 114, #12 128th St., Edmonton, Alberta, Canada	1
OFFICE OF THE CHIEF OF ENGINEERS—Con.	
Division Engineer, Ohio River Division, 1120 Huntington Bank Bldg., Columbus 16, Ohio.	1
Division Engineer, Pacific Division, 351 California St., San Francisco 19, Calif.	1
Division Engineer, South Atlantic Division, 50 Whitehall St., Atlanta 2, Ga.	1
Division Engineer, Southwestern Division, Santa Fe Bldg., 1114 Commerce St., Dallas 2, Tex.	1
Division Engineer, Upper Mississippi Valley Division, Syndicate Trust Bldg., 915 Olive St., St. Louis 1, Mo.	1
Area Engineer, P.O. Box 1111, Clinton, Tenn.	1
Area Engineer, P.O. Box 265, Church St., New York, N. Y.	1
Area Engineer, P.O. Box 1712, Wilmington, Del.	1
Area Engineer, P.O. Box 2277, Boston, Mass.	1
Area Engineer, P.O. Box 550, Pasco, Wash.	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, Va.	2
Commanding General, Edgewood Arsenal, Edgewood, Md.	1
Commanding General, Pine Bluff Arsenal, Pine Bluff, Ark.	1
Commanding General, Rocky Mountain Arsenal, Denver 2, Colo.	1
Commanding Officer, Huntsville Arsenal, Huntsville, Ala.	1
Commanding Officer, Boston CW Procurement District, Room 500, 75 Federal St., Boston 10, Mass.	1
Commanding Officer, Chicago CW Procurement District, Room 1600, Civic Opera Bldg., 20 North Wacker Drive, Chicago 6, Ill.	1
Commanding Officer, Dallas CW Procurement District, Mercantile Bank Bldg., 106 Ervay St., Dallas 1, Tex.	1
Commanding Officer, Pittsburgh CW Procurement District, American Bank Bldg., 6th Ave. and Grant St., Pittsburgh 19, Pa.	1
Commanding Officer, New York CW Procurement District, 292 Madison Ave., New York, N. Y.	1
Commanding Officer, San Francisco CW Procurement District, Room 201, 1355 Market St., San Francisco, Calif.	1
Commanding Officer, Indianapolis CW Depot, 2060 Northwestern Ave., Indianapolis 7, Ind. (Part 3 only)	1
OFFICE OF THE CHIEF OF TRANSPORTATION	
Redistribution and Salvage Officer, Office of the Chief of Transportation, Washington 25, D. C.	1
Property Disposal Officer, Procurement Division, OCT, Cincinnati 2, Ohio.	2
Transportation Corps Supply Officer, Marietta Transportation Corps Depot, Marietta, Pa.	1
Transportation Corps Supply Officer, Montgoery Transportation Corps Depot, Montgomery, Ala.	1
Transportation Corps Supply Officer, Voorheesville Transportation Corps Depot, Voorheesville, N. Y.	1
Chief, Chicago Procurement Office, TC 201, N. Wells St., Chicago 6, Ill.	1
Chief, New Orleans Procurement Office, TC, P. O. Box 1510, New Orleans 5, La.	1
Chief, New York Procurement Office, TC, 25 Broad St., New York 4, N. Y.	1
Chief, San Francisco Procurement Office, TC, 461 Market St., San Francisco 6, Calif.	1
OFFICE OF THE CHIEF OF TRANSPORTATION—Continued	
Commanding General, Boston Port of Embarkation, Boston 10, Mass.	1
Commanding General, Charleston Port of Embarkation, Charleston, S. C.	1
Commanding General, Hampton Roads port of Embarkation, Newport News, Va.	1
Commanding Officer, Los Angeles Port of Embarkation, Wilmington, Calif.	1
Commanding General, New Orleans Port of Embarkation, New Orleans 12, La.	1
Commanding General, New York Port of Embarkation, Brooklyn 9, N. Y.	1
Commanding General, San Francisco Port of Embarkation, Fort Mason, Calif.	1
Commanding General, Seattle Port of Embarkation, 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.	1
Chief, Communications Engineering Br., Army Communications Service, Office of the Chief Signal Officer, Room 4D279 Pentagon Building, Washington 25, D. C.	1
Commanding Officer, Signal Security Agency, Army Communication Service, Office of the Chief Signal Officer, Pentagon Building, Room 3C340, Washington 25, D. C.	1
Commanding Officer, Signal Corps Photographic Laboratory, Army War College, Washington 25, D. C.	1
Chief, Special Activities Branch, Office Service Division, Office of the Chief Signal Officer, Pentagon Building, Room 3C283, Washington 25, D. C.	1
Commanding Officer, Storage and Issue Agency, 128 North Broad Street, Philadelphia 2, Pa. Attn: Redistribution and Salvage Officer	3
Officer in Charge, Plant Engineering Agency, SPSLP-82, Architects Building, 17th and Sansom Streets, Philadelphia 3, Pa.	1
Commanding Officer, Philadelphia Sig. C. Procurement District, 128 North Broad Street, Philadelphia 2, Pa.	3
Officer in Charge, Philadelphia Signal Corps, Production Field Office, Architects Building, 17th and Sansom Streets, Philadelphia 3, Pa.	1
Officer in Charge, Sig. C. Ground Sig. Maintenance Br., Architects Building, 17th and Sansom Streets, Philadelphia 3, Pa.	1
Commanding Officer, Monmouth Sig. C. Procurement District, Bradley Beach, N. J.	1
Commanding General, Eastern Sig. C. Training Center, Fort Monmouth, N. J.	1
Commanding Officer, Signal Corps Ground Signal Agency, Shark River Hills Hotel, Bradley Beach, N. J., Attn: Redistribution and Salvage Officer.	1
Commanding Officer, Signal Corps Photographic Center, 35–11 35th Avenue, Long Island City 1, N. Y.	1
Officer in Charge, New York Sig. C. Production Field Office, 165 Broadway, New York 6, N. Y.	1
Commanding Officer, Army Experimental Station, Pine Camp, N. Y.	1
Officer in Charge, Los Angeles Sig. C. Production Field Office, Rm. 1009, Pacific National Bldg., 315 West Ninth Street, Los Angeles 15, Calif.	1
Director, Western Div., Sig. C. Photographic Center, 1421 North Western Avenue, Los Angeles, Calif.	1
Officer in Charge, Chicago Sig. C. Production Field Office, 1 North LaSalle Street, Chicago 2, Ill.	1

OFFICE OF THE CHIEF SIGNAL OFFICER—Con.

	Number of copies
Commanding Officer, Holabird Signal Depot, Baltimore, Md., Attn: Training Branch	1
Commanding General, Camp Crowder, Mo	1
Commanding Officer, Alaska Communication System, Seattle, Wash	1

OFFICE OF THE QUARTERMASTER GENERAL

Redistribution and Salvage Officer, Office of the Quartermaster General, Room 1049 Temporary A Building, 2d and T Sts. SW., Washington 25, D. C	5
Commanding Officer, Jersey City Quartermaster Depot, 34 Exchange Pl., Jersey City 2, N. J. Attn.: Excess Utilization Section, Buying and Purchase Branch, Procurement Division	2

OFFICE OF THE SURGEON GENERAL

Redistribution and Salvage Officer, Army Medical Purchasing Office, 52 Broadway, New York 4, N. Y	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
Chief of Property Disposal Section, Readjustment Division, Air Technical Service Command, Wright Field, Dayton, Ohio	3
District Supervisor, Eastern Procurement District, Attention: Redistribution & Salvage Officer, 67 Broad St., New York, N. Y	1
District Supervisor, Central Procurement District. Attention: Redistribution and Salvage Officer, 8505 West Warren Ave., Detroit, Mich	1
District Supervisor, Midwestern Procurement District. Attention: Redistribution and Salvage Officer, Municipal Airport, P. O. Box 117, Wichita, Kans	1
District Supervisor, Western Procurement District. Attention: Redistribution and Salvage Officer, 3636 Beverly Blvd., Los Angeles, Calif	1
District Supervisor, Midcentral Procurement District. Attention: Redistribution and Salvage Officer, 111 West Jackson Blvd., Chicago, Ill	1
District Supervisor, Southeastern Procurement District. Attention: Redistribution and Salvage Officer, 86 Edgewood Ave. NE., Atlanta, Ga	1
Chief of Disposal Section, Supply Division, Air Technical Service Command, Wright Field, Dayton, Ohio	20

NAVY DEPARTMENT

Chief of the Bureau of Supplies and Accounts, Navy Department. Attention: S. P. D.-17, Washington 25, D. C	20
Officer-in-Charge, P. O. Box "NN"—Chicago 90, Illinois, Attn: Surplus Materials Section	2

§ 829.904 *Assignment of property to disposal agencies.* Assignment of property to Disposal Agencies is set forth in this section as published in Surplus Property Board Regulation No. 1, Order 1, under the following prefatory notes:

ASSIGNMENT OF SURPLUS PROPERTY

Under its Regulation No. 1, the Surplus Property Board hereby assigns to the Government disposal agencies named below such items or types of surplus property located in the continental United States as are listed under the name of each agency. The items or types of surplus property listed below under the name of each disposal agency are included within the class of surplus property assigned to each agency for disposal in Regulation No. 1. The code numbers used herein are those of the Standard Commodity Classification (U. S. Government Printing Office) to Volume I of which reference must be made for a complete list of the items or types of surplus property assigned by means of the code number.

PART 1—CRUDE MATERIALS

R. F. C.	Department of Commerce	War Food Administration
	01 Live animals, other than food animals.	01 Live animals, except nonfood animals. 02 Crude animal products, edible.
03 Crude animal products inedible, except fibers.		04 Crude vegetable products, edible.
05-5 Crude rubber and allied gums. 05-623 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.		05 Crude vegetable products, inedible, except fibers (except as indicated).
06 Fibers, vegetable and animal, unmanufactured (except domestically reduced wool and mohair).		06-1 Cotton. 06-22 Flax (only domestic production). 06-23 Hemp (cannabis sativa). 06-3 Wool and related specialty hair (domestically produced wool and mohair only).
07 Coal, crude petroleum, and related crude hydrocarbons. 08 Metallic ores, tailings, concentrates and their unrefined metallic products. 09 Crude non-metallic minerals, except coal and petroleum.		

PART 2—BASIC MATERIAL AND PRODUCTS

11 Leather. 12 Boot and shoe cut stock and shoe findings.		
13 Wood basic materials, except pulpwood (except as indicated).	13-92 Rattan, willow and bamboo stock. 13-97 Handles.	
14-1 Pulpwood. 14-2 Paperbase stocks except pulp. 14-3 Woodpulp. 14-4 Other pulp. 14-6 Building paper. 14-8 Building board.	14 Pulp, paper and paper board (except as indicated). 14-21 Waste paper (located in Washington, D. C.).	
15-2 Jute basic textiles. 15-69 Curled hair (similar to 03-7). 15-71 Silk semimanufactures. 15-72 Silk yarn. 15-81 Rayon, nylon, etc., semimanufactures. 15-82 Rayon nylon, etc., yarn. 15-912 Jute cordage except sizes less than one-quarter inch cross-sectional diameter. 15-913 Soft fiber cordage except sizes less than one-quarter inch cross-sectional diameter. 15-914 Hard fiber cordage and twine (all).	15 Textile basic manufactures (except as indicated).	
16-52 Industrial molasses.		16 Food and beverage basic materials (except as indicated).
17-6 Floral absolutes, concretes and mixtures of essential and floral oils. 17-7 Waxes, animal and vegetable.	17-5 Essential oils (packaged for veterinary or medicinal use only).	17 Oils, fats, waxes and derivatives, animal and vegetable (except as indicated).
18 Petroleum and coal products except raw materials for chemical industries.		

PART 3—END PRODUCTS

19 Chemicals.		19-271 Resins. 19-272 Turpentine. 19-274 Pine oil. 19-275 Pine pitch. 19-276 Pine tar.
21 Iron, and iron and steel scrap (except as indicated). 22 Steel (except as indicated);	21-632 Cast iron soil pipe. 21-6412 Soil pipe fittings. 22-52 Barbed and twisted wire.	

PART 3—END PRODUCTS—Continued

R. F. C.	Department of Commerce	Maritime Commission
23 Ferro and nonferrous additive alloys.		
24 Nonferrous metals (except as indicated).	24-82 Gold and gold-base alloy basic shapes and forms.	
25 Fabricated metal basic products (except as indicated).	25-42 Truck tanks. 25-51 Builders' basic hardware 25-51 Motor vehicle hardware. 25-56 Casket hardware. 25-57 Furniture hardware. 25-58 Trunk and luggage hardware. 25-59 Miscellaneous 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 and 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 and spikes. 25-99 Miscellaneous fabricated products.	25-31 Power boilers marine. 25-53 Marine basic hardware (rigging hardware and chain attachments).
26 Nonmetallic mineral basic products—chiefly structural (except as indicated).	26-3 Glass basic products.	
27 Nonmetallic mineral basic products—chiefly non-structural (except as indicated).	27-1 Glass basic products (except 3 items): 27-1431 Railroad signal lenses. 27-152 Radio tubes (glass only). 27-16 Insulators. 27-32 Asbestos and asbestos metallic packing and gaskets. 27-33 Asbestos woven or moulded friction material. 27-376 Asbestos paper pipe covering insulation. 27-381 Pipe covering insulation. 27-92 Pottery. 27-93 Pottery supplies. 27-94 Ceramic products.	
29 Miscellaneous basic materials (except as indicated).	29-1 Rubber fabricated materials (except item 29-12 reclaimed rubber). 29-2 Plastic fabricated materials to be used as components of end products (except items 29-22 plastic electrical fittings; 29-23 plastic construction and maintenance products, less 29-2306 door and window screening; and 29-24 plastic glass). 29-8 Imitation gem and ornamental stones. 29-91 Button blanks, moulds, and other parts. 29-92 Beads, bugles, and spangles. 29-95 Catgut and wormgut.	
31 General purpose industrial machinery and equipment (except as indicated).	31-211142 Compressors, air, portable, skid or wheel mounted, two-stage, powered by gasoline or diesel motors, capacities 50 to 500 cubic feet. 31-222—31-225 Pumps, portable, centrifugal, plunger diaphragm or sump, powered by gasoline, diesel or electric motors ordinarily used for contractors' purposes or by contractors. 31-226 Hand pumps. 31-31 Crushers jaw, roll and crushing plants portable type (except 31 3150—stamp mills and 31 3160—pick-type breakers). 31-36 Screening plants, portable type. Screens rotary, vibrator and gravity type. 31-493—31-4931 Conveyors, construction material, portable type; and portable plants. 31-570 Derricks. 31-582 Winches (except fixed shipboard exclusive marine winches). 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.	31-582 Fixed shipboard or exclusive marine winches. 31-583 Anchor—windlasses. 31-584 Capstans.

PART 3—END PRODUCTS—Continued

R. F. C.	Department of Commerce	Maritime Commission
32 Electrical machinery and apparatus (except as indicated).	32-412 Battery charging generators (except aircraft) 32-432 Starter motors except aircraft. 32-45 Motor ignition equipment (except aircraft) 32-51 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 Special industry machinery	33-122 Peeling and paring machines. 33-124 Pitters, seeders and steamers. 33-127 Juice extractors. 33-1313 Milk extractors. 33-1322 Butter cutters. 33-133 Ice cream manufacturing machinery and equipment. 33-193 Food products machinery of general purpose. 33-54 Tire repairing machinery and equipment. 33-733 Bakery ovens. 33-995 Automobile service station equipment	
34 Metal working machinery.	35 Agricultural machinery and implements.	
36-31 Oil well machinery	36 Construction, mining, excavating and related machinery (except as indicated). 37 Tractors.	
39 Miscellaneous machinery.	38 Office machines. 39-11 Home type laundry equipment. 39-20 Home sewing machines. 39-3 Dishwashing machinery. 39-43 Calculating and computing scales. 39-44 Coin operated scales. 39-45 Spring scales, household. 39-50 Cash registers. 39-60 Coin operated machines. 39-91 Lawnmowers.	
41 Communications equipment and electronic devices (except as indicated).	41-1 Radio broadcast receivers.	
42 Aircraft (except as indicated).	42-8 Flight equipment for personnel.	43 Ships, small water craft and marine propulsion machinery (except items 43-21 battleships, 43-22 cruisers, 43-23 aircraft carriers, 43-24 destroyers and 43-25 submarines).
44 Railroad transportation equipment.	45 Motor vehicles. 49 Miscellaneous transportation equipment.	
52-32 Industrial refrigeration units. 52-12 Central station air conditioning systems.	51 Plumbing and heating equipment. 52 Air conditioning and refrigeration equipment (except as indicated).	
53-32 Railroad signal fixtures. 53-7 Airport, airway and seadrome lighting. 53-81 Train lighting fixtures. 53-86 Aircraft lighting fixtures.	53 Lighting fixtures (except as indicated).	53-2 Marine fixtures.
	54 Furniture and fixtures.	
55-12 Aerial cameras. 55-13 Gun cameras. 55-15 Camera parts (aerial only). 55-313 Aerial camera lenses. 55-8 Motion pictures (instructional aids for equipment assigned to RFC).	55 Photographic goods and processed motion pictures (except as indicated).	
	56 Optical instruments and apparatus.	

PART 3—END PRODUCTS—Continued

R. F. C.	Department of Commerce	Maritime Commission
47 Indicating, recording and controlling instruments, watches and clocks (except as indicated).	57-112 Glass stemmed laboratory thermometers. 57-113 Glass stemmed clinical thermometers. 57-114 Household and commercial thermometers. 57-119 Thermometers not elsewhere classified. 57-14 Heating and ventilating controls and accessories. 57-33 Barometers (domestic household types). 57-34 Refrigeration controls. 57-50 Taximeters and parking meters. 57-65 Compasses and accessories (except fixed shipboard types and aircraft types). 58 Professional and scientific instruments and apparatus.	57-65 Compasses and accessories (fixed shipboard types). 57-69 Azimuths centants and octants. 57-691 Taff Rail Logs. 59-10 Water safety equipment.
59-15 Hazard measuring devices. 59-18 Machine guards. 59-20 Water purification equipment except 59-241, hose water softeners. 59-3 Sewage disposal equipment. 59-55 Sprinkler system components. 59-77 Railroad signal controls. 59-78 Industrial process supervisory systems.	59 Miscellaneous equipment (except as indicated).	
		War Food Administration
		61 Feed, manufactured. 62 Feed, manufactured. 63 Beverages and ice. 64 Tobacco manufactures.
	65 Drugs and medicines (except as indicated).	65-681 Marine liver oil, derivatives, and preparations, except marine liver oil concentrates in solution, n.e. 65-64 Vitamins, vitamin-active compounds and preparations containing one and more than one vitamin, n.e.
	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.	
73-13 Books and pamphlets (instructional aids for equipment assigned to RFC).	73 Products of printing and publishing industries (except as indicated). 74 Rubber end products.	*Maritime Commission*
75-7481 High pressure cylinders.	75 End products of metal industries (except as indicated).	75-613 Cargo nets, wire rope. 75-624 Wire rope slings.
76-51 Lasts for boots and shoes. 76-52 Last sole patterns.	76 Finished wood products, except furniture and rail work (except as indicated). 77 End products of glass, clay and stone. 79 Miscellaneous end products of manufacturing industries (except as indicated). 81 Small arms and components. 83 Small arms ammunition and specifically adapted components.	76-63 Rafts, floats, kelts and buoys. 79-574 Life preservers. 79-575 Buoys

82 Artillery, Naval Guns, Mortars and Components.
84 Artillery, Naval, and Mortar Ammunition and specifically Adapted Components.
85 Aerial Bombs and specifically Adapted Components.
86 Miscellaneous Ammunition and Related Products.
87 Common Components of Ammunition.
88 Fire Control Equipment.

Such components and accessories within these groups as have civilian utility are assigned to the appropriate disposal agencies handling the classes of property within which such components and accessories fall.

The assignments made to each disposal agency in the manner detailed above, through the use of the Standard Commodity Classification code numbers, are intended to be in aid of and supplementary to the assignment of the general classes of property made in § 8301.3 of Regulation No. 1 of the Surplus Property Board. If, therefore, items fall within a general class of property assigned by Regulation No. 1 but the items are not listed in the Standard Commodity Classification, they are assigned to the disposal agency to which the general class of property is assigned. Similarly, where Order No. 1 assigns an item of property to one disposal agency (for example, winches) and the Standard Commodity Classification does not disclose that certain types of that same item are within the general class of property assigned to another disposal agency (for example, marine winches) such types shall be disposed of by the latter disposal agency.

§ 829.905 *Surplus Property Board report forms.*[1]

§ 829.907 *Reconstruction Finance Corporation; offices of disposing loan agencies and regions covered.*

ATLANTA REGION

Healey Building, Atlanta 3, Georgia.
Georgia, Alabama, Tennessee, Florida.

BOSTON REGION

10 Post Office Square, Boston 9, Massachusetts.

[1] Filed with the Division of the Federal Register.

Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut—(except Fairfield County).

CHARLOTTE REGION

Wilson Building, 109 West 3rd Street, Charlotte 1, N. C.
North Carolina, South Carolina.

CHICAGO REGION

203 South LaSalle Street, Chicago 4, Illinois.
Illinois—except 44 Southern counties in St. Louis Region, Indiana—except 24 Southern counties in St. Louis Region, Wisconsin—except 23 Northern counties in Minneapolis Region, Iowa.

CLEVELAND REGION

Federal Reserve Bank Bldg., Cleveland 1, Ohio.
Ohio; Kentucky—56 Eastern counties: Bath, Bell, Boone, Bourbon, Boyd, Bracken, Breathitt, Campbell, Carter, Clark, Clay, Elliott, Estill, Fayette, Fleming, Floyd, Garrard, Grant, Greenup, Harlan, Harrison, Jackson, Jessamine, Johnson, Kenton, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, McCreary, Madison, Magoffin, Martin, Mason, Menefee, Montgomery, Morgan, Nicholas, Owsley, Pendleton, Perry, Powell, Pulaski, Pike, Robertson, Rockcastle, Rowan, Scott, Whitley, Wolfe, Woodford; Pennsylvania—10 Western Counties: Allegheny, Armstrong, Beaver, Butler, Clarion, Crawford, Erie, Fayette, Forest, Greene, Indiana, Jefferson, Lawrence, Mercer, Somerset, Venango, Warren, Washington, Westmoreland; West Virginia—6 Northwestern counties: Brooke, Hancock, Marshall, Ohio, Tyler, Wetzel.

DALLAS REGION

Cotton Exchange Bldg., Dallas 1, Texas.
Texas—except 95 counties in San Antonio and Houston Regions; Oklahoma—8 Southeastern counties: Atoka, Bryan, Choctaw, Coal, Johnston, McCurtain, Marshall, Pushmataha; New Mexico—except 13 counties in Denver Region; Arizona—5 Southeastern counties: Cochise, Graham, Greenlee, Pima, Santa Cruz.

DENVER REGION

Boston Building, Denver 2, Colorado.
Colorado; New Mexico—13 Northern counties: Bernalillo, Colfax, Harding, McKinley, Mora, Rio Arriba, Sandoval, San Juan, San Miguel, Santa Fe, Taos, Union, Valencia.

DETROIT REGION

697 Shelby Street, Detroit 26, Michigan.
Michigan—except Upper Peninsula listed under Minneapolis Region.

HOUSTON REGION

Rusk Building, 723 Main St., Houston 2, Texas.
Texas—43 Southeastern counties: 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.

KANSAS CITY REGION

Federal Reserve Bank Bldg., Kansas City 6, Missouri.
Kansas; Missouri—19 Western counties: Andrew, Atchison, Barton, Bates, Buchanan, Cass, Clay, Clinton, De Kalb, Gentry, Holt, Jackson, Jasper, McDonald, Newton, Nodaway, Platte, Vernon, Worth; Oklahoma—except 8 Southeastern counties listed in Dallas Region.

LOS ANGELES REGION

Pacific Mutual Building, Los Angeles 14, Calif.

California—9 Southern counties: Imperial, Inyo, Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, Ventura; Arizona—except 5 Southeastern counties in Dallas Region.

MINNEAPOLIS REGION

McKnight Building, Minneapolis 1, Minn.

Minnesota; North Dakota; South Dakota; Michigan—Upper Peninsula, counties of: Alger, Baraga, Chippewa, Delta, Dickinson, Gogebic, Houghton, Iron, Keweenaw, Luce, Mackinac, Marquette, Menominee, Ontonagon, Schoolcraft; Wisconsin—26 Northern counties: Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Douglas, Dunn, Eau Clare, Florence, Forest, Iron, La Crosse, Lincoln, Oneida, Pepin, Pierce, Polk, Price, Rusk, St. Croix, Sawyer, Taylor, Trempealeau, Vilas, Washburn.

NEW ORLEANS REGION

Richards Bldg., 837 Gravier St., New Orleans 12, La.

Louisiana, Mississippi.

NEW YORK REGION

70 Pine Street, New York 5, New York.

New York, Connecticut—Fairfield County, New Jersey—except 9 Southern counties in Philadelphia Region.

OMAHA REGION

Woodman of the World Bldg., Omaha 2, Nebraska.

Nebraska, Wyoming.

PHILADELPHIA REGION

1528 Walnut Street, Philadelphia 2, Pa.

Delaware; Pennsylvania—except 19 Western counties in Cleveland Region; New Jersey—9 Southern counties: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Ocean, Salem.

PORTLAND REGION

Pittock Block, Portland 5, Oregon.

Oregon—except Klamath and Lake counties; Montana; Washington—except 16 Western counties in Seattle Region; Idaho—10 Northern counties: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latch, Lewis, Nez Perce, Shoshone.

RICHMOND REGION

Richmond Trust Bldg., 7th and Main Streets, Richmond 19, Va.

Maryland, Virginia, District of Columbia, West Virginia—except 6 Northwestern counties in Cleveland Region.

ST. LOUIS REGION

Victoria Bldg., 407 North 8th Street, St. Louis 2, Mo.

Missouri—except 19 Western counties in Kansas City Region; Illinois—44 Southern counties: Adams, Alexander, Bond, Brown, Calhoun, Clay, Clinton, Crawford, Edwards, Effingham, Fayette, Franklin, Gallatin, Green, Hamilton, Hardin, Jackson, Jasper, Jefferson, Jersey, Johnson, Lawrence, Macoupin, Madison, Marion, Massac, Monroe, Montgomery, Morgan, Perry, Pike, Pope, Pulaski, Randolph, Richmond, St. Clair, Saline, Scott, Union, Wabash, Washington, Wayne, White, Williamson; Indiana—24 Southern counties: Daviess, Dubois, Gibson, Clark, Crawford, Floyd, Greene, Knox, Martin, Pike, Posey, Spencer, Harrison, Jackson, Perry, Sullivan, Vanderburg, Warrick, Jefferson, Lawrence, Orange, Scott, Washington, Switzerland; Arkansas; Kentucky—except 56 Eastern counties in Cleveland Region.

SALT LAKE CITY REGION

Dooly Bldg., Salt Lake City 1, Utah.

Utah; Idaho—except 10 Northern counties in Portland Region; Nevada—4 Eastern counties: Clark, Elko, Lincoln, White Pine.

SAN ANTONIO REGION

Alamo National Bldg., San Antonio 5, Texas.

Texas—52 Southern counties: Aransas, Atascosa, Bandera, Bee, Bexar, Blanco, Brewster, Brooks, Caldwell, Cameron, Comal, De Witt, Dimmit, Duval, Edwards, Frio, Gillespie, Goliad, Gonzales, Guadalupe, Hays, Hidalgo, Jim Hogg, Jim Wells, Karnes, Kendall, 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.

SAN FRANCISCO REGION

200 Bush Street, San Francisco 4, Calif.

California—except 9 Southern counties in Los Angeles Region; Nevada—except 4 Eastern counties in Salt Lake City Region; Oregon—2 counties (Klamath and Lake).

SEATTLE REGION

Dexter-Horton Bldg., Seattle 1, Washington.

Washington—16 Western counties: Clallam, Grays Harbor, Island, Jefferson, King, Kitsap, Kittitas, Lewis, Mason, Pacific, Pierce, San Juan, Skagit, Snohomish, Thurston, Whatcom.

§ 829.908 *Regional Offices of Department of Commerce.*

Region I: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont: Office of Surplus Property, Department of Commerce, Park Square Building, Boston 16, Mass.

Region II: New Jersey and New York: Office of Surplus Property, Department of Commerce, 350 Fifth Avenue—62d Floor, New York 1, N. Y.

Region III: District of Columbia, Delaware, Maryland, Pennsylvania and Virginia: Office of Surplus Property, Department of Commerce, 499 Pennsylvania Avenue NW, Washington 25, D. C.

Region IV: Indiana, Kentucky, Ohio, and West Virginia: Office of Surplus Property, Department of Commerce, 704 Race Street, Cincinnati 2, Ohio.

Region V: Illinois, Michigan, Minnesota, North Dakota, South Dakota, and Wisconsin: Office of Surplus Property, Department of Commerce, 209 South LaSalle Street, Chicago 4, Ill.

Region VI: Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, and Tennessee: Office of Surplus Property, Department of Commerce, Belle Isle Building, 105 Pryor Street NE, Atlanta 3, Ga.

Region VII: Arkansas, Louisiana, Oklahoma and Texas: Office of Surplus Property, Department of Commerce, 609 Neil P. Anderson Building, Fort Worth 2, Tex.

Region VIII: Iowa, Kansas, Missouri, and partment of Commerce, 2005 Fifth Avenue, Nebraska: Office of Surplus Property, Department of Commerce, 2605 Walnut Street, Kansas City 8, Mo.

Region IX: Colorado, New Mexico, Utah, and Wyoming: Office of Surplus Property, Department of Commerce, 1030 15th Street, 7th Floor, Denver 2, Colo.

Region X: Arizona, California, and Nevada: Office of Surplus Property, Department of Commerce, 30 Van Ness Ave., San Francisco 2, Calif.

Region XI: Idaho, Oregon, Montana, and Washington: Office of Surplus Property, Dea Seattle 1, Wash.

§ 829.909 *Stockpile materials.*

Material, Minimum Quantity and Specific Types and Grades

Agar; 250 pounds; Medical Department supply catalog, item numbers 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% 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 & G/1, C & G/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% 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" di.

Chromite:

- Chemical grade; 25 long tons; commercial ore or concentrates. Dry chromium chemicals.
- Metallurgical grade; 25 long tons; ore (42% 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% 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 numbers 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% minimum; 5 short tons; any amorphous lump (97% 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% 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; commercial grade, larger than 1 square inch.
Muscovite splittings; no minimum; commercial grades, unbonded.
Phlogopite (amber) splittings; no minimum; commercial grades, unbonded.
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 numbers 13900, 13910, 13900-12, 13900-03, 13900-05, A-717000, A-716500, A-716600. Quinine sulfate or hydrochloride in bulk.
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.
Talc—Continued.
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% minimum WO_3). commercial ferrotungsten, tungsten powder.
Vanadium; 10,000 pounds vanadium content; vanadium oxide (70% 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.

§ 829.909-1 *W.D., A.G.O. Form 257.*

STOCKPILE MATERIALS—REQUEST FOR DISPOSITION INSTRUCTIONS

(See instructions on reverse side. See also §§ 822.210, 822.213, 822.403)

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. Subgroup.	6. Quantity.	7. Analysis. State whether an actual analysis or guaranteed max. or min.
8. Type or grade.	9. Physical form and size.		Element / Percent Weight
10. Source of analysis shown in 7.	11. Specification purchased under.		
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.		

FIRST INDORSEMENT

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.			

SECOND INDORSEMENT

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 § 822.210-2 (a) will be taken. This form will be returned with 3rd indorsement completed.	
	Subject lot of material is not desired for stockpile. Action required by § 822.210-2 (c) 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.	

THIRD INDORSEMENT

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.		

W.D. A.G.O. Form 257
13 June 1944.

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 § 829.909.

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 § 829.909, 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 a generic term, show here the commercial name of the actual subject mate-

rial. i. e. where 4 is "vanadium," 8 might be "fused black vanadium oxide" or "ferrovanadium".

10—Quote the source or 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.

§ 829.910 *Monthly report of redistribution and disposal of excess and surplus serviceable property.*

Tech. service or service command / Procurement office or installation	REDISTRIBUTION AND DISPOSAL OF SERVICEABLE PROPERTY EXCESS AND SURPLUS	Control approval symbol RCS-5 / Month

Line No.	STATUS AND TYPE OF ACTION		Cost
	Section I.—Available excess and surplus:		
1	Available for redistribution and disposal first of month		
2	Made available during month		
	a. Military property		
	b. Contract termination property		
	c. Other nonmilitary property		
3	Withdrawn from available excess and surplus		
	a. Redistributed within reporting agency		
	b. Transfers to war reserve and stockpile		
	c. Transfers to salvage		
4	Adjustments		
5	Balance before disposal (Line 1+2—3, + or —4)		

	Section II.—Disposals and redistributions:	Cost	Selling price
6	Transferred to other War Department components		
7	Transferred to Navy Department		
8	Transferred to other Federal agencies		
9	Sold to Red Cross and U. S. O.		
10	Sold to contractors		
11	Sold or retained by CPFF contractors		
12	Other disposals		
13	Total War Department disposal and redistribution (Lines 6 through 12).		
14	Transfers to or on order of disposal agencies (Line 22, Col. d)		
15	Total redistribution and disposal (Line 13+14)		
16	Available for redistribution and disposal end of month (Line 5—15)		

	Section III.—Disposal agencies summary—Cost of property:					
	Disposal Agency	On hand first of month (a)	Reported month (b)	Withdrawn month (c)	Disposals month (d)	On hand end of month (e)
17	Treasury Dept.					
18	R. F. C.					
19	R. F. C. (Aircraft)					
20	Maritime Comm.					
21	War Food Admin.					
22	Total					

	Section IV.—Contractor-owned termination inventory:	Cost	Disposal credits
23	Inventory on hand first of month		
24	Inventories reported during month		
25	Serviceable property retained or sold by contractor		
26	Property sold or retained by contractor as scrap		
27	Title taken by Government		
28	Inventory on hand end of month		

Remarks:

WD AGO Form 256
1 December 1944
This form supersedes WD AGO Form 256, 1 June 1944, which will not be used after receipt of this revision.

§ 829.910–1 *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 (II–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 16 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; and (c) Other non-military property. Such subdivisions will be made in accordance with the following definitions:

(a) Military property to be reported will consist of all excess and surplus property except salvage, including all items in excess of the disposal level, and all other items processed as excess and surplus. In Army Service Forces, the chiefs of technical services are responsible for complete reporting of all technical service excess and surplus military property regardless of the echelon where physically stored, except for such property as to which authority to redistribute and declare surplus has been delegated to the commanding generals of service commands (ASF Circular No. 407, 1944).

(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.

(c) Other non-military 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 in accordance with Supply Control procedures.

(c) The cost of excess or surplus property previously included on Lines 1 or 2 which was abandoned or transferred to salvage officers for disposal. This will include residual costs of assemblies from which parts have been sold or used, costs of nominal quantities turned over to salvage officers for disposal in accordance with § 827.701, and property abandoned in accordance with § 844.453–3.

(I–4) Enter any adjustments 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. Credit figures will be prefixed by a minus (—) sign.

(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 prior to disposals and redistributions during the month.

(II–6) Enter the cost of excess property transferred to other War Department components. (§ 823.308)

(II–7) Enter the cost of excess property transferred to the Navy Department. (§ 823.309)

(II–8) Enter the cost of excess property transferred to other Federal agencies. (§§ 823.307, 823.310)

(II–9) Enter the cost of excess property sold to Red Cross and USO and the selling price received. (§ 823.302)

(II–10) Enter the cost of excess property sold to contractors and the selling price received, including sales made under the provisions of §§ 823.301, 823.317 and 824.403 and sales of Government-owned termination inventory and other Government-owned property in the hands of fixed price war contractors which are handled in accordance with § 844.400–2.

(II–11) Enter the cost of excess property sold or retained by cost-plus-a-fixed-fee contractors and the selling price received, including sales made under the provisions of §§ 823.306 and 824.403, and sales to cost-plus-a-fixed-fee contractors of Government-owned termination inventory and other Government-owned property in the hands of cost-plus-a-fixed-fee war contractors which are handled in accordance with § 844.400–2.

(II–12) Enter the cost of excess property disposed of by any other method. Explain the nature of such transactions in the space provided for remarks or on an attached sheet. If sales of property are involved, show cost and selling price for each type of transaction.

(II–13) Enter the total of Lines 6 through 12.

(II–14) Enter the cost of surplus property disposed of by disposal agencies during the month as shown on Line 22, Column (d).

(II–15) Enter the total of Lines 13 and 14.

(II–16) Enter the balance available for disposal at the end of the month (Line 5 minus Line 15).

(III–17 through 22). *Disposal agencies summary.*

(a) Enter in Column (a) the cost of surplus property reported to disposal agencies in previous months but not shipped to them or on their order at the first of the reporting month. This figure must agree with the corresponding entry in Column (e) of the preceding month's report.

(b) Enter in Column (b) the cost of surplus property reported to disposal agencies during the month on declaration Form SPB–1. A copy of each declaration where the total cost of the property included in the declaration exceeds $25,000 will be attached to the report.

(c) Enter in Column (c) the cost of approved withdrawals from disposal agencies during the month, when withdrawal takes place prior to shipment to or on order of the disposal agencies, and of adjustments of prior declarations. A copy of each Form SPB–1.1 (Adjustment of Prior Declaration of Surplus Personal Property) where the cost of the adjustment or withdrawal is $25,000 or more will be attached to the report.

(d) Enter in Column (d) the cost of surplus property transferred to or on the order of disposal agencies during the month.

(e) Enter in Column (e) the cost of surplus property declared to disposal agencies but not transferred to them or on their order at the end of the month. Column (e) represents the cost of all property reported to disposal agencies for which shipping instructions have not yet been received and must equal Columns (a) plus (b) minus (c) minus (d). Failure to effect this balance, due to errors on previous reports, will be adjusted in Column (c) and explained in the space provided for remarks or on an attached sheet.

(f) If accountability is transferred to another service after it has been included in Column (b), such transfers will be treated as a withdrawal in Column (c) in the month in which the transfer is made. The service picking up accountability will also record the addition in Column (b). The amounts of such transfers-out and transfers-in will be noted in the space provided for remarks by both the transferring and receiving service.

(g) Corrections due to reporting to incorrect disposal agencies, including termination inventory reported to Reconstruction Finance Corporation which is transferred to Treasury Department, will be reflected in Column (b) for the correct agency and in Column (c) for the incorrect agency in the month in which the correction is made.

(IV–23) Enter the cost of contractor-owned termination property reported on inventory listings (submitted in connection with contract termination) which have not been disposed of at the first of the month. (This figure must agree with the corresponding entry in IV–28 of the preceding month's report.)

(IV–24) Enter the cost of contractor-owned property reported on inventory listings in connection with contract terminations during the month.

(IV–25) 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.

(IV–26) 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.

(IV–27) Enter the cost of contractor-owned property resulting from contract termination, title to which was taken by the Government during the month.

(IV–28) Enter balance of contractor-owned property yet to be disposed of (Line 23, plus Line 24, minus Line 25, minus Line 26, minus Line 27).

Subchapter C—Termination of Contracts

[Procurement Reg. 15]

PART 841—GENERAL PROVISIONS

SUBPART A—INTRODUCTORY MATERIAL

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841.111 Applicability of subchapter.
841.112 Authority for subchapter.
841.113 Arrangement of subchapter.
841.114 Relation of subchapter to Joint Termination Accounting Manual.
841.115 Amendments of subchapter.
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841.117 Regulations of the Office of Contract Settlement and other Government agencies.

SUBPART B—DEFINITIONS OF TERMS

841.121 Definitions.
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SUBPART C—BASIC POLICIES

841.130 Scope.
841.131 Objectives of the act.
841.132 Prompt cessation of work.
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SUBPART D—ADMINISTRATION OF TERMINATIONS

Sec.
841.140 Scope.
841.141 Office of Contract Settlement.
841.142 Departmental responsibility for termination policy.
841.143 Delegation of authority.
841.144 Authority to supplement and deviate from this subchapter.
841.145 Termination personnel.
841.146 Freedom of Government officers and employees from personal liability.
841.147 Assistance to contractors.
841.148 Supervision of administration.
841.149 Existing contracts not impaired.

SUBPART A—INTRODUCTORY MATERIAL

§ 841.111 *Applicability of subchapter.* [JTR 111]

§ 841.111–1 *General.* The War and Navy Departments have jointly adopted the regulations in this subchapter to establish uniform policies and procedures for administering the termination of war contracts, termination settlements, interim financing and related matters. [JTR 111.1]

§ 841.111–2 *Services and bureaus covered.* The regulations in this subchapter are applicable to the following:

The Army Service Forces including the technical services and the service commands;
The Army Air Forces;
All Bureaus, Boards and Offices of the Navy Department, including Navy field purchasing activities;
The United States Marine Corps.
The United States Coast Guard.

[JTR 111.2]

§ 841.111–3 *Application outside the United States.* (a) All war contracts of the War or Navy Departments made or to be performed outside the continental limits of the United States or in Alaska are exempted from the provisions of the Contract Settlement Act of 1944, except to the extent that some or all of the provisions of the act are made applicable to any such contract or class of contracts (1) by any commanding officer pursuant to War Department Circular No. 330, (2) by the chief of any bureau of the Navy Department, or (3) by this subchapter.

(b) In terminating and settling war contracts made or to be performed outside the continental limits of the United States or in Alaska, any commanding officer or the chief of any service or bureau is not required to conform to the provisions of this subchapter (unless this subchapter has been made expressly applicable under paragraph (a) above), but may do so to such extent as he deems appropriate. [JTR 111.3]

§ 841.111–4 *Terminations covered.* (a) This subchapter applies to terminated war contracts, including subcontracts terminated by a war contractor either as a result of termination or modification of a prime contract, or under any other circumstances which may require the Government to bear the cost of settling the terminated subcontract.

(b) This subchapter does not apply to the termination or cancelation of a war contract for default of the contractor. Where any war contract is terminated for default, subcontracts thereunder terminated other than for default of the

subcontractor are within the provisions of the act and of this subchapter for the benefit of subcontractors.

(c) The application of this subchapter to quantity changes made under so-called "changes" articles or similar contract provisions or by agreement is stated in § 842.216. [JTR 111.4]

§ 841.111–5 *Action on defective, informal, and quasi contracts not covered.* This subchapter does not cover any action under section 17 of the Contract Settlement Act of 1944, relating to defective, informal and quasi contracts. War Department regulations on this subject are found at § 803.308h of this chapter and Navy Department regulations are found at paragraph 11,111 and following of Navy Procurement Directives. [JTR 111.5]

§ 841.112 *Authority for subchapter.* The authority of the War and Navy Departments to terminate prime contracts for the convenience or at the option of the Government is based upon their general authority to make contracts and to amend them in the interests of the Government, and upon their authority under Public Law 703, 76th Congress, as extended, and the First War Powers Act of 1941. The Contract Settlement Act of 1944 confers on the Departments express authority to settle termination claims by agreement, by arbitration, and by determination without agreement, in accordance with the provisions of that act, and authorizes the making and amending of contracts to carry out the provisions of the act. The act authorizes the Director of Contract Settlement and the Departments to make regulations thereunder. This subchapter is based upon the authority under these laws and the regulations of the Director. [JTR 112]

§ 841.113 *Arrangement of subchapter.* [JTR 113]

§ 841.113–1 *General plan.* (a) Terminations for the convenience of the Government under any type of contract involve the same general problems. Parts 841 to 847, inclusive, of this subchapter prescribe procedures generally applicable to such terminations. These procedures apply to terminations of all fixed-price contracts, cost-plus-a-fixed-fee contracts, letter orders and other preliminary contractual instruments, with the exceptions stated in these parts and in Part 848. Terminations of construction contracts require certain variations from the standard procedures and special provisions with respect to them are prescribed in Part 848.

(b) To clarify the presentation and to facilitate reference, each part has been divided into several subparts dealing with related topics. Each of the following parts and most of the subparts are preceded by a short section stating the scope of the part or subpart in order to indicate the general arrangement of the subchapter. [JTR 113.1]

§ 841.113–2 *Content of parts.* The arrangement of the parts is as follows:

(a) This part covers preliminary matters relating to this subchapter, definitions of terms, basic policies, and the administration of terminations.

(b) Part 842 prescribes the procedures for planning termination and for stopping work under terminated prime contracts.

(c) Part 843 deals with interim financing for a war contractor pending settlement of his termination claim.

(d) Part 844 discusses the disposition of termination inventories of war contractors in connection with settlements.

(e) Part 845 contains basic policies and procedures common to settlement of both prime contracts and subcontracts.

(f) Part 846 covers the procedures peculiar to settlements with subcontractors both by the prime contractor or intermediate subcontractor and directly by the Government.

(g) Part 847 covers the procedures peculiar to settlements with prime contractors.

(h) Part 848 contains special procedures of limited application for particular types of war contracts and for particular war contractors.

(i) Part 849 contains forms and instructions, relating to termination, for use in accordance with this subchapter. [JTR 113.2]

§ 841.113–3 *Numbering of original document.* The numbering of individual paragraphs is not consecutive and is designed to permit additional paragraphs to be inserted later within the appropriate section and part. The number of a particular paragraph shows the section and part where it is found and also whether it is subordinate to a preceding paragraph. The first digit of the number indicates the section and the second digit the part in which the paragraph is found. Where the number of a paragraph ends with a digit preceded by a decimal point (as 113.3), this indicates that it is part of the general subject covered by the basic paragraph (as 113). [JTR 113.3]

NOTE: In order to conform the Joint Termination Regulation to the numbering system used in the Code of Federal Regulations, the following changes have been made: Sections in the original regulation have been treated as code parts, parts as code subparts, and paragraphs as code sections. Thus Section I becomes Part 841, Section II becomes Part 842, part 1 of any section becomes Subpart A, part 2 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 where paragraph numbers also contain a decimal point the point is changed to a dash. The original paragraph numbers appear in brackets following text affected.

§ 841.113–4 *Cross references.* Unless specifically stated otherwise, cross references in this subchapter specify sections, subparts or parts of this subchapter. [JTR 113.4]

§ 841.114 *Relation of subchapter to Joint Termination Accounting Manual.*[1] [JTR 114]

§ 841.114–1 *Application of Manual.* The Office of the Fiscal Director, Headquarters, Army Service Forces, and the Cost Inspection Service, Bureau of Supplies and Accounts, Navy Department, have prepared a Joint Termination Accounting Manual for Fixed-Price Supply Contracts. This Manual is prescribed for use by accounting personnel of all agencies of the War and Navy Departments in making accounting reviews or examinations in connection with settlements of terminated fixed-price supply contracts or subcontracts, including fixed-price supply subcontracts under cost-plus-a-fixed-fee prime contracts. It is also suitable for use by war contractors in the accounting examination of their subcontractors' settlement proposals. [JTR 114.1]

§ 841.114–2 *Manual inapplicable to portions of contract already on a cost basis.* Some fixed-price supply contracts provide that certain facilities shall be furnished on a cost basis. The Joint Termination Accounting Manual is not applicable to such portions of any contract. The audit procedures for such costs are stated for the War Department in Manual, "TM 14–1000, Administrative Audit Procedures for Cost-Plus-A-Fixed-Fee Supply Contracts", and for the Navy Department in the "Revised Cost Inspection Manual". [JTR 114.2]

§ 841.114–3 *Manual not directed to contracting officers.* The Joint Termination Accounting Manual is not directed to contracting officers although they should be familiar with it. The reports and procedures prescribed by the Manual will not limit or affect the authority of the contracting officer to negotiate termination settlements. [JTR 114.3]

§ 841.115 *Amendments of subchapter.* (a) This subchapter will be amended from time to time by the War and Navy Departments jointly. Recommendations for amendments should be submitted through channels (1) in the War Department, to the Readjustment Division, ASF, or (2) in the Navy Department, to the Industrial Readjustment Branch, OP&M.

(b) Unless otherwise specifically provided, compliance with any amendment of this subchapter shall not be mandatory until 30 days after the date of issuance of such amendment, but compliance therewith is authorized from the date of issuance. [JTR 115]

§ 841.116 *Public distribution of publications on contract termination.* War contractors may obtain without cost copies of this regulation and amendments, and also certain other publications on contract terminations, issued by the War Department, Navy Department, or the Office of Contract Settlement, by a written request to the Readjustment Distribution Center (formerly the Joint Army-Navy Termination Regulation Distribution Office), Federal Office Building, 6th Floor, 90 Church Street, New York 7, New York. [JTR 116]

SUBPART B—DEFINITIONS OF TERMS

§ 841.121 *Definitions.* As used in this subchapter, the following terms shall have the following meanings. [JTR 121]

§ 841.121–1 *The act.* The term "the act" means the Contract Settlement Act of 1944 (Public Law 395, 78th Congress, approved July 1, 1944). [JTR 121.1]

[1] Filed with the Division of the Federal Register.

§ 841.121–2 *Chief of service or bureau.* The term "chief of service or bureau" includes (a) the chief of any technical service of the Army Service Forces, the Commanding General, Army Air Forces, and the Commanding General of any service command; (b) the chief of any bureau, board or office of the Navy Department, the Commandant, U. S. Marine Corps, and the Commandant, U. S. Coast Guard; and (c) except as otherwise expressly provided, any duly authorized representative of any of the foregoing. [JTR 121.2]

§ 841.121–3 *Common item.* The term "common item" means any material which is normally usable both in connection with a terminated war contract and in connection with other work of the war contractor. [JTR 121.3]

§ 841.121–4 *Continued portion of contract.* The term "continued portion of the contract" means that portion of a partially terminated war contract which is not already completed at the effective date of termination, and which the war contractor must continue to perform. [JTR 121.4]

§ 841.121–5 *Contracting officer.* The term "contracting officer" means (a) the officer or employee who signs the prime contract in behalf of the Government or who is designated as such in the prime contract, and (b) any duly appointed successor or authorized representative of such a contracting officer. In the case of the War Department, the term includes all persons within the definition contained in § 803.302–3 of this chapter. [JTR 121.5]

§ 841.121–6 *Effective date of termination and date fixed for termination.* The terms "effective date of termination" and "date fixed for termination" mean the date upon which the notice of termination first requires the war contractor (a) to reduce or stop deliveries under his contract, or (b) if no deliveries are being made or are called for under the contract, to reduce or stop performance under the contract. [JTR 121.6]

§ 841.121–7 *Industrial Readjustment Branch, OP&M.* The term "Industrial Readjustment Branch, OP&M" means the Vice Chief of the Office of Procurement and Material, Navy Department. [JTR 121.7]

§ 841.121–8 *Interim financing.* The term "interim financing" includes advance payments, partial payments, loans, discounts, advances, and commitments in connection therewith, and guaranties of loans, discounts, advances, and commitments in connection therewith and any other type of financing made in contemplation of or related to termination of war contracts. [JTR 121.8]

§ 841.121–9 *Material.* The term "material" includes any article, commodity, machinery, equipment, accessory, part, component, assembly, work in process, maintenance, repair and operating supplies, and any product of any kind. [JTR 121.9]

§ 841.121–10 *Navy material inspector.* The term "Navy material inspector" means (a) an Inspector of Naval Material, a Naval Inspector of Ordnance, a Supervisor of Shipbuilding, an Inspector of Machinery, a Bureau of Aeronautics Representative, an Officer in Charge of Construction, or (b) any designated representative of any of the foregoing, or (c) any other officer designated by the chief of a bureau to perform the functions of Navy material inspector under this subchapter. [JTR 121.10]

§ 841.121–11 *Other work.* The term "other work" means any work, whether Government or commercial, being done by a war contractor other than that related to the terminated war contract under discussion. [JTR 121.11]

§ 841.121–12 *Prime contract.* The term "prime contract" means any contract, agreement, purchase order, letter of intent, letter contract, or other preliminary contractual instrument, heretofore or hereafter entered into by the War or Navy Department and connected with or related to the prosecution of the war. [JTR 121.12]

§ 841.121–13 *Prime contractor.* The term "prime contractor" means any holder of one or more prime contracts. [JTR 121.13]

§ 841.121–14 *Readjustment Division, ASF.* The term "Readjustment Division, ASF" means the Director, Readjustment Division, Headquarters, Army Service Forces, or, with respect to the Army Air Forces, means the Director, as Special Representative of the Under Secretary of War. [JTR 121.14]

§ 841.121–15 *Retain or retention.* The terms "retain" or "retention" include any purchase, by the war contractor in possession, of termination inventory in which the Government has title or other interest, as well as the retention of termination inventory to which the contractor has title. [JTR 121.15]

§ 841.121–16 *Subcontract.* The term "subcontract" means any contract, agreement, or purchase order, and any preliminary contractual instrument, heretofore or hereafter entered into to perform any work, or to make or furnish any material, to the extent that such work or material is required for the performance of any one or more prime contracts or of any one or more other subcontracts. [JTR 121.16]

§ 841.121–17 *Subcontractor.* The term "subcontractor" means any holder of one or more subcontracts. [JTR 121.17]

§ 841.121–18 *Terminated portion of the contract.* The term "terminated portion of the contract" means that portion of a terminated war contract which does not relate either (a) to completed work or material delivered and accepted under the war contract or (b) to any continued portion of the war contract. [JTR 121.18]

§ 841.121–19 *Termination, terminate, and terminated.* The terms "termination", "terminate", and "terminated" refer to the termination or cancelation, in whole or in part, of work under a prime contract for the convenience or at the option of the Government (except for default of the prime contractor) or of work under a subcontract for any reason except the default of the subcontractor. [JTR 121.19]

§ 841.121–20 *Termination claim.* The term "termination claim" or "claim" means any claim or demand by a war contractor for fair compensation for the termination of any war contract and any other claim under a terminated war contract, which this regulation authorizes to be asserted and settled in connection with any termination settlement. [JTR 121.20]

§ 841.121–21 *Termination inventory.* The term "termination inventory" means any materials (including a proper part of any common items) properly allocable to the terminated portion of a war contract, except any machinery or equipment subject to a separate contract or contract provision specifically governing the use or disposition thereof. [JTR 121.21]

§ 841.121–22 *War contract.* The term "war contract" means a prime contract or a subcontract. [JTR 121.22]

§ 841.121–23 *War contractor.* The term "war contractor" means any holder of one or more war contracts. [JTR 121.23]

§ 841.122 *Determining amount of claim or settlement.* When any action under this subchapter depends upon the amount of a termination claim or settlement, then, unless specifically provided otherwise, in determining the amount of the claim or settlement, (a) credits for retention or disposal of termination inventory allocated to the claim and advance or partial payments shall not be deducted from the gross claim or settlement; but (b) amounts payable for completed articles or work at the contract price, for the discharge of termination claims of subcontractors and for interest shall be deducted. When the action is authorized or required before the amount of the claim or settlement is finally determined, the amount may be estimated. [JTR 122]

SUBPART C—BASIC POLICIES

§ 841.130 *Scope.* This subpart summarizes the basic policies of this subchapter designed to implement the objectives of the act, and refers to the provisions of the subchapter carrying out these policies. [JTR 130]

§ 841.131 *Objectives of the act.* Section 1 of the act declares that the objectives of the act are:

(a) To facilitate maximum war production during the war, and to expedite reconversion from war production to civilian production as war conditions permit;

(b) To assure to prime contractors and subcontractors, small and large, speedy and equitable final settlement of claims under terminated war contracts, and adequate interim financing until such final settlement;

(c) To assure uniformity among Government agencies in basic policies and administration with respect to such termination settlements and interim financing;

(d) To facilitate the efficient use of materials, manpower, and facilities for war and civilian purposes by providing prime contractors and subcontractors with notice of termination of their war contracts as far

in advance of the cessation of work thereunder as is feasible and consistent with the national security;

(e) To assure the expeditious removal from the plants of prime contractors and subcontractors of termination inventory not to be retained or sold by the contractor;

(f) To use all practicable methods compatible with the foregoing objectives to prevent improper payments and to detect and prosecute fraud.

[JTR 131]

§ 841.132 *Prompt cessation of work.* The purpose of terminating war contracts is to prevent unnecessary expense to the Government and waste of materials, manpower and facilities. To accomplish this purpose, prime contracts to be terminated must be carefully selected, and their termination must be well planned. In addition, all work under the terminated prime contract, whether performed by the prime contractor or by a subcontractor, must be stopped promptly, unless the contracting officer permits some work in process to be completed in accordance with §§ 842.241–2 and 842.241–3. Part 842 of this chapter prescribes the procedures to carry out these objectives. [JTR 132]

§ 841.133 *Expeditious settlements.* When a war contract is terminated, the basic objective is to make a fair and prompt settlement with the war contractor to compensate him for the work done and the preparations made for the terminated part of the contract. This can be done most effectively by negotiated agreement based on adequate information. The termination claims and data submitted by war contractors must be intelligently reviewed but detailed auditing must be reduced to the minimum in order to avoid delay and waste of accounting personnel. Part 845 prescribes the general policies and procedures designed for this purpose. Part 847 states in detail the procedures applicable to settlements with prime contractors. [JTR 133]

§ 841.134 *Settlements with subcontractors.* To assure subcontractors fair and speedy settlements of their claims, prime contractors and intermediate subcontractors must be pressed to make settlements with their subcontractors promptly, and, in some cases, the Government must undertake to make such settlements. In addition to the general policies and procedures prescribed in Part 845, procedures peculiar to subcontracts are prescribed in Part 846. [JTR 134]

§ 841.135 *Inventory disposition.* The prompt disposition of termination inventory is essential. Unless the war contractor desires to retain it, the termination inventory must be promptly disposed of or taken over by the Government. Expeditious disposition of termination inventories also makes them available for other productive use as soon as possible. Part 844 of this chapter deals with this subject. [JTR 135]

§ 841.136 *Interim financing.* The act entitles war contractors to adequate interim financing pending the final settlement of their claims. Speedy settlements will reduce the need for such interim financing, but many war contractors will require it. Accordingly, the provisions of the act for partial payments and guaranteed loans must be fully applied in accordance with Part 843. [JTR 136]

§ 841.137 *Importance of uniform procedures.* Uniformity of procedures will facilitate the prompt and equitable settlement of war contracts. It will enable war contractors concerned with more than one Department or with more than one service or bureau within either Department to use substantially the same methods in terminating and settling war contracts pertaining to any of them. Such uniformity will permit war contractors to set up their own internal arrangements for this work on a more efficient basis. It will also assist the Departments in giving all war contractors fair and equal treatment. The chief of each service or bureau will see that termination procedures employed in his service or bureau carry out the policy of uniformity stated in this section. [JTR 137]

§ 841.138 *Prevention of fraud.* [JTR 138]

§ 841.138–1 *Statutory provisions.* (a) Sections 19 (c) and (d) of the act impose severe penalties on any person who directly or indirectly makes or presents to any Government agency any claim, statement, or account, knowing the same to be false, or to be based on any false statement or entry, or who covers up or conceals any material fact, or who uses or engages in any other fraudulent device for the purpose of securing or obtaining for any person any benefit from any Government agency in connection with the award, performance, termination or settlement of a contract with the United States or with any other person, or who enters into an agreement, combination, or conspiracy so to do.

(b) Sections 16 (b) and 18 (e) of the act relate to settlements induced by fraud, and provide for appropriate action in such cases. [JTR 138.1]

§ 841.138–2 *Duty to report fraud.* (a) Where, at any time prior to settlement, any contracting officer or any other officer or employee of the War or Navy Department has reason to believe that there has been a violation of section 19 (c) or (d) of the act in respect of the termination claim of any war contractor, he shall take no further action thereon, either by negotiation or otherwise, but shall immediately prepare a report of all known pertinent facts without additional investigation. Unless intent to defraud clearly appears, it should not be concluded that there has been a violation of the act with respect to claims concerning which there may be a reasonable difference of opinion.

(b) Where any contracting officer or any other officer or employee of the War or Navy Department has reason to believe that any settlement of a termination claim was induced by fraud, he likewise shall immediately prepare a report of the pertinent facts.

(c) Where any war contractor has reason to believe that there has been a violation of section 19 (c) or (d) of the act in respect of the termination claim of any war contractor, or that any settlement of a termination claim was induced by fraud, he should, without further investigation, immediately prepare and submit a report of all known pertinent facts to the appropriate contracting officer.

(d) To enable the Department of Justice to make the necessary investigation as soon as possible after discovery of the suspected fraud, all reports and documents in connection therewith shall be prepared in quadruplicate. In the War Department, such reports and documents shall be transmitted through channels to the Readjustment Division, ASF, for submission to the Under Secretary of War and for transmission in duplicate by his office to the Department of Justice. In the Navy, such reports and documents shall be transmitted directly to counsel for the bureau executing the prime contract, who shall in turn promptly forward three copies thereof with any recommendations to the Office of the General Counsel of the Navy Department for further transmittal in duplicate to the Department of Justice. One copy of the report shall be transmitted by the Office of the General Counsel for information to the Industrial Readjustment Branch, OP&M. [JTR 138.2]

SUBPART D—ADMINISTRATION OF TERMINATIONS

§ 841.140 *Scope.* This subpart outlines the respective functions of the Director of Contract Settlement, the Readjustment Division, ASF, and Industrial Readjustment Branch, OP&M, and the chief of each service or bureau. [JTR 140]

§ 841.141 *Office of Contract Settlement.* [JTR 141]

§ 841.141–1 *Creation.* The act establishes an Office of Contract Settlement headed by the Director of Contract Settlement, and a Contract Settlement Advisory Board composed of the Director and representatives of the principal contracting agencies and of the Department of Justice. [JTR 141.1]

§ 841.141–2 *Regulations of Director.* (a) The act empowers the Director to issue general orders or general regulations prescribing policies, principles, methods, procedures, and standards to govern the exercise of the authority and discretion and the performance of the duties and functions of the various Government agencies under the act. [JTR 141.2]

§ 841.141–3 *Liaison with Office.* The Readjustment Division, ASF, and the Industrial Readjustment Branch, OP&M, will maintain liaison between the War and Navy Departments and the Office of the Director of Contract Settlement, and will clear all matters of policy arising in connection with that office. [JTR 141.3]

§ 841.142 *Departmental responsibility for termination policy.* [JTR 142]

§ 841.142–1 *War.* (a) The duty of formulating policy with respect to terminations has been vested 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.

(b) 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, ASF. 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 and Services.

(c) Within policies prescribed by the Readjustment Division, ASF, the Office of the Fiscal Director has staff responsibility for developing and coordinating procedures for termination accounting and auditing, and the training of personnel for these purposes. On matters affecting the Army Air Forces, the Fiscal Director coordinates with the Commanding General of the Army Air Forces. [JTR 142.1]

§ 841.142–2 *Navy.* Responsibility for the establishment, supervision, and coordination of all policies and procedures with respect to terminations is vested in the Vice Chief of the Office of Procurement and Material. [JTR 142.2]

§ 841.142–3 *Interdepartmental coordination.* A Joint Army-Navy Termination Committee, composed of the Director, Readjustment Division, ASF, his designee, and two designees of the Vice Chief of the Office of Procurement and Material, will coordinate the policies and procedures of the War and Navy Departments with respect to termination matters on which the two Departments have undertaken joint activities. When instructions or statements of policy are issued in either Department on matters which have been coordinated by the Committee, the statement may be made, in appropriate cases, that such matters have been coordinated with the representative of the other Department. [JTR 142.3]

§ 841.142–4 *Interdepartmental audit coordination.* With respect to the accounting aspects of terminations, the formulation of procedures in the two Departments is coordinated by a Joint Army-Navy Audit Committee, composed of a representative of the Office of the Fiscal Director, Hq. ASF, and a representative of the Cost Inspection Service, Bureau of Supplies and Accounts. This committee acts in an advisory capacity on accounting matters to the Joint Army-Navy Termination Committee referred to in § 841.142–3. Within policies formulated in accordance with §§ 841.142–1 and 841.142–2, it coordinates among the services of the War Department and Cost Inspection Service in the Navy Department the formulation of termination accounting and auditing procedures, the training of personnel in termination accounting, and the activities of the local audit coordination committees described in § 848.834. [JTR 142.4]

§ 841.143 *Delegation of authority.* (a) The policy of the War and Navy Departments is to delegate to the chiefs of the several services and bureaus the administration of contract terminations as fully as possible.

(b) The chief of each service or bureau may exercise the authority to terminate contracts and the authority and discretion under the Contract Settlement Act of 1944 to the extent necessary to carry out this subchapter. No approval of any higher authority is required for any action authorized or prescribed by this subchapter unless the subchapter expressly so requires.

(c) The chief of each service or bureau may redelegate any authority or discretion granted to him by this regulation, with or without authority to make successive redelegations (1) within his service or bureau, except where action is explicitly required to be taken by such chief himself or by a specified officer or employee within his service or bureau, or (2) to the chief of another service or bureau: *Provided,* That no such delegation shall be made to the chief of another service or bureau without his consent. In connection with the redelegation of authority between services or bureaus, direct communication between the chiefs of the services or bureaus and their representatives is authorized. [JTR 143]

§ 841.144 *Authority to supplement and deviate from this subchapter.* [JTR 144]

§ 841.144–1 *Supplementary procedures.* Subject to the provisions of §§ 841.137 and 841.144–4, the chief of each service or bureau may prescribe supplementary procedures for his service or bureau, consistent with the provisions of this subchapter. Such supplementary procedures shall not modify or restrict the general application of this subchapter except as to matters specifically within the discretion of the chief of the service or bureau under this subchapter. [JTR 144.1]

§ 841.144–2 *Authority of service or bureau to vary procedures.* (a) Subject to the basic policies stated in §§ 841.131 to 841.138, inclusive, and to the provisions of § 841.144–4, the chief of each service or bureau may authorize variations from the procedures herein prescribed in any case or class of cases, unless such variation involves a substantial deviation from this subchapter.

(b) In determining whether a substantial deviation is involved, the chief of the service or bureau will consider whether the variation:

(1) Conflicts with a policy stated in this subchapter;

(2) Involves a decision on an important question of policy which has not theretofore been passed upon by higher authority;

(3) Involves a decision on any matter in which uniformity among the several services and bureaus is desirable;

(4) Involves a decision on an important or doubtful question of law, cost interpretation, accounting practice or fiscal policy;

(5) Will tend to set a precedent which may be undesirable in other cases.

(c) In any case where a substantial deviation from this subchapter is involved, such deviation may be made only with the approval of the Readjustment Division, ASF, or the Industrial Readjustment Branch, OP&M, which will obtain any appropriate concurrences which in its judgment are desirable. [JTR 144.2]

§ 841.144–3 *Authority of Readjustment Division, ASF, and Industrial Readjustment Branch, OP&M.* The Readjustment Division, ASF, or the Industrial Readjustment Branch, OP&M, may authorize:

(a) Any deviation from the provisions of this subchapter in any case or class of cases;

(b) Such action or procedures as it deems appropriate in any case or class of cases where this subchapter does not adequately cover the problems raised. [JTR 144.3]

§ 841.144–4 *Clearance of service and bureau regulations and directives.* (a) All directives of general application proposed to be issued under this subchapter by the chief of a bureau of the Navy Department, or pursuant to his authority, shall be submitted for approval, before issuance, to the Industrial Readjustment Branch, OP&M.

(b) The chief of each service of the War Department will report to the Readjustment Division, ASF, all regulations of general application issued by him or pursuant to his authority under this subchapter and shall submit for approval, before issuance, any such regulation which proposes to modify a form prescribed in Part 849. [JTR 144.4]

§ 841.145 *Termination personnel.* [JTR 145]

§ 841.145–1 *War.* The chief of each service will provide, so far as possible, in each contracting office, district office, or area office which is delegated authority with respect to termination settlements, adequate and competent technical, legal, accounting and other personnel to protect the interests of the Government. [JTR 145–1]

§ 841.145–2 *Navy.* (a) The chief of each bureau engaged in contract termination or property disposition shall establish with respect to activities under his jurisdiction a unit or units which shall have the responsibility for, and the supervision of, contract termination and property disposition. The Chief of the Bureau of Supplies and Accounts shall establish similar units for purchasing activities in the field.

(b) The chiefs of the several bureaus and the Director of the Inspection Administration of the Office of Procurement and Material shall establish, in the several field inspection activities of the Navy Department, units which shall have the responsibility for, and supervision of, the contract termination and property disposition functions of Navy material inspectors.

(c) The Director of the Cost Inspection Service shall establish in such of its offices as he shall deem necessary a unit to coordinate the functions of that office concerning contract termination. He shall also designate representatives to act

as liaison officers with the termination units established in accordance with paragraphs (a) and (b) of this section. Such representatives shall act as advisors to such units with respect to the establishment of procedures for the review of termination claims, the application of accepted accounting principles, and all other accounting problems resulting from terminations. Except where other qualified accounting personnel is regularly used by a bureau, the Cost Inspection Service has the responsibility of making office accounting reviews of settlement proposals as required by this subchapter and, to the extent requested by contracting officers, of making any field accounting reviews or audits.

(d) The Director of the Navy Material Redistribution and Disposal Administration, of the Office of Procurement and Material, (herein referred to as the "NMR&DA") shall designate representatives to act as liaison officers with the termination units established in accordance with paragraphs (a) and (b) of this section. The NMR&DA is the central agency for the disposition, storage and removal of termination inventory for the entire Naval establishment. [JTR 145.2]

§ 841.146 *Freedom of Government officers and employees from personal liability.* [JTR 146]

§ 841.146–1 *For payments.* (a) Section 15 (a) of the act provides as follows:

SEC. 15. (a) Whenever any payment is made from Government funds to any war contractor or other person as an advance, partial or final payment on any termination claim, or pursuant to any loan, guaranty, or agreement for the purchase of any loan, or any commitment in connection therewith, entered into by the Government, no officer or other Government agent authorizing or approving such payment or settlement, or certifying the voucher for such payment, or making the payment in accordance with a duly certified voucher, shall be personally liable for such payment, in the absence of fraud on his part. In settling the accounts of any disbursing officer the General Accounting Office shall allow any such disbursements made by him notwithstanding any other provisions of law.

(b) This provision relieves any Government officer or agent authorizing, approving, certifying, or making payment on any termination claim or on any interim financing, or authorizing or approving any settlement, from personal financial liability for such payment except for his own fraud. Thus, an officer or employee will not be personally liable for mistakes of judgment or errors made in good faith in connection with termination payments or settlements or interim financing. [JTR 146.1]

§ 841.146–2 *For property disposal.* Section 26 (a) of the Surplus Property Act of 1944 (Public Law 457, 78th Congress, approved October 3, 1944) provides as follows:

SEC. 26. (a) Where any property is disposed of in accordance with this Act and any regulations prescribed under this Act, no officer or employee of the Government shall (1) be liable with respect to such disposition except for his own fraud or (2) be accountable for the collection of any purchase price which is determined to be uncollectible by the agency responsible therefor.

[JTR 146.2]

§ 841.147 *Assistance to contractors.* [JTR 147]

§ 841.147–1 *Statutory provision.* Section 20 (f) of the act provides as follows:

(f) Any contracting agency may authorize or direct its officers and employees, as a part of their official duties, to advise, aid, and assist war contractors in preparing and presenting termination claims, in obtaining interim financing, and in related matters, to such extent as it deems desirable. Such advice, aid, or assistance shall not constitute a violation of Section 109 of the Criminal Code (18 U.S.C. 198) or of any other law, provided the officer or employee does not receive therefor benefit or compensation of any kind, directly or indirectly, from any war contractor.

[JTR 147.1]

§ 841.147–2 *Duty to assist.* To expedite settlements, war contractors must understand the policies and procedures applicable to terminations. As a part of their official duties, officers and employees engaged in termination activities for the War and Navy Departments will advise, aid and assist war contractors in preparing and presenting termination claims, in obtaining interim financing, and in related matters, but will not accept therefor, benefit or compensation of any kind, directly or indirectly, from any war contractor. The chief of any service or bureau may prescribe methods for the giving of such advice, aid or assistance by officers or employees under his supervision, and may impose such restrictions thereon as he deems necessary. [JTR 147.2]

§ 841.148 *Supervision of administration.* (a) The act places directly on the War and Navy Departments and other contracting agencies responsibility for protecting the Government's interest in making termination settlements and interim financing. The Comptroller General is authorized to investigate completed settlements for the purpose of (1) determining whether payments conform to the settlement, or the settlement was induced by fraud, and (2) reporting to Congress on whether the settlement methods and procedures used by the contracting agencies are designed to achieve expeditious and fair settlements and are followed with care and efficiency and adequately protect the interest of the Government.

(b) The chief of each service or bureau will establish procedures for regular checks by his office of the administration of terminations by each procurement office or termination unit under his direction, including review of samples of settlements and interim financing, to insure that its termination settlements are being made expeditiously, are fair to the Government and to war contractors, and conform to existing regulations.

(c) The chief of each service or bureau will be prepared to report periodically on the procedures established by him to discharge his responsibilities under this section and on the results of the checks on individual procurement offices or termination units. [JTR 148]

§ 841.149 *Existing contracts not impaired.* In accordance with section 20 (e) of the act, the act and this subchapter do not impair or modify any war contract or any term or provision of any war contract or any assignment of any claim under a war contract, without the consent of the parties thereto, if the war contract, or the term, provision, or assignment thereof, is otherwise valid. [JTR 149]

PART 842—PROCEDURES FOR TERMINATING PRIME CONTRACTS

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§ 842.200 *Scope of part.* This part covers the preliminary procedures and planning involved in the termination of prime contracts, the preparation of the notice of termination, and the steps to be taken by the contracting officer and prime contractor immediately after the service of the notice of termination. [JTR 200]

SUBPART A—AUTHORITY FOR TERMINATIONS

§ 842.210 *Scope.* This subpart deals with the authority to terminate prime contracts either under contract articles giving the Government that option or in the absence of such contract provisions. [JTR 210]

§ 842.211 *Authority of service or bureau to terminate.* [JTR 211]

§ 842.211–1 *War.* The chief of each service may terminate, in accordance with the provisions of this subchapter, any prime contract under his administration regardless of the amount of such contract and even though the contract expressly requires the approval of the Secretary of War for its termination. [JTR 211.1]

§ 842.211–2 *Navy.* As a general rule, the chief of the bureau which executed a prime contract has the responsibility for its termination, in accordance with the provisions of the subchapter. In those cases, however, where a bureau other than the bureau which executed a contract participated in the negotiation or preparation thereof, or where the materials covered by a contract are part of a general procurement program of such other bureau, the chief of that other bureau may assume the responsibility for the termination of the contract, in accordance with the provisions of this subchapter. The assumption of such responsibility must be exercised either before or promptly after the decision has been made to terminate the contract and should be accomplished by notification to the bureau which executed the contract, which shall take all action necessary to effect the transfer of authority and responsibility. The transfer of responsibility from the chief of the bureau which executed the contract shall not be effected until the notificatian has been received by that bureau. [JTR 211.2]

§ 842.212 *Prime contract articles for termination.* [JTR 212]

§ 842.212–1 *Use of provisions.* In the larger prime contracts the Government has generally reserved the right to terminate the contract in accordance with a termination article. The forms of the termination articles used in such contracts have changed from time to time. In considering the rights of the Government with respect to the termination of any prime contract, the terms of the termination article should be examined with care. [JTR 212.1]

§ 842.212–2 *Current approved forms of termination articles.* (a) The following are approved forms of termination articles for prime contracts with the War or Navy Department:

(1) The uniform article for fixed-price supply contracts set forth in § 849.931 of this subchapter;

(2) The uniform article for cost-plus-a-fixed-fee supply contracts set forth in § 849.932 of this subchapter.

(b) For the War Department, the following additional forms of termination articles are approved forms for prime contracts:

(1) The form for fixed-price construction contracts set forth in § 849.933 of this subchapter;

(2) For cost-plus-a-fixed-fee construction contracts, the uniform article set forth in § 849.932 of this subchapter is the approved form;

(3) The form for letter orders for supplies with no price stated or for letter orders for fixed-price or cost-plus-a-fixed-fee construction contained in § 849.935–1;

(4) The form for letter orders for supplies with the price stated contained in § 849.935–2;

(5) Forms for laundry contracts and other types of service contracts have been specially approved from time to time.

(6) A short-form article, set forth in § 849.939, for use in any fixed-price supply or construction contract where neither of the articles above referred to in paragraphs (a) (1) and (b) (1) is required to be used.

(c) For the Navy Department, the approved forms of termination articles for classes of contracts, such as construction contracts, vessel contracts, letters of intent or other preliminary contractual instruments, for which the use of the uniform articles specified in paragraph (a) is not required, are the forms currently in use by the several bureaus as approved by counsel for such bureau. Such counsel will not approve the uniform termination articles specified in paragraph (a) of this section for use in any letter of intent or other preliminary contractual instruments, but may approve an appropriate termination article therefor containing a provision allowing such profit on termination as may be reasonable under the circumstances.

(d) As used in this subchapter, the term "approved termination articles" refers to the articles specified in paragraphs (a), (b) and (c) of this section. [JTR 212.2]

§ 842.212–3 *Deviations from approved termination articles.* (a) No deviations from the form of approved termination articles shall be made without the approval (1) for the War Department, of the Director, Purchases Division, Headquarters, Army Service Forces, or the Legal Assistant, or Chief, Legal Branch, Office of Director of Matériel, Headquarters, Army Service Forces, or (2) for the Navy Department, of the Office of the General Counsel.

(b) Any deviation from an approved article or any substitute therefor authorized under paragraph (a) shall be considered as an approved article for the purpose of this subchapter. [JTR 212.3]

§ 842.213 *Amendments of prime contracts to insert current approved termination articles.* [JTR 213]

§ 842.213–1 *General policy.* (a) Where any war contract does not provide for or provides against fair compensation for its termination, section 6 (g) of the act requires the Departments to agree to, authorize, approve, or ratify, its amendment to provide for such fair compensation.

(b) The approved termination articles currently authorized provide fair compensation for termination. Amendments of prime contracts to include such approved articles, whether or not they contain earlier forms of termination articles, will facilitate prompt settlements, promote uniform procedures, avoid delay and administrative difficulties, and carry out the objectives of the act.

(c) Accordingly, whenever practicable, each service or bureau will give prime contractors an opportunity to amend outstanding prime contracts to include the latest form of appropriate approved termination article. [JTR 213.1]

§ 842.213–2 *Amendments of fixed-price and cost-plus-a-fixed-fee prime contracts.* The chief of any service or bureau may amend any fixed-price or cost-plus-a-fixed-fee prime contract at any time to insert therein the current approved termination article appropriate for that type of contract. Wherever practicable, such amendments will be made before giving formal notice of termination, but may be made after the notice is given. [JTR 213.2]

§ 842.213–3 *Amendment of letter orders.* (a) As used in this section the term "letter order" includes letter contracts, letters of intent and letter purchase orders.

(b) The chief of any service or bureau may amend any letter order to include therein the appropriate approved termination article. Whenever practicable, such amendments will be made before the giving of notice of termination, but may be made after the notice is given.

(c) The execution of a definitive contract will not be delayed by the amendments authorized by this section. (See § 845.533–4) [JTR 213.3]

§ 842.213–4 *Procedure for amendment.* (a) Each amendment pursuant to §§ 842.213–2 and 842.213–3 will recite that it is made pursuant to the Contract Settlement Act of 1944. A form of supplemental agreement appropriate to amend prime contracts for this purpose is set out in § 849.937.

(b) Before making any such amendment, each surety or guarantor should be notified, if the surety or guarantee agreement so requires, and the assent of any assignee, who has given notice under the Assignment of Claims Act, should be obtained where possible. [JTR 213.4]

§ 842.214 *Authority to terminate prime contracts without termination articles.* [JTR 214]

§ 842.214–1 *Termination by agreement.* When the Government desires to terminate a prime contract containing no termination article, the chief of the

service or bureau may agree with the contractor for the termination of the contract and for its settlement upon such terms as he deems for the best interest of the Government, and consistent with the provisions of this subchapter. [JTR 214.1]

§ 842.214–2 *Termination without agreement.* (a) If such a prime contract cannot be terminated by agreement, the chief of the service or bureau concerned may authorize the contracting officer to order the contractor to discontinue further performance. In the Navy Department, the chief of a bureau will exercise this authority only after the matter has been referred to counsel for the bureau for advice and the preparation of the termination notice.

(b) With the notice to discontinue performance or promptly thereafter, the contractor shall be requested to amend his contract to include the appropriate termination article pursuant to § 842.213. If he does so, he should be notified to terminate the contract under the article as of the effective date of the order to discontinue performance and his termination claim should be settled in accordance with the article.

(c) If the contractor refuses so to amend, the chief of the service or bureau shall record and preserve a statement of the circumstances and reasons leading to the action and of the grounds on which such action was determined to be in the interests of the Government. In such cases, the chief of the service or bureau may settle with the contractor by agreement in accordance with § 842.214–1.

(d) Where the contractor refuses to agree to a settlement, the chief of the service or bureau will prepare and deliver findings of the amount due on the termination claim in accordance with the formula contained in the appropriate approved termination article and the procedure prescribed in Subpart E of Part 847. [JTR 214.2.]

§ 842.215 *Terminations of prime contracts where default exists.* [JTR 215]

§ 842.215–1 *Terminations during hostilities.* Notwithstanding any default under a prime contract, the chief of the service or bureau charged with its administration may terminate the contract under the contract article providing for termination for the convenience of the Government, instead of for default, whenever he considers (a) that any default of the contractor has not been gross or willful and has not caused substantial injury to the Government, and (b) that the use of that termination article will be equitable under all the circumstances. [JTR 215.1]

§ 842.215–2 *Terminations of complete programs or at the end of hostilities.* (a) Under the uniform prime contract termination articles, the contract must be terminated in accordance with the article even though the prime contractor is in default, if the termination 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 or Navy Department for the same product or for closely related products, or

(2) Of war contracts at or about the time of or following the cessation of the present hostilities, or any large part thereof,

unless the contracting officer finds that the contractor is then in gross or willful default under the contract.

(b) Certain of the other or earlier forms of termination articles contain somewhat similar provisions applicable to terminations at the cessation of hostilities.

(c) The chief of any service or bureau will follow the contract provisions referred to in paragraphs (a) and (b) above, whenever they become applicable. [JTR 215.2]

§ 842.216 *Reductions in quantity under "Changes" articles or by agreement; changes in specifications.* [JTR 216]

§ 842.216–1 *When reductions permitted.* (a) Certain War and Navy Department prime contracts contain a special "Changes" article which authorizes the Government, under certain conditions, to reduce by a change order the quantity of supplies to be delivered under the contract. Such a reduction is a method of termination, and is subject to the provisions of §§ 842.233, 842.234 and 842.235, requiring clearance with the War Production Board.

(b) Where a reduction in the quantity of supplies to be delivered under a prime contract appears likely to involve substantial or complicated problems regarding termination inventories or claims by subcontractors, such reduction should ordinarily be effected as a partial termination pursuant to the termination article contained in the contract. Where no such substantial or complicated problems exist, such a reduction in the quantity of supplies may be effected under the special "Changes" article or any similar article.

(c) Where a prime contract does not contain such a "Changes" article, reductions may be made under the same conditions by supplemental agreement with the consent of the contractor. Before making any such agreement, each surety or guarantor should be notified, if the surety or guarantee agreement so requires, and the assent of any assignee, who has given notice under the Assignment of Claims Act, should be obtained where possible. [JTR 216.1]

§ 842.216–2 *Compensation for such reductions.* (a) When any such reduction is made under a "Changes" article or by supplemental agreement, the prime contractor may be compensated therefor by an equitable adjustment in the contract price without conforming to the procedures in this subchapter; but the provisions of this subchapter may be used as a guide in making the adjustment.

(b) Such an equitable adjustment should compensate the contractor fairly for the reduction, taking into account the types of costs, allocable to the reduction, recognized by the Statement of Principles for Determination of Costs upon Termination of Fixed-Price Supply Contracts (§ 845.551). The adjustment may be a lump sum or a change in the unit price or both. In the War Department, the adjustment should be made in conformity with the procedures prescribed in § 812.1231 of this chapter. Any excess inventory resulting from such a reduction should, if practicable, be dealt with and accounted for in conformity with Part 844.

(c) The act and this subchapter shall apply to the termination and settlement of subcontracts resulting from such reductions, and to the termination inventory involved in such subcontracts.

(d) In the event of failure to agree on the adjustment in any such case, the contracting officer will make formal findings of the amount due substantially in accordance with § 847.750 and following, insofar as applicable. Since such reduction constitutes a termination under the act, the prime contractor will be entitled to appeal from such findings or sue in accordance with section 13 of the act.

(e) Where the adjustment involves a payment of more than $25,000, computed in accordance with § 841.122, it is subject to review under § 845.582. [JTR 216.3]

§ 842.216–3 *Changes in specifications.* (a) Any modification of a war contract pursuant to its terms for the purpose of changing plans and specifications, without substantially reducing its extent, is exempted from the provisions of the act and of this subchapter, except to the extent that the chief of the service or bureau, in his discretion, may require that the provisions of the act or of this subchapter shall apply.

(b) The act and this subchapter shall apply to the termination and settlement of subcontracts resulting from such modifications, and to the termination inventory involved in such subcontracts. [JTR 216.3]

§ 842.217 *Use of suspensions of performance.* [JTR 217]

§ 842.217–1 *Statutory provision.* Section 11 (b) of the act provides as follows:

> Whenever a contracting agency hereafter directs a prime contractor to cease or suspend all or a substantial part of the work under a prime contract, without terminating the contract, then, unless the contract provides otherwise, (1) the contracting agency shall compensate the contractor for reasonable costs and expenses resulting from such cessation or suspension, and (2) if the cessation or suspension extends for thirty days or more, the contractor may elect to treat it as a termination by delivering written notice of his election so to do to the contracting agency, at any time before the contracting agency directs the prime contractor to resume work under the contract.

[JTR 217.1]

§ 842.217–2 *Where suspensions authorized.* (a) Arbitrary suspension of performance of work under contracts generally causes undue hardship to affected war contractors and increased costs to the Government, gives rise to injurious uncertainty in the minds of management and labor, and otherwise creates confusion and disorganization harmful to the war effort and to the national economy. Contracting officers should not direct a prime contractor to suspend performance while attempting

to decide requirements for continuing production or as a temporary expedient in connection with the solution of other administrative problems. Suspensions will, therefore, be ordered only to the limited extent permitted by paragraph (b) below, and every precaution will be taken to insure that each suspension is in fact in the public interest in the light of the factors set out above and not merely an administrative convenience.

(b) Contractors may be directed to suspend performance of work only where:

(1) A termination has definitely been decided upon, but time is needed in which to determine whether the termination should be effected as a termination for default or for the convenience of the Government; or

(2) Complete, or a substantial part of, performance under the contract is needed, but cessation of performance for a period not unreasonable under the circumstances is necessary or deemed to be in the best interest of the Government, provided that the written approval (in the case of the War Department) of the head of the local procurement district, depot, or other office, or (in the case of the Navy Department) of the chief or assistant chief of the bureau, acting personally, will be required for the continuance of any suspension (subject to § 842.217–3 (c)) issued under this subparagraph for more than five days after receipt of a request by the contractor for its revocation; or

(3) Prior approval of the Readjustment Division, ASF, or the Industrial Readjustment Branch, OP&M, is obtained. [JTR 272.2]

§ 842.217–3 *Terms of suspension.* (a) Where a suspension is ordered, the contracting officer should:

(1) Discuss with the prime contractor the nature and terms of the suspension and reduce such terms to writing;

(2) Limit the duration of the suspension to the shortest practicable period; and

(3) Avoid delay in reaching any decision which may be required as to the necessity, nature, or scope of a termination.

(b) If possible, the contracting officer should negotiate with the contractor a supplemental agreement covering the terms of the suspension. If the prime contract does not already contain a termination article substantially in the form currently approved, the agreement should insert the appropriate approved article.

(c) Unless the prime contract or supplemental agreement provides otherwise, the contractor may elect to treat any suspension, extending for thirty days or more, as a termination. 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.

(d) The contracting officer shall not suspend performance of work under a contract before clearance with, or notice to, the War Production Board, if required by § 842.233. [JTR 217.3]

SUBPART B—ADVANCE PREPARATIONS FOR TERMINATION SETTLEMENTS

§ 842.220 *Scope.* This subpart deals with advance preparations for termination settlement, consisting of discussions, informal arrangements and pretermination settlement agreements with war contractors. [JTR 220]

§ 842.221 *Responsibility for advance preparations.* [JTR 221]

§ 842.221–1 *Value of advance preparations.* (a) Advance preparations for termination lead to prompt and equitable settlement of terminated contracts, and are therefore designed to facilitate the prompt transition from terminated war production to other war production or to civilian production upon the partial or final cessation of hostilities. It is vital to the present war effort and the future economy of the country that this transition be accomplished with the greatest possible speed.

(b) Settlements of terminated war contracts involve many decisions and actions of war contractors and the Government. Diligent efforts must be made, before actual terminations, to agree on both the financial and property disposition aspects of the termination settlement.

(c) Such advance preparations will speed the diversion of personnel, inventory and facilities to other war production or to civilian production, and will facilitate interim financing, plant clearance, and prompt settlement of termination claims, with resulting avoidance of unemployment. [JTR 221.1]

§ 842.221–2 *Types of advance preparations.* The three types of advance preparations are:

(a) Discussions with contractors of termination procedures and problems, and the preparation by contractors of internal termination plans and procedures. (See § 842.222.)

(b) Tentative understandings or informal arrangements embodied in memoranda not binding upon the Government or the contractor. (See §§ 842.223, 842.225 and 842.226.)

(c) Pretermination settlement agreements which are formal, binding agreements covering elements of the termination settlement. (See §§ 842.224, 842.225, 842.226 and 842.227.) [JTR 221.2]

§ 842.221–3 *Scope of advance preparations.* Except in those specific cases where such activity would interfere with production, all services and bureaus are responsible for conducting advance preparations to the greatest extent practicable. Discussions with contractors should lead to the preparation of a written termination plan by each contractor, and to informal arrangements covering elements of termination settlements. Thereafter, to the greatest extent practicable, advance preparations should be extended to the negotiation of pretermination settlement agreements. [JTR 221.3]

§ 842.221–4 *Coordination of advance preparations.* The local termination coordination committees appointed under Subpart C of Part 843 can be of material assistance to all the services and bureaus in carrying out advance preparations for termination settlement without unnecessary duplication of effort. The chairman of each committee should coordinate planning and contractor education so that every war contractor in the area will be covered by at least one of the services or bureaus and made aware of the benefits to be derived from advance preparations. The termination coordination committees should serve as clearing houses for disseminating information to contractors regarding informal arrangements and pretermination settlement agreements. [JTR 221.4]

§ 842.221–5 *Navy Department procedures.* In the Navy Department, certain functions of the contracting officer in respect of the termination and settlement of war contracts, interim financing, disposition of property and related matters have been assigned to the Navy Material Redistribution and Disposal Administration, Navy material inspectors and Cost Inspection Service. The foregoing representatives of the contracting officer shall have corresponding authority and responsibility in connection with advance preparations for termination settlement, including the authority to enter into informal arrangements pursuant to § 842.223. In addition, the NMR&DA (as well as the bureaus), is authorized on behalf of the Navy to enter into pretermination settlement agreements which determine what material or classes of material (with the exception of Government-furnished material and equipment and production and supply items) shall be considered to be scrap (as defined in § 842.225–6) and grant authority to the contractor to retain or sell or to approve retention or sale by a subcontractor of such material, or provide for the storage or removal of such material not retained by the war contractor or otherwise disposed of, or make any other disposition thereof, provided that the agreements shall allow not less than fifteen days from the effective date of termination within which the bureaus may request items for their own purposes prior to any disposition thereof. [JTR 221.5]

§ 842.222 *Discussions with contractors.* [JTR 222]

§ 842.222–1 *Purpose of discussions.* Both the Government and the contractor will benefit from a thorough discussion of anticipated terminations. Contracting officers will become more familiar with the records and termination problems of contractors, and contractors will become more familiar with termination procedures and the character of the information which they must furnish to the Government on termination. [JTR 222.1]

§ 842.222–2 *Scope of discussions.* A number of the specific matters which should be discussed with contractors are listed in § 842.222–3. The subjects listed in § 842.225 as appropriate matters for informal arrangements or pretermination settlement agreements should also

be discussed as early as possible. [JTR 222.2]

§ 842.222–3 *Specific subjects of discussions with contractors*—(a) *Termination article.* War contractors should become thoroughly familiar with the termination articles in their contracts. Contracts which do not contain approved termination articles should be amended to insert them wherever possible.

(b) *Termination organization.* Each contractor should form a termination section headed by an individual of executive level, and provide necessary legal, accounting and other assistance.

(c) *Training of personnel.* An adequate staff should be trained in all the operations involved in the prompt settlement of claims and disposal of inventory, such as the preparation of settlement proposals, taking of inventories, disposal of property, and negotiations with subcontractors.

(d) *Government regulations and forms.* Contractor personnel concerned with terminations should become thoroughly familiar with this regulation, the Termination Accounting Manual, and standard forms for notice of termination, instructions to contractors, settlement proposals, and interim financing. Each contractor should see that sufficient copies of these documents are available.

(e) *Accounting system.* Contractors should review their accounting systems to make sure that they will have available all data required in filling out the standard settlement proposal forms. Contracting officers and Government accounting personnel should, to the extent practicable, become familiar with each contractor's accounting policies and procedures.

(f) *Production control.* The contractor and the contracting officer should consider the normal "production cycle", representing the length of time taken to complete the finished unit from initial operations, and the "lead time", representing the time from the placement of orders with subcontractors and suppliers until raw materials and components are received in the contractor's plant. This will permit an approximation of the character and quantity of inventory and commitments that the contractor will have upon termination.

(g) *Contractor's inventory forms.* The contractor should arrange for an ample supply of all forms needed to record inventory and costs.

(h) *Records of contractor.* The records of the contractor should be reviewed to assure that they afford the basis for proper identification and allocability of all property acquired for the contract and all subcontracts thereunder, and for determining the cost of all property that may be included in termination inventories. The records of the contractor and the contracting officer regarding Government-owned materials and production equipment should be brought up to date and reconciled. The contractor should be encouraged to set up and maintain proper records of his post-termination expenses.

(i) *Disposal of property by the contractor.* In general, it is the policy of the Government to encourage war contractors to retain or sell as much termination inventory as possible at prices which conform to regulations of the Surplus Property Board.

(1) *Diversion to other contractors.* Where production of the terminated end-product will be continued by other contractors, diversion to them should be accomplished, if a saving to the Government may be effected, even though termination of subcontracts will result.

(2) *Return to suppliers.* Arrangements should be made to list the standard items which the contractor will return to original suppliers upon termination. In many cases it will be desirable to ascertain in advance from such suppliers the extent to which such returns can probably be negotiated.

(3) *Special arrangements.* Contractors should be informed of any special arrangements of the nature referred to in § 844.452–3, covering the disposition of certain specific items of material, and should be instructed as to compliance with such arrangements.

(4) *Other sales by contractors.* The manner in which the contractor will offer items of termination inventory for general sale should be considered, and appropriate authorizations for sales without further approval of the contracting officer should be granted.

(j) *Packaging.* Plans should be made by the contractor to assure adequate personnel, equipment and materials for packaging those items of termination inventory to be taken over by the service or bureau concerned. Packaging specifications should be supplied, and the desirability of deviation from standard specifications in the case of low-value items, such as scrap and salvage, should be considered.

(k) *Interim financing.* Each contractor should make an estimate of his financial needs during the period between termination and final settlement and ascertain in advance the most suitable method of interim financing. Contracting officers should advise contractors about the availability of partial payments, guaranteed loans and funds for the benefit of subcontractors; and the necessary application forms should be secured. If a guaranteed loan will be required, the contractor should discuss it with his bank. [JTR 222.3]

§ 842.222–4 *Planning by subcontractors.* The list of subjects enumerated in § 842.222–3 for discussions with war contractors applies in general to both prime contractors and subcontractors. It is particularly important that subcontractors be able, in advance of termination, to identify accurately the prime contracts to which their subcontracts relate, and the names and offices of the Government officers charged with administering them. They should also be familiar with their rights and duties under this subchapter, and under the notices and instructions which they should expect to receive upon termination. [JTR 222.4]

§ 842.222–5 *Planning by higher tier war contractors.* The most thorough planning by subcontractors will not expedite the settlement of their claims without the cooperation of their customers. Advance planning by prime contractors and higher tier subcontractors should cover the following specific matters in addition to those listed in § 842.222–3.

(a) *Identification of subcontracts.* All war contractors should examine their subcontracts with a view to establishing their allocability to the contracts to which they relate. Order forms, invoices and other supporting documents should be made readily available to support subcontract charges.

(b) *Termination article.* The termination provisions in subcontracts should be reviewed, and, where appropriate, the approved subcontract termination article (§ 849.936) should be inserted.

(c) *Forms and instructions.* Contractors should prepare a list of subcontracts to be terminated upon termination of their own contracts, and should have on hand all necessary forms. Contractors should see that their subcontractors are familiar with the requirements of the instructions to subcontractors (§ 849.944–3).

(d) *Review procedure.* Contractors should ascertain the nature and extent of, and establish internal procedures for carrying out, any required review of settlement proposals and contemplated dispositions of termination inventory of subcontractors.

(e) *Settlement of subcontractors' claims.* War contractors authorized under § 846.642 to make final settlement of claims of $10,000 or less or to make partial payments should be encouraged to exercise this authority widely.

(f) *Interim financing.* War contractors should also be encouraged (1) to study and assist in solving the financial needs of their subcontractors, (2) to pay immediately for all completed articles delivered under the subcontract, (3) to make other payments to subcontractors without awaiting payment by the Government and (4) to process promptly applications for partial payments for their subcontractors. [JTR 222.5]

§ 842.223 *Informal arrangements.* (a) Discussions with a contractor should frequently lead to understandings concerning particular elements of the termination settlement, which should be reduced to informal memoranda. Such memoranda are not binding, are subject to change by either party and should so state clearly.

(b) In the case of prime contractors, informal memoranda should be signed by the contractor and the contracting officer. They may set forth any tentative agreements reached on the pricing, disposition or retention of inventory, particular cost elements, or any other aspects of the termination settlement.

(c) Discussions with subcontractors may lead to informal arrangements between the subcontractor and his customer, with the tentative approval of the contracting officer. Such approvals constitute indications by the contracting officer that, as advised at the time the memorandum is made, he would approve the arrangement if embodied in a settlement agreement between the subcontractor and his customer.

(d) Immediately upon termination all tentative arrangements previously made

should be reviewed by the interested parties. If no new factors or considerations have made the arrangement inadvisable, the tentative understandings may be promptly confirmed or adjusted. A tentative memorandum may provide for a specific method by which such confirmation or adjustment may be accomplished. Widespread use of this procedure will materially reduce the time required after termination for plant clearance and final settlement and payment of contractors' claims. [JTR 223]

§ 842.224 *Pretermination settlement agreements.* [JTR 224]

§ 842.224–1 *Regulations of Office of Contract Settlement.* (a) General Regulation No. 3 of the Office of Contract Settlement added to Directive Order No. 2 of the Office of War Mobilization the following paragraph:

Any Department or Agency of the Government may embody in any contract a special agreement to pay the contractor, as fair compensation for the termination of the contract, amounts specified in the contract or to be readily computed according to specified methods, standards or bases appropriate to the particular contract and set out therein, in lieu of any other compensation therefor, whenever the Department or Agency determines (1) that the available data permit a reasonable forecast, consistent with sound commercial standards, of the factors involved in determining what will be fair compensation for termination in the case or class of cases and (2) that such agreement will substantially facilitate settlements, plant clearance, reconversion from war to civilian production or the efficient use of materials, manpower and facilities or will otherwise promote the objectives of the Contract Settlement Act of 1944. Such special agreements may be included in original contracts or may be inserted in contracts by amendment made before their termination and, when so included or inserted, are hereby determined to provide a method for determining fair compensation for the termination of such contracts.

(b) Regulation No. 6 of the Office of Contract Settlement states that a similar policy will be applied to subcontract pretermination settlement agreements. [JTR 224.1]

(c) Regulation No. 9 of the Surplus Property Board provides:

To the maximum extent practicable decisions for the retention or disposal by contractors of all types of contractor inventories shall be made in advance of termination by means of pretermination agreements or otherwise. Provisions may be included in pretermination agreements for the determination of what property shall be considered to be scrap and for the retention or disposal of all types of property by the contractor. Pretermination agreements may also provide for the care and handling and removal of contractor inventories and for the classes of property that the owning agency will take over.

[JTR 224.1]

§ 842.224–2 *Price provisions in pretermination settlement agreements.* The following provisions apply to pretermination agreements entered into on and after July 1, 1945:

(a) Any property, except scrap, which is to be retained by the contractor for his own use, may be retained at prices that are fair and reasonable and not less than the proceeds that could reasonably be expected to be obtained if the property were offered for sale. The agreement shall contain in connection with each such retention a written representation from the contractor that he intends to use or consume the property for manufacturing, construction, maintenance or repair purposes, and that he is not retaining it for the purpose of reselling it at profit.

(b) Any property, except scrap, which is to be retained by the contractor not for his own use may be retained at either (1) prices that are fair and reasonable and not less than the proceeds that could reasonably be expected to be obtained if the property were offered for sale, but in no event less than 50% of cost (estimated if not known); or (2) market prices.

(c) Any property to be retained by the contractor as scrap may be retained at market prices with or without a scrap warranty.

(d) All prices referred to in this paragraph may be determined either as of the time of the agreement or the time of termination. [JTR 224.2]

§ 842.224–3 *Required conditions.* (a) Before entering into any pretermination settlement agreement, the contracting officer should determine (1) that the available data assure reasonable accuracy of the information on which the agreement is based, and (2) that the agreement will advance one or more of the objectives of the act. When the agreement involves a forecast of the factors involved in determining fair compensation, the available data must permit a reasonable forecast, consistent with sound commercial standards, of such factors. Many agreements can be made, however, that do not settle the actual methods, standards or bases for determining fair compensation, but fix specific elements that enter into the determination of a fair settlement. In each case, the required data, considered in the light of the contractor's records and his reliability and experience, must justify a judgment that the determinations made by the agreement will contribute to a fair settlement upon termination.

(b) Each pretermination settlement agreement which determines the amount payable to the contractor as fair compensation for termination shall provide that the gross amount, exclusive of any sum payable for post-termination expenses, shall not exceed the total contract price, less payments otherwise made or to be made under the contract. [JTR 224.3]

§ 842.224–4 *Permissible provisions.* (a) Pretermination settlement agreements may provide that they shall become operative, or may be modified or cancelled, only upon stated conditions. Each such agreement should clearly state, for example, whether it becomes operative only upon total or upon a defined, partial termination; and whether the agreement shall be modified or cancelled after execution, but before termination of the contract by such events as change orders, variations in volume of production, passage of time or completion of a specified portion of the contract.

(b) Where the passage of time might substantially affect the fairness of an agreement, especially as to unit costs, retention values, rates of overhead or profit and special facilities, a provision for periodic adjustment of the settlement terms by negotiation or by an agreed formula may properly be included. The contractor will not be given the option to choose, after notice of termination, between the pretermination settlement agreement and settlement under other authorized termination provisions.

(c) A pretermination settlement agreement may provide that the contractor will make no charge because of termination if he is given notice by a specified period of time before the effective date of termination. The purpose of such notice shall be to give the contractor adequate time to plan his work so as to avoid termination charges. The Government, however, shall not bind itself to give such advance notice.

(d) A suggested form of pretermination settlement agreement appears in § 849.904. This form, which is for use in connection with fixed-price supply contracts containing the uniform termination article, is furnished solely as an example and is not designed to cover the many types of situations which may be presented. [JTR 224.4]

§ 842.224–5 *Settlements on behalf of more than one service or bureau.* The Readjustment Division, ASF, may authorize the chief of any service or bureau to execute a pretermination settlement agreement with a war contractor on behalf of any or all services of the War Department; and the Industrial Readjustment Branch, OP&M, may grant such authority on behalf of any or all bureaus of the Navy Department. [JTR 224.5]

§ 842.224–6 *Applicability of this subchapter and Joint Termination Accounting Manual.* The principles of this subchapter relating to negotiated termination settlements, and the Joint Termination Accounting Manual shall be employed as general guides, insofar as applicable, in making decisions and determinations concerning any pretermination settlement agreements. [JTR 224.6]

§ 842.225 *Specific matters which may be covered by informal arrangements and by pretermination settlement agreements.* The following list includes important matters, some or all of which may be the subject of either informal arrangements or binding settlement agreements. [JTR 225]

§ 842.225–1 *Stop-work points.* The contractor and the contracting officer should ascertain and agree upon the points or stages at which production is to be stopped upon termination in accordance with § 842.241–3 (a). [JTR 225.1]

§ 842.225–2 *Method of taking inventory.* Advance arrangements should be made as to the place and method of taking and verifying inventories and preparing satisfactory termination inventory schedules. Proper short cuts in counting inventory should be considered, such as estimates, weighing instead of counting and using book inventory subject to appropriate check. Arrange-

ments should be made for concurrent verification of inventory by the contracting officer, particularly as to those items to be scrapped, retained by the contractor, or immediately diverted to other work of the contractor or to other contractors. Agreement should be reached as to what constitutes a "satisfactory" schedule with respect to classification and description. Items to be scrapped, sold, or retained by the contractor, diverted to other war contractors, transferred to the Government for war production, or otherwise disposed of promptly upon termination, need be described only to the extent required to substantiate the contractor's charges and to meet the requirements of such disposal; they need not be described in the detail required for inventory to be taken over and reported to a disposal agency. [JTR 225.2]

§ 842.225–3 *Categories of anticipated termination inventory.* Termination inventory anticipated as being on hand at termination should be studied, and agreement reached on the items to be:

(a) Retained by the contractor at cost or less than cost but at more than scrap prices;

(b) Retained at scrap prices by the contractor;

(c) Disposed of by the contractor to original vendors or others;

(d) Transferred to the Government;

(e) Covered by a storage agreement. [JTR 225.3]

§ 842.225–4 *Property required by Government.* Termination inventory required by the Government for any reason should be ascertained at the earliest possible date. Where lists of critical items desired by a service or bureau are available, they should be used as a basis for advance arrangements. Generally, a determination can be made that certain items will not be required, and a tentative understanding reached. In general, the Government will require raw materials only where the supply is critical, and, as to spare parts, will require only completed components and assemblies. Chiefs of services and bureaus should supply contracting officers, prior to termination wherever possible, with a current list of critical items, as a basis for advance arrangements. [JTR 225.4]

contractor. Subject to any applicable

§ 842.225–5 *Retention of property by* War Production Board regulations, retention of termination inventory by the contractor is encouraged. Retention values should be negotiated at a fixed price or by a definite formula for computation of such price. The price at which items may be retained will be subject to the price policies set forth in Subpart D of Part 844. [JTR 225.5]

§ 842.225–6 *Scrap.* (a) For the purpose of this subpart the term "scrap" shall mean property that has no reasonable prospect of sale except for its basic material content.

(b) All scrap determinations shall be submitted for disposal board review and approval as provided in § 842.227–2. [JTR 225.6]

§ 842.225–7 *Transfer of property to the Government.* Arrangements should be made for packaging, shipping and storing termination inventory to be taken over by the Government. [JTR 225.7]

§ 842.225–8 *Unit costs of termination inventory.* Agreement may be reached as to the unit costs of each item or class of inventory on termination, including raw materials and work-in-process at the appropriate stop-work stages permitted by § 842.241–3 (a). Such unit costs may be negotiated as definite figures on the basis of the contractor's prior cost experience; or if such costs cannot be forecast with reasonable accuracy, provision may be made for adjustment upward or downward, in accordance with any agreed formula. Such formula should be designed to cover any special factors, such as wage changes, market fluctuations, or changes in production volume arising from cut-backs or increases in production, which would materially affect termination inventory costs. Cost of work-in-process, at the appropriate stop-work stages, may be forecast and negotiated on any agreed basis of standard, average or estimated costs. Agreement upon unit costs, retention values, settlement expenses, and rates of general and administrative expense and profit represents a "count and multiply" type of agreement, requiring only an extension of agreed-on prices to the number of units on hand on termination to arrive at the amount of the termination claim. The suggested form of agreement set forth in § 849.984 is of this type. [JTR 225.8]

§ 842.225–9 *Advance agreement on total-cost basis.* In cases where it is impracticable to negotiate unit costs of anticipated termination inventory, arrangements or agreements may provide that the total-cost basis shall be used. [JTR 225.9]

§ 842.225–10 *Allocation of common inventory to specific terminations.* Where raw materials and work in the early stages of process cannot be identified with specific contracts or orders, rules governing allocability as between civilian and war business, terminated and continued war business, and similar questions, may be decided on. [JTR 225.10]

§ 842.225–11 *Special facilities.* Arrangements or agreements may be made regarding capital items which are determined to be special facilities within the meaning of the Statement of Cost Principles, § 845.551–2 (f). The cost to be allowed and the method of protecting the Government's interest should be specifically covered in accordance with Subpart G of Part 844. [JTR 225.11]

§ 842.225–12 *Government-owned production equipment.* Advance arrangements should cover the following:

(a) *Idle equipment.* A list of the equipment that will become idle as a result of termination should be prepared in satisfactory form for plant clearance purposes.

(b) *Acquisition by the contractor.* The contractor should indicate those items that he wishes to acquire at the prices established under applicable War and Navy Department regulations, and the contracting officer should determine whether such items can be released. The method of financing such acquisition should be considered.

(c) *Removal.* The contractor should be given definitive instructions as to the dismantling, packaging, shipment and storage of those items that he does not wish to acquire or that the Government is unwilling to release. [JTR 225.12]

§ 842.225–13 *Starting load costs and similar items.* Arrangements or agreements should cover the methods of determining and allocating such costs as starting load, engineering, and tooling expenses. [JTR 225.13]

§ 842.225–14 *Factory overhead and general and administrative expense.* The rates of factory overhead and general and administrative expense may be agreed upon and, in appropriate cases, made subject to periodic adjustment. [JTR 225.14]

§ 842.225–15 *Profit.* The rate or method of computing profit may be determined. [JTR 225.15]

§ 842.225–16 *Pretermination and post-termination settlement expenses.* Arrangements or agreements may be made covering the amount of, or the methods of determining and allocating, the costs of maintaining a termination organization and the expenses incurred in advance preparations for termination settlement, as well as the amount or method of computing the amount of post-termination settlement expenses. [JTR 225.16]

§ 842.225–17 *Interim financing by means of partial and advance payments*—(a) *Prime contractors' charges.* Advance arrangements or agreements covering methods of computing fair compensation on termination will assist a prime contractor in applying for an immediate, cost-supported or controlled partial payment in accordance with Subpart E of Part 843. An agreement may establish the basis upon which the contractor's estimate is to be prepared, and, if prepared in accordance with such basis, the percentage of the estimate that will be paid as a partial payment, but not the amount of the estimate or of the partial payment. Where unit costs of termination inventory have been agreed to in advance, an estimate of costs based upon the amount of inventory customarily in the contractor's plant at then prevailing rates of production should be submitted in advance to the contracting officer, and currently revised to facilitate prompt approval by the contracting officer on the date of termination.

(b) *Subcontractors' charges.* Arrangements may be made for establishing a fund in the hands of higher tier contractors from which partial and final payments may be made to subcontractors, in accordance with § 843.364. [JTR 225.17]

(c) *Use of advance payments for interim financing.* Under the conditions stated in §§ 843.331 and 843.332, advance payment funds in special accounts may be utilized for the payment of subcontractors' charges and those of the contractor. [JTR 225.17]

§ 842.226 *Advance preparations for subcontract termination.* [JTR 226]

§ 842.226–1 *Informal arrangements.* Informal arrangements and pretermination settlement agreements between war contractors affecting subcontracts will be recognized on substantially the same conditions as those applicable to prime contracts.

Contracting officers, in cooperation with prime contractors, should encourage advance arrangements covering elements of subcontractors' settlements. [JTR 226–1]

§ 842.226–2 *Pretermination settlement agreements* (a) Pretermination settlement agreements between the Government and prime contractors may not be used to relieve such contractors of their obligations with respect to subcontractors' claims. Where a prime contractor's pretermination settlement agreement with the Government deals with subcontractors' claims, it shall contain an undertaking by the contractor promptly to pay fair compensation to subcontractors in accordance with the standards prescribed by this subchapter.

(b) Pretermination settlement agreements between war contractors and their subcontractors will be recognized as binding on the Government upon approval by the Government to the extent and upon the conditions stated in § 842.227, or when they are made pursuant to the terms of a pretermination settlement agreement between the Government and the prime contractor.

(c) When a pretermination settlement agreement between a war contractor and his subcontractor has been made binding on the Government by the approval of one service or bureau, any other service or bureau may rely upon that approval and, without making any independent review of any provisions so approved, may approve other pretermination settlement agreements or other settlements between the subcontractor and the same or other customers which contain or give effect to the same provisions. Such action may appropriately be taken with respect to provisions of general application to all claims of the subcontractor, such as those determining overhead or profit rates or classifying items of termination inventory. [JTR 226.2]

§ 842.226–3 *Direct pretermination settlement agreements with common subcontractors.* (a) The Government may enter into direct pretermination settlement agreements with subcontractors producing the same or similar articles under different prime contracts, and may prescribe therein the method of determining the termination charges of such subcontractors. Such agreements may be entered into only to the extent that, in accordance with paragraph (b) below, authority has been granted to the service or bureau executing the agreement to make it applicable in the settlement of the prime contracts to which such subcontracts relate.

(b) The Readjustment Division, ASF, may authorize the chief of any service or bureau to execute such a pretermination settlement agreement with subcontractors on behalf of any or all services of the War Department; and the Industrial Readjustment Branch, OP&M, may grant such authority on behalf of any or all bureaus of the Navy Department.

(c) Such agreements with subcontractors may establish as fair compensation amounts specified in the agreement or to be readily computed according to methods, standards or bases appropriate to such subcontracts. Subcontract settlements made in accordance with such agreements will be recognized by the Government in the settlement of the prime contract to which such subcontract relates, but no such agreement shall bind any higher tier contractor without his consent. [JTR 226.3]

§ 842.227 *Approval of pretermination settlement agreements.* [JTR 227]

§ 842.227–1 *Approval by review board.* Each pretermination settlement agreement shall, before approval or execution by the contracting officer, be examined by a review board in the service or bureau of that contracting officer. Such board may be a settlement review board established under § 845.581, or such other board of three or more members as may be specially created by the chief of the service or bureau. The function of the board shall be to determine the over-all reasonableness of the agreement, and the adequacy of the protection of the Government's interests. If the review board disapproves any proposed agreement, the contracting officer shall not approve or execute it without the approval of the head of the office in which the board is established. [JTR 227.1]

§ 842.227–2 *Approval by disposal board.* Where a pretermination settlement agreement provides for the retention or disposal of any termination inventory by the contractor, or for a scrap determination, regardless of the cost of the property involved, such agreement shall be subject to prior review and approval by a disposal board established under § 844.449. [JTR 227.2]

§ 842.227–3 *Approval by Readjustment Division or Industrial Readjustment Branch.* In addition to the approval required under §§ 842.227–1 and 842.227–2, a pretermination settlement agreement requires approval of the Readjustment Division, ASF, or the Industrial Readjustment Branch, OP&M where the agreement:

(a) Has the effect of substantially determining the entire matter of fair compensation, and the undelivered portion of the contract is more than $5,000,000 at the time of execution; or

(b) Provides for the payment of any amount for loss on special facilities as defined in § 845.551–2 (f); or

(c) Determines, from estimates based on the contractor's production cycle, or otherwise, the precise quantities of termination inventory which will be assumed to be on hand at any given time, and on which, therefore, the settlement is to be based; or

(d) Provides for the additional processing or continuation of production of any work-in-process for the account of the Government after the effective date of termination, except to the extent provided in § 842.241–3 (a); or

(e) Is a direct pretermination settlement agreement with a war contractor under § 842.224–5 or § 842.226–3; or

(f) Relates to reimbursement of costs or adjustment of the fee under a cost-plus-a-fixed-fee contract. [JTR 227.3]

§ 842.227–4 *Form for submitting agreements for approval.* Every request for approval under § 842.227–3 will include such of the following information as is relevant:

(a) Name and address of contractor.

(b) Numbers and dates of the contracts or orders covered by the agreement, estimated dates of completion, and delivery schedules.

(c) Location of the principal plant furnishing the items.

(d) Quantity and brief description of items being furnished.

(e) Unit price or prices and total amount to be expended under the contracts or orders.

(f) Experience of contractor with the type of production involved.

(g) Copy of the pretermination settlement agreement.

(h) Recommendation of the chief of the service or bureau.

(i) Such other information as the contracting officer deems proper. [JTR 227.4]

SUBPART C—DISTRIBUTION OF CUTBACKS

§ 842.230 *Scope.* This subpart deals with policies and procedures governing the translation of cutbacks in procurement schedules into terminations or revisions of specific contracts. Such policies and procedures are based on, and follow the requirements of, (a) a directive dated January 20, 1945 issued by the Director, Office of War Mobilization and Reconversion, entitled "Policies of Contract Curtailment, Non-renewal and Termination", and (b) Directive No. 40 of the War Production Board, entitled "Clearance and Consultation on Cutbacks". This subpart includes the steps to be taken in planning contract terminations, clearing such plans with the War Production Board where this is required, and informing the prime contractors' employees and the general public where substantial releases of manpower or facilities may result. The preparation of the notice of termination and its delivery to the prime contractor are covered in Subpart D. [JTR 230]

§ 842.231 *Responsibility for planning cutbacks.* [JTR 231]

§ 842.231–1 *Need for planning.* (a) When the supply programs of the armed forces change due to strategic changes, new technical developments, scarcity of materials, or other similar factors, procurement schedules must often be curtailed either by terminating outstanding prime contracts or by reducing the rate of deliveries scheduled under such contracts, or by both methods.

(b) In reducing procurement schedules and in terminating war contracts, it is essential, to the greatest extent practicable:

(1) To shift any manpower, facilities, and materials released into other war production;

(2) To minimize disruption of the national economy;

(3) To reduce or eliminate termination claims, by enabling war contractors to change over to other production with minimum delay or loss of productive capacity;

(4) To provide prime contractors with notice of termination as far in advance of the cessation of work thereunder as is feasible and consistent with the national security, without permitting unneeded production or performance, in order to enable the contractor and his employees to prepare for the termination of work.

(c) The chief of each service or bureau will carefully plan all cutbacks under his administration in such manner as to meet these objectives. [JTR 231.1]

§ 842.231–2 *Review boards.* The chief of each service (except the Army Air Forces) and the chief of each bureau will establish one or more boards of review composed of not less than three responsible officers or employees to review proposed terminations of contracts and reductions in individual delivery schedules. Such a board shall review each such cutback required to be cleared by the War Production Board (CPAD), which involves a selection of facilities and a reduction of more than $500,000 in the total value of the items to be delivered under all prime contracts with that service or bureau for substantially similar procurement items (a) in the current month or in any one of the succeeding 11 months, or (b) in the case of Navy Department ship construction, in the current month or any succeeding month. The chief of the service or bureau in his discretion may require proposed cutbacks involving smaller amounts to be submitted to a review board. In the Army Service Forces such Boards shall review all cutbacks which may result in the complete or partial closing of government-owned plants and transmit the action of the board to the Commanding General ASF (Director, Production Division) for approval. [JTR 231.2]

§ 842.231–3 *Records to be maintained.* The chief of each service or bureau will maintain adequate records of all cutbacks, evidencing the application to each case of the procedures prescribed by this regulation and especially of the policies specified in §§ 842.232 and 842.241. It is recommended that such records be maintained on the PEC Form B prescribed in § 842.233–4, whenever practicable, whether or not a report for the case is required to be made on that form under § 842.233–4. [JTR 231.3]

§ 842.231–4 *Navy procedures.* In obtaining information as a basis for applying the policies specified in §§ 842.232 and 842.241, each bureau should consult directly with appropriate divisions or sections in the Office of Procurement and Material and in the Shore Establishments and Civilian Personnel Division of the Secretary's Office. Such divisions and sections in OP&M include the Materials and Products Control Officer and the Labor Relations Division of the Production Branch, the Finance Division and Industry Cooperation Division of the Procurement Branch, and in Shore Establishments and Civilian Personnel, the Industrial Manpower Section of the Employment Branch. [JTR 231.4]

§ 842.232 *Factors in selecting prime contracts for termination.* [JTR 232]

§ 842.232–1 *General application of factors.* (a) When a cutback in a procurement program will require the termination of less than all outstanding prime contracts related to the program, the service or bureau concerned will select the particular prime contracts to be terminated in the light of all applicable factors within its knowledge.

(b) The prime consideration is the retention of facilities with capacity to produce known and contingent future requirements. A list of the other factors to be considered is given in the following sections. Not all of these factors will apply to each case, but all that are pertinent should be considered. Readily determinable factors, such as relative costs, should not be over-emphasized to the exclusion of those less tangible in nature.

(c) To the fullest extent possible, the service or bureau should take into account the bearing of all pertinent factors upon subcontractors; for example, in regard to critical labor areas or the use of transportation facilities, the location of the prime contractor may be less important than the location of major subcontractors. [JTR 232.1]

§ 842.232–2 *Costs.* Prime contracts affording lower unit costs to the Government should be retained where other factors are equal, but the obvious importance of this factor and the ease with which it can be applied must not result in disregarding other pertinent factors. As in the case of initial procurement, prime contracts may be retained even though involving higher prices than the contracts terminated, whenever necessary to give due weight to other factors. The cost factor will, however, grow in importance as manpower, transportation and other shortages are overcome. [JTR 232.2]

§ 842.232–3 *Facilities useful for other production.* (a) Facilities which can be utilized for other war production or for essential civilian production should be released in preference to terminating war contracts at plants not readily adaptable for such other production. In addition to physical facilities, the availability of engineering and other technical staffs able to effect speedy change-over should be considered in this regard.

(b) Where the released facilities will not be required for other war production or essential civilian production, preference should be given to those able to reconvert to other civilian production for which labor and material are available. This consideration may be particularly important where a war contractor is located in a single industry community dependent on the business of the contractor. [JTR 232.3]

§ 842.232–4 *Financial condition.* Prime contractors requiring Government financial assistance in the form of guaranteed loans or advance payments at substantial credit risk may ultimately be of greater expense to the Government than prime contractors with a higher contract price per unit. [JTR 232.4]

§ 842.232–5 *Government-owned versus privately owned facilities.* Privately owned plants not normally engaged in production of a military character will be given first priority of release from war production in order to facilitate their reconversion to civilian production, due consideration being given to the wishes of the contractors. Government-owned plants will be kept in operation or reserve until their production is clearly no longer required for military needs. However, where a plant is located in an isolated section with no opportunity for displaced workers, the exercise of wise administrative discretion may prompt other action. [JTR 232.5]

§ 842.232–6 *Location in critical labor areas.* Manpower shortages in critical labor areas designated by the War Manpower Commission as Group I or Group II Areas should be relieved by terminating war contracts for materials being produced in such areas to the greatest extent possible. Particular attention should be given to the location of the principal subcontractors as well as prime contractors. [JTR 232.6]

§ 842.232–7 *Performance.* (a) War contractors' records for meeting or anticipating required schedules should be reviewed.

(b) Reports of technical inspectors and other data indicating quality of product should be weighed.

(c) War contractors with a record of economic use of critical materials, machinery and equipment and efficient utilization of labor should be retained in preference to those with a record of over-ordering or waste, or of labor hoarding, rapid labor turnover, or excessive absenteeism.

(d) Where practicable, companies responsible for the development and engineering of specialized products will be retained in their manufacture in preference to those companies which are merely licensed for their manufacture. [JTR 232.7]

§ 842.232–8 *Pro rata partial terminations.* Where all other factors are in substantial balance, a cutback may be spread pro rata over all affected prime contracts by partial terminations. The possibility that the operations of some war contractors may be reduced below an economic production rate must, however, be taken into account in this connection. [JTR 232.8]

§ 842.232–9 *Security.* The security factor should be considered, based on location and dispersion. [JTR 232.9]

§ 842.232–10 *Smaller war plants.* Independent smaller concerns within the scope of the Smaller War Plants Act (Public Law 603, 77th Congress) should be retained to the fullest extent possible except where the prime contractor would prefer termination in order to be released for permitted civilian production. Similar preference should be accorded prime contractors with a large number of sub-

contractors in the Smaller War Plants category. [JTR 232.10]

§ 842.232–11 *Stage of completion.* War contracts not yet in production or in earlier stages of production should be terminated in preference to contracts nearing completion, in order to avoid waste in scrapping work in process and to reduce termination claims. [JTR 232.11]

§ 842.232–12 *Stand-by facilities.* Facilities retained should have existing or potential capacity for production of known and contingent future requirements. Safeguarding of future requirements normally will require maintenance in operation of more than one source of supply for any important nonstock item. [JTR 232.12]

§ 842.232–13 *Transportation.* The burden on transportation facilities should be minimized by retention of war contractors accessible to raw materials, purchased components and destination, in preference to contractors requiring cross-hauls or long distance deliveries. [JTR 232.13]

§ 842.232–14 *Type of contract.* Fixed-price prime contracts should be retained in preference to cost-plus-a-fixed-fee prime contracts, other factors being equal, where both types of prime contracts are outstanding under a procurement schedule. [JTR 232.14]

§ 842.233 *Approval of large cutbacks by the War Production Board; notification of smaller cutbacks.* [JTR 233]

§ 842.233–1 *General.* (a) Pursuant to instructions of the Director, Office of War Mobilization and Reconversion, the Production Executive Committee of the War Production Board has adopted uniform policies to govern termination of contracts in order to give reasonable notice to management and labor of such terminations. The contracting agencies are required to obtain approval of their proposed large cutbacks and terminations, excluding subsistence and other specifically exempted programs, from the Production Executive Committee and not to make them effective until such approval is obtained. To insure complete coordination in the field of cutbacks or other production adjustments, the Production Executive Committee has established under its direction the Production Readjustment Committee on which the armed services and numerous other government agencies are represented. The Production Executive Committee has further established (1) uniform procedures and report forms to be used by the contracting agencies and (2) an administrative group operating under the Production Readjustment Committee, known as the Current Production Adjustments Division. The Director of this Division rules on distribution of cutbacks, subject to appeal in accordance with § 842.233–4 (c).

(b) The procedures and forms described in the following sections apply except where the Production Executive Committee of the War Production Board authorizes deviations or alternative procedures for special cases or classes of cases. The forms used for clearing and reporting cutbacks are designated as PEC Forms A, B, C, and D, and will be used in accordance with §§ 842.233–3, 842.233–4, 842.233–5, and 842.233–6. [JTR 233.1]

§ 842.233–2 *Definition of cutbacks.* For the purpose of these reports a "cutback" means a revision of delivery schedules under contract that (a) eliminates all or part of the items to be delivered under one or more prime contracts, or (b) reduces the rate of deliveries scheduled for any period; it does not include changes in items to be delivered, resulting from changes in plans and specifications. Items, parts, or materials that are alike in their principal specifications or that are usually procured together or grouped in one procurement program are regarded as one item or material for the purposes of the reports. Orders to Government-owned plants shall be treated as prime contracts for the purpose of the foregoing definition and for making reports. [JTR 233.2]

§ 842.233–3 *PEC Form A, preliminary advice of current cutbacks.* (a) PEC Form A will be filed for a proposed cutback which will involve a reduction of more than $500,000 in the total value of items to be delivered under all prime contracts with that service or bureau for substantially similar procurement items (1) in the current month or any one of the succeeding 11 months or (2) in the case of Navy Department ship construction, in the current month or any succeeding month.

(b) In determining whether cutbacks require submission of PEC Form A, only the amounts actually under contract (as distinguished from scheduled procurement not yet placed under contract) will be considered; the value of items of Government-furnished equipment will be excluded from such consideration; and in cases where programmed items are assembled from separately procured components, the determination will be confined to consideration of all prime contracts for each separately procured component.

(c) The form shall be submitted as soon as a cutback has been determined upon or has advanced to a stage where it is sufficiently firm and definite with respect to quantities to be considered by the Current Production Adjustments Division. The form is a preliminary advice and is not to be delayed pending determination of the revised schedules or selection of the particular prime contracts to be terminated. [JTR 233.3]

§ 842.233–4 *PEC Form B, detailed advice of current cutbacks.* (a) PEC Form B will be filed showing data for each plant currently producing an item for which a report of a cutback is made on PEC Form A, whether or not the particular plant is affected by the cutback, except that in cutbacks in ammunition component programs, the procedure prescribed in § 842.233–7 is followed in lieu of filing PEC Form B. PEC Form B is a detailed advice of a cutback upon the basis of which approval of the War Production Board is obtained.

(b) The form shall be submitted as soon as possible after proposed contract terminations or proposed revisions of individual contract delivery schedules have been determined upon, and shall be accompanied by a statement of the factors supporting the proposed distribution of the cutback among the plants producing the item. Pending receipt of a ruling from the War Production Board on PEC Form D, no formal notice of termination, notice to suspend work or change order shall be sent to any prime contractor.

(c) Any ruling of the Current Production Adjustments Division may be appealed to the Production Readjustment Committee, and any ruling of the latter may be appealed to the Production Executive Committee, as provided in §§ 842.234–1 (a), 842.234–2 (b) and 842.234–3 (b). In any case where, because of unusual circumstances in the opinion of the service or bureau, action at variance with a ruling of the War Production Board must be taken, justification therefor by the service or bureau concerned will be presented (through the channels and in the manner established in § 842.235) to the Chairman of the Production Readjustment Committee within ten days after such action.

(d) Where the cutback involves no selection of facilities, such as complete terminations or reductions in production of any item produced by a single facility, the service or bureau may request (through channels) that the filing of PEC Form B be waived. In such instances, an estimate of labor to be released by the cutback, and the name and location of the district or other local officer responsible for notifying the facility affected, will be entered on PEC Form A in order that the Current Production Adjustments Division, in granting such a waiver, may be informed of the effect of the cutback and arrange for coordination with the district or other local officer prior to initiating its discussions with the facility. If the Current Production Adjustments Division agrees to the waiver of PEC Form B in such instances, a formal notice of termination, notice to suspend work, or change order to the facility will be deferred until the district or other local officer has contacted the local representative of the War Production Board, or until the service or bureau is advised that such prior coordination is unnecessary. [JTR 233.4]

§ 842.233–5 *PEC Form C, notification of termination or revision of contract delivery schedules.* (a) A report on PEC Form C shall be filed for each contract termination or change in delivery schedule under any one outstanding prime contract which reduces the total value of items to be delivered in the current month or any one of the succeeding 11 months by over $100,000.

(b) Where the proposed termination or change in delivery schedule is not made pursuant to a recommendation or clearance on PEC Form D, the report on PEC Form C must be received by:

(1) The Current Production Adjustments Division, in the case of Washington action by a service or bureau; or

(2) The regional or district office of the War Production Board, in the case of field action by a service or bureau

at least 48 hours (exclusive of Sundays) before a formal notice of termination, order to suspend work, or change order is sent to the prime contractor. In order to comply with this requirement, adequate time, in addition to the 48 hours, must be allowed for transmittal. No approval or other action on the report is required before the termination notice, order to suspend work or change order is sent.

(c) Where the proposed termination or change in delivery schedule is made pursuant to a clearance or recommendation on PEC Form D, notice to the prime contractor may be sent forthwith after receipt of PEC Form D, and the notification on PEC Form C may be filed promptly thereafter. [JTR 233.5]

§ 842.233–6 *PEC Form D, rulings as to cutbacks by War Production Board.* PEC Form D will be used by the War Production Board for its rulings with respect to proposed cutbacks submitted for approval on PEC Form B, or PEC Form A when filing on PEC Form B has been waived. After receipt of PEC Form D by the service or bureau, formal notice to the war contractor of termination, order to suspend work, or change order may be sent forthwith, subject to the provisions of § 842.235. [JTR 233.6]

§ 842.233–7 *Clearance of cutbacks of ammunition components.* (a) A report on PEC Form B will not be submitted in connection with cutbacks involving ammunition component programs. The distribution of cutbacks will be determined at meetings attended by all interested contractors, representatives of the service or bureau, and a representative of the Current Production Adjustments Division authorized to act for such Division on all matters before the meetings and to approve verbally the action decided on at the meeting.

(b) Such meetings will not be called earlier than three days after submission of PEC Form A. Maximum advance notice of the time and place of the meeting will be given to the Current Production Adjustments Division by the member thereof representing the service or bureau concerned. Verbal approval of the action of the meeting by the Current Production Adjustments Division representative will have the effect of the issuance of a PEC Form D (§ 842.233–6) which will be issued later in confirmation of such verbal approval. PEC Form C will be submitted in accordance with § 842.233–5. [JTR 233.7]

§ 842.234 *Procedures for filing PEC Forms.* [JTR 234]

§ 842.234–1 *Army Service Forces.* (a) All liaison with the War Production Board in connection with the filing of PEC Forms A and B, the prosecution of appeals from rulings on cutbacks, and the receipt from the War Production Board of PEC Form D will ordinarily be handled by Headquarters, ASF (Director, Production Division). PEC Form C will be prepared by the responsible service and forwarded directly to the prescribed list of recipients. In special cases, such as the meetings on cutbacks of ammunition components (§ 842.233–7), direct liaison between the Current Production Adjustments Division and the service concerned may be authorized.

(b) Where a report on PEC Form A becomes necessary because of a change in Programmed Procurement for items which appear in specific quantities in Monthly Progress Report—section 22–G—Procurement Program—Ground, or Monthly Progress Report—section 22–A—Procurement Program—Air (Summary of Army Supply Program—Air, Part C) which constitute "contract items" (items procured in the form listed in the foregoing Procurement Programs as distinguished from items assembled from separately procured components), PEC Form A will be prepared and submitted by Headquarters, ASF (Director, Production Division).

(c) Where a report on PEC Form A becomes necessary because of a cutback of an item (or items) which appears in specific quantities in the Monthly Progress Report—section 22–G—Procurement Program—Ground, or Monthly Progress Report—section 22–A—Procurement Program—Air (Summary of Army Supply Program—Air, Part C), but represents an assembly of components which constitute the items of procurement, a report will be prepared by the service which let the contract for the components affected. PEC Form A will also be prepared by the responsible service where a report on that form is necessary because of a cutback in an item which is included in a dollar value category of secondary items in Monthly Progress Report 22–G or because of a cutback in material schedules or nonprogrammed procurement. A case number will be assigned by Headquarters, ASF, (Director, Production Division) and the space provided for it will be left blank on the forms filled in by the service.

(d) The responsible service will prepare PEC Forms B and C in all cases. In cases where PEC Form A is prepared by Headquarters, ASF, the service will be requested verbally to prepare PEC Form B. A copy of the PEC Form A filed in the case will be transmitted to the service in confirmation of such verbal request.

(e) PEC Forms A and B originating with the services shall be forwarded in quadruplicate to Headquarters, ASF (Director, Production Division), which will transmit them to the War Production Board. PEC Form B shall be accompanied by a statement of the factors considered in accordance with § 842.232. In the case of reports submitted on PEC Form B, Headquarters, ASF, will promptly notify the service of approval of the proposed distribution of the cutback or of any War Production Board recommendation for an alternative course of action, upon receipt of PEC Form D.

(f) In addition to the reports submitted to Headquarters, ASF, the services will distribute copies of PEC Form C directly to headquarters offices and to appropriate district, state or regional offices of the War Production Board, the War Manpower Commission and the Smaller War Plants Corporation in whose territory the plant to be cut back is located. [JTR 234.1]

§ 842.234–2 *Army Air Forces.* (a) Unless the Chief, Resources Division AC/AS, M & S, prescribes otherwise in special cases, PEC Forms A and B shall be executed by the Air Technical Service Command and transmitted to the Resources Division, AC/AS, M & S, in quadruplicate. PEC Form C shall be prepared by the Air Technical Service Command and communicated by teletype to the Resources Division, AC/AS, M & S.

(b) All contacts with the War Production Board (including the prosecution of all appeals from rulings) shall be handled by the Office of the Chief, Resources Division, AC/AS, M & S, which will be responsible for transmitting required PEC forms to the War Production Board and which will promptly notify the Air Technical Service Command of the approval of Form D by the War Production Board. Case numbers shall be assigned by the Air Technical Service Command. [JTR 234.2]

§ 842.234–3 *Navy.* (a) The bureau concerned will prepare PEC Forms A, B and C in all cases. Where one bureau purchases for another the reports shall be prepared by the bureau responsible for the decision as to the particular prime contracts to be terminated or contract delivery schedules to be revised. Required reports on PEC Form A shall be prepared immediately upon receipt by a bureau of notice of a decision by the Chief of Naval Operations that a procurement program shall be cut back or upon the making of such a decision within the bureau. Case numbers will be assigned by the bureau.

(b) All PEC forms shall be forwarded in triplicate to the Industrial Readjustment Branch, OP&M, which will transmit them to the War Production Board and handle all contacts (including the prosecution of all appeals from rulings) with the Current Production Adjustments Division and its related committees. In the case of reports submitted on PEC Form A or B, the Industrial Readjustment Branch will promptly notify the bureau of approval of the proposed distribution of the cutback or of any War Production Board directive for an alternative course of action, upon receipt of PEC Form D.

(c) In order that Navy material inspectors may be informed of contemplated terminations and changes in delivery schedules which would affect contractors under their cognizance, the bureau concerned will advise the inspectors by telephone or TWX at the time PEC Forms A, B and C are transmitted to OP&M. The inspectors should not, until authorized to do so, disclose to any contractor the fact that the termination of his contract is under consideration, and should not disclose any proposed termination to anyone other than representatives of the Naval establishment concerned or of other interested Government agencies, such as the War Production Board and the War Manpower Commission. [JTR 234.3]

§ 842.234–4 *Joint procurement.* Where the War Department procures for the Navy Department, or vice versa, or another agency procures for either of them, reports on PEC Forms A, B and C,

where required, will be filed by the contracting service or bureau, or other agency. In such cases, the service or bureau which originates advice of a cutback in its requirements shall instruct the contracting service, bureau or other agency to file any necessary PEC forms. [JTR 234.4]

§ 842.235 *Cutback procedures; explanations to war contractors and workers; the War Production Board "seven-day" rule.* (a) When employment will probably be substantially reduced as a result of a termination or reduction in delivery schedules under a cutback, the service or bureau concerned shall arrange to inform the prime contractor and his employees as far in advance as possible. Particular care should be taken to include in the letter or other notification as detailed a statement of the reasons for the cutback as appears advisable. The service or bureau concerned should also urge the prime 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 to take similar action. The prime contractor and subcontractors should likewise be urged to cooperate with the War Manpower Commission by making known their new net labor requirements and allowing United States Employment Service representatives to conduct job interviews at their plants if sufficiently large numbers of workers are to be displaced.

(b) In effecting terminations of contracts or reductions in delivery schedules, services or bureaus will arrange to give seven days' notice thereof before deliveries of the items contracted for must be curtailed whenever a proposed termination or reduction in delivery schedules will result in a substantial release of workers from a plant and will involve a cutback of over $100,000 per month in the current month or any one of the succeeding 11 months in one establishment. This requirement of notice is subject to the provisions of § 842.241–3, which will be strictly complied with. In any case where compliance with § 842.241–3 or other conditions make it impossible to give such notice, authorization to take immediate action will be obtained from the War Production Board, or action will be taken and a justification will be presented to the Chairman of the Production Readjustment Committee before, or within 10 days after, the actual curtailment in deliveries.

(c) The requirement set out in paragraph (b) above relates only to the delivery of items contracted for under prime contracts and does not apply (1) to curtailments of deliveries of component parts, subassemblies, and the like, in excess of the number necessary to complete the reduced quantities of prime contract items, or (2) to deliveries by subcontractors. In no case will the Government be responsible for continued production of such component parts, subassemblies and the like, or for deliveries by subcontractors, beyond the reduced requirements of the prime contract. However, every effort will be made to give notice of termination or reduction in delivery schedules of the prime contract sufficiently far in advance to permit seven days' notice to be given before curtailment of deliveries of component parts, subassemblies, and the like, or of deliveries by subcontractors.

(d) In the case of the Army Service Forces, all requests for authority to waive the seven days' notice of termination, required under paragraph (b) above, will be prepared by the service concerned and transmitted to Headquarters, ASF (Director, Production Division) for approval and submission to the War Production Board; and termination action will not be instituted by the service except upon advice from Headquarters, ASF (Director, Production Division) of the approval of the War Production Board. Similarly, in any case where the chief of the service deems immediate termination action necessary, prior approval of the contemplated action will be obtained from Headquarters, ASF (Director, Production Division) which will, pursuant to paragraph (b) above, submit to the War Production Board a statement of justification based on information furnished by the service.

(e) In the Army Air Forces, all requests for authority to waive the seven days' notice of termination, required under paragraph (b) above, will be prepared by the Air Technical Service Command and transmitted to the Office of the Chief, Resources Division, AC/AS, M&S, for approval and submission to the War Production Board, and termination action will not be instituted by the Air Technical Service Command, except upon advice from such office. Similarly, in any case where the Air Technical Service Command deems immediate termination action necessary, prior approval of the contemplated action will be obtained from the Office of the Chief, Resources Division, AC/AS, M&S, which will, pursuant to paragraph (b) above, submit to the War Production Board a statement of justification based upon information furnished by the Air Technical Service Command.

(f) In the Navy Department, all requests for authority to waive the seven days' notice of termination will be prepared by the bureaus concerned and transmitted to the Industrial Readjustment Branch, OP&M, for approval and submission to the War Production Board; and termination action will not be instituted by the bureau until informed by the Industrial Readjustment Branch, OP&M, of the approval of the War Production Board. Similarly, in any case where the chief of the bureau deems immediate termination action necessary, prior approval of the contemplated action will be obtained from the Industrial Readjustment Branch, OP&M, which will, pursuant to paragraph (b) above, submit to the War Production Board a statement of justification prepared by the bureau.

(g) In cases where arrangements for special notification of termination appear necessary because of the size of the labor layoff, and in every case where "major case" procedure is ordered by the Current Production Adjustments Division, notice of the cutback will not be given to the contractor (subject, however, to the provisions of § 842.243–1) until after a representative of the service or bureau has consulted with the appropriate field representative of the War Production Board to discuss the probable effect of the cutback and proposed suitable action. [JTR 235]

§ 842.236 *Official press statements.* [JTR 236]

§ 842.236–1 *PEC statements.* The Production Executive Committee of the War Production Board has established an Information Subcommittee which includes representatives of the War and Navy Departments. This subcommittee prepares a Production Adjustment Statement for release to press and radio regarding cutbacks reported on PEC Form B and individual terminations reported on PEC Form C whenever it considers this advisable. The service or bureau concerned shall assist the War or Navy Department representative by supplying him with the information necessary to enable the subcommittee to prepare the Production Adjustment Statement. [JTR 236.1]

§ 842.236–2 *War Department field release of PEC statement.* The Production Adjustment Statement will accompany the official termination notice to the appropriate War Department field office to be released by the field public relations officer, only after the plant has been officially notified and in turn has notified its employees. The field public relations officer is authorized to confer with plant managements, War Manpower Commission and War Production Board field officials and to make additions to the Statement to conform to local conditions, such as amount of labor to be released and to be hired elsewhere in the area, and then to issue the statement to local press and radio. [JTR 236.2]

§ 842.236–3 *Navy Department field release of PEC statement.* The Statement will be forwarded to the Navy material inspector cognizant of the plant involved and to the appropriate public relations officer. Such personnel in the field will make such changes as may be needed to conform to local circumstances, clear the changes with the Public Relations Office in Washington, and after the affected plants have been notified, and in turn notified their employees, issue the statement locally. [JTR 236.3]

§ 842.236–4 *War Department local press statements.* (a) Where a revision is handled locally and reported on PEC Form C by the local field office, and where no PEC Form B report has been made, the PEC does not have sufficient time upon receipt of the Form C to prepare and transmit a statement. In such cases, and in cases where the revision is not reported to PEC on any form, the public relations officer is authorized to prepare and issue the necessary Production Adjustment Statement locally on his own initiative if the amount of labor to be released warrants such action.

(b) Commanding officers of procurement districts and service command installations should release in their communities information on contract settlement and property disposal operations of their organizations. The public should

generally be advised of the reasons for terminations as well as the policies and procedures established for expeditious settlement of the resulting claims and the disposal of the related property. Any information released locally must, however, conform to the policies of higher authority. Emphasis will be laid on the necessity for continued production under currently outstanding contracts and the part contributed to this end by rapid settlement of terminated contracts.

(c) Personnel responsible for release of this information will have access to the records of settlements and will be advised of all pertinent operations within the local organization. In individual cases, public releases will be made only after notification of the prime contractor and the appropriate notification of his employees and subcontractors.

(d) Releases dealing with proposed policies of contract settlement and property disposal which have not become law, or which have not been incorporated in appropriate regulations, must have prior approval of the Readjustment Division, ASF. Other releases do not require such approval. [JTR 236.4]

§ 842.236–5 *Navy Department statements in absence of PEC statements.* When, in the opinion of the chief of the bureau concerned, any case not required to be reported on PEC Form B or C is of sufficient public interest, the office of the chief of the bureau will prepare an official statement to serve as the basis for a press release announcing the cutback and the reasons for it. This statement should include the name and location of the plant or facility affected, the effective date of the cutback, the end item or items affected, and the probable effect on future employment. After appropriate clearance for public release, such statement will be furnished to the cognizant Navy material inspector for release in the affected locality. [JTR 236.5]

§ 842.237 *Post V-J Day procedures.* (a) This section outlines the procedures to be followed after the declaration of V-J Day. This paragraph is based on, and follows the requirements of, paragraphs (p) and (s) of Directive No. 40 of the War Production Board, as amended 21 June 1945.

(b) The procedures for clearance and consultation on cutbacks set forth in §§ 842.233 through 842.236 will cease to be effective at V-J Day.

(c) Except as permitted under the policies and procedures outlined in § 842.241–3, production of items or quantities beyond military needs will be discontinued as rapidly as is possible after the declaration of V-J Day.

SUBPART D—PREPARATION AND DELIVERY OF TERMINATION NOTICE

§ 842.240 *Scope.* This subpart deals with the planning of an individual termination and with preparing and delivering the termination notice. The preceding subpart prescribed the procedures to be followed in deciding on and clearing the termination. [JTR 240]

§ 842.241 *Determining the time for termination.* [JTR 241]

§ 842.241–1 *Planning of termination.* Careful planning before exercising the Government's right to terminate any type of prime contract will greatly simplify the termination settlement, will avoid confusion and expense to war contractors and the Government and will tend to expedite settlement. This preliminary study should make certain that the notice of termination orders discontinuance or changes in the future performance by the contractor in accordance with the best interests of the Government. [JTR 241.1]

§ 842.241–2 *Need for components.* Before terminating a prime contract, the chief of the service or bureau should consider whether any subassemblies or components of the end product covered by the prime contract are within the requirements of the procurement program for maintenance or spare parts for completed units, and should permit completion of such items or parts to cover reasonable prospective needs. Such needs should also be considered in determining how to dispose of work in process or parts on hand. [JTR 241.2]

§ 842.241–3 *Discontinuance of production.* (a) Production should not be continued for items or quantities beyond military needs, and processing of such items will be stopped immediately, regardless of their state of completion, except that additional processing, including the introduction of new material, may be permitted to the stage deemed by the contracting officer to be necessary for reasons of safety, or to clear or avoid damage to production equipment, or to avoid immediate complete spoilage of work in process having a definite commercial value. To the greatest extent practicable, contracting officers should agree with contractors in advance of termination upon the points or stages at which work under the terminated war contract is to be stopped in order to comply with the policy stated above. Otherwise the termination notice should specify such points or stages.

(b) Any agreement made in advance of termination which provides for retention of work in process by the contractor shall provide for halting production for the purpose of checking inventories at the stage at which production would otherwise have been stopped under paragraph (a), except where inventories may be so checked without halting production.

(c) In exceptional cases, the contracting officer may authorize continued processing to a stage necessary to get a usable end product or component where the available data or actual commitments of responsible persons make it apparent that an undue loss to the Government on the production to date will be prevented thereby, *Provided,* That:

(1) The contracting officer, after diligent effort, has been unable to agree with the contractor in advance of termination for the retention of work in process at a reasonable figure which, in the opinion of the contracting officer from available data, is greater than the net proceeds that could reasonably be expected to be obtained if the work in process were offered for general sale and would result in a saving in the amount which would otherwise have been payable by the Government as fair compensation for the termination of the contract;

(2) The contracting officer considers on the basis of available data that the realizable value of work in process, if work on it were stopped immediately, plus the cost of additional processing would be less than the value of the end product or component; and

(3) The continuation of production in the specific instance is approved in writing (in the case of the War Department) by the head of the local procurement district, depot or other office, or (in the case of the Navy) by the chief of the bureau.

Under no circumstances will processing be continued for the purpose of completing surplus items on a speculative basis.

(d) Under a statement of policy adopted by the Procurement Policy Board of the War Production Board, there has been established a centralized system for coordinating information regarding terminations of war contracts and making known such information, normally through the War Production Board, to other contracting agencies. The purpose of the system is to enable the transfer of production from the terminating agency to an agency having a current procurement requirement for the product. The responsibility for the administration of the system, including the supplying and screening of information concerning terminations by other contracting agencies, is centered, within the War Department, in the Production Division, Headquarters, Army Service Forces and the Resources Division, M. & S., Headquarters, Army Air Forces, and within the Navy Department in the Production Branch, O. P. & M. Each service or bureau will be notified by the offices in the respective departments administering the system whenever another contracting agency intends to negotiate with a contractor for a direct contract for the terminated portion of the contractor's production. Normally a War or Navy Department contract to be terminated or modified will actually be terminated or modified by the service or bureau without regard to whether or not another contracting agency may have requirements for the product. The production will usually be obtained under a new contract by the agency desiring it. To the extent that any such contract is made by another contracting agency, there should, of course, be an appropriate reduction in the termination claim of the affected contractor. Nothing in this Procurement Policy Board policy in any way supersedes or limits the obligation of the services and bureaus to discontinue promptly production for items or quantities beyond military needs, and to effect prompt settlement of the termination claims of war contractors.

(e) Where any end product is desired by any other responsible government agency for any use, or by any responsible civilian agency for use in civil relief for liberated and occupied countries, the

work in process should be completed to the extent desired by such agencies whenever they have arranged in advance to take over specific contracts at the contract price.

(f) The policies and procedures outlined in this section are based upon, and reflect, regulations dated October 24, 1944, issued by the Director, Office of War Mobilization and Reconversion, entitled "Termination of War Contracts—Processing of Uncompleted Items; Retention of Work-in-Process by Contractor; Taking Over of Contracts by Other Agencies or Governments". [JTR 241.3]

§ 842.241–4 *Obtaining data from local representatives.* In some cases the effect of a proposed termination cannot be fully analyzed in the office of the chief of the service or bureau concerned. Local procuring offices, material inspectors, plant agents, expediters and others who have been concerned in the plants of the prime contractor and subcontractors with the administration of the war contracts to be terminated will ordinarily possess first hand information as to the status of production, production methods and other details about such contracts. In deciding on the point of termination, the contracting officer should obtain the necessary information from these readily available sources, and from the pretermination conference described in § 842.242. Where representatives in the field consider a proposed termination unwise, they should not hesitate to ask its reconsideration. [JTR 241.4]

§ 842.242 *Conference with prime contractor before termination.* [JTR 242]

§ 842.242–1 *When to be held.* (a) Unless the proposed termination does not involve factors of any complexity, or special circumstances make it impractical, the contracting officer should hold a conference with the prime contractor before termination. Where practicable, such a conference should usually be held before a report is filed on PEC Form B or C pursuant to §§ 842.233 and 842.234. This conference will supplement any previous advance planning discussions with the contractor under § 842.222.

(b) In the more important cases it may be advisable to confer with all interested prime contractors and principal subcontractors, so that each may contribute all pertinent information in his possession as a basis for decision as to terminating or adjusting delivery schedules of particular contracts..

(c) This conference should be considered as the start in the process of negotiating a speedy settlement. Frequently, it will eliminate problems which might otherwise delay or complicate the final settlement. [JTR 242.1]

§ 842.242–2 *Subjects for discussion.* In such a conference, if held, such of the following points should be discussed as may be appropriate under the circumstances:

(a) The reasons which make a termination necessary;

(b) Appropriate effective date of termination;

(c) Work in process which may advantageously be completed;

(d) Status of performance of prime contract and subcontracts, with a view to determining which, if any, subcontracts should be retained and completed;

(e) Problems of labor relations and unemployment which may result;

(f) Financial problems of the prime contractor and subcontractors which may arise in connection with the termination;

(g) Procedures to be followed by the prime contractor upon the effective date of the termination;

(h) A program for property disposition and scrapping;

(i) Other work which may be substituted for that which is to be terminated;

(j) The matters specified in § 842.254–2. [JTR 242.2]

§ 842.243 *Preparation of termination notice.* [JTR 243]

§ 842.243–1 *Standard forms of notice.* (a) The prime contractor may be notified to terminate by a letter notice or by telegraphic notice followed by a letter notice.

(b) Standard forms of telegraphic notice are set out in § 849.941 of this chapter.

(c) Standard forms of letter notice for fixed-price and cost-plus-a-fixed-fee contracts containing approved prime contract termination articles or other similar articles are set out in § 849.942 of this chapter.

(d) Where the chief of the service or bureau determines that any portion of the standard form of notice is inappropriate for any case or class of cases, he may omit or vary that portion.

§ 842.243–2 *Instructions for preparing notice.* In using the standard forms prescribed by § 849.942 of this chapter, the following information should be clearly stated:

(a) The effective date of termination. This shall not be earlier than the date the letter notice or preceding telegraphic notice is delivered to the business address of the prime contractor unless the contractor agrees to an earlier date. Where a temporary suspension of work is followed by a termination, the date of the suspension of work should ordinarily be designated as the effective date of termination if the contractor so agrees.

(b) The performance to be discontinued and, if the termination is partial, the portion of the contract to be continued.

(c) Any subcontracts which are not to be terminated.

(d) Any special directions which can then be given as to the protection of Government property in the custody of the prime contractor or any subcontractor.

(e) Any special directions or limitations, which can then be stated, with respect to the sale or retention of any termination inventory by the prime contractor or any subcontractor or its transfer to the Government. [JTR 243.2]

§ 842.244 *Detailed instructions to prime contractors for delivery with notice.* A standard form of instructions to advise the prime contractor as to the course of action to be followed by him immediately upon receipt of the termination notice is set out in § 849.943. In every case the contracting officer should prepare and furnish to the prime contractor with the termination notice, or with the confirmation thereof, a copy of these instructions modified or supplemented to the extent the contracting officer deems necessary for the particular case. In the interest of uniformity of procedure, the language of the form should not be changed except for substantial reasons arising in a particular case. With these instructions, the contracting officer should send to the prime contractor copies of the suggested forms of termination notices and instructions to subcontractors set out in § 849.944. [JTR 244]

§ 842.245 *Service of termination notice.* (a) In order to enable the prime contractor to terminate his own work and that of subcontractors in an efficient and orderly manner, the termination notice shall be given as far in advance of the cessation of work thereunder as is feasible and consistent with the national security without permitting unneeded production or performance.

(b) In all cases, the termination notice should be served in written form, preferably by delivery by hand, registered mail or telegram. Where the notice of termination is sent by telegram, it should be confirmed by letter. A signed acknowledgment of receipt of the notice should be obtained from the prime contractor wherever possible, and when this is not possible, a written record of proof of delivery shall be made.

(c) Copies of the notice of termination shall be sent to any assignee, who has filed a proper notice of assignment, and any guarantor or surety, of the prime contractor with respect to the terminated contract, and to the appropriate disbursing officer, and to such other officers and agents of the Departments as to the chief of the service or bureau may direct.

(d) Upon termination of Navy prime contracts, copies of the termination notice shall also be transmitted promptly to the cognizant Navy material inspector, to the Director, Cost Inspection Service, Bureau of Supplies and Accounts, and to the Chief, Finance Division, Office of Procurement and Material. When a notice of termination of a Navy prime contract is sent to the prime contractor by telegram, the copy to the cognizant Navy material inspector should likewise be sent by telegram or TWX, and followed by a copy of the letter termination notice. [JTR 245]

SUBPART E—IMMEDIATE ACTION AFTER TERMINATION

§ 842.250 *Scope.* This subpart describes the duties of the prime contractor and the contracting officer immediately after the service of the notice of termination with respect to the stoppage of work and the planning of the termination settlement. [JTR 250]

§ 842.251 *Immediate duties of prime contractor under notice.* [JTR 251]

§ 842.251–1 *Stoppage of work.* The prime contractor must discontinue the making of subcontracts and must take all necessary steps to stop work as promptly as practicable on and after the effective date of the termination notice, except that the prime contractor may continue any part of the work for his own account, unless the notice expressly provides otherwise. The contractor is not entitled to any compensation, or reimbursement of costs, for work done after he should have stopped work, or for work continued for his own account. The contractor should immediately call to the attention of the contracting officer any special circumstances which make it necessary or desirable to continue some or all of the work for the account of the Government in order to avoid waste of materials or work in process, or injury to the plant or other property. [JTR 251.1]

§ 842.251–2 *Completion of continued portion.* The prime contractor must complete any continued portion of the prime contract in accordance with the termination notice. He should promptly submit to the contracting officer any requests for equitable adjustment in the terms and prices for the performance of the continued portion of the contract, and any evidence showing changes in the probable cost of such performance which will result from the partial termination and will not be taken into account in the termination settlement. Such an equitable adjustment in the price or terms of the continued portion shall not be used to compensate the contractor for his termination claim. [JTR 251.2]

§ 842.251–3 *Termination of subcontracts.* (a) Except as the termination notice provides otherwise, the prime contractor must take steps to terminate, with or without the consent of the subcontractors, all unperformed or partially performed subcontracts related to the terminated portion of the prime contract, except that he may continue any such subcontracts for his own account unless the notice expressly provides otherwise. Such subcontracts must be terminated as promptly as practicable on and after the effective date of the termination notice or, if the termination notice so provides, at such later times as the contracting officer may direct. The prime contractor will notify his subcontractors of the termination as far in advance of the effective date as possible. Subcontractors in turn should be required to pass along the same requirements to their immediate subcontractors. If any subcontractor continues work after it should have been stopped, neither he nor the prime contractor is entitled to compensation or reimbursement from the government for such work.

(b) In the notice of termination, the prime contractor will inform his subcontractors of the number of the prime contract to which their subcontracts relate, and the name and address of the contracting officer administering the prime contract. Each subcontractor will, in turn, include such information in the notice terminating any next lower tier subcontract.

(c) The prime contractor should take such action as the contracting officer may direct to secure to the Government by assignment or otherwise the benefit of his rights under subcontracts in accordance with § 846.614. [JTR 251.3]

§ 842.251–4 *Termination inventory.* (a) The prime contractor and each subcontractor must use reasonable care, and in addition take such action as the contracting officer may direct or approve, to protect and preserve property in his possession in which the Government has or may acquire an interest, and to reduce or prevent loss or damage to the Government.

(b) As soon as practicable after the termination, the prime contractor should develop and present to the contracting officer a program for the disposition of termination inventory both by the prime contractor and by the various tiers of subcontractors, and should issue instructions to and through its immediate subcontractors as to the methods of carrying out the program. [JTR 251.4]

§ 842.251–5 *Notice of suits.* (a) The prime contractor should promptly notify the contracting officer in writing of any legal procedings against the contractor, based upon any subcontract or commitment related to the terminated prime contract, which are pending on the date of the termination notice or are brought at any time thereafter.

(b) The contracting officer should give notice through channels of all such litigation with his recommendation thereon (1) in the War Department, to the Litigation Division, Office of The Judge Advocate General, (2) in the Navy Department, to the Office of the General Counsel. That office will decide whether to assume control of any such case and defend against the claim by suitable arrangement with the prime contractor. [JTR 251.5]

§ 842.251–6 *Preparation of settlement proposal.* The prime contractor must proceed promptly to prepare his proposal for settlement of his termination claim, and necessary supporting schedules. He should also take steps to obtain promptly similar proposals and schedules from his subcontractors. [JTR 251.6]

§ 842.252 *Treatment of completed articles.* [JTR 252]

§ 842.252–1 *Acceptance of completed articles under contract.* (a) The termination notice for a fixed price supply prime contract should exclude from the terminated portion of the contract any completed articles accepted and delivered after the termination.

(b) Promptly after giving the prime contractor notice of termination, the contracting officer shall take steps to inspect and accept all completed articles which comply with the provisions of the prime contract and which do not represent unreasonable anticipation of production schedules, unless the contracting officer directs other disposition of such articles.

(c) The production of completed articles in advance of schedules will not be considered unreasonable where such production (1) was requested or approved by the Government, or (2) was required for economic or efficient performance of the contract and was done in good faith.

(d) The contractor may obtain payment for articles so accepted and delivered by invoicing them at the contract price in the usual manner and omitting them from his termination claim. [JTR 252.1]

§ 842.252–2 *Inclusion in settlement.* (a) Where acceptable completed articles are not delivered and invoiced under the contract, the contractor may include such articles in his settlement proposal at the contract price appropriately adjusted for any saving of freight or other charges, together with any credits for their disposition or retention.

(b) The contractor can obtain prompt payment on account of such articles before final settlement of his claim either through a partial payment under § 843.353 or through a partial final settlement under § 845.515–2. [JTR 252.2]

§ 842.253 *Designation and authority of principal representatives of contracting officer.* [JTR 253]

§ 842.253–1 *Designation in War Department.* In the War Department, the contracting officer will designate one or more persons to act as his principal representative in connection with each termination. [JTR 253.1]

§ 842.253–2 *Authority in War Department.* (a) Such representatives should be given either general or limited authority:

(1) To approve partial payments for the prime contractor and his subcontractors under Part 843 of this chapter;

(2) To approve the disposition or retention of termination inventory, where required;

(3) To approve settlements with subcontractors up to some stated amount;

(4) To act upon miscellaneous minor questions in connection with the termination settlement;

(5) To negotiate a settlement subject to any required approval.

(b) Generally it is good practice to state in writing the scope of the authority of the principal representative of the contracting officer. In appropriate cases, to avoid misunderstanding, a copy should be furnished to the prime contractor and subcontractors. In any case the prime contractor should be clearly advised that such representative is not authorized to agree finally upon a settlement with the prime contractor. [JTR 253.2]

§ 842.253–3 *Designation and responsibility of Navy material inspectors.* The Navy material inspector cognizant of a particular war contractor is a general representative of a Navy contracting officer in the field. He is authorized to perform the specific duties outlined in this section, unless the contracting officer specifically limits or withdraws such authority in a particular case. The contracting officer may limit or withdraw the authority of a Navy material inspector where extraordinary circumstances make this advisable, and the contracting officer may delegate such authority to other persons. The Navy material in-

spector's responsibilities include the following:

(a) Instructing the prime contractor and subcontractors in the general principles stated in this subchapter in order to enable them properly to prepare their settlement proposals;

(b) Conferring with the prime contractor when conferences are held under §§ 842.242 and 842.254;

(c) Examining applications by war contractors for partial payments, as set forth in §§ 843.351–3 and 843.362, and approving such applications in accordance with §§ 843.314–2 (c), 843.351–3 and 843.362;

(d) Acting as the representative of the contracting officer in the handling of termination inventories as set forth in § 844.415–2;

(e) In the case of an inspector cognizant of the prime contractor, selecting for approval and approving subcontract settlements as set forth in § 846.644;

(f) Examining settlement proposals of the prime contractor and subcontractors as set forth in §§ 846.645–2 and 847.721–4. [JTR 253.3]

§ 842.254 *Initial conference with the prime contractor after termination.* [JTR 254]

§ 842.254–1 *Importance of conference.* (a) Where a termination is substantial, a conference should ordinarily be held with the prime contractor at the time of service of the termination notice, or as promptly as possible thereafter, to develop a definite program for making the settlement. This conference is an important step in the negotiation of the settlement. Analysis of the problems of the particular case and agreement on the general basis for preparing the contractor's claim will reduce the amount of accounting review and facilitate final settlement. Every effort should be made in this conference to dispose of as many questions as possible by agreement.

(b) All interested groups in the office of the contracting officer should be represented at this conference. Normally, this will include the principal representative of the contracting officer and appropriate negotiating, technical, engineering, legal, property disposal, and accounting personnel.

(c) In substantial terminations, it may be desirable to have at the conference major subcontractors of the prime contractor. [JTR 254.1]

§ 842.254–2 *Scope of conference.* (a) If no conference was held before termination, the contracting officer should make certain that the prime contractor understands fully his obligations under the termination article as stated in § 842.251. He should emphasize:

(1) The duty of the prime contractor to review and settle claims of subcontractors;

(2) The responsibilities of the prime contractor and subcontractors for the prompt preparation of settlement proposals, and prompt disposition of termination inventory;

(3) The responsibilities to the War Manpower Commission and employees stated in § 842.235.

(b) This conference should establish, at least tentatively:

(1) The general principles for settlement and the basic terms on which the particular settlement is to be made;

(2) The information to be furnished by the prime contractor;

(3) The methods to be followed in disposing of termination inventory, and wherever practicable, definite authority to dispose of specific items or classes of items;

(4) The accounting or other investigations to be undertaken;

(5) The need of the prime contractor and his subcontractors for interim financing and a program for furnishing such financing. [JTR 254.2]

§ 842.255 *Time schedule for settlement.* (a) A time schedule for the specific steps required for the settlement of the claim will facilitate its orderly settlement. This schedule should be worked out at the initial conference if possible, and should fix the following:

(1) The time for submission of any application by the prime contractor for partial payments.

(2) The period within which the prime contractor will ascertain whether any of his subcontractors require partial payments or other types of interim financing.

(3) The time for submission of the prime contractor's inventory schedules. Generally, these should be submitted within 30 days, but where practicable, partial inventories should be submitted earlier.

(4) A schedule for submission by subcontractors of their inventory schedules and settlement proposals.

(5) The time for submission by the prime contractor of a partial proposal covering his own charges.

(6) The time for submission of the prime contractor's final settlement proposal, including the charges of all subcontractors. Generally this should be submitted within 60 days except in complicated cases.

(7) The time for the accounting review of the settlement proposal and for negotiation of the final settlement. Generally, the proposed date for final settlement should not be more than 90 days after the date fixed for termination.

(b) The prime contractor should promptly prepare a complete list of his immediate subcontractors and make certain that he has notified them all to file with him their inventory schedules and settlement proposals in accordance with the time schedule. As inventory schedules and settlement proposals are received from subcontractors, the contracting officer and prime contractor should adjust the time schedules for subsequent action. [JTR 255]

§ 842.256 *Modification of termination instructions.* The contracting officer may at any time rescind, modify, or revise the instructions in the termination notice. If the contractor has materially changed his position in reliance upon such earlier instructions, he shall be reasonably compensated for any resulting expenses by termination charges. [JTR 256]

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§ 843.300 *Scope of part.* This part sets forth the policies and procedures

applicable to interim financing of war contractors pending settlement of their termination claims. [JTR 300]

SUBPART A—GENERAL POLICY AND ADMINISTRATION

§ 843.310 *Scope.* This subpart states the general policies relating to interim financing, enumerates the methods available for such financing and describes the basic organization. [JTR 310]

§ 843.311 *Basic policy on interim financing.* Section 8 of the act requires that adequate interim financing be provided for all war contractors, pending settlement of their termination claims, within thirty days after proper application therefor. Contracting officers should be informed, and should inform war contractors, regarding the types of interim financing available. [JTR 311]

§ 843.312 *Methods of interim financing.* The following methods of interim financing are available:

(a) Guaranteed V-Loans for contractors still in war production (§§ 843.321 to 843.323);

(b) Guaranteed T-Loans for use on termination (§§ 843.324 to 843.326);

(c) Advance payments authorized prior to termination or additional advances authorized thereafter (§ 843.330 and following);

(d) Partial payments (§.843.340 and following). [JTR 312]

§ 843.313 *Choice of method.* Interim financing should be provided through partial payments, upon request of the war contractor, whenever administratively practicable. Where war contractors have numerous contracts with several agencies, services or bureaus, or are primarily subcontractors, guaranteed loans may be a more practicable method of initially financing the war contractor's termination claims. [JTR 313]

§ 843.314 *Administration of interim financing.* [JTR 314]

§ 843.314–1 *Within the War Department.* (a) Subject to review by the Director of Matériel, or by the Director of the appropriate Division under his supervision, the Fiscal Director or his authorized representatives may establish policies and procedures to govern the Federal Reserve Banks, Financial Contracting Officers, and Liaison Officers in exercising their authority and discretion under this subchapter and to govern interim financing by advance payments under this regulation. The Advance Payment and Loan Branch, Special Financial Services Division, Office of the Fiscal Director, Headquarters, Army Service Forces, will administer such policies and procedures.

(b) The Fiscal Director may act for the War Department as a Financial Contracting Officer and may designate other persons to act as such Financial Contracting Officers under this section. Any person authorized to act for the War Department as a Financial Contracting Officer under Executive Order No. 9112 may also exercise the authority of a Financial Contracting Officer under this section.

(c) Any Financial Contracting Officer may exercise all authority and discretion conferred upon the War Department under section 8 (g) and section 10 of the act. Such Financial Contracting Officers may also exercise the authority and discretion of Liaison Officers under this part.

(d) Interim financing by advance and partial payments will be made in accordance with this subchapter. [JTR 314.1]

§ 843.314–2 *Within the Navy Department.* (a) The Vice Chief of the Office of Procurement and Material, and the Assistant Chief in Charge of Procurement, and the Chief, Deputy Chief and Assistant Chief of the Finance Division of the Procurement Branch may each exercise all authority and discretion conferred on the Secretary of the Navy or the Navy Department:

(1) By or pursuant to section 10 of the act, or

(2) By or pursuant to sections 8 and 9 of the act with respect to interim financing made through (i) loans, (ii) advance payments made before termination, and (iii) advance payments made after termination to any war contractor having at the time of such termination an existing agreement with the Navy Department under which advance payments have been made or authorized in connection with the performance of any war contract.

(b) The chief of each bureau may exercise all authority and discretion conferred on the Secretary of the Navy or the Navy Department with respect to interim financing by means of partial payments pursuant to sections 8 and 9 of the act in conformity with such policies and procedures as may be prescribed by the Industrial Readjustment Branch, OP&M, and subject to paragraph (c) below.

(c) Navy material inspectors who are Inspectors of Naval Material, Naval Inspectors of Ordnance, Supervisors of Shipbuilding, or Naval Inspectors of Machinery may approve any partial payment upon proper application therefor filed by a war contractor without further approval: *Provided,* That:

(1) The inspector finds that the amount of the partial payment requested plus:

(i) Unliquidated partial payments previously made to the applicant, and unliquidated advance and progress payments previously made to the applicant and not to be liquidated by the partial payment applied for; and

(ii) All credits for the disposal or retention of the applicant's termination inventory

does not exceed $25,000 (exclusive of amounts authorized to be included in the application by §§ 843.355 or 843.368–2) for any applicant therefor under any one termination claim;

(2) The inspector has cognizance of the applicant prime contractor, or of the prime contractor to whose contract the termination claim of the applicant subcontractor, of whatever tier, is allocable. The authority set forth herein does not include the authority:

(i) To approve applications for partial payments by war contractors whose termination claims are being settled under a company-wide settlement program;

(ii) To approve an application for partial payment on account of a termination claim under any war contract which the chief of any bureau, by written notice to the Vice Chief of the Office of Procurement and Material and to the inspector concerned, shall have specifically excepted from the provisions of this paragraph;

(iii) To approve applications for partial payments into a fund for the benefit of subcontractors under § 843.364; or

(iv) To approve direct partial payments under § 843.366. [JTR 314.2]

§ 843.314–3 *Contract Financing Section in service or bureau.* Each procurement office of a service and each bureau, which has not established a Contract Financing Section or similar unit, shall promptly establish such a section. Such sections should have personnel competent to advise contractors and Government personnel engaged in termination settlements with respect to the various types of interim financing available. Their duties and responsibilities with respect to the administration of interim financing are to be prescribed by the chiefs of the procurement offices or bureaus. [JTR 314.3]

§ 843.314–4 *Finance officers in Navy material inspectors' offices.* Each contract termination unit established under § 841.145–2 (b) within the offices of Navy material inspectors should have personnel competent to advise contractors and Government personnel engaged in termination settlements with respect to the various types of interim financing available. [JTR 314.4]

§ 843.314–5 *Application of existing procedures.* Except to the extent inconsistent with this subchapter, procedures applicable to loans, guarantees and advance payments under the First War Powers Act and Executive Orders 9001 and 9112 shall apply to the administration of loans, guarantees and advance payments under the act. (For the War Department, see §§ 803.319 to 803.321 inclusive, of this chapter). [JTR 314.5]

§ 843.315 *Protection of other financing.* Whenever a prime contract is about to be terminated, the service or bureau responsible for the termination, if requested, shall provide the office or officer administering outstanding advance payments or guaranteed loans of the contractor with all information necsary for the purpose of administering such outstanding financing. In the case of loans guaranteed by the War Department, such information will be given to the Liaison Officer assigned by the Advance Payment and Loan Branch, Headquarters, Army Service Forces, to the Federal Reserve Bank for the district. In the case of advance payments made by, and loans guaranteed by, the Navy Department, such information shall be given to the Finance Division, OP&M. [JTR 315]

§ 843.316 *Penalty on overstatement of claims.* [JTR 316]

§ 843.316–1 *Statutory provision.* Section 8 (d) of the act provides that in case of an overstatement by any war contractor of the amount due on his termination claim or claims in connection with any interim financing (furnished or guaranteed by or on behalf of a contracting agency) under the act, such contractor shall pay to the United States as a penalty an amount equal to 6% of the overstatement. This provision applies to an overstatement of the amount due on account of the applicant's termination claims contained in an application for a loan, guaranteed loan, advance payment or partial payment and in any certificate by the war contractor in connection therewith. The penalty imposed by this section of the act is not to be confused with the penalty imposed by section 9 (b) in connection with excess advance or partial payments (§ 843.346). The penalty for overstatement arises whether or not any excess payment results therefrom, but does not arise unless interim financing is furnished to the contractor. This penalty may be suspended or modified by the Director of Contract Settlement, if, in his opinion, the imposition thereof would be inequitable. [JTR 316.1]

§ 843.316–2 *Suspension or modification of penalty.* (a) Under Regulation No. 13 of the Office of Contract Settlement, authority has been delegated to the head of each contracting agency, with power of redelegation, to suspend or modify and determine the dollar amount of the penalty provided in section 8 (d) of the act, in accordance with the standards prescribed therein.

(b) The chief of any service or bureau is authorized (and may delegate his authority, with or without power of successive redelegation) to suspend or modify and determine the dollar amount of the penalty provided in section 8 (d) of the act, whenever, in connection with any interim financing furnished or guaranteed by or on behalf of the War or Navy Department, any war contractor overstates the amount due on his termination claim or claims, and the chief of the service or bureau determines the penalty would be inequitable, in accordance with the following principles:

(1) Where the war contractor overstates the amount due on account of the termination charges set forth in an application for a partial payment for his own account, then, unless the chief of the service or bureau shall determine that the overstatement was made in bad faith, the penalty would be inequitable if greater than, and should be reduced to, six percent (6%) of the amount by which the total partial payments made to the war contractor on account of his own termination claim exceed the amount of the final settlement of that claim. For purposes of this paragraph, in determining "total partial payments", there shall be deducted from the gross amount of partial payments any amounts thereof paid to him on account of claims of his subcontractors, and there shall be added to such gross amount (i) all credits for the disposal or retention of inventory at the date of the submission of the last application for partial payment, and (ii) all progress and advance payments unliquidated at the date of the receipt of the last partial payment; and in determining "the amount of the final settlement" of the war contractor's own termination claim, there shall be deducted from the gross amount of the settlement of his entire termination claim all amounts approved on account of settlements with his subcontractors.

(2) Where the war contractor overstates the amount due on account of his termination charges:

(i) In connection with a loan, made or guaranteed by the Government, or

(ii) In connection with a request for a partial payment to enable the war contractor to establish a fund from which partial and final payments may be made to subcontractors (§ 843.304–2), or

(iii) In connection with an application for a controlled partial payment (§ 843.256), or for the use for interim financing purposes of funds provided in accordance with procedures governing advance payments for production purposes or otherwise on account of the contract price,

the penalty would be inequitable unless the chief of the services or bureau shall determine that the overstatement was made in bad faith.

(c) The amount of the penalty if any, should be determined at the time of the settlement, and the final settlement agreement, formula determination or arbitration award, as the case may be, should provide for the payment of any liability of the war contractor on account of the penalty. [JTR 316.2]

§ 843.317 *Collection and settlement of interim financing.* [JTR 317]

§ 843.317–1 *Agencies authorized.* (a) The Financial Contracting Officers attached to the Office of the Fiscal Director, ASF, of the War Department, and the Finance Division, OP&M, of the Navy Department are authorized to settle claims arising from or related to any loan made or guaranteed by the War or Navy Department, in contemplation of or related to termination of war contracts.

(b) In the case of the War Department, the chief of the service making any advance payment in contemplation of or related to termination of any war contract, and in the case of the Navy, the Finance Division, OP&M, is authorized to settle claims arising from or related to any such advance payment.

(c) The chief of the service or bureau making, authorizing, or ratifying any partial payment to any war contractor under the act is authorized to settle claims arising from or related to any excess partial payment. [JTR 317.1]

§ 843.317–2 *Extent of authority.* (a) Any representative of the War or Navy Department who is authorized, under the First War Powers Act, Executive Order 9001 or 9112, or under the act, to collect or settle claims arising from or related to advance or partial payments, or direct or guaranteed loans, may exercise such authority with respect to such interim financing whether made, acquired, or authorized before or after the effective date of the act.

(b) The authority, under section 8 (g) of the act, to settle claims arising from or related to interim financing is deemed to apply to any financing heretofore provided through V or VT guaranteed loans, and to any financing provided under the 1944 V-Loan Guarantee, if the terms of the loan covered by such 1944 V-Loan Guarantee provide for borrowings upon the basis of receivables, inventories or other charges under terminated contracts as well as unterminated contracts. [JTR 317.2]

SUBPART E—GUARANTEED LOANS

§ 843.320 *Scope.* This subpart describes the various types of guaranteed loans and their use for financing war contractors having termination claims. [JTR 320]

§ 843.321 *Basic of guaranteed loan program.* (a) Guaranteed loans for production authorized by Executive Order 9112 under the First War Powers Act include termination protection as a feature additional to their production aspect. The Contract Settlement Act of 1944 specifically authorizes the making of guaranteed loans for termination.

(b) Under the guaranteed loan arrangement, a financing institution makes a loan to its customer under a guarantee from the War Department, the Navy Department or any other Government agency authorized to guarantee loans. Guaranteed loans are made primarily to war contractors who wish to secure financing on a company-wide basis. Such loans afford a convenient medium for financing borrowers who hold subcontracts, or numerous prime contracts, or prime contracts with several contracting agencies.

(c) Under both Executive Order 9112 and the act, the Federal Reserve Banks are authorized to act in behalf of the War and Navy Departments as fiscal agents of the United States in connection with the guaranteed loan program. [JTR 321]

§ 843.322 *Previous forms of V and VT-Loans.* (a) The early forms of guarantee agreement provided protection on termination by requiring the financing institution to suspend the maturity of loans outstanding and by requiring the guarantor, instead of the borrower, to pay interest thereon, on the basis of the ratio which the borrower's terminated war contracts bore to his unterminated war contracts. These forms also provided protection to financing institutions in the event of termination by providing a "step-up" of the guaranteed percentage based on a similar ratio.

(b) A similar form of guarantee agreement was also used to cover the so-called VT-Loans. The guaranteed percentage did not exceed 90 percent, except in unusual cases, and the "step-up" provision was eliminated. [JTR 322]

§ 843.323 *1944 V-Loan Guarantee.* [JTR 323]

§ 843.323–1 *Simplified form.* A simplified form of guarantee agreement known as the 1944 V-Loan Guarantee has now been authorized. Under it the distinction between V- and VT-Loan has been eliminated; provisions for waiver

of interest and suspension of maturity, and for the "step-up" of guarantee are omitted. [JTR 323.1]

§ 843.323–2 *When V-Loan made.* These V-Loans are available only when the borrower is engaged in a business which is deemed necessary, appropriate, or convenient for the prosecution of the war, and needs some financing in addition to his own working capital to enable him to perform war contracts. [JTR 323.2]

§ 843.323–3 *Guarantees and fees.* If the circumstances justify it, the percentage of guarantee may exceed 90 per cent. The banks are allowed to charge a commitment fee of not in excess of one-fourth of 1 percent or a flat fee of $50. The guarantor does not share in the commitment fee and a reduced schedule of guarantee fees has been adopted. [JTR 323.3]

§ 843.323–4 *Protection on termination.* V-Loans are designed primarily to finance war production. The war contractor can, however, obtain termination protection under a V-Loan if the financing institution makes loans, or a firm commitment to lend, on the basis of a loan formula providing for borrowings based on receivables and inventories under terminated, as well as unterminated, war contracts and upon amounts payable to subcontractors under terminated war contracts. This is the formula used in most of the outstanding V and VT-Loans under old forms. [JTR 323.4]

§ 843.324 *Procedure for T-Loans.* [JTR 324]

§ 843.324–1 *Standard forms.* Regulation No. 1 of the Office of Contract Settlement dated August 18, 1944 (§ 849.922–1), prescribes a standard form of guarantee agreement for T-Loans and approves a standard form of loan agreement for T-Loans, together with Explanatory Notes in connection with these forms. [JTR 324.1]

§ 843.324–2 *Negotiation of loan.* A war contractor may arrange for a T-Loan before any of his contracts have been terminated. He should make application to his local bank and provide the bank with adequate information as to his financial condition and his war production contracts. The bank and the war contractor then agree, in the light of this information, as to the additional terms, if any, which are to be inserted in the standard form of termination loan agreement. This agreement provides for borrowings based upon receivables and inventory under contracts terminated in whole or in part and upon amounts paid or concurrently to be paid in settlement of subcontractors' termination claims. [JTR 324.2]

§ 843.324–3 *Borrowing under T-Loan.* (a) In order to borrow, the contractor must present a certificate as to the amount of his termination claims in the form shown in § 849.952–3. If the bank believes that the amount shown in the certificate is substantially overstated, it may refuse to make advances to the extent of such overstatement. The borrower must present similar certificates every three months while the loan is outstanding, and both the bank and the guarantor have the right to require the borrower to reduce the amount of the loan outstanding if, in their opinion, the amount thus outstanding substantially exceeds the value of the borrower's claims.

(b) The borrower must reduce the loan as payments or credits are received on his termination claims and as he disposes of or elects to retain inventory allocable to the terminated contracts listed on Exhibit C of the loan agreement as a basis for borrowing. To comply with the act, the entire loan must mature within thirty days after final payment of all of the borrower's termination claims, on which the loan is based. [JTR 324.3]

§ 843.325 *Procedure for T-Loan guarantee.* [JTR 325]

§ 843.325–1 *Application for guarantee.* (a) When the terms of the credit have been agreed upon by the war contractor and his local bank, the bank applies for a guarantee to the Federal Reserve Bank on a standard form (§ 849.952–5). The Federal Reserve Bank will examine the application and the proposed loan agreement and will recommend terms upon which the guarantee should be authorized in accordance with § 843.326.

(b) If the application indicates that a preponderance of the borrower's war contracts is with the War Department or is related to its contracts, the application will be referred to the War Department Liaison Officer assigned to the Reserve Bank by the Office of the Fiscal Director, Headquarters, Army Service Forces. If the preponderance of the borrower's war contracts is with the Navy Department, or is related to Navy prime contracts, the application and recommendations of the Federal Reserve Bank will be forwarded to the Finance Division, OP&M, Navy Department, Washington, D. C.

(c) The War Department Liaison Officer or the Navy Finance Division, as the case may be, will determine whether or not the borrower is eligible for a guaranteed loan under the terms of the act, and will examine the application, the recommendations of the Reserve Bank and other relevant data. [JTR 325.1]

§ 843.325–2 *Procedure for guarantee by War Department.* (a) If the War Department is to guarantee the T-Loan, the guarantee agreement will be authorized and executed according to substantially the same procedure followed for V-Loans except as provided in paragraph (b) below.

(b) Where the amount of the loan, together with all other outstanding loans to the same borrower, made or guaranteed by the War Department, or any other contracting agency, does not exceed (1) $500,000 if the requested guarantee does not exceed 90 per cent, or (2) $100,000 if the requested guarantee does not exceed 95 per cent, the Federal Reserve Bank, after consulting the Liaison Officer, is authorized to execute and deliver the guarantee agreement on behalf of the War Department, unless the Liaison Officer objects, or unless the Reserve Bank will make or participate in the proposed loan. Where the Reserve Bank is so disqualified, the Liaison Officer may execute and deliver the guarantee agreement, if designated by the Fiscal Director as a Financial Contracting Officer for this purpose.

(c) Where the conditions prescribed by paragraph (b) are not fulfilled or the guarantee of the loan is refused, the application must be referred through channels to the Office of the Fiscal Director, Army Service Forces, Washington, D. C. for approval or review by a Financial Contracting Officer. [JTR 325.2]

§ 843.325–3 *Procedure for guarantee by Navy Department.* (a) If the Navy Department is to guarantee the T-Loan, the guarantee agreement will be authorized and executed according to substantially the same procedure followed for V and VT-Loans.

(b) The Federal Reserve Bank will forward the application and accompanying documents, together with its recommendations, to the Finance Division, OP&M. The Finance Division will issue the necessary authorization to the Reserve Bank, subject to § 843.325–4. [JTR 325.3]

§ 843.325–4 *Execution of guarantee agreements by Federal Reserve Banks.* (a) The Federal Reserve Banks, acting as fiscal agents of the United States, are authorized to execute all guarantee agreements on behalf of the War and Navy Departments, unless the Reserve Bank is to make or participate in the loan.

(b) If the Reserve Bank is so disqualified in any case, the guarantee agreement will be executed for the War Department, by a Financial Contracting Officer or Liaison Officer authorized to act as Financial Contracting Officer for that purpose, or for the Navy Department, by the Finance Division, OP&M. [JTR 325.4]

§ 834.326 *Factors to be considered by guarantor.* (a) Regulation No. 1 (§ 849.922–1) prescribes the general policies to be followed by the Reserve Banks and the guarantor in guaranteeing T-Loans. Such guarantee will not be refused if the borrower is or has been engaged in performing an operation connected with or related to war production, except in such classes of cases as may hereafter be prescribed by the Director.

(b) Conditions other than those required under the standard loan agreement will be prescribed only in exceptional circumstances and when they are clearly necessary to protect the Government's interest. There will be no objection to additional conditions agreed upon by the borrower and the financing institution, if such conditions are not unreasonable and not inconsistent with the standard loan agreement.

(c) The requested percentage of guarantee will not ordinarily be questioned unless it exceeds 90 per cent, but a higher percentage of guarantee will be authorized if the circumstances clearly justify it and if other means of interim financing are not promptly available.

(d) In general, officers of the War and Navy Departments authorized to approve or object T-Loan guarantees will rely on the information submitted by the Federal Reserve Banks and upon their

recommendations, unless further investigation appears necessary under the known circumstances of the particular case. [JTR 326]

SUBPART C—USE OF ADVANCE PAYMENTS FOR INTERIM FINANCING

§ 843.330 *Scope.* This subpart deals with the use of advance payments for termination financing. [JTR 330]

§ 843.331 *Authority to use advance payments for interim financing.* [JTR 331]

§ 843.331–1 *Amounts on deposit.* Where funds are on deposit in an advance payment account under a war contract at the time of its termination, the contracting officer for the War Department, or the Finance Division, OP&M, for the Navy Department, may continue to authorize withdrawal of such funds to make payments chargeable to the contract pending settlement of the termination claim: *Provided,* That the contracting officer or Finance Division determines that the unliquidated balance of advance payments allocable to the contract does not exceed the total amount to be paid under the contract, including the termination charges. In making such determination, the contracting officer or Finance Division may rely on such information as may be on hand or may be furnished by the contractor upon request. If the contract specifically entitles the contractor to such withdrawals, the contracting officer or Finance Division shall permit them. [JTR 331.1]

§ 843.331–2 *Amounts previously authorized.* When an advance payment has been authorized, but all or part thereof has not been paid to the contractor directly or by deposit in the advance payment account, before termination, the contracting officer or Finance Division may, or if the contract so requires shall, permit authorized payments to be made directly or by deposit in the advance payment account, and permit withdrawals from the account, in accordance with the terms of the contract: *Provided,* That the contracting officer or the Finance Division determines that the unliquidated balance of all advance payments allocable to the contract will not exceed the total amount to be paid under the contract, including the termination charges. [JTR 331.2]

§ 843.331–3 *Authorizing additional amounts.* (a) Advance payments, in addition to those authorized prior to termination, should generally not be authorized after termination. Instead, the contractor should apply for a partial payment in an amount sufficient to liquidate outstanding advance payments and provide him with such additional interim financing as he may need.

(b) However, the contracting officer or the Finance Division may authorize additional payments after termination whenever it is not practicable to liquidate outstanding advance payments by a partial payment within the time in which interim financing is required, or other circumstances, such as the existence of pooled accounts for financing both terminated and unterminated contracts, make advance payments the most practicable method for interim financing. The additional advance payments so authorized after termination generally should not exceed ninety per cent of the total amounts estimated to be payable under the contract, including the termination charges, less any unliquidated balances of advance payments previously made.

(c) In the case of the War Department, reports on such additional authorizations will be submitted to the Advance Payment and Loan Branch in the same manner as reports on advance payments required under § 803.321–14 (a) of this chapter. In the case of the Navy, such additional authorizations will be reported by the Finance Division to the Industrial Readjustment Branch, OP&M. [JTR 331.3]

§ 843.331–4 *Advance payments on partially terminated contracts.* Where advance payments have been authorized in connection with a contract which has been partially terminated, amounts on deposit in the advance payment account may be used to pay termination charges as well as expenses in connection with performance, and additional advance payments may be authorized, in accordance with procedures governing advance payments for production purposes. [JTR 331.4]

§ 843.331–5 *Estimate of claims.* In order that the determinations required by §§ 843.331–1, 843.331–2 and 843.331–3 (b) may be made, the contractor shall submit an estimate of his own termination charges and, if the advance payments are also to be used to make partial or final payments to subcontractors, an estimate of his subcontractors' termination claims. In the case of contracts with the War Department, such estimate will be submitted to the contracting officer. and in the case of contracts with the Navy, the estimate will be submitted to the officer charged with the duty of countersigning checks on the advance payment account, who will forward the estimate to the Finance Division, OP&M, with his comments. [JTR 331.5]

§ 843.332 *Use of advance payments for making partial and final payments to subcontractors.* The contractor may use funds on deposit in an advance payment account to make partial and final payments to his subcontractors on account of their termination claims, subject to the terms of the contract and to the following provisions:

(a) Partial payments may be made only upon specific approval of the applications therefor by the contracting officer, or pursuant to authority delegated by the contracting officer to make such partial payments without approval; final payments may be made only upon settlements which have been approved by the contracting officer, or which have been made pursuant to § 846.643, or to authority delegated by the contracting officer to the contractor.

(b) Partial payments may be made only upon the basis of an application in the form prescribed by, and executed in accordance with, General Regulation No. 2 of the Office of Contract Settlement (see § 849.953).

(c) The contractor shall not, without the approval of the contracting officer, make any partial payment to, or payment on account of a partial or final settlement with, any subcontractor for the benefit of a lower tier subcontractor if, to the knowledge of any director, officer or employee of the contractor having direct control or supervision over withdrawals from the advance payment account, such subcontractor or any intervening subcontractor is unable or unwilling for any reason to pay or credit to his subcontractors any payments received for their benefit.

(d) The contractor shall obtain and preserve in connection with each partial or final payment such evidence of receipt thereof as the contracting officer may require.

(e) The contractor shall, upon request, present to the contracting officer the original of any application for a partial payment and any receipt for partial or final payment obtained pursuant to paragraph (d). If he has been unable to obtain such receipt for a partial payment, the contractor shall use his best efforts to supply such information with respect to such partial payment as may be necessary to protect the Government's interest therein.

(f) The contractor shall, upon request, present to the contracting officer a monthly statement setting forth the following information with respect to each partial payment made from the advance payment account during the preceding month: (1) The date of such payment; (2) the number of the subcontractor's invoice pursuant to which such payment was made; (3) identification of the prime contract to which such payment is allocable; (4) the name and address of the payee; and (5) the date and manner of approval or authorization of such payment. [JTR 332]

§ 843.333 *Discharge of lien.* Where termination inventory upon which the Government has a lien to secure advance payments is properly retained or disposed of by the contractor in accordance with this subchapter, the lien thereon is discharged by payment to the Government of the proceeds of the disposal, or of an amount equivalent to the agreed credit for retention, in reduction of the advance payment outstanding, or by depositing such proceeds or amount in the advance payment account. [JTR 333]

SUBPART D—GENERAL PROVISIONS FOR PARTIAL PAYMENTS

§ 843.340 *Scope.* This subpart covers general matters applicable to interim financing of war contractors by means of partial payments on account of termination claims. [JTR 340]

§ 843.341 *Authority.* Partial payments are authorized by sections 8 and 9 of the act and by General Regulation No. 2 promulgated by the Office of Contract Settlement on September 8, 1944. A partial payment must be made to a war contractor within thirty days after proper application therefor. [JTR 341]

§ 843.342 *Partial payment defined.* (a) The term "partial payment" means a payment on account on a termination claim, made without prejudice to the amount of the final settlement and repayable if excessive.

(b) A partial payment is to be distinguished from a payment on a partial final settlement, which, in general, cannot be recovered by the Government in the absence of fraud. [JTR 342]

§ 843.343 *Types of partial payment authorized.* The following types of partial payments are authorized:

(a) Immediate partial payment based on the contractor's estimates (§ 843.352); or

(b) Cost-supported partial payment based on the contractor's settlement proposal or other adequate statement of costs (§ 843.353); or

(c) Controlled partial payment to be deposited in a special controlled account and to be released as particular items of cost become established and are presented for payment (§ 843.356); or

(d) Partial payments into a fund for the benefit of subcontractors (§ 843.364–2).

Successive applications may be filed for partial payments of any type. [JTR 343]

§ 843.344 *Deductions in computing amount of partial payments.* (a) Except as provided in paragraph (b) below, in determining the amount of a partial payment of any type to be made, there shall be deducted from the gross amount otherwise payable under this subchapter any unliquidated balances of advance and partial payments theretofore made to the war contractor, which are allocable to the terminated war contract or the terminated portion of the war contract and the amounts of all credits arising from the sale or retention of property as to which costs or estimated costs were included in the application. The sum of any such credits and unliquidated balances and of all partial payments made on the same termination claim shall not exceed any limitation imposed by this regulation or by the act on the amount of a partial payment of any particular type.

(b) Where any unliquidated balances of advance payments are to be liquidated with the proceeds of the partial payment, pursuant to § 843.331–3 (a), such balances should not be so deducted from the gross amount otherwise payable under this subchapter. [JTR 344]

§ 843.345 *Recognition of assignments.* Partial payments shall be made in such a manner as not to impair or modify any valid assignment of a claim under a war contract without the consent of the parties thereto. Contracting officers are required to see that partial payments are made consistently with the terms of assignments known to them. They may rely, however, on the statement in the application that no assignments are outstanding in the absence of actual knowledge to the contrary or notice given in accordance with the Assignment of Claims Act of 1940. [JTR 345]

§ 843.346 *Effect of overpayments.* Section 9 (b) of the act provides that any partial payment in excess of the amount finally determined to be due on the termination claim shall be treated as a loan from the Government to the war contractor receiving it, payable upon demand, together with a penalty computed at the rate of 6 per cent per annum, from the date such excess payment is received to the date on which such excess is repaid. Where credits for dispositions of termination inventory reduce the termination claim below outstanding partial payments, the penalty for excess payments applies from the date the outstanding partial payments first become excessive. This penalty is in addition to the penalty for overstatement discussed in § 843.316. [JTR 346]

SUBPART E—PARTIAL PAYMENTS FOR THE BENEFIT OF PRIME CONTRACTORS

§ 843.350 *Scope.* This subpart describes the types of partial payments that will be made for the benefit of prime contractors and the procedures relating thereto. [JTR 350]

§ 843.351 *Submission of applications.* [JTR 351]

§ 843.351–1 *General.* In general, prime contractors will file applications for partial payments on substantially the form of application prescribed by General Regulation No. 2 of the Office of Contract Settlement (see § 849.953). Except as authorized by § 843.355, the charges on which the application is based include only the prime contractor's own costs. [JTR 351.1]

§ 843.351–2 *War Department procedure.* A prime contractor under a War Department contract shall file his application in duplicate with the contracting officer under his contract. [JTR 351.2]

§ 843.351–3 *Navy Department procedure.* (a) A prime contractor under a Navy Department contract will file his application in triplicate with the Navy material inspector who is cognizant of the prime contractor.

(b) Where the inspector cognizant of the prime contractor is authorized pursuant to § 843.314–2 (c) to approve a partial payment on such application, he will, upon receipt of such an application in triplicate, immediately forward one copy to the contracting officer clearly marked to denote that action on the application will be taken by the inspector; he will then process the application and will authorize the partial payment to the extent that he approves it. The inspector will immediately inform the contracting officer of the disposition of any such partial payment application.

(c) In all other cases, the inspector will immediately forward one copy of the application to the contracting officer, without comment, to be followed within seven (7) days by an additional copy with his comments. The contracting officer will refer the application, with the comments of the inspector, to the Contract Financing Section in the bureau or its representative for investigation and recommendation as to the amounts to be authorized and conditions to be imposed. Such recommendations will be made within seven (7) days from the receipt of the application and comments. The contracting officer will authorize the partial payment to the extent that he approves it. The Contract Financing Section will immediately inform the inspector cognizant of the prime contractor of the disposition of such partial payment application and of the amount of any payment made. [JTR 351.3]

§ 843.352 *Immediate partial payments.* [JTR 352]

§ 843.352–1 *When used.* It is recognized that many contractors may desire or need partial payments within a short time after termination and before partial or complete settlement proposals can be prepared. For this purpose immediate partial payments are authorized. A prime contractor applying for an immediate partial payment will set forth in Column B of the Application Form (§ 849.953) his best estimate of the amount due on his own charges. [JTR 352.1]

§ 843.352–2 *Amount to be allowed.* Subject to the limitations of §§ 843.344 and 843.352–4, the contracting officer (or authorized Navy material inspector) should promptly grant the application for partial payment in the largest amount he believes to be reasonable under all the circumstances known to him. In deciding the amount to be paid, the prime contractor's application should be considered in the light of his general reputation, the relation between the amount requested and the amount certified by the contractor as due, and any other relevant information. In the absence of known factors militating against the payment requested, contracting officers (or authorized Navy material inspectors) are authorized to make their determinations of the amounts to be paid solely on the basis of the prime contractor's application. [JTR 352.2]

§ 843.352–3 *Minimum amount of payment.* An immediate partial payment will be made in each case for at least 75 per cent of the contract price of completed articles not delivered, plus 75 per cent of the contractor's estimated costs of raw materials, purchased parts, supplies, direct labor and overhead allocable to the terminated portion of the contract (but not including the cost of special facilities or other items deemed likely to be of a controversial character, and not including profit), unless (a) the contracting officer (or authorized Navy material inspector) has reason to believe that the application for immediate partial payment was not filed in good faith, or that the amount requested is excessive, or that protection of the Government's interests requires denial of the application or payment in a lesser amount, or (b) unless the contractor requests payment in a lesser amount. This provision for minimum partial payments shall not be construed to limit the responsibility of the contracting officer (or authorized Navy material inspector) to make partial payments in the largest amount believed reasonable under the provisions of § 843.352–2. [JTR 352.3]

§ 843.352–4 *Maximum amount of payment.* Immediate partial payments

based on a prime contractor's estimates shall not exceed 90 per cent of the amount certified in the application as due on account of the contractor's own costs allocable to the terminated portion of the contract. [JTR 352.4]

§ 843.353 *Cost-supported partial payments.* [JTR 353]

§ 843.353–1 *When used.* This type of partial payment may be used after the contractor has submitted a partial or complete settlement proposal, supported by the data prescribed for the submission of termination claims, or has otherwise submitted substantial accounting data. A contractor applying for such a cost-supported partial payment will set forth his cost data in Column A of the Application Form (§ 849.953). [JTR 353.1]

§ 843.353–2 *Amount to be allowed.* Where the contractor has submitted substantial accounting data, and a preliminary review of such data indicates that the application is proper and is supported by the data submitted, the contracting officer (or authorized Navy material inspector) shall authorize payment of such amounts as he believes to be:

(a) An amount equal to 100 per cent of the amount payable, at the contract price, on account of undelivered acceptable items completed prior to the termination date under the terms of the contract, or completed thereafter with the approval of the contracting officer (or authorized Navy material inspector); plus

(b) An amount equal to 90 per cent of the cost of raw materials, purchased parts, supplies, direct labor, and manufacturing overhead allocable to the terminated portion of the war contract; plus

(c) A reasonable percentage of other allowable costs, including administrative overhead, allocable to the terminated portion of the war contract not included in the foregoing; plus

(d) Such additional amounts, if any, as the contracting officer (or authorized Navy material inspector) deems necessary to provide the war contractor with adequate interim financing.

The amount of any partial payment made under this section shall not exceed the amount which, in the opinion of the contracting officer (or authorized Navy material inspector), is due to the contractor by reason of the termination. [JTR 353.2]

§ 843.354 *Disbursement of partial payments to prime contractors.* A partial payment to a prime contractor under §§ 843.352, 843.353, 843.355, will be made on the basis of a voucher or invoice certified by the contractor and approved by the contracting officer (or authorized Navy material inspector) in a specific amount by noting thereon the following, "Payment in the amount of $_____ approved." The certification of the voucher or invoice by the prime contractor shall include the following two provisions:

(a) The payment covered by this voucher is a partial payment on account of the contractor's termination claim under contract No. _____ made pursuant to Section 9 of the Contract Settlement Act of 1944 and expressly subject to subsection (b) of that section.

(b) I certify that the above bill is correct and just; that payment has not been received; that all statutory requirements as to American production and labor standards, and all conditions of purchase applicable to the transaction have been complied with; and that State or local sales taxes are not included in the amount billed.

(Paragraph (b) is the certificate printed on the Form 1034 voucher). [JTR 354]

§ 843.355 *Partial payments to prime contractors on account of final settlements with, or partial payments to, subcontractors.* (a) A prime contractor may include in his application for a partial payment, a request for:

(1) The amount paid or payable to his immediate or remote subcontractors under subcontract settlements approved by the contracting officer or made pursuant to a delegation of authority to the prime contractor; or

(2) The amount of any partial or final payments made from a fund created for the benefit of subcontractors, pursuant to § 843.364–4; or

(3) The amount of any partial payment made pursuant to authority to make partial payments in amounts up to $10,000 granted to the prime contractor under § 843.368 or pursuant to other authorization by the contracting officer.

(b) In applying for a partial payment for any of the foregoing purposes, the prime contractor should list the amount required as Other Costs on line 7 of column A of the application form, and should support the application by a list showing the partial payments which have been so made and their amounts, and, in the case of final payments to subcontractors, a list showing the subcontracts settled and their amounts. [JTR 355]

§ 843.356 *Controlled partial payments.* [JTR 356]

§ 843.356–1 *When used.* If a prime contractor is of doubtful financial responsibility, or if his records are known to be inadequate, the contracting officer (or authorized Navy material inspector) may require that any immediate or cost-supported partial payment be made to the contractor through the medium of a controlled account. [JTR 356.1]

§ 843.356–2 *Administration.* Such controlled partial payments shall be originally authorized by the execution of a supplemental agreement to the terminated contract substantially in the form set forth in § 849.954. Moneys will be deposited in a controlled account in the name of the prime contractor and will be made subject to withdrawal only in accordance with the agreement. The funds in the controlled account shall be made subject to a lien in favor of the Government to protect its interest. Under the general direction of the contracting officer, personnel of the Contract Financing Section will supervise the administration of the controlled account. [JTR 356.2]

SUBPART F—PARTIAL PAYMENTS FOR THE BENEFIT OF SUBCONTRACTORS

§ 843.360 *Scope.* This subpart covers partial payments for the benefit of subcontractors made either through the prime contractor or directly. [JTR 360]

§ 843.361 *Methods of making partial payments to subcontractors.* (a) Partial payments may be made available to subcontractors by the following methods:

(1) By payment to the prime contractor on the application of the subcontractor transmitted through the contractual chain, in accordance with § 843.363.

(2) By payment by the prime contractor or higher tier subcontractor from a fund in accordance with § 843.364.

(3) By direct payment from the Government to the subcontractor in accordance with § 843.366.

(4) By controlled partial payments in accordance with § 843.367.

(b) The provisions of §§ 843.352 and 843.353 regarding the types and amounts of partial payments for the benefit of prime contractors also apply to partial payments for the benefit of subcontractors. [JTR 361]

§ 843.362 *Submission of application.* (a) A subcontractor will file his application for a partial payment, in substantially the prescribed form (§ 849.953), with the war contractor liable to him, except where direct payment is authorized by § 853.366–1.

(b) A war contractor receiving the application of a subcontractor will take the action with respect thereto required by the application form. If the war contractor receiving such an application is also a subcontractor, he will forward the application to his customer; and, if the war contractor receiving such an application is a prime contractor, he will forward it to the responsible War Department contracting officer or to his cognizant Navy material inspector, as the case may be; unless, in either case, the war contractor receiving such an application has been delegated the authority to take action thereon.

(c) In the Navy Department the prime contractor will submit any application of a subcontractor in triplicate to the Navy material inspector cognizant of the prime contractor. Where the inspector is authorized, pursuant to § 843.314–2 (c), to approve a partial payment on such application, he will immediately forward one copy to the contracting officer, clearly marked to denote that action thereon will be taken by the inspector; and he will then process the application and will authorize the partial payment to the extent that he approves it. The inspector will immediately inform the contracting officer of the disposition of any such partial payment application. In all other cases he will immediately forward one copy of the application to the contracting officer, without comment, to be followed within seven (7) days by an additional copy with his comments, and the procedure prescribed in § 843.351–3 for prime contractors' applications will be followed. [JTR 362]

§ 843.363 *Payments transmitted through the contractual chain.* [JTR 363]

§ 843.363–1 *How made.* The prescribed form of application for immediate or cost-supported partial payment requires that applications by subcontractors be reviewed by the war contractor directly liable on the claims to be financed and all higher tier war contractors, including the prime contractor. Unless payment is made by a reviewing war contractor pursuant to authorization from the contracting officer, the application is transmitted to the contracting officer (or authorized Navy material inspector). In signing the form of recommendation, each war contractor undertakes promptly to pay over to his immediate subcontractor or credit against amounts owing from the applicant the amount received on the application. The contracting officer (or authorized Navy material inspector) should expedite requests of subcontractors in view of the requirement of the act that partial payments be made available to such subcontractors within 30 days after receipt by the contracting agency of proper application therefor. [JTR 363.1]

§ 843.363–2 *Disbursement.* A partial payment for the benefit of a subcontractor under § 843.363–1 will be made on the basis of a voucher or invoice certified by the prime contractor and approved by the contracting officer (or authorized Navy material inspector) in a specific amount by noting thereon the following, "Payment in the amount of $_____ approved." In addition to the Form 1034 certificates, the voucher or invoice shall include substantially the following provisions:

The payment covered by this voucher is a partial payment on account of the contractor's termination claim under contract No. _____, made pursuant to section 9 of the Contract Settlement Act of 1944 and expressly subject to subsection (b) of that section.

Where the prime contract has not been terminated, and the subcontract termination resulted from an amendment or change order relating to the prime contract or from other circumstances entitling the subcontractor to interim financing under the act, the foregoing voucher provisions should be appropriately modified. [JTR 363.2]

§ 843.364 *Funds for the benefit of subcontractors.* [JTR 364]

§ 843.364–1 *Purpose of funds.* War contractors having large numbers of subcontracts should endeavor to anticipate the needs of their subcontractors and be prepared to meet their requirements promptly. To aid in accomplishing this end, partial payments or direct loans may be made to war contractors to enable them, in advance of subcontractors' requests, to set up funds from which prompt partial and final payments may be made to subcontractors on their termination claims. [JTR 364.1]

§ 843.364–2 *Fund created by partial payments to war contractors.* (a) Any war contractor who has been authorized to make final subcontract settlements under § 846.642, and who has numerous subcontractors, may apply for partial payments on account of particular war contracts to create a fund for the benefit of subcontractors.

(b) Such an application need not be on the form prescribed by the Office of Contract Settlement, but may be in the form of a letter to the contracting officer containing a certificate of the contractor that the approximate amount of all subcontractors' charges allocable to the terminated contract or contracts is not less than a specified figure.

(c) A partial payment to set up a fund for the benefit of subcontractors will be made to a war contractor only upon his agreement, among other things, to keep all monies received for such purpose in an account separate from his other funds, and to make prompt partial and final payments to subcontractors under authority of this regulation or when otherwise specifically authorized or approved by the Government. [JTR 364.2]

§ 843.364–3 *Disbursement of partial payments for the benefit of subcontractors.* Partial payments to a war contractor for the benefit of subcontractors under § 843.364–2 will be made on the basis of a voucher or invoice certified by the war contractor and approved by the contracting officer in a specified amount by noting thereon the following: "Payment in the amount of $_____ approved." In addition to the Form 1034 certificates, the voucher or invoice shall include substantially the following provisions:

The payment covered by this voucher is a partial payment on the contractor's termination claim under Contract No. _____ on account of termination claims of subcontractors under that contract. The payment is made pursuant to section 9 of the Contract Settlement Act of 1944 and expressly subject to subsection (b) of that section. The contractor agrees to keep this payment and all other payments received for the same purpose in an account separate from his other funds and to use this payment only for the purpose of making prompt partial and final payments to subcontractors when such payments are authorized or approved by the Government. Any amount not so used shall be repaid to the Government upon demand, with interest at the rate of 6% per annum from the date of demand to the date of repayment.

[JTR 364.3]

§ 843.364–4 *Fund created by direct loan to war contractors.* (a) Any war contractor who has been authorized to make final subcontract settlements under § 846.642, and who has numerous subcontractors, may apply for a direct loan to create a fund for the benefit of subcontractors.

(b) If the preponderance of the current dollar value of the contractor's war contracts is with the War Department or is under War Department prime contracts, the application for the loan should be made to the Advance Payment and Loan Branch, Special Financial Services Division, Office of the Fiscal Director, Hq., ASF, via a contracting officer of the service under which the applicant has the greatest current dollar value of war contracts. If such preponderance is with the Navy Department or is under Navy Department prime contracts, the application should be made to the Finance Division, OP&M.

(c) An application for a direct loan shall be in the form of a letter. Such letter shall (1) indicate the amount of the loan requested, (2) list the services and bureaus under which the applicant holds war contracts and the approximate current dollar value of such contracts under each of such services or bureaus, (3) indicate any outstanding advance payments or loans to the applicant, (4) estimate the number and total amount of subcontract termination claims which it is anticipated will be settled or partially paid by the applicant during the next 90 days, (5) enclose a certified copy of the applicant's balance sheet and operating statement for the latest fiscal year and for the latest period subsequent to such fiscal year, and, if the contractor has an outstanding loan, any necessary consents of financing institutions to the additional borrowing, and (6) indicate the name of the bank or banks which it is proposed to use as a depositary for the fund.

(d) Among the considerations to be taken into account in determining whether the applicant qualifies or should be recommended for a fund to be created by a direct loan are the following:

(1) Whether establishment of the fund will result in more expeditious settlement and payment of termination claims of subcontractors than is possible under other procedures.

(2) Whether the contractor already has available advance payments to make prompt partial and final payments to his subcontractors on account of their termination claims.

(3) Whether the contractor has an efficient termination organization and can quickly process both his own settlement proposals and those of his subcontractors.

(4) The volume of the contractor's war business and termination claims, both actual and anticipated.

(5) The contractor's financial condition and general reputation.

(e) (1) In the War Department, the contracting officer with whom the application is filed will forward the application, together with his recommendations thereon (including a specific statement concerning each of the matters referred to in paragraph (d) hereof to the extent known) through channels to the Advance Payment and Loan Branch for approval. If the contracting officer's recommendation is favorable, the application will be accompanied by 8 copies of the loan agreement, in substantially the form set forth in § 849.955, and 4 copies of the voucher required by § 843.364–5, both executed by the contractor, together with 8 copies of the depository agreement executed by the bank. The amount of the application for a loan as recommended by the contracting officer will be inserted in the loan agreement and in the voucher, but the name of the Financial Contracting Officer and the contract number shall be left blank for insertion upon approval by the Advance Payment and Loan Branch.

(2) In the Navy Department, the Finance Division, OP&M, before approving

the application, will obtain the recommendations of the Assistant Chief of Procurement and Material for Industrial Readjustment.

(f) Upon approval of the application, an agreement in substantially the form set forth in § 849.955 will be executed by a Financial Contracting Officer in the War Department, or by the Chief, Deputy Chief or Assistant Chief of the Finance Division, OP&M, in the Navy Department. [JTR 364.4]

§ 843.364–5 *Disbursement of direct loans for the benefit of subcontractors.* In making a direct loan to a war contractor for the benefit of subcontractors, payment will be made to the war contractor on the basis of a voucher which (a) contains a Form 1034 certificate signed by the war contractor and (b) is approved by a person authorized under the preceding paragraph to execute the agreement. A confirmed copy of the agreement will be attached to the first voucher by the approving officer. In addition, the voucher shall include substantially the following provision:

The payment covered by this voucher is a payment pursuant to the Agreement for Subcontractors' Payment Fund, No. ---------, dated ----------, authorized by the Contract Settlement Act of 1944 and the Joint Termination Regulation.

[JTR 364.5]

§ 843.364–6 *Administration of fund created by direct loan.* Subject to the general supervision and control of the Advance Payment and Loan Branch in the War Department or the Finance Division, OP&M, in the Navy Department, the fund created by a direct loan will be administered by the chief of the service or bureau designated in the loan agreement, who will render such reports as may be required by the Fiscal Director, in the case of the War Department, or by the Finance Division, OP&M, in the case of the Navy Department. [JTR 364.6]

§ 843.365 *Protection of payments to subcontractors.* Whenever a war contractor is deemed to be insolvent or in imminent danger of insolvency, or for any other reason is deemed to be unable or unwilling to pay over to his subcontractors any partial payment received for their benefit, contracting officers should take appropriate steps to assure receipt of such partial payment by the subcontractor who applied therefor. For this purpose, direct payment may be made to the subcontractor under § 843.366 or the controlled account procedure described in § 843.367 may be used. [JTR 365]

§ 843.366 *Direct payment.* [JTR 366]

§ 843.366–1 *When authorized.* The contracting officer under the applicable prime contract shall make immediate or cost-supported partial payments directly to a subcontractor upon receipt by the contracting officer of an application in the prescribed form, submitted directly by the subcontractor, whenever:

(a) The contracting officer has undertaken to settle directly the termination claim or claims of the subcontractor; or

(b) The subcontractor furnishes:

(1) Evidence that use of the procedures set forth in §§ 843.363 and 843.364 would cause unwarranted delay in his receipt of a partial payment; and

(2) A certificate by the war contractor in the next higher tier, containing the material in the first paragraph of the certificate in Article VI of the Standard Form of Application (§ 849.953), and consenting to the direct payment to the subcontractor, unless sufficient other information justifying such partial payment is submitted by the applicant to the contracting officer.

In cases covered by paragraph (b), the subcontractor will also submit through contractual channels a copy of his application marked "Information Copy, Direct Payment Requested"; any intervening war contractor desiring to take exception to such direct payment will so notify the contracting officer. [JTR 366.1]

§ 843.366–2 *Disbursement.* A partial payment to a subcontractor under § 843.366–1 will be made on the basis of a voucher or invoice certified by the subcontractor applying therefor and approved, by the contracting officer under the applicable prime contract, in a specific amount by noting thereon the following, "Payment in the amount of $---------- approved." In addition to the Form 1034 certificates, the voucher or invoice shall include substantially the following provisions:

The payment covered by this voucher is a partial payment on account of the termination claim of the payee as a subcontractor under contract No. ---------- between the United States of America and ----------, made pursuant to section 9 of the Contract Settlement Act of 1944 and expressly subject to subsection (b) of that section.

[JTR 366.2]

§ 843.367 *Controlled partial payments for subcontractors.* (a) When the controlled partial payment procedure is used for the benefit of a subcontractor, the contracting officer will enter into a supplemental agreement with the prime contractor in substantially the form set forth in § 849.954, and containing the provisions relating to subcontractors set forth in brackets on that form.

(b) Payments from the controlled account shall be made directly to the subcontractor for whose benefit the partial payment is made or through intervening subcontractors, as the contracting officer shall deem appropriate. Such controlled payments may be made without the certificates of intervening contractors, provided that sufficient other information justifying such payments is available.

§ 843.368 *Authority to make partial payments; procedures for reimbursement of partial and final payments.* [JTR 368]

§ 843.368–1 *Delegation of authority to make partial payments.* Authorization under § 846.642 to war contractors to make final settlements with subcontractors should generally include an express authorization to make partial payments not exceeding 10,000 (including all previous unliquidated partial payments and advances) to any applicant therefor under any one termination claim. War contractors who have been so authorized to make partial payments should make such payments available to subcontractors on substantially the terms and conditions prescribed by this subchapter. In such cases, partial payments may be made in accordance with the terms of the authorization and without obtaining the contracting officer's approval of the particular payment. [JTR 368.1]

§ 843.368–2 *Partial payments to war contractors on account of final settlement with, or partial payments to, lower tier subcontractors.* A war contractor may include in his application for a partial payment any of the amounts provided for in the case of prime contractors by § 843.355, and under like conditions. [JTR 368.2]

§ 843.369 *Effect of payments to subcontractors.* (a) Where any partial payment by a war contractor to a subcontractor is authorized or approved by the contracting officer, the war contractor making it is not liable for the repayment of any excess in the absence of fraud on his part; such excess is treated as a loan from the Government to the subcontractor receiving the payment, repayable by the subcontractor directly to the Government together with the penalty imposed by section 9 (b) of the act.

(b) Where any partial payment made by a war contractor without prior authority or approval is subsequently ratified by the contracting officer, that payment has the same effect, under section 9 (b) of the act, as a partial payment made with his specific approval.

(c) Releases from a controlled account may be considered as authorizations, approvals or ratifications only when specifically so stated by the contracting officer.

(d) A partial payment made pursuant to a general delegation of authority under § 843.368 has the same effect as a payment made with the specific approval of the contracting officer. [JTR 369]

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§ 844.400 *Scope of part.* (a) This part states the policies and procedures governing the submission of inventory schedules, plant clearance, and the disposition of contractor inventory. The provisions of this part apply to all types of contractor inventory, except where the context indicates that it applies only to a particular type (for example, termination inventory).

(b) In the case of the War Department, contractor inventory which is plant equipment is dealt with only in Subpart F of Part 848. Part 844 applies to plant equipment only to the extent that Subpart F of Part 848 expressly makes it applicable. In the case of the Navy Department, plant equipment is dealt with in Property Disposition Directive No. 7.

(c) Retentions and sales of contractor inventory in accordance with pretermination agreements are governed by the provisions of § 842.224. Such retentions and sales are outside the scope of this part.

(d) Certain other parts of this subchapter relate to the disposition of contractor inventory under special programs of the War and Navy Departments. For example, see Subpart B of Part 842, Advance Preparations for Termination Settlements; Subpart B of Part 848, Consolidated Termination Program for Selected Contractors; and Subpart E of Part 848, Direct Settlement of War Contracts on a Company-Wide Basis. [JTR 400]

§ 844.400–2 *"Material treated as termination inventory".* Material formerly treated as termination inventory under this section is now included in the definition of contractor inventory (see § 844.411–3). Whenever the term "material treated as termination inventory under § 844.400–2" is used in this Subchapter (e. g. § 849.987–1) it refers to material furnished by the Government for incorporation in end items. [JTR 400.2]

SUBPART A—GENERAL POLICIES

§ 844.410 *Scope.* This subpart contains provisions of general application to contractor inventory. [JTR 410]

§ 844.411 *Special terms.* Certain terms, in addition to those defined in § 841.121, have a special meaning as applied to the disposition of contractor inventory. As used in this part, these terms are as follows. [JTR 411]

§ 844.411–1 *Best price obtainable.* In the case of a sale or retention for resale, the term the "best price obtainable" means the highest price offered which is adequate in the light of a reasonable knowledge or test of the market, having due regard for current prices for any raw materials or products for which quotations are published and to the circumstances, nature, condition, quantity, and location of the particular property. In the case of a retention for use, the term "best price obtainable" means a price that is fair and reasonable and not less than the net proceeds that could reasonably be expected to be obtained if the item were offered for sale at such time. [JTR 411.1]

§ 844.411–2 *Care and handling.* The term "care and handling" includes completing, repairing, converting, rehabilitating, operating, maintaining, preserving, protecting, insuring, storing, packing, handling, and transporting, and in the case of property which is dangerous to public health or safety, destroying, or rendering innocuous, such property. [JTR 411.2]

§ 844.411–3 *Contractor inventory.* The term "contractor inventory" (as used in this subchapter and as defined in the Surplus Property Act) means (a) any property related to a terminated contract of any type with the owning agency or to a subcontract thereunder; (b) any property acquired under a contract pursuant to the terms of which title is vested in the Government, and in excess of the amounts needed to complete performance thereunder; and (c) any property which the Government is obligated to take over under any type of contract as a result of any change in the specifications or plans thereunder. Contractor inventory includes, but is broader than, termination inventory, as the term is defined in § 821.121–21, and in the Contract Settlement Act, and also includes any Government-owned material in the war contractor's plant, either before or after expiration of a contract, which is no longer required for the purpose for which it was supplied. [JTR 411.3]

§ 844.411–4 *Cost.* (a) The "cost" of contractor-owned material is the cost to the war contractor, as stated in his inventory schedule, provided that such cost is computed upon a reasonably acceptable basis. Generally, such cost will be the actual or estimated cost of raw material, purchased parts, and supplies plus direct labor and factory overhead for work in process and manufactured parts. Cost may be estimated if necessary, and the contracting officer may rely on the estimates of the war contractor.

(b) The "cost" of Government-owned materials is the cost to the Government, estimated if not known. [JTR 411.4]

§ 844.411–5 *Disposal agency.* The term "disposal agency" means any Government agency designated by the Surplus Property Board pursuant to the Surplus Property Act to dispose of surplus property. [JTR 411.5]

§ 844.411–6 *Owning agency.* The term "owning agency" is defined in the Surplus Property Act as "the executive department, the independent agency in the executive branch of the Federal Government, or the corporation (if a Government agency) having control of such property otherwise than solely as a disposal agency". As used in this part, "owning agency" means the War Department or the Navy Department. [JTR 411.6]

§ 844.411–7 *Plant clearance period.* The term "plant clearance period" means the period within which the owning agency is required to remove or make

arrangements for storage of contractor inventory to be cleared from a war contractor's plant. The plant clearance period begins upon receipt by the owning agency of an inventory schedule in form satisfactory for storage or removal purposes. It ends sixty days thereafter, or on such later date as may be agreed to by the contractor, or on such earlier date as the owning agency takes possession of contractor inventory. [JTR 411.7]

§ 844.411–8 *Possession.* The owning agency takes "possession" of contractor inventory upon:

(a) The execution of a standard storage agreement in accordance with § 844.465–2; or

(b) The execution of a final settlement agreement with a war contractor in accordance with § 844.465–3 or 846.662; or

(c) The execution of a special storage agreement with a subcontractor in accordance with § 844.465–4; or

(d) Removal by the Government in accordance with § 844.466. [JTR 411.8]

§ 844.411–9 *Retention for use.* The term "retention for use" means a retention of contractor inventory that a war contractor intends to use or consume for his own manufacturing, construction, maintenance, or repair purposes and not for resale in its existing form, at a profit. Such retention must be accompanied by the use representation, except as provided in § 844.445–3. For the definition of "retention" see § 821.121–15. When unqualified, the words "retain" and "retention", mean both a retention for resale and a retention for use. [JTR 411.9]

§ 844.411–10 *Reviewing authority.* (a) For the War Department the term "reviewing authority" means the local disposal board established under Subchapter B for the purpose of reviewing dispositions and determinations that property is unserviceable, scrap or salvage. It also includes any disposal board established under Subchapter B in the office of the chief of a service, or, in the Army Air Forces, in the headquarters of a Command.

(b) For the Navy Department, the term "reviewing authority" means a disposal board established by the NMR&DA for the purpose of reviewing dispositions of material and determinations that property is unserviceable, scrap or salvage, where review is required. It also includes any disposal board established by the chief of a bureau to review disposition transactions made by direction of a contracting officer of the bureau (or by a Navy material inspector under his authority) where such review is required.

§ 844.411–11 *Salvage.* The term "salvage" means property that is in such a worn, damaged, deteriorated or incomplete condition, or is of such a specialized nature, that it has no reasonable prospect of sale for use as a unit, but has some value in excess of its basic material content because it may contain serviceable components. Salvage includes used containers and cable reels. It should be noted that property is not "salvage" merely because it is worn, damaged, deteriorated, incomplete, or of a specialized nature. [JTR 411.11]

§ 844.411–12 *Scrap.* The term "scrap" means property that has no reasonable prospect of sale except for its basic material content. [JTR 411.12]

§ 844.411–13 *Scrap warranty.* The term "scrap warranty" means a written warranty by a buyer that property purchased or retained as scrap will in fact be sold or used by the buyer only as scrap. The scrap warranty shall read as follows:

> The undersigned represents and warrants to the United States that the property covered by this agreement was offered as scrap, that he is purchasing or retaining it only as scrap and that he will sell and chip or use it only 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.

[JTR 411.13]

§ 844.411–14 *Serviceable property.* The term "serviceable property" means property that has reasonable prospect of sale for use as a unit either in its existing form or after minor repairs; it includes raw materials, primary forms and shapes, and mill products. [JTR 411.14]

§ 844.411–15 *Small lot.* The term "small lot" means any item or group of items where the cost of all substantially similar items available for sale at any one location, listed on any one inventory schedule, does not exceed $300. [JTR 411.15]

§ 844.411–16 *Substantially similar items.* The term "substantially similar items" means items which serve the same immediate purpose. Substantially similar items include items which are commonly considered in ordinary business practice as being in the same class, although they differ in size, weight, color, capacity, composition, quality, or design, and are not interchangeable in use. [JTR 411.16]

§ 844.411–17 *Surplus.* The term "surplus" refers to property determined to be surplus to the needs and responsibilities of the owning agency. Surplus property is declared to a disposal agency or disposed of in accordance with § 844.452. [JTR 452]

§ 844.411–18 *Unserviceable material.* The term "unserviceable material" means scrap, salvage, and other material that has no reasonable prospect of sale for use as a unit either in its existing form or after minor repairs. [JTR 411.18]

§ 844.411–19 *Use representation.* The term "use representation" means a written representation in the following form:

> The undersigned represents to the United States that the material covered by this agreement is retained or purchased by him, as the case may be, for his manufacturing, construction, maintenance, or repair purposes and that he intends to use or consume the material for said purposes, and that he is not retaining or purchasing the material with the intention of reselling in its existing form at a profit.

[JTR 411.19]

§ 844.412 *Disposition of contractor inventory.* [JTR 412]

§ 844.412–1 *Relation to settlement.* Under the Contract Settlement Act, when a war contract is terminated the war contractor is entitled to fair compensation, including the cost of material allocable to the terminated portion of the contract. As an incident to the allowance of such fair compensation, the war contractor is required either to deliver the material for which compensation is allowed or to credit in the termination settlement the agreed value of material retained and the proceeds of material sold. [JTR 412.1]

§ 844.412–2 *General policy.* (a) In order to further the objectives of the Surplus Property Act, the Surplus Property Board has empowered the War and Navy Depatments to authorize any war contractor to retain or sell contractor inventory in accordance with Regulation No. 9 of the Board (Part 8309 of Title 32).

(b) The policy of the Government is to encourage war contractors to retain for use at the best price obtainable as large amounts as possible of all types of contractor inventory for their manufacturing, construction, maintenance, or repair purposes. The policy of the Government also is to authorize sales by war contractors under circumstances which will yield the best price obtainable by competitive bidding, or by negotiation in certain cases.

(c) All types of contractor inventory are to be treated alike, for purposes of disposition. [JTR 412.2]

§ 844.412–3 *Retentions by subcontractors.* Regulation No. 9 of the Surplus Property Board (Part 8309 of Title 32) provides that it is the policy of the Board that subcontractors shall be permitted to retain, as against their upper tier contractors, such contractor inventories as they desire, and that exceptions to this policy shall be permitted only in cases where contract rights of upper tier contractors make it necessary. This policy is called to the attention of war contractors in Instructions to Prime Contractors (§ 849.943) and Instructions to Subcontractors (§ 849.944). Representatives of the War and Navy Departments will use their best efforts to carry out the policies set forth in this section, consistent with the contract rights of upper tier contractors. Under this subchapter upper tier contractors have authority, in certain cases, to approve retentions and sales of contractor inventory by their subcontractors, in order to expedite the settlement of claims and the disposition of material. Such approval should be granted promptly for retentions and sales in accordance with this part. [JTR 412.3]

§ 844.412–4 *Disposition not to delay settlement or removal.* The Contract Settlement Act provides that the contracting officer shall not delay a termination settlement beyond the plant clearance period for the purpose of awaiting disposal by the war contractor or by the Government of any termination inventory. In carrying out the policy of expeditious plant clearance, removal of termination inventory should not be im-

peded by concentration of effort on disposition of the inventory. [JTR 412.4]

§ 844.413 *Plant clearance.* (a) Section 12 of the Contract Settlement Act provides that a war contractor may submit a statement listing items of his termination inventory which he desires the Government to remove. This statement (inventory schedule) must be prepared in the form and detail and must be submitted in the manner prescribed in this subchapter. Within sixty days, or such longer time as may be agreed, after the war contractor submits a termination inventory schedule in satisfactory form, the Government is under a duty to store or to remove the listed items not retained or sold. This regulation follows Regulation No. 10 of the Office of Contract Settlement with respect to plant clearance. (See Part 8051 of Title 32)

(b) The policy of the War and Navy Departments is to clear plants of all types of contractor inventory within the plant clearance period, subject to the qualifications stated in § 844.460. [JTR 413]

§ 844.414 *Supply contract provisions on retentions and sales.* [JTR 414]

§ 844.414–1 *Fixed-price prime contracts.* The uniform termination article for use in fixed-price supply prime contracts 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, drawing, 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; * * *

Many earlier termination articles contained similar provisions. [JTR 414.1]

§ 844.414–2 *Cost-plus-a-fixed-fee prime contracts.* The uniform termination article for use in cost-plus-a-fixed-fee supply prime contracts contains provisions substantially the same as the provisions of the fixed-price contract article quoted in § 844.414–1. Under cost-plus-a-fixed-fee prime contracts, as well as certain fixed-price prime contracts which provide specifically therefor, title to the property acquired in connection with the performance of the contract is vested in the Government. Such property may, however, be retained or sold by the prime contractor as set forth in § 844.432–2. [JTR 414.2]

§ 844.414–3 *Subcontracts.* The approved termination article for fixed-price supply subcontracts provides in part as follows:

(c) With the consent of the buyer, the seller may retain at an agreed price or sell at an approved price any completed articles, or any articles, materials, work in process or other things the cost of which is allocable or apportionable to this order * * *, and will credit or pay the amounts so agreed or received as the buyer directs. As directed by the buyer, the seller will transfer title to, and make delivery of, any such articles, materials, work in process or other things not so retained or sold. Appropriate adjustment will be made for delivery costs or savings therein.

[JTR 414.3]

§ 844.415 *Diversion of contractor inventory to continuing war contracts.* [JTR 415]

§ 844.415–1 *General policy.* The policy of the Government, upon termination of war contracts, is to divert contractor inventory to continuing war production. Whenever a saving to the Government would result, such inventory should be employed on other war contracts of the contractor or sold to another war contractor, even if this necessitates the termination of subcontracts. The allocability to the terminated contract of common items and of material diverted to other war contracts of the contractor will be determined in accordance with § 845.555. Section 845.556 describes the methods of compensating the war contractor for the costs incurred. Diversions for war production under the authority of this section may be made without regard to the requirements applicable to sales stated in § 844.445. [JTR 415.1]

§ 844.415–2 *Government-owned material.* Government-owned contractor inventory remaining after termination of a war contract should be diverted by a sale, or a transfer of accountability to continuing cost-plus-a-fixed-fee or other war contracts which by their provisions vest title to material in the Government, or should be diverted by sale or as Government-furnished material or equipment to fixed-price war contractors. [JTR 415.2]

§ 844.415–3 *Determination of price.* For the purpose of determining the price at which material is retained or sold, charges for the termination of subcontracts may be taken into consideration. (See § 845.556.) Such charges, however, shall not be considered for purposes of determining whether the price conforms to the applicable price policy or whether approval or review of a retention or sale is required. [JTR 415.3]

§ 844.416 *Scope of authority of contracting officer and his representatives.* [JTR 416]

§ 844.416–1 *Within the War Department.* (a) The contracting officer is authorized to act for the War Department in making and approving dispositions of contractor inventory, subject to review by a reviewing authority in certain cases as provided in § 844.449. The functions assigned the contracting officer under this part, may be delegated by him or may be divided by the service among any military or civilian personnel, such as termination contracting officers, property disposal officers, accountants, inspectors, and others. As used in this part, the term "contracting officer" includes all such persons.

(b) The contracting officer, on his own initiative or at the request of a war contractor, may authorize a local representative to act for him in the district or geographical area in which the war contractor's plant is located. [JTR 416.1]

§ 844.416–2 *Within the Navy Department.* (a) In the Navy Department certain functions of the contracting officer relating to the handling of contractor inventory are specifically assigned to the Navy Material Redistribution and Disposal Administration or to Navy material inspectors. As used in this part, the term "contracting officer" includes the representatives of the NMR&DA and Navy material inspectors authorized to perform these functions.

(b) The NMR&DA has general authority to make or approve those dispositions of contractor inventory which the Navy Department is permitted by law or required by this subchapter to make or approve (including disposition of material as scrap or salvage), and to arrange for storage or removal of contractor inventory not retained by the war contractor or otherwise disposed of, subject only to the authority of the contracting officer to make or approve certain dispositions set forth in paragraphs (c) and (d). A retention or sale of contractor inventory made or approved by the NMR&DA is subject to review by a reviewing authority in certain cases as provided in § 844.449.

(c) Property Disposition Directive No. 1, Navy Procurement Directive paragraph 15001 and following, grants to the chiefs of the several bureaus and the Commandant, U. S. Marine Corps, and the Commandant, U. S. Coast Guard, authority to execute certain transfers or contracts for the sale of property. They are further authorized to delegate their authority to such persons as they may designate. A Navy contracting officer may execute any transfer of property within the scope of authority delegated to him pursuant to Property Disposition Directive No. 1.

(d) The Navy contracting officer may make or approve a retention by the war contractor in possession or a sale to another war contractor of contractor inventory, if any such war contractor will execute a use representation as defined in § 844.411–9. Such a retention or sale made or approved by a contracting officer is subject to review and approval by a bureau disposal board in certain cases as provided in § 844.449. The Navy contracting officer may also require transfer to the Government of items which the bureau wishes to acquire for construction, production or supply purposes. A Navy contracting officer is not authorized to make or approve dispositions of contractor inventory except as set forth in paragraphs (c) and (d).

(e) The Navy material inspector cognizant of a particular war contractor is a general representative of the contracting officer in the field, unless the contracting officer specifically limits or withdraws such authority in a particular case. The Navy material inspector cog-

nizant of a war contractor is not authorized to make or approve dispositions of the contractor's inventory unless authorized or directed by the contracting officer to make or approve dispositions within the contracting officer's authority. The cognizant Navy material inspector's specific responsibilities in connection with the handling of contractor inventories include the following:

(1) He will notify the local representative of the NMR&DA immediately after receipt of a copy of the termination notice in each case where it appears that action may be required to be taken for the disposition of contractor inventory, so that the NMR&DA representative can carry out any possible disposition operations with the war contractor prior to submission of inventory schedules and can render assistance in the determination of whether inventory schedules are satisfactory in form.

(2) He is authorized to receive inventory schedules from the war contractor and to advise the war contractor in their preparation. He will deliver copies of such schedules to the local NMR&DA representative for disposition purposes.

(3) He is authorized to determine when inventory schedules are satisfactory in form for storage or removal purposes and will notify the local representative of the NMR&DA of the receipt of such schedules, in order that storage or removal arrangements may be made within the plant clearance period. The Navy material inspector will, whenever possible, seek the advice of the local NMR&DA representative in examining inventory schedules to determine whether they are satisfactory in form.

(4) He will see that the war contractor lists Government-owned material and production and supply items separately, and he will transmit schedules listing such material in accordance with instructions from the contracting officer or cognizant bureau.

(5) He will arrange for the removal or transfer of items of contractor inventory required by the bureau for production or supply purposes.

(6) He will arrange with the contractor for the packaging and handling of contractor inventory removed from the war contractor's plant or stored with the contractor.

(7) He will verify items listed on an inventory schedule when such items are to be removed from the war contractor's premises or stored under a storage agreement.

(8) He will, in connection with the preparation of his comments on the settlement proposal, give the contracting officer and the local NMR&DA representative his comments as to whether the material claimed to be termination inventory is properly allocable to the terminated war contract. [JTR 416.2]

SUBPART B—SUBMISSION OF INVENTORY SCHEDULES

§ 844.420 *Scope.* This subpart covers the preparation and submission of inventory schedules (a) to support the war contractor's settlement proposal, (b) to facilitate the disposition of contractor inventory, and (c) to provide the information necessary for plant clearance. [JTR 420]

§ 844.421 *Schedules not required with Form 1a.* Whenever the proposal for settlement of a terminated fixed-price war contract is to be submitted on Form 1a, no inventory schedules are required. This form is to be used only if the war contractor will retain or dispose of all termination inventory and the net amount of the proposed settlement is less than $1,000. The war contractor will state briefly on the form the nature of the inventory, how much of it was sold and how much retained, and the manner in which sales prices and the value of inventory retained were determined. Acceptance of a settlement proposal on this form will constitute approval of the price which the war contractor offers for the entire inventory, including the proceeds of any sales which he has made. [JTR 421]

§ 844.422 *Prescribed forms of inventory schedules.* [JTR 422]

§ 844.422–1 *Termination inventory resulting from terminated fixed-price supply war contracts.* The following inventory schedules (reproduced in § 849.962) have been approved by the Office of Contract Settlement for use with the Standard Forms for settlement proposals under fixed-price war supply contracts (other than Form 1a):

Form 2a—Metals (in mill product form).
Form 2b—Raw Materials (other than metals), Purchased Parts, Finished Components, Finished Product, and Miscellaneous.
Form 2c—Work in Process.
Form 2d—Dies, Jigs, Fixtures, etc., and Special Tools.

[JTR 422.1]

§ 844.422–2 *Other types of contractor inventory.* (a) The inventory schedules referred to in § 844.422–1 shall be used by war contractors, for purposes of disposal or plant clearance, in connection with terminated cost-plus-a-fixed-fee war contracts and for listing other types of contractor inventory, unless otherwise directed by the chief of a service or bureau. However, plant equipment which is not a part of termination inventory will be listed on Forms 5 and 5a of the Office of Contract Settlement.

(b) Where the forms are used for such purposes, the certificate set forth in § 849.962–3 should be modified, as applied to items title to which has passed to the Government, to eliminate the statement by the contractor that the quantities are not in excess of the reasonable quantitative requirements of the terminated portion of the contract and that title is tendered to the Government.

(c) The contracting officer may permit the war contractor to eliminate the cost data wholly or in part from the inventory schedules originally submitted, but in such event the contracting officer should supply the cost data on surplus property to be declared to a disposal agency. [JTR 422.2]

§ 844.423 *Time and purpose of submitting inventory schedules.* [JTR 423]

§ 844.423–1 *In support of settlement proposal.* To support the war contractor's settlement proposal on a Standard Form (other than Form 1a), complete inventory schedules must be submitted with the final settlement proposal or prior to its submission, except as otherwise provided in § 845.526. [JTR 423.1]

§ 844.423–2 *To facilitate disposition.* In order to obtain prompt approval of recommendations that material is unserviceable or scrap, or of proposed retentions or sales of material, a war contractor may submit inventory schedules at any time. Schedules may be submitted before submission of the settlement proposal, and should not be delayed in order to supply complete cost data on items of work in process where this is not readily available. In such cases estimated costs may be given. The war contractor may group items which he considers unserviceable, as provided in § 844.425–2. Cost data on raw materials and purchased parts are generally available and should be given. Partial schedules may be submitted provided that they cover substantial portions of the contractor inventory. [JTR 423.2]

§ 844.423–3 *To start the running of the plant clearance period.* The plant clearance period shall be deemed to commence, as to items listed on an inventory schedule, on the date the contracting officer (in the case of the Navy, the cognizant Navy material inspector) receives the schedule in form which he determines to be satisfactory for storage or removal purposes in accordance with § 844.427. In order to start the running of the plant clearance period a war contractor may submit an inventory schedule at any time. For this purpose, partial schedules may be submitted provided that they cover substantial portions of the contractor inventory. [JTR 423.3]

§ 844.424 *To whom schedules submitted.* [JTR 424]

§ 844.424–1 *By prime contractors.* Prime contractors will submit inventory schedules for all purposes to their contracting officers. Navy prime contractors will submit their schedules via their cognizant Navy material inspectors. [JTR 424.1]

§ 844.424–2 *By subcontractors.* (a) In all cases, subcontractors will submit inventory schedules to the next higher tier contractor. When the termination claim of a subcontractor under a Navy prime contract is $10,000 or more, computed according to § 841.122, the subcontractor will submit his schedules via his cognizant Navy material inspector, who will forward copies of such schedules to the next higher tier war contractor and to the local representative of NMR&DA.

(b) In addition, where the contracting officer or a reviewing authority must approve a proposed determination or disposition of material by a subcontractor, the subcontractor under a War Department prime contract will transmit to the contracting officer copies of the pertinent schedule. Such a schedule may be limited to a list of items to be included in the proposed determination or disposition. In the case of the Navy, the NMR&DA is responsible for approving a determination or disposition.

(c) The next higher tier contractor will not forward inventory schedules which he receives from a subcontractor except:

(1) As directed to do so by the contracting officer; or

(2) In support of the subcontractor's settlement proposal, if the settlement with the subcontractor is forwarded for review or approval pursuant to § 846.644.

(d) If a subcontractor wishes to start the running of the plant clearance period for material which he desires the Government to store or to remove, he must submit copies of inventory schedules, satisfactory in form as provided in § 844.427, to the contracting officer or to his local authorized representative. In the case of the Navy, such schedules shall be submitted to the Navy material inspector cognizant of the subcontractor. On request, the contracting officer will inform a subcontractor of the name and address (1) in the case of the War Department, of the contracting officer's authorized representative, if one has been appointed, for the district in which the subcontractor's plant is located, or (2) of the subcontractor's cognizant Navy material inspector. (In most cases the termination notice to the subcontractor will include the name and address of the contracting officer and the number of the prime contract.) [JTR 424.2]

§ 844.425 *Requirements as to form of inventory schedules.* [JTR 425]

§ 844.425–1 *General.* Contractor inventory must be listed on the appropriate schedules referred to in § 844.422. Detailed instructions for the use of the schedules are contained in the "Instructions for Use of Standard Contract Settlement Proposal Forms," set forth in § 849.964. Each schedule must state the contract number of the prime contract. All material listed on a schedule must be at the same location. Government-owned material (including Government-furnished material and equipment) should be separately listed and marked to show that the items are Government-owned. Material subject to special arrangements for disposal, as set forth in § 844.452–3, or items on a production and supply list of a service or bureau, should also be separately listed. Where several war contracts are grouped for termination settlement purposes, the contracts shall be identified, but the schedules need not separate material by contracts. [JTR 425.1]

§ 844.425–2 *Description of items.* (a) The inventory schedules must contain a separate listing of each item of material included, except as provided in paragraphs (b) and (c) of this section. An adequate description of the items listed is essential to enable prospective purchasers to identify particular items, and to accomplish efficient removal or storage of contractor inventory. A commercial description of all metals and of other items believed to have commercial value must be given; stock numbers and prefixes, manufacturers' part numbers, and standard catalog reference numbers should be supplied. For other items, the war contractor need furnish only such description as is sufficient to enable the contracting officer or next higher tier contractor to approve a disposition. In describing items listed on inventory schedules, the war contractor shall be guided by the "Handbook of Standards for Describing Surplus Property," prepared by the War Production Board.

(b) The war contractor need not itemize on an inventory schedule material he believes unserviceable or scrap, provided he segregates the material and prepares a list adequate for purposes of determination that the material is unserviceable or scrap. This list should provide a general record of the material and its cost. If the material is determined to be unserviceable or scrap, the war contractor, with the approval of the contracting officer (in the case of the Navy, the NMR&DA), may make a single descriptive entry for all of it on his inventory schedule and may indicate only its total cost.

(c) Items having a cost of less than $100 each need not be listed separately. These may be grouped together under a "sundry" caption with only a general description of the types of items, provided their aggregate cost does not exceed $5,000, or 20 percent of the total inventory cost, whichever is less. For this purpose, the term "item" means all substantially similar articles in the inventory at any one location. Such listing will be deemed satisfactory in form for storage or removal purposes, provided that at least twenty days before the end of the plant clearance period, the war contractor submits a supplementary schedule listing such items, not to be retained or disposed of, with an adequate description and classification in accordance with paragraph (a) of this section and § 844.425.3. [JTR 425.2]

§ 844.425.3 *Classification of items.* (a) A classified arrangement of listed items is required to start the running of the plant clearance period, except in the case of work in process, and material having no commercial value. Detailed instructions for classifying items on the inventory schedules are set forth in Appendix A to the "Instructions for Use of Standard Contract Settlement Proposal Forms" (§ 849.964).

(b) War contractors may submit inventory schedules which do not contain the prescribed classification of listed items. This will expedite the submission of a settlement proposal and avoid classifying items which may be disposed of. Such a schedule will not start the running of the plant clearance period until a supplementary schedule is submitted containing the prescribed classification. [JTR 425.3]

§ 844.425–4 *Recommendations of war contractors.* War contractors should make scrap recommendations by inserting an "S" in column 7 of the inventory schedules, as stated in the instruction for use of inventory schedules (§ 849.964). Under Regulation No. 9 of the Surplus Property Board (Part 8309 of Title 32) contractor inventory may be determined to be unserviceable without a separate determination that any particular material may be scrap. Where the war contractor considers that material is unserviceable, but not necessarily scrap, he should insert the letter "X" in column 3 of the inventory schedules (column 7, in the case of Form 2c) opposite the description of the material. [JTR 425.4]

§ 844.426 *Inventory schedule certificate.* [JTR 426]

§ 844.426–1 *Certificate to accompany all schedules.* Each inventory schedule or set of schedules submitted together must be accompanied by a certificate in the form set forth in Appendix B to the "Instructions for Use of Standard Contract Settlement Proposal Forms" (§ 849.964). [JTR 426.1]

§ 844.426–2 *Tender of title.* Government officers may rely upon the representation of the war contractor in his certificate that title to material listed in the attached schedules is tendered free and clear of all liens and encumbrances. Unless otherwise agreed, the Government will not accept title until the War or Navy Department takes possession of contractor inventory. [JTR 426.2]

§ 844.426–3 *Statement of storage space.* Where the war contractor indicates in the prescribed form of certificate that he is willing to negotiate with the Government to store all or part of the material listed, he should attach a statement of the approximate amount he is willing to store on acceptable terms. [JTR 426.3]

§ 844.426–4 *Change of certificate accompanying unclassified schedules.* Whenever unclassified schedules are submitted as provided in § 844.425–3, the statements regarding storage or removal by the Government and tender of title by the war contractor contained in the second paragraph of the prescribed form of certificate should be omitted. [JTR 426.4]

§ 844.427 *Acceptance of schedules as satisfactory in form for storage or removal.* [JTR 427]

§ 844.427–1 *Meaning of satisfactory in form.* (a) Inventory schedules must be submitted in satisfactory form to start the running of the plant clearance period. Such schedules must meet the general requirements referred to in § 844.425–1, must contain an adequate description and classification of items listed in accordance with §§ 844.425–2 and 844.425–3, and must be accompanied by the prescribed certificate referred to in § 844.426.

(b) In addition, in order to obligate the Government to store or remove termination inventory, subcontractors shall supply a certificate from the next higher tier contractor that in his opinion the termination inventory listed in the schedules is allocable to the subcontractor's terminated contract, unless the contracting officer (or, in the case of the Navy, the cognizant Navy material inspector) agrees to accept, in lieu of such certificate, other evidence of allocability which he deems satisfactory. If commencement of the plant clearance period will be delayed unduly by having to pro-

cure such a certificate, the subcontractor need not include the certificate with his original submission of inventory schedules, but may submit it at a later date. However, the Government will be under no obligation to remove termination inventory until twenty days after receipt of the certificate (or other satisfactory evidence of allocability) or until the end of the plant clearance period, whichever is the later.

(c) Acceptance of an inventory schedule as satisfactory in form for storage or removal purposes will not affect the Government's right to require additional information on any listed item, to contest the allocability of any item, or to exclude any listed item on any proper ground. [JTR 427.1]

§ 844.427–2 *Return of schedules not found satisfactory.* (a) The contracting officer (in the case of the Navy, the cognizant Navy material inspector) to whom a schedule is submitted will determine whether it is satisfactory in form for purposes of storage or removal by the Government of items listed. If the officer to whom a schedule is submitted considers that it is not satisfactory in form for purposes of storage or removal, he will return the schedule within ten days from the time he receives it, with a brief statement of its deficiencies. The schedule will be deemed to have been returned on the date it is mailed or delivered by hand to the war contractor. Except as provided in paragraph (b) of this section, if a schedule is not so returned to the war contractor within ten days of its receipt, the schedule will be considered satisfactory in form for purposes of storage or removal and the plant clearance period will commence to run from the date the schedule was first received.

(b) Where an unclassified schedule is submitted without the certificate required by § 844.426–1, or where a schedule, whether classified or unclassified, is submitted with a certificate, but the certificate has been modified in accordance with § 844.426–4, no action need be taken to return the schedule as not satisfactory in form for storage or removal purposes. [JTR 427.2]

§ 844.428 *Notification to war contractor of disposition of material.* Every effort should be made by the contracting officer and the war contractor to determine which items of contractor inventory the Government will require for its own use, and which items can be otherwise disposed of prior to the submission of inventory schedules. If practicable, within twenty days after the contracting officer (in the case of the Navy, the cognizant Navy material inspector) receives an inventory schedule, the war contractor will be notified which items the owning agency will require for its use. Such notice should be given at the time of termination, where practicable. Except where the war contractor is authorized to dispose of contractor inventory without approval of the contracting officer, he will also be notified, if practicable, within such twenty-day period, which items may be disposed of as unserviceable or as scrap, and which items the war contractor will be permitted to retain for his own use at prices agreed upon. The authority of the contracting officer to approve disposal of material however, is not limited to such twenty-day period. [JTR 428]

SUBPART C—GENERAL PROVISIONS RELATING TO AUTHORITY TO MAKE AND APPROVE DISPOSITIONS

§ 844.430 *Scope.* This subpart contains the general provisions relating to the authority of war contractors and representatives of the War and Navy Departments to make and approve dispositions of contractor inventory. The price policies and conditions applicable to specific situations are stated in subpart D. [JTR 430]

§ 844.431 *Basic policy.* (a) Regulation No. 9 of the Surplus Property Board (see Part 8309 of Title 32) empowers owning agencies to authorize war contractors to dispose of contractor inventory, and establishes certain price policies governing the disposition of contractor inventory.

(b) In disposing of contractor inventory war contractors and representatives of the owning agency should attempt to realize as much as possible. Whenever approval of retentions and sales is required, compliance with the price policies is a matter to be determined according to the best judgment of the contracting officer or of the next higher tier war contractor approving the retention or sale, subject to the approval of a reviewing authority where required. Officers authorized to make and approve retentions and sales will be supported by higher authority in the exercise of their honest judgment. [JTR 431].

§ 844.432 *Authority and responsibility of war contractors to dispose of contractor inventory.* [JTR 432]

§ 844.432–1 *Basic authorization.* Pursuant to Regulation No. 9 of the Surplus Property Board (Part 8309 of Title 32), war contractors are authorized to retain or to sell contractor inventory in accordance with the provisions of this part. In certain cases, as provided in this part, subcontractors are authorized to retain or sell contractor inventory with the approval of their next higher tier contractor. In such cases, the next higher tier contractors are authorized to and should approve retentions or sales by their subcontractors which meet the requirements set forth in this part. [JTR 432.1]

§ 844.432–2 *War contractor's authority, where title is in the Government.* (a) Where Government-owned material or material acquired or produced under a cost-plus-a-fixed-fee war contract or other war contract which provides that title to it shall vest in the Government, is in the possession of the war contractor, he may dispose of it in accordance with this subchapter.

(b) Certain contracts of these types provide that the proceeds of any such disposition shall be applied in reduction of payments to be made under the war contract. The uniform termination article for cost-plus-a-fixed-fee contracts (§ 849.932) contains such a provision with respect to termination inventory. Where any contract of this type does not contain such provision, it should be amended to include it. The Instructions to Prime Contractors (§ 849.943) provide that the contractor is authorized to dispose of Government-owned material, and to credit the proceeds against the termination claim, and that if the contract does not provide for such disposition and credit, it will be deemed to be amended accordingly upon the contractor's exercise of this authority.

(c) Where the contract contains such a provision or has been amended in accordance with paragraph (b), the proceeds of any retention or other disposition of such Government-owned inventory may be applied to reduce the amount otherwise payable under the contract, unless the contracting officer otherwise directs. Where the contract does not contain such a provision and is not amended in accordance with paragraph (b), such proceeds must be paid over to the Government and covered into the Treasury as miscellaneous receipts. [JTR 432.1]

§ 844.432–3 *General restrictions on war contractor's authority.* The authority of a war contractor to dispose of contractor inventory or to authorize or approve a disposition by a subcontractor is subject to the following general restrictions, in addition to the restrictions specifically set forth in this part:

(a) Any applicable Government restrictions upon the disposition of secret, confidential, or restricted material, or existing contract provisions regarding the disposition of material under the contract, or any restriction on the disposition of material subject to a lien, shall govern such disposition, notwithstanding the provisions of this subchapter.

(b) The contracting officer may require any item of contractor inventory to be transferred to the Government. He will do so in the case of critical items or other items which the Government wishes to acquire for production or supply purposes.

(c) The contracting officer may require that no disposition of Government-furnished equipment and material be effected without his approval, and he may specify methods for preparing and routing inventory schedules of such equipment or material.

(d) If a service or bureau has entered into a special agreement with a disposal agency covering the disposition of certain classes of contractor inventory, the war contractor may not dispose of such material except as provided in §844.452–3.

(e) War contractors shall not sell contractor inventory to persons known by them to be officers, enlisted personnel or civilian employees of the War or Navy Department.

(f) A war contractor will not retain or sell his contractor inventory, nor approve a retention or sale by his subcontractor, unless the price is the best price obtainable and one that he would approve if reimbursement by the Government were not involved.

(g) The authority of a subcontractor to retain or sell contractor inventory

with the approval of the next higher tier contractor does not extend (1) to a sale by a subcontractor to the next higher tier war contractor or to an affiliate of such war contractor, or (2) to a retention or sale by a subcontractor affiliated with the next higher tier contractor. Such sales require the specific approval of the contracting officer. For this purpose a contractor is considered to be affiliated with another person if they are under common control or if there is any common interest between them, by reason of stock ownership or otherwise, which is sufficient to create a reasonable doubt that the bargaining between them is completely at arm's length. The decision of the war contractor as to this question may be accepted by the contracting officer in the absence of information to the contrary.

(h) The authority granted to war contractors to retain or sell, or to approve retention or sale by a subcontractor, of contractor inventory, does not include the authority to destroy or abandon worthless material or to approve destruction or abandonment of worthless property without the approval of the contracting officer (in the case of the Navy, the local NMR&DA officer or the Navy material inspector when the war contractor submits his claim properly on Form 1a) or disposal board, required by § 844.447–2. [JTR 432.3]

§ 844.432–4 *Revocation of war contractor's authority.* The contracting officer may at any time revoke or restrict the authority of a war contractor to make or approve sales and retentions of contractor invehtory. The revocation or restriction will not operate retroactively. The contracting officer may cancel such revocation. [JTR 432.4]

§ 844.432–5 *Finality of authorized dispositions.* Authorized retentions or sales of contractor inventory which meet the requirements of this part, including dispositions which do not require the approval of the contracting officer, will be accepted by the Government as final and conclusive, in the absence of fraud. [JTR 432.5]

§ 844.433 *Authority of War and Navy Departments to dispose of contractor inventory.* [JTR 433]

§ 844.433–1 *General.* The War and Navy Departments, before taking possession, may dispose of contractor inventory title to which is in the Government or tendered to the Government, in the following cases.

(a) Redistribution within War or Navy Department, in accordance with §844.433–2;

(b) Dispositions under the Surplus Property Act:

(1) Dispositions for war production purposes, in accordance with § 844.433–3;

(2) Sales of scrap, salvage, waste, small lots, emergency disposals, and destruction or abandonment of worthless property, in accordance with Surplus Property Board Regulation No. 9 (Part 8309 of Title 32) (see Subpart D).

(3) Sales of plant equipment in accordance with Surplus Property Board Regulation No. 6 (Part 8306 of Title 32).

(c) Dispositions under statutory authority other than the Surplus Property Act, in accordance with § 844.433–4. [JTR 433.1]

§ 844.433–2 *Redistribution within War or Navy Department*—(a) *Within the War Department.* To accomplish redistribution of contractor inventory for authorized production or supply requirements, contracting officers should cooperate fully with district organizations and industry integrating committees, and take such independent action as may be proper under the circumstances. Circularization, however, is not required. The chief of a service will furnish contracting officers lists of items which are to be referred to him for redistribution assistance. If no such lists are furnished, the contracting officer will exercise his judgment in referring significant items to the chief of the service. The chief of the service will give prompt consideration to the utilization of such items within his own service, and, informally, may bring selected items to the attention of other services. Redistribution efforts by the chief of a service under this section will not be permitted to delay or to limit local disposition, except as the chief of service may direct.

(b) *Within the Navy Department.* To accomplish redistribution of contractor inventory, but avoid unnecessary circularization, each bureau shall endeavor to inform its contracting officers and Navy material inspectors of the types of material needed for its production and supply requirements. Where such lists are used, the disposition procedures set forth in this Subpart D may be appropriately modified with the approval of the Industrial Readjustment Branch, OP&M, except that the requirements for removal and storage set forth in Subpart F must be met. The NMR&DA will be responsible for general redistribution among the bureaus and activities of the Navy Department. The NMR&DA may, to the extent deemed desirable by it, circularize inventory schedules among the bureaus, or effect such redistribution as is practicable by its Material Redistribution and Disposal Offices in the field through local action with Navy material inspectors or other local representatives of the Navy Department. [JTR 433.2]

§ 844.433–3 *Dispositions for war production purposes.* Nothing in Regulation No. 9 of the Surplus Property Board (Part 8309 of Title 32) applies to retentions or disposals of property for war production purposes. The War and Navy Departments may dispose of, and authorize the disposition of, contractor inventory for war production purposes. Such dispositions will be governed, in the War Department, by Part 823 of Subchapter B and, in the Navy Department, by Property Disposition Directive No. 1. [JTR 433.3]

§ 844.433–4 *Dispositions under statutory authority other than the Surplus Property Act.* (a) Section 34 of the Surplus Property Act provides that "this act shall not impair or affect any authority for the disposition of property under any other law, except that the Board may prescribe regulations to cover any disposition of surplus property under any such authority." Regulation No. 9 of the Surplus Property Board applies only to dispositions under the Surplus Property Act.

(b) Under statutory authority other than the Surplus Property Act, transfers to Government agencies, sales, donations, loans, exchanges, and other dispositions of contractor inventory, title to which is in the Government, will be made in the case of the War Department, in accordance with Subchapter B and, in the case of the Navy Department, in accordance with Property Disposition Directive No. 1. [JTR 433.4]

§ 844.434 *Approval of dispositions.* [JTR 434]

§ 844.434–1 *Authority of contracting officer.* Whenever a disposition of contractor inventory requires the approval of the contracting officer, such approval may be given for a particular transaction, or advance approval may be given where prices or stated discounts from costs have been determined for selected items or selected classes of material. [JTR 434.1]

§ 844.434–2 *Authority of war contractors to approve dispositions by subcontractors.* (a) War contractors are authorized to approve retensions and sales of small inventories in accordance with § 844.444.

(b) The contracting officer may authorize a war contractor, regardless of the amount of his claim, to approve retentions and sales by his subcontractor, where the cost of the material to be disposed of in a single disposition does not exceed $10,000. Such retentions and sales are subject to review under the conditions stated in § 844.449. No disposition will be divided into separate transactions for the purpose of avoiding the limit fixed for a single disposition. The contracting officer may establish conditions and fix limits under which the war contractor may approve disposition of specific classes of material, individual items, or lots. The authority granted under this section to approve dispositions of contractor inventory includes the authority to determine that material is unserviceable, whenever such determination is required.

(c) Any authority granted to a war contractor under this section shall be subject to the restrictions set forth in § 844.432–3, and shall be exercised only in accordance with requirements and price policies set forth in subpart D. [JTR 434.1]

§ 844.439 *Regulations of other agencies.* [JTR 439]

§ 844.439–1 *War Production Board regulations.* Priority Regulation No. 13 of the War Production Board imposes certain restrictions on the disposition of termination inventory. War contractors and contracting officers shall comply with that regulation. Representatives of the War and Navy Departments, however, are not responsible for policing a war contractor's compliance with War Production Board regulations in the case of dispositions of contractor-owned termination inventory by the contractor. In approving such dispositions by the contractor, such representatives may rely

on the contractor to comply with any applicable regulations. Representatives of the War and Navy Departments responsible for making or approving dispositions of Government-owned termination inventory may rely upon the buyer's statement that a purchase is in compliance with all War Production Board regulations affecting the buyer, unless there is reason to believe that such representation is false. This representation should be incorporated in each written contract of sale [JTR 439.1]

§ 844.439–2 *Regulations of Office of Price Administration*—(a) *General.* All dispositions of contractor inventory are subject to OPA Supplementary Order No. 94, which establishes price regulations covering retentions and sales of contractor inventory.

(b) *Retention or sale of contractor inventory at acquisition cost.* (1) A retention or sale of any item of raw material, supplies, component parts, semi-processed and semi-fabricated material in a contractor inventory not exempt and not made in reliance upon a certificate, nevertheless complies with OPA regulations if made at a price not exceeding acquisition cost (although a sale may be made at a price in excess of acquisition cost if it complies with OPA regulations).

(2) "Acquisition cost" of contractor inventory means the purchase price, plus freight, if any, paid by the war contractor for the item, and may be averaged. Freight charges which cannot be definitely assigned or allocated to the item may be estimated. Where the item has been fabricated or processed by the war contractor, direct labor costs plus the appropriate allocable factory overhead (which may be estimated if actual figures are not available) may be added to the acquisition cost. For purposes of determining compliance with OPA regulations, the cost shown by war contractors on termination inventory schedules may be accepted by contracting officers as representing acquisition cost. The acquisition cost of property furnished to the war contractor by the Government may be estimated, if the actual cost is unknown or cannot reasonably be ascertained.

(c) *Exemptions from price ceilings.* Price ceilings established by the Office of Price Administration do not apply to a sale of contractor inventory (other than a sale of food) where the sale is:

(1) To another Government agency;

(2) To any foreign government or agency thereof;

(3) To a prime contractor (but not to a subcontractor) for use in carrying out his prime contract with a Government agency;

(4) To any relief organization for donation or export sale;

(5) Of a single item or group of items where the sale price estimated to be obtainable for all substantially similar items available for sale at the place of sale does not exceed $300;

(6) Of scrap metal to a dealer in such material purchasing solely for resale, provided that:

(i) The dealer certifies that he is purchasing such material for resale and that in reselling he will not exceed the applicable OPA maximum prices, and

(ii) The seller has no reason to doubt the accuracy of the dealer's certificate.

(d) *Reliance on buyer's certificate.* Unless war contractors and contracting officers have reason to doubt the accuracy of the certificate hereinafter set forth, they may make any sale of contractor inventory (other than of food), without verifying OPA ceiling prices, in reliance upon a certificate in the following form executed by the buyer:

> The undersigned hereby certifies that the price paid (to be paid) (to be credited to the Government) for the goods purchased (to be purchased) (to be retained by the undersigned) under (identify contract, bid or quotation) does not exceed one of the following:
>
> (a) The maximum price applicable to purchases by the undersigned, from usual sources of supply, of the goods in the quantity and at the place of delivery specified in such contract (bid, quotation), or
>
> (b) The maximum ceiling price applicable to sales by the undersigned, in its capacity as a manufacturer, producer or processor of the same goods, disregarding minor differences in specifications or design, in the quantity and at the place of delivery specified in such contract (bid, quotation).

[JTR 439.2]

SUBPART D—PRICE POLICIES AND CONDITIONS APPLICABLE TO SPECIFIC DISPOSITIONS

§ 844.440 *Scope.* (a) This subpart sets forth the price policies and conditions applicable to sales and retentions in specific situations, and states the requirements for review. Any specific sale or retention by a war contractor is subject to the general restrictions on his authority set forth in § 884.432–3.

(b) The table preceding this subpart summarizes the price policies and requirements for each type of retention and sale of contractor inventory by war contractors. This table is a general guide only.[1] [JTR 440]

§ 844.441 *Determinations not required in certain cases.* A determination that material is unserviceable, scrap or salvage is not required in connection with the following types of retentions or sales:

(a) Retentions and sales at cost, in accordance with § 844.442.

(b) Retentions and sales of sundry items, in accordance with § 844.443.

(c) Retentions and sales of small inventories, in accordance with § 844.444.

(d) Retentions and sales of small lots, in accordance with § 844.445–2.

(e) Retentions for use, in accordance with § 844.445–3. [JTR 441]

§ 844.442 *Retentions and sales at cost.* (a) War contractors may retain or sell any contractor inventory at cost, without the approval of the contracting officer or the next higher tier contractor. Reasonable freight, packing, and handling charges on items sold may be included in the termination claim.

(b) For purposes of this section, the cost of completed articles deliverable under the contract is the contract price. [JTR 442]

[1] Filed with the Division of the Federal Register.

§ 844.443 *Retentions and sales of sundry items under $100.* War contractors may retain or sell any item of contractor inventory at the best price obtainable, where the total cost of the item does not exceed $100: *Provided,* That the aggregate cost of all items so retained or sold does not exceed $5,000, or 20 per cent of the total inventory cost, whichever is less. The term "item", as used in this section, includes all substantially similar articles at any one location listed on any one inventory schedule. Such retentions and sales may be made without the approval of the contracting officer or next higher tier contractor. [JTR 443]

§ 844.444 *Retentions and sales of small inventories.* [JTR 444]

§ 844.444–1 *When termination claim is submitted on Form 1a.* (a) A war contractor may retain or sell contractor inventory at the best price obtainable whenever his termination claim is properly submitted on Form 1a, in accordance with this subchapter. However, material furnished by the Government for incorporation in end items may not be sold under the authority of this section unless the cost of such material to be sold and the amount of the net termination claim total less than $1,000.

(b) No approval of a specific retention or sale is necessary. Acceptance of the prime contractor's settlement proposal by the contracting officer constitutes approval of the price offered by the prime contractor for the entire inventory. Acceptance of a subcontractor's settlement proposal by the next higher tier contractor constitutes approval of the price offered for the entire inventory, and in such cases approval by the contracting officer is not required. [JTR 441.1]

§ 844.444–2 *When termination claim is less than $10,000.* (a) A prime contractor may retain or sell any contractor inventory at the best price obtainable with the approval of the contracting officer, whenever the prime contractor's termination claim is less than $10,000 computed according to § 841.122.

(b) A subcontractor may retain or sell any contractor inventory at the best price obtainable, with the approval of the next higher tier contractor, and without the approval of the contracting officer, whenever the subcontractor's termination claim is less than $10,000, computed according to § 841.122.

(c) Completed articles not delivered under the contract, and material furnished by the Government for incorporation in end items may not be retained or sold under the authority of this section, unless the cost of such articles and material to be retained or sold and the amount of the contractor's termination claim, computed according to § 841.122, total less than $10,000. [JTR 444.2]

§ 844.445 *Retentions and sales by war contractors when termination claim is $10,000 or more.* [JTR 445]

§ 844.445–1 *General.* This section applies when the termination claim is $10,000 or more, computed according to § 841.122. It contains certain general provisions which have special ap-

plication to such claims (§§ 844.445–2 and 844.445–3). [JTR 445.1]

§ 844.445–2 *Retentions and sales of small lots.* War contractors may retain or sell small lots of substantially similar items at the best price obtainable. Such retentions and sales require the approval of the contracting officer (in the case of the Navy, the NMR&DA), or the next higher tier contractor authorized under § 844.434–2 to approve his subcontractor's retentions and sales. The decision of the person first authorized to make the determination as to which items are substantially similar shall be accepted, except in the event of an obvious error. Small lots shall not be assembled for purposes of a consolidated sale. [JTR 445.2]

§ 844.445–3 *Retentions for use.* (a) The war contractor may retain for use any contractor inventory at the best price obtainable, with the approval of:

(1) The contracting officer; or

(2) The next higher tier contractor authorized under § 844.434–2 to approve his subcontractor's retentions and sales.

Retentions for use are subject to review under the conditions stated in § 844.449. Although no formal determination is required as to whether the material is serviceable or unserviceable, its nature and condition are relevant in determining whether the contractor is retaining the material at the best price obtainable.

(b) The war contractor retaining contractor inventory for use will execute a use representation, except in the following cases:

(1) Retentions at cost, in accordance with § 844.442.

(2) Retentions of sundry items, in accordance with § 844.443; and

(3) Retentions of small lots, in accordance with § 844.445–2. [JTR 445.3]

§ 844.445–4 *Retentions and sales by war contractors of unserviceable material on the basis of competitive bidding*—(a) *General.* A war contractor may retain or sell unserviceable material, when his termination claim is $10,000 or more, as provided in this § 844.445–4. Such retentions and sales shall be made on the basis of competitive bidding, except in the cases mentioned in §§ 844.441 and 844.445–5.

(b) *Determinations that material is unserviceable.* (1) A war contractor may not sell or retain for resale contractor inventory as unserviceable material under the authority of this section unless it is first determined to be unserviceable.

(2) Unless material affirmatively appears serviceable, it shall be considered unserviceable. The contracting officer (in the case of the Navy, the NMR&DA) will determine which items of contractor inventory are unserviceable, and will notify the war contractor, in writing, of such determination. War contractors have no authority to determine that material is unserviceable, except as permitted under § 844.434–2. However, war contractors should assist Government personnel by recommending that certain items be considered unserviceable, and by noting such recommendations on their inventory schedules.

(3) The Reconstruction Finance Corporation has set up a system of field consultants who may be called upon for assistance in determining whether contractor inventory is serviceable or unserviceable. The services of such consultants may be obtained by application to the regional offices of the Reconstruction Finance Corporation. War contractors and representatives of the War and Navy Departments should, so far as practicable, confer with and be guided by such consultants. The Reconstruction Finance Corporation, or other appropriate disposal agency, may certify in writing to the contracting officer (in the case of the Navy the NMR&DA) at any time before the material has been physically transferred to the disposal agency and either before or after the owning agency has taken possession, that the material is in its judgment scrap. In addition, the disposal agency may certify in writing to an owning agency that all material of any specified class is in its judgment scrap when such material is part of any war contractor's contractor inventory. In either case, when material is covered by such a certificate, the contracting officer (in the case of the Navy the NMR&DA) may authorize the contractor to dispose of the material or class of material without further review, in accordance with the provisions of this section. Such certificate takes the place of any scrap determination which might otherwise be required.

(4) Unless a scrap certificate has been given by a disposal agency, determination that material, included in any one inventory schedule and located at any one place, is unserviceable must be approved by a reviewing authority pursuant to § 844.449, when the cost of such material is $25,000 or more.

(c) *Requirements for competitive bidding*—(1) *Invitations to bid.* Competitive bidding will be initiated by the issuance of invitations to bid. An invitation to bid will contain a list of material available for sale. It will state the location of the material, when it may be inspected, when and where bids will be opened, and the terms and conditions of sale. The material will be described in sufficient detail to secure intelligent competition from bidders. Lots will be offered in such reasonable quantities as to permit all bidders, small as well as large, to compete on equal terms. Different types of material will be physically segregated whenever practicable.

(2) *Public notice.* Invitations to bid will be distributed to both large and small prospective purchasers to insure wide public notice concerning the sale. In cases in which the quantity or type of material offered justifies advertising in newspapers or trade publications, that medium of publication may be used.

(3) *Interval between notice and sale.* The material will not be sold less than seven days after the first distribution of the invitations to bid. During that period an opportunity will be afforded to inspect the material at reasonable times.

(4) *List of prospective bidders.* The war contractor, within forty-eight hours after invitations to bid have been issued, will provide the contracting officer (in the case of the Navy, the local NMR&DA officer) with a list of the names and addresses of prospective bidders to whom invitations to bid have been furnished, a copy of the invitation to bid, and a copy of any published advertisement. The contracting officer (in the case of the Navy, the local NMR&DA officer) may add names and addresses to the list of persons invited to bid. If the war contractor intends to bid he will include his own name on this list.

(5) *Formalities of bids.* Each bidder will enclose his bid in duplicate in a sealed envelope addressed as directed in the invitation to bid. If the war contractor wishes to retain without a use representation all or part of the material included in the invitation to bid, he must place his bid in a sealed envelope and transmit a copy to the contracting officer (in the case of the Navy, the local NMR&DA officer) in advance of the opening of bids.

(6) *Acceptance of bids.* Bids will be opened at the place and time specified in the invitation to bid. The war contractor shall accept the highest bid unless he considers it to the best interests of the Government to accept a lower bid. In such case he shall furnish the contracting officer (in the case of the Navy, the local NMR&DA officer) a statement of reasons for accepting the lower bid. The war contractor shall reserve the right to reject any or all bids and, unless otherwise specified by the bidder, to accept any item in the bid.

(7) *Approval of contracting officer.* The acceptance of any bid is subject to the approval of the contracting officer (in the case of the Navy, the local NMR&DA officer), or the next higher tier contractor authorized under § 844.434–2 to approve his subcontractor's retentions and sales. The contracting officer will give such assistance to the war contractor in carrying out the procedures prescribed in this section as may reasonably be requested. [JTR 445.4]

§ 844.445–5 *Retentions and sales of scrap without competitive bidding.* (a) War contractors may retain or sell scrap without competitive bidding (but with a scrap warranty) in exceptional cases or classes of cases; *Provided*, That:

(1) A determination has been made by the contracting officer (in the case of the Navy the NMR&DA), approved by the reviewing authority, that the material is scrap, and that it is to the best interest of the Government to dispose of it by negotiated sale; or

(2) A scrap certificate has been given by the disposal agency, as provided in § 844.445–4 and a determination has been made by the owning agency, approved by the reviewing authority, that it is to the best interest of the Government to dispose of it by negotiated sale.

(b) Retentions and sales under this section require the approval of the contracting officer (in the case of the Navy, the local NMR&DA officer), or the next higher tier contractor authorized under § 844.434–2 to approve his subcontractor's retentions and sales. [JTR 445.5]

§ 844.445–6 *Retentions and sales of serviceable material.* (a) The retentions and sales referred to in § 844.441 do not come within the application of this section.

(b) When the war contractor's termination claim is $10,000 or more, he may retain serviceable material or sell serviceable material to any buyer, at the best price obtainable, but not less than 50% of cost.

(1) Where the cost of serviceable material that will be available for sale at any one time at any one location is less than $10,000, the war contractor may retain or sell such material without the necessity of advertising.

(2) Where the cost of serviceable material that will be available for sale at any one time at any one location is $10,000 or more, the contractor shall publish a notice in a newspaper of general circulation in the locality. The notice shall indicate in general terms the types of material that are expected to be available for sale and shall name a date (not less than seven days from the date of first publication of the notice) on or after which such material will be available for sale. On and after the date of sale fixed in the notice the war contractor may sell the material or portions thereof. He shall conduct sales in the manner in which a reasonably prudent business man would dispose of property in normal commercial transactions, endeavoring to secure the maximum return consistent with expedtious disposition. So far as feasible, lots will be offered in such reasonable quantities as to permit all bidders, small as well as large, to compete on equal terms. Where the war contractor intends to offer to retain the material without a use warranty, he shall, at the time of publication of the notice, file with the contracting officer (in the case of the Navy, the local NMR&DA officer) a statement of the price he offers for the material.

(c) If contractor inventory cannot be disposed of within a reasonable time on the terms stated in paragraph (b), sales may be made at the best price obtainable to any buyer who furnishes a use representation.

(d) Retentions or sales under this section require the approval of the contracting officer (in the case of the Navy, the NMR&DA), or the next higher tier contractor if authorized under § 844.434–2 to approve his subcontractor's retentions and sales. Such retentions and sales shall be subject to review under the conditions stated in § 844.449. [JTR 445.5]

§ 844.446 *Sales by War and Navy Departments.* [JTR 446]

§ 844.446–1 *General.* (a) Under the Uniform Termination Article, war contractors are required to use their best efforts to sell termination inventory. The policy of the War and Navy Departments is to assist war contractors in disposing of contractor inventory, so that the owning agency will not have to take possession of such material.

(b) The owning agency may dispose of small lots and scrap and salvage in contractor inventory. Generally it should not be necessary to exercise this authority. It may be exercised when the contracting officer (in the case of the Navy, the NMR&DA) considers that such action is to the best interest of the government. In sales by the owning agency under the authority of this section, the contractor's tender of title will be accepted, and the material will be sold as government-owned property. The proceeds of such sales will be paid to the government and covered into the Treasury as miscellaneous receipts. [JTR 446.1]

§ 844.446–2 *Small lots.* Contracting officers (in the case of the Navy, the NMR&DA) may sell small lots of substantially similar items at the best price obtainable. The decision of the first person authorized to make the determination as to which items are substantially similar shall be accepted, unless there is an obvious error. Small lots shall not be assembled for the purpose of a consolidated sale. [JTR 446.2]

§ 844.446–3 *Scrap and salvage.* (a) The contracting officer (in the case of the Navy, the NMR&DA) will sell scrap and salvage in contractor inventory by competitive bidding, in all but the exceptional cases covered by paragraph (b). Before such a sale, a determination must be made in each instance by the contracting officer (in the case of the Navy, the local NMR&DA officer) that the material is scrap or salvage. When the cost of such material, located at one place at one time, is $25,000 or more, the scrap or salvage determination must be approved by a reviewing authority pursuant to § 844.449. The contracting officer (in the case of the Navy, the NMR&DA) may, if he considers it in the best interests of the Government, require a scrap warranty in any case where material is sold as scrap.

(1) In the War Department, the procedures for competitive bidding are stated in TM 38–505.

(2) In the Navy Department, the procedures for competitive bidding are stated in the NMR&DA Handbook.

(b) In exceptional cases or classes of cases, contracting officers (in the case of the Navy, the NMR&DA) are authorized to sell scrap and salvage in contractor inventory, by negotiated sale, at the best price obtainable. Before such a sale a determination must be made in each instance by the contracting officer (in the case of the Navy, the local NMR&DA officer), approved by a reviewing authority, (1) that the material to be sold is scrap or salvage and (2) that it would be in the best interests of the Government to dispose of it by negotiated sale. The buyer in all such sales of scrap shall furnish a scrap warranty. [JTR 446.3]

§ 844.446–4 *Material certified as scrap by disposal agency.* When material has been certified as scrap by a disposal agency as provided in § 844.445–4, the contracting officer (in the case of the Navy, the NMR&DA) may forthwith, and without further review, dispose of the material or class of material in accordance with the provisions of § 844.446–3. [JTR 446.4]

§ 844.446–5 *Release of scrap warranty.* The scrap warranty may be released in behalf of the Government by the contracting officer (in the case of the Navy, by the NMR&DA) under the following conditions:

(a) The consideration to the Government for the release shall be the difference between (1) the amount at which the material was retained or sold as scrap and (2) an amount not less than that which would be accepted if the material were then to be sold or retained for purposes other than use as scrap. The latter amount shall be determined under the price policies set forth in this subpart, with review and approval in appropriate cases as provided in § 844.449.

(b) The release of the scrap warranty in behalf of the Government will be given by the Government and the consideration paid to the Government, even though the contract containing the warranty was not made directly with the Government. [JTR 446.5]

§ 844.446–6 *Information on sales by War and Navy Departments.* (a) The policy of the War and Navy Departments is to have the facts on all sales of contractor inventory by the owning agency available at the point of sale for public inspection during customary business hours for any proper purpose.

(b) When sales are made on written invitations to bid, copies of invitations and information as to sales may be transmitted to periodicals for publicity purpose, to Smaller War Plants Corporation, and 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 sales will be open to inspection by representatives of periodicals and other interested persons during customary business hours for any proper purpose. [JTR 446.6]

§ 844.447 *Dispositions of special types of material.* [JTR 447]

§ 844.447–1 *Contractor inventory where there is no contract termination.* Contractor inventory of the types described in subparagraph (b) and (c) of the definition of that term in § 844.411–3 may be in the possession of a war contractor, although there has been no termination of his contract. Where the cost of such material available for sale at any one time at any one location is less than $10,000, it may be disposed of at the best price obtainable, with the approval of the contracting officer (in the case of the Navy, the NMR&DA). Where the cost of such material available for sale at any one time at any one location is $10,000 or more, it may be disposed of in accordance with § 844.445. [JTR 447.1]

§ 844.447–2 *Destruction or abandonment of worthless contractor inventory.* The contracting officer, or the war contractor (with the approval of the contracting officer) may destroy or abandon any worthless contractor inventory. Whenever the cost of the material is more than $1,000, before approving the destruction or abandonment, the contracting officer (in the case of the Navy, the

local NMR&DA officer) must certify to a reviewing authority that:

(a) Reasonable efforts have been made to dispose of the material without success by offering it to at least three persons dealing in that type of material, or that such offer would be useless;

(b) In his opinion the material is worthless, or that the cost of sale would exceed the proceeds thereof; and

(c) The material should be destroyed or abandoned. In such cases, the written approval of the reviewing authority for the proposed destruction or abandonment must be obtained. [JTR 447.2]

§ 844.447–3 *Special attachments to tools owned by Reconstruction Finance Corporation.* The contracting officer (in the case of the Navy, the NMR&DA) may transfer to the Reconstruction Finance Corporation (Office of Defense Plants) without reimbursement, special attachments which are attached to machines or machine tools owned by the Reconstruction Finance Corporation. In such cases the contracting officer (in the case of the Navy, the NMR&DA) shall first determine that such special attachments have no commercial value separate from the machines to which they are attached or that the cost of the care and handling and disposition of such special attachments, separate from the machines to which they are attached, would exceed the estimated proceeds of such disposition. [JTR 447.3]

§ 844.447–4 *Aluminum scrap.* Retentions and sales of aluminum scrap are subject to the pricing policies and other provisions set forth in Regulation 5 of the Surplus War Property Administration (Part 8305 of Title 32). [JTR 447.4]

§ 844.447–5 *Production equipment.* (a) Certain contractor-owned machine tools and other production equipment are contractor inventory, but not plant equipment as that term is defined in Regulation No. 6 of the Surplus Property Board (Part 8306 of Title 32). War contractors may retain or sell such production equipment:

(1) With the approval of the contracting officer; or

(2) With the approval of the next higher tier contractor authorized under § 844.434–2 to approve his subcontractor's retentions and sales.

(b) Dispositions of production equipment, except small lots and small inventories, will be made in accordance with the following price policies:

(1) All retentions and sales of used standard general-purpose machine tools as defined in Surplus War Property Administration Regulation 3 (see Part 8303 of Title 32), and all used standard machines listed in § 8306.5 (a) of Surplus Property Board Regulation 6 shall be made at prices in accordance with Regulation No. 3, Order No. 2 of the Surplus Property Board (see Exhibit D of Regulation 6) (see Part 8306 of Title 32).

(2) All other production equipment of the types not subject to a fixed price schedule will be retained or sold in accordance with the provisions of this subpart. [JTR 447.5]

§ 844.447–6 *Small lots of material peculiar to aircraft.* In the case of the Navy Department, the NMR&DA may sell any item or group of identical items of material peculiar to aircraft, title to which has been tendered to the Government, at the best price obtainable, when the cost of such items available for sale at any one time at any one location does not exceed $100. [JTR 447.6]

§ 844.448 *Sales on credit.* (a) A war contractor may sell contractor inventory on credit at his own risk. With the approval of the contracting officer (in the case of the Navy, the NMR&DA) a war contractor also may sell contractor inventory on credit, not to exceed sixty days, at the risk of the Government.

(b) The war contractor who makes a sale on credit at the risk of the Government will assign to the Government, at any time on request of the contracting officer, all his right, title, and interest in any claims for the unpaid balance of the purchase price, arising out of such sale. If the Government has not received an assignment of claims arising from such a sale, upon final settlement the owning agency will deduct from the amount of the settlement, as a disposal credit, a sum equal to the amount remaining unpaid upon the sale.

(c) War contractors will not make settlements with subcontractors who have unpaid claims for sales on credit at the risk of the Government, unless such claims have been assigned to the Government and the debtor has been notified of such assignment. A war contractor who makes a settlement with a subcontractor without procuring such assignment will not be credited with the proceeds of the sale in his termination settlement. [JTR 448]

§ 844.449 *Review of determinations and dispositions.* [JTR 449]

§ 844.449–1 *Establishment of reviewing authority.* (a) In the case of the War Department, the review required under this section will be accomplished by disposal boards established under Subchapter B:

(b) In the case of the Navy, the NMR&DA shall establish disposal boards for the purpose of reviewing dispositions of any material and determinations that material is unserviceable, scrap or salvage. The number of boards required, their location and their membership shall be as determined by the Director of the NMR&DA. The chiefs of bureaus shall also establish at least one disposal board in each bureau to review disposition transactions made by direction of a contracting officer of the bureau (or by a Navy material inspector under his authority), where such review is required. [JTR 449.1]

§ 844.449–2 *Determinations subject to review.* The reviewing authority must approve the following determinations:

(a) A determination that material, included in any one inventory schedule at any one location, is unserviceable, when the cost of such material is $25,000 or more;

(b) A scrap or salvage determination, where material is to be sold by the owning agency by competitive bidding, and the cost of such material located at one place at one time is $25,000 or more;

(c) A determination that material is scrap and that it would be in the best interests of the Government for the war contractor to dispose of it by negotiated sale;

(d) A determination that material to be sold by the owning agency is scrap or salvage and that it would be in the best interests of the Government to dispose of it by negotiated sale;

(e) A determination that contractor inventory should be destroyed or abandoned where the cost is more than $1,000. [JTR 449.2]

§ 844.449–3 *Dispositions subject to review.* (a) Retentions for use in accordance with § 844.445–3 and retentions and sales of serviceable material in accordannce with § 844.445–6 are subject to prior review and approval by a reviewing authority where:

(1) The cost of the material to be disposed of by the retention or sale exceeds $100,000 and it is proposed to retain or to sell such material below such cost, less freight and handling charges; or

(2) The cost of the material to be disposed of by the retention or sale exceeds $10,000 and it is proposed to retain or to sell such material at more than 50 per cent below such cost, less freight and handling charges.

(b) For the purpose of determining whether or not a retention or sale shall be submitted for the review and approval of a reviewing authority, simultaneously negotiated retentions or sales of different items to a single buyer, or of the same item to several buyers, shall be considered as a single disposition.

(c) In the case of the War Department, the chief of a service may require prior review and approval by a disposal board, established in his office under § 821.106 of Subchapter B, or, in the case of the Army Air Forces, in the headquarters office of a Command, where the cost of the material to be disposed of by the retention or sale exceeds $500,000 and it is proposed to retain or sell such material at more than 50 per cent below such cost.

(d) The reviewing authority is not authorized to waive or to modify the price policies stated in this Regulation relating to the disposition of contractor inventory, and will not approve retentions or sales which are not in conformity with the price policies. [JTR 449.3]

§ 844.449–4 *Dispositions not subject to review.* The following retentions, sales, or transfers may be made or approved without review, except as may be required by the chief of a service or bureau:

(a) Retentions or sales at cost, as permitted under § 844.442;

(b) Sales of unserviceable material by competitive bidding, as provided in §§ 844.445–4 and 844.446–3;

(c) Sales by negotiation of scrap and salvage (although the scrap or salvage determination and the determination to sell by negotiated sale are subject to review);

(d) Retentions or sales in connection with settlements based on proposals submitted on Form 1a;

(e) Retentions or sales made at specific prices established by, or with the ap-

proval of, the Surplus Property Board; including retentions on sales of production equipment at fixed prices in accordance with § 844.447–5;

(f) Sales to a cost-plus-a-fixed-fee war contractor for the account of the Government;

(g) Transfers between services or bureaus of the War or Navy Department, or to another Government agency, whether or not the transfer of funds is required;

(h) Declaration of surplus material to a disposal agency. [JTR 449.4]

SUBPART E—DISPOSITION OF TERMINATION INVENTORY ON SETTLEMENT AND DISPOSITION OF SURPLUS CONTRACTOR INVENTORY

§ 844.450 *Scope.* This subpart covers the disposition of termination inventory upon final settlement with the prime contractor and the methods for accounting for termination inventory by the prime contractor and subcontractors. This subpart also covers the disposition of surplus contractor inventory. [JTR 450]

§ 844.451 *Disposition of termination inventory on settlement.* [JTR 451]

§ 844.451–1 *Accounting for termination inventory on settlement with prime contractor.* Upon final settlement with the prime contractor, all termination inventory of the prime contractor and his subcontractors, whether contractor-owned or Government-owned, must be accounted for in one of the following ways:

(a) By retention by the war contractor and the application of the agreed value in reduction of his claim, or otherwise to the credit of the Government.

(b) By sale (including retentions for resale and return to suppliers) and application of the proceeds in reduction of the war contractor's claim, or otherwise to the credit of the Government.

(c) By destruction or abondonment with the approval of the contracting officer or his representative in accordance with § 844.447–2.

(d) By removal by the Government, evidenced by a receipt in accordance with § 849.971.

(e) By storage by the Government with the war contractor under a storage agreement in accordance with § 844.465.

(f) By storage by the war contractor at the risk and expense of the Government in accordance with § 844.464.

(g) By temporary storage with the war contractor under the settlement agreement with the prime contractor, in accordance with § 844.465–3 or under a special agreement with the subcontractor in accordance with § 844.465–4.

(h) By disposition in accordance with the terms of a contract with the Government. [JTR 451.1]

§ 844.451–2 *Evidence required on settlement with prime contractor.* (a) Upon final settlement of the prime contractor's termination claim, evidence that all termination inventory has been accounted for in accordance with § 844.451–1 may be established in such manner as the contracting officer deems satisfactory.

(b) In the case of claims under $1,000 properly submitted on Standard Form 1a, the contracting officer or any war contractor may accept the submission of such Form itself as satisfactory evidence that the termination inventory covered thereby has been so properly accounted for.

(c) In the case of all other claims, the contracting officer may accept the prime contractor's certification in the final settlement agreement that (1) all of his termination inventory has been properly accounted for and (2) he has received from each of his immediate subcontractors, other than those whose claims were properly submitted on Form 1a, a certificate substantially in the form set forth in § 849.973. It is contemplated (in the case of all claims other than those properly submitted on Form 1a) that each such immediate subcontractor will obtain a similar certificate in turn from each of his immediate subcontractors, and so on, down the line, to the lowest tier subcontractor. In order, therefore, to accomplish prompt settlement of the prime contractor's termination claim against the Government, and of all war contractors' claims of any tier included therein, every war contractor should obtain this certificate (in the case of all claims other than those properly submitted on Form 1a) from each of his immediate subcontractors whose termination claim is included in the war contractor's termination claim. [JTR 451.2]

§ 844.451–3 *Disposition of termination inventory on settlement with subcontractor.* Unless otherwise authorized by the contracting officer, upon settlement of the termination claim of a subcontractor, the settlement agreement made with the subcontractor by the next higher tier war contractor shall identify clearly by reference to inventory schedules all termination inventory which has not been disposed of. Such inventory schedules must be in form satisfactory for purposes of storage or removal by the Government as provided in § 844.427 and must be submitted to the contracting officer (in the case of the Navy, to the cognizant Navy material inspector) upon, or prior to, settlement of the prime contractor's termination claim. All termination inventory should be accounted for in accordance with § 844.451–1 upon, or prior to, settlement by a subcontractor with his next higher tier war contractor; and all such inventory must be accounted for in accordance with that paragraph before reimbursement will be made by the Government to the prime contractor for the amount of the settlement of the subcontractor's claim. [JTR 451.3]

§ 844.451–4 *Undelivered termination inventory.* (a) In the event that any termination inventory not disposed of is lost, destroyed, damaged, or for any reason cannot be delivered by the war contractor at the time of settlement of his termination claim, such termination inventory shall be accounted for as termination inventory retained by the war contractor, and its fair value shall be deducted from his termination claim, except as provided in § 845.542–2 and in paragraph (b) below.

(b) If in accordance with § 844.464 a war contractor has stored any termination inventory at the risk and expense of the Government prior to the execution of a final settlement agreement, and at the date of execution of the settlement agreement any such termination inventory properly allocable to the terminated war contract has been lost, destroyed or damaged, or for any reason cannot be delivered by the war contractor, no charge for the fair value of such termination inventory shall be deducted from the termination claim unless the loss, damage, destruction or inability of the war contractor to deliver such termination inventory is due to his failure to exercise reasonable care in the storage of such termination inventory. [JTR 451.4]

§ 844.452 *Surplus contractor inventory.* [JTR 452]

§ 844.452–1 *General.* (a) When the owning agency takes possession of contractor inventory, the material loses its identity as contractor inventory, for purposes of disposition, and is treated as any other property of the War and Navy Departments. It is deemed surplus unless it is to be retained for production or supply purposes or is to be disposed of under statutory authority other than the Surplus Property Act.

(b) Surplus contractor inventory, like any other surplus property, may be disposed of in the following cases:

(1) Disposition for war production purposes;

(2) Disposition of scrap, salvage, and waste;

(3) Disposition of small lots;

(4) Destruction or abandonment in the interest of health, safety, or security;

(5) Emergency disposals in the interest of health, safety, or security.

These dispositions are governed, in the case of the War Department, by Subchapter B and TM 38–505 and in the case of the Navy Department, the Property Disposition Directive No. 1 and the NMR&DA Handbook.

(c) The basic policy of the War and Navy Departments is that the maximum amount of surplus material be declared to the agencies designated by the Surplus Property Board for disposal of surplus property. [JTR 452.1]

§ 844.452–2 *Declaration to disposal agency in absence of special arrangements.* (a) In the absence of special arrangements of the nature referred to in § 844.452–3, surplus contractor inventory (except stockpile materials, scrap and salvage, and small lots) will be reported to the Regional Office of the Reconstruction Finance Corporation for the region in which the material is located.

(b) Material in process of storage or removal at the time of execution of a final settlement agreement with the prime contractor will not be reported until it has reached its destined place of storage.

(c) In the case of the War Department, declarations to disposal agencies are governed by Part 827 of Subchapter B.

(d) In the case of the Navy Department, when surplus contractor inventory is declared to a disposal agency, the material shall be listed in triplicate on Form

SPB–1, or on mechanical accounting lists or inventory schedules (Forms 2a, 2b, 2c and 2d) attached to Form SPB–1 as a cover transmittal sheet. [JTR 452.2]

§ 844.452–3 *Declaration to disposal agency under special arrangements.* Special arrangements have been entered into under a Memorandum of Understanding between the Army Air Forces, the Navy, Army Signal Corps, and Defense Supplies Corporation, as agent for the Reconstruction Finance Corporation, covering disposition of certain electronic components, parts, and equipment. Other such special arrangements may be made with the approval of the Readjustment Division, ASF, or the Industrial Readjustment Branch, OP&M. A war contractor whose contractor inventory is subject to such arrangements will be notified by the contracting officer. The terms of such arrangements will be observed in disposing of contractor inventory affected thereby and in declaring items thereof to a disposal agency as surplus. [JTR 452.3]

§ 844.452–4 *Action after declaring surplus contractor inventory.* (a) The contracting officer (including, in the case of the Navy, the NMR&DA) will not make or approve dispositions of contractor inventory after it has been declared to a disposal agency as surplus, except as provided in paragraph (b) and except that scrap may be sold upon receipt of a scrap certificate from a disposal agency. Such certification may be given at any time before the material is transferred physically to the disposal agency.

(b) After surplus contractor inventory is declared to a disposal agency, further action will be taken only in accordance with Part 827 of Subchapter B in the case of the War Department, or Property Disposition Directive No. 4 and the NMR&DA Handbook in the case of the Navy. [JTR 452.4]

§ 844.452–5 *Disposition of stockpile materials*—(a) *Within the War Department.* When any of the stockpile materials listed in § 829.909 of Subchapter B are included in contractor inventory in quantities equal to or in excess of the minimum quantities therein indicated and are not disposed of prior to the War Department taking possession, they will be reported to the chief of service having jurisdiction over the contractor inventory, and held for disposition instructions. Requests for such instructions will be made in triplicate by the field installation concerned on W. D., A. G. O., Form 257, in accordance with § 829.909–1 of Subchapter B. Copies of the form may be requisitioned from Adjutant General depots. It is imperative to expedite action under this paragraph to avoid double handling of stockpile materials. Upon receipt of W. D., A. G. O. Form 257 covering any lot of stockpile materials, the chief of service will execute a first endorsement thereto and forward two copies to the Director, Production Division, ASF. The Director, Production Division, ASF, is responsible for the issuance of disposition instructions. If instructions are issued to hold the material for stockpile, the chief of service will: (1) Arrange for permanent storage of the material; (2) issue instructions to the appropriate field installation to accomplish permanent storage; (3) advise the Director, Production Division, of the location and manner of storage; and (4) dispose of the material only upon specific authorization of the Director, Production Division. If instructions are issued not to hold the material for stockpile, the chief of service will direct the appropriate field installation to dispose of the material as surplus.

(b) *Within the Navy Department.* The NMR&DA is responsible for reporting stockpile materials to the Office of Procurement and Material for disposition instructions. [JTR 452.5]

SUBPART F—PLANT CLEARANCE: REMOVAL AND STORAGE

§ 844.460 *Scope.* (a) This subpart provides instructions for plant clearance, the removal and storage of contractor inventory, and indicates the conditions under which the storage is administered by the owning agency and by the disposal agency.

(b) This subpart applies only with the approval of the contracting officer to:

(1) Government-owned material no longer required or in excess of the amounts needed to complete performance of a war contract; and

(2) Material no longer required for the performance of a war contract as a result of any change in the specifications or plans thereunder. [JTR 460]

§ 844.461 *Duty to clear contractor's plant within sixty days.* (a) Where contractor inventory is not otherwise disposed of, the Government will store such material with the war contractor or will remove it from the war contractor's premises, within sixty days (or such longer time as may be agreed to by the contractor) after receipt of inventory schedules satisfactory in form.

(b) The owning agency has the final responsibility for the removal or storage of material not otherwise disposed of. However, when contractor inventory is declared surplus the disposal agency will be requested to make storage arrangements with the war contractor or furnish shipping instructions to a designated storage point. Such requests, so far as practicable, shall be made sufficiently in advance of the required date of plant clearance to allow for preparation for storage and shipment by that date. In the event it is not possible for the disposal agency to make the requested storage arrangements, the owning agency shall arrange for storage of the material.

(c) The owning agency is responsible for packaging and preparing material for storage and for initial shipping to storage, whether storage arrangements are made by the owning agency or the disposal agency. After material is stored with the war contractor under a storage agreement executed by a disposal agency or shipped in accordance with shipping instructions issued by the disposal agency, accountability for the material and any subsequent care and handling is the responsibility of the disposal agency.

(d) In the Navy Department, the cognizant bureau is responsible for the removal of material retained by the bureau for production and supply purposes. The NMR&DA is responsible for furnishing storage space for such material, when requested by the bureau. In addition, the NMR&DA is responsible for the removal of all other contractor inventory not disposed of and for the execution of all agreements covering the storage of surplus contractor inventory with the contractor or elsewhere, and for the execution of all agreements covering the storage of production and supply items other than with the contractors. The cognizant bureau will execute agreements with the contractor covering (1) the storage of items which the bureau desires to have retained at the war contractor's plant for possible use under future procurement contracts, (2) the storage of production and supply items pending issuance of shipping instructions, and (3) the storage of items where the contractor will perform work or services other than handling, packaging, and preservation, in addition to the storage of material. The NMR&DA will assist the bureaus in determining the form of such agreements, storage charges and similar matters. [JTR 461]

§ 844.462 *Transfer of title to contractor inventory.* Title to contractor inventory, not already owned by the Government, is transferred to the Government when the owning agency takes possession of such material or accepts the contractor's tender of title. [JTR 462]

§ 844.463 *Contractor's right to store at his own risk.* Unless the contract contains contrary provisions and such provisions have not been waived, a war contractor may at any time remove from his plant and store on his own premises or elsewhere any items of contractor inventory at his own risk. The war contractor will use reasonable care in the transportation and preservation of material so removed and stored, and will comply with any directions or specifications covering removal, preservation, transportation and storage which may be issued by the contracting officer (including, in the case of the Navy, the NMR&DA). The war contractor is entitled to be reimbursed for the reasonable cost of (a) necessary or appropriate transportation, preservation, protection and storage, and (b) compliance with any directions or specifications in connection therewith issued by the contracting agency. Ordinarily, charges for storage of contractor inventory prior to the expiration of the plant clearance period will not be deemed a reasonable settlement expense. The war contractor should give the contracting officer twenty days prior notice of his intention to remove any substantial portion of the contractor inventory. (See Regulation No. 10 of the Office of Contract Settlement, Part 8051 of Title 32). [JTR 463]

§ 844.464 *War contractor's right to remove and store for account and at risk of Government.* (a) Where neither the owning agency nor a disposal agency enters into a storage agreement with a war contractor or removes termination inventory within the plant clearance pe-

riod, the war contractor may remove and store for the account and at the risk and expense of the Government any termination inventory not otherwise disposed of, stored, or removed; subject, however, to the requirements stated in paragraphs (b) and (c) below.

(b) The war contractor will deliver to the contracting officer (in the case of the Navy, to his cognizant Navy material inspector):

(1) Twenty days' notice in writing in advance of the date fixed for removal; and

(2) A certified statement that the inventory schedule, as originally submitted or as modified, or a revised schedule, represents a concurrent physical inventory of the items to be removed.

Notice of removal may be delivered before or after the expiration of the plant clearance period, but submission of such notice will not shorten the period.

(c) War contractors will use reasonable care in the transportation and preservation of material removed and stored, regardless of any contract provision requiring a lesser degree of responsibility for the care and preservation of material during performance of the contract. Material will be prepared for removal in accordance with § 844.466–1 governing the preparation of material for removal by the owning agency.

(d) Prior to the date fixed for removal of the material by the war contractor, the contracting officer (in the case of the Navy, the cognizant Navy material inspector) should, to the extent practicable, verify the material on the schedule as to quantities and condition and as to its allocability to the terminated war contract. Under section 12 (d) of the act, if the contracting officer fails to check such material at or before the time of its removal, a certificate of the war contractor, specifying the material on the schedule which has been removed, and submitted to the contracting officer within thirty days after the date fixed for removal, will constitute prima facie evidence against the Government as to the quantities and condition of the material removed, and the fact of its removal. [JTR 464]

§ 844.465 *Storage by the owning agency.* [JTR 465]

§ 844.465–1 *General.* (a) The owning agency may store contractor inventory before it is declared surplus in facilities operated by the services, bureaus, or other Government agencies. If storage space is not available immediately in such facilities, and other storage space cannot be obtained through the Space Control Committee of the Surplus Property Board, the owning agency may store contractor inventory with the terminated war contractor or other war contractors in commercial warehouses. It is recognized also that the owning agency will be compelled to store temporarily in cases where the disposal agency is unable to assume immediately its responsibility for the care and handling of surplus material. Open storage may be utilized, depending upon the character of the material to be stored. The Surplus War Property Administration "Guide for Storage of Plant Equipment, Termination Materials, and other Property" should be consulted in determining the type of storage and the preparation of contractor inventory therefor.

(b) War contractors will package and mark contractor inventory prior to its removal for storage as prescribed in § 844.466–1, unless directed otherwise by the owning agency. [JTR 465.1]

§ 844.465–2 *Storage by owning agency with war contractor under standard storage agreements.* (a) Agreements with war contractors for the storage of contractor inventory will normally be made substantially in accordance with either one of the two forms of standard storage agreements set forth in § 849.972. If a storage agreement is entered into with a prime contractor under a cost-plus-a-fixed-fee contract or other contract pursuant to which title is already vested in the Government, the provisions for transfer of title and allocability should be deleted from the form of storage agreement. Where a storage agreement made with a subcontractor, appropriate changes will be made in the recitals and in the first two articles of the forms in § 849.972.

(b) The form of standard storage agreement set forth in § 849.972–1 will be used for storing contractor inventory which has no immediate use and which is not salable at a price approaching its original cost. Salvage, semi-fabricated parts and components, and non-usable raw materials are the types of material that will usually be stored under this form of agreement which limits the responsibility of the war contractor for the material stored. His liability under this agreement is merely to provide space for the material to be stored and to see that it is not lost or damaged because of his wilful misconduct or lack of good faith.

(c) The form of standard storage agreement set forth in § 849.972–2 will be used whenever the contractor inventory to be stored has a value for use or sale substantially in excess of its value as unserviceable material. Usable raw materials, fabricated components and parts, and completed items which have a value for future use or sale will be stored under this form of agreement. This form of agreement imposes a duty on the war contractor to exercise reasonable care in the storage and preservation of the material.

(d) If a standard storage agreement is executed with the war contractor, the contracting officer (in the case of the Navy, the NMR&DA) may permit contractor inventory to be left in bins or otherwise unpackaged, provided the items are properly tagged or marked to identify them with the listings on the inventory schedules. [JTR 465.2]

§ 844.465–3 *Temporary storage under settlement agreement with prime contractor.* (a) In certain cases it is impracticable to provide for removal or for storage under a standard form of storage agreement, of all contractor inventory of the prime contractor not disposed of at the time of execution of the final settlement agreement. In such cases the settlement agreement shall provide for the transfer of title to the Government of the contractor-owned inventory in substantially the form set forth in §§ 849.931–1 and 849.931–2 as the third form of Article 1. The material so transferred to the Government shall be clearly identified by reference to inventory schedules or a separate list of the material.

(b) If there are discrepancies between the quantities, weights and conditions of the items listed and of those actually found, the prime contractor will reimburse the Government for the fair value of items lost, destroyed, damaged or short. No discrepancies, however, shall be taken into account unless they exceed tolerances which are reasonable tolerances in accordance with good commercial inventory practice and the contractor has failed to exercise such care as a reasonably careful owner of similar property would exercise. [JTR 465.3]

§ 844.465–4 *Temporary storage with subcontractor.* (a) In certain cases all contractor inventory of a subcontractor is not disposed of before, or at the time, the settlement of his claim becomes final and conclusive upon the Government, and it may be impracticable to provide for the removal of such remaining inventory or for its storage under a standard form of storage agreement. In such cases the remaining inventory may be temporarily stored with the subcontractor by an agreement between the owning agency and the subcontractor. This agreement will be executed on or after the date of the final settlement agreement between the subcontractor and his next higher tier war contractor. It will contain substantially the provisions prescribed by § 844.465–3.

(b) In the case of a subcontract under a War Department prime contract, such temporary storage may also be provided for by an agreement between the subcontractor and the war contractor liable to him. Such agreement shall contain substantially the provisions prescribed by § 844.465–3. Where the subcontract settlement is authorized, approved, or ratified by the War Department, the War Department thereafter will look only to the subcontractor storing the inventory for such inventory or its value, provided the war contractor making the settlement with him assigns to the Government his rights under the storage agreement and promptly submits a list of the property to the contracting officer. [JTR 465.4]

§ 844.466 *Removal by the Government.* [JTR 466]

§ 844.466–1 *Preparation of material for removal.* (a) Where items are to be removed, the war contractor will prepare them for removal in accordance with instructions of the contracting officer. In the case of the Navy, the instructions will be given by the NMR&DA with respect to items which are to be removed for storage by the NMR&DA or by the disposal agency, and by the Navy material inspector with respect to items which are to be removed for the cognizant bureau.

(b) Such instructions will require that all contractor inventory, other than scrap, be crated, baled, or otherwise packaged, and that each container or bale be marked or tagged to show the war contractor's name, the terminated war contract number, the page number of the inventory schedule, and the item number. In general, only one type of product or material will be packed in the same container or bundle; miscellaneous assortments of items in the same container will be avoided. Packaged kits and sets, however, need not be unpacked, sorted, and repacked. Where a single item of inventory is to be moved in more than one container or bundle, each container or bundle should show its number and the total number in the series, as for example, 1 of 5; 2 of 5; etc. If available, the Surplus Property Board declaration number, or disposal agency identification number assigned to the declaration, will be shown in the markings or on the tags, in lieu of the contract number. Strict observance of these packaging and marking requirements is essential to efficient handling of contractor inventory.

(c) The war contractor will be allowed reimbursement in the termination settlement, or under a subsequent agreement, for reasonable costs incurred in the care and handling of items for sale or removal in accordance with instructions of the contracting officer, except as to any part of such costs which the war contractor is obligated by contract to pay. [JTR 466.1]

§844.466–2 *Receipt for material removed.* (a) When contractor-owned inventory is removed from a war contractor's premises, the contracting officer (in the case of the Navy, the cognizant Navy material inspector) will furnish the war contractor with a receipt in the form provided in § 849.971. Such a receipt constitutes the Government's acceptance of the contractor's tender of title, free and clear of all liens and encumbrances. This receipt does not affect the right of the Government to require additional information, contest the allocability of any item, and exclude any item on any proper ground. If it is determined, prior to final settlement by the Government of the termination claim under the prime contract, that any of such property is not so allocable, or should be excluded, then the Government will be liable to the contractor with respect to such property only, at the election of the Government, (1) for the return of the property or like property to the Contractor at the risk and expense of the contractor, or (2) for its disposal value at the time of its removal, or (3) for the proceeds realized by the Government from its disposal.

(b) When Government-owned contractor inventory is removed from a war contractor's premises, the owning agency will use the form of receipt provided in § 849.971. In such case the provisions in paragraph (a) pertaining to acceptance of title have no application.

(c) Whenever feasible, the receipt will be executed on copies of the inventory schedules to be retained by the war contractor. The receipt may be stamped on copies of the Vendor's Shipping Document. [JTR 466.2]

§ 844.467 *Verification of material for storage or removal by the Government.* (a) The contracting officer (in the case of the Navy, the cognizant Navy material inspector) will be responsible for verification of items listed on an inventory schedule when such items are to be removed from the war contractor's premises or stored under a storage agreement.

(b) Ordinarily, one hundred per cent verification is not required. The extent of selective checks should depend upon the size of the inventory, the nature of the property, past experience with the war contractor, and any other relevant factors. The verification should include a check to disclose defective material or rejects. Quantities, conditions, and weights shown on inventory schedules ordinarily will be accepted if they are substantially correct. For property accounting purposes, personnel making selective counts of material as herein provided will note the items selected and the results of their counts on one copy of the schedule and in every case these copies, properly authenticated by Government representatives charged with supervision, of the selective count, will be furnished (1) in the case of the War Department to the contracting officer and then to the interested accountable property officer or, (2) in the case of the Navy, to the Navy material inspector.

(c) If a storage agreement is entered into with a war contractor, the war contractor and the contracting officer (in the case of the Navy, the cognizant Navy material inspector) will make a joint verification of the inventory schedules.

(d) Under cost-plus-a-fixed-fee war contracts and other contracts pursuant to which title is already vested in the Government, the contracting officer will arrange for the taking of a physical inventory. In the case of War Department contracts, such inventory will be taken as prescribed in section X of the War Department TM 14–910 and section X of War Department TM 14–911. [JTR 467]

§ 844.468 *Storage responsibilities of disposal agencies.* [JTR 468]

§ 844.468–1 *General.* Under the Surplus Property Act the disposal agencies are responsible for the care and handling of surplus property declared to them by the owning agencies. SPB Special Order No. 3 postpones this responsibility, but provides that the disposal agencies shall assume responsibility for the care and handling of as much of such property as possible with the facilities and personnel available to them. This order also states that the disposal agencies shall prepare actively for the assumption of complete responsibility for such care and handling. [JTR 468.1]

§ 844.468–2 *Liaison with Regional Offices of Reconstruction Finance Corporation.* It is essential that the local representatives of the owning agency and the Reconstruction Finance Corporation establish the closest possible working relationship. Local representatives of the Reconstruction Finance Corporation should be consulted as to the storage and removal, as well as to the disposition of contractor inventory. [JTR 468.2]

§ 844.468–3 *Shipping instructions by Reconstruction Finance Corporation.* (a) The Reconstruction Finance Corporation will not issue definitive shipping instructions until it receives a declaration of surplus covering the material to be shipped. This should not prevent the Regional Office of the Reconstruction Finance Corporation from furnishing advance information as to shipping schedules to the Owning agencies. By this means it will be possible to establish tentative shipping schedules which will be confirmed by definitive shipping instructions when the declaration of surplus and the formal request for shipping instructions are submitted to the Reconstruction Finance Corporation.

(b) In the case of the War Department, requests for shipping instructions are governed by Part 827 of Subchapter B. The Navy Department will request shipping instructions from the Reconstruction Finance Corporation on forms RFC WD–4 and 5 (Revised). Copies of form RFC WD–4 (Request for shipping instructions) and form RFC WD–5 (Shipping instructions), with instructions for their use, may be obtained from Regional Offices of the Reconstruction Finance Corporation.

(c) Upon receipt of requests from the owning agency for shipping instructions, the disposal agency will arrange for the storage or removal of surplus contractor inventory by issuing shipping instructions. [JTR 468.3]

§ 844.468–4 *Storage with contractor by disposal agency.* If the disposal agency cannot arrange for the removal and storage of surplus contractor inventory, the disposal agency will execute a storage agreement covering the storage of the surplus contractor inventory with the war contractor. [JTR 468.4]

§ 844.468–5 *Sales by disposal agency.* In certain cases the disposal agency may arrange for immediate sale upon receipt of a surplus declaration and will issue shipping instructions for the movement of surplus contractor inventory from the war contractor's plant to the purchaser within the plant clearance period. [JTR 468.5]

§ 844.468–6 *Material assigned to Department of Commerce.* In general, the Reconstruction Finance Corporation will issue shipping instructions and provide for the storage of surplus contractor inventory of the type assigned to the Department of Commerce for disposal. [JTR 468.6]

SUBPART G—SPECIAL TOOLING AND SPECIAL FACILITIES

§ 844.470 *Scope.* This subpart deals with certain methods for protecting the Government's interest in contractor-owned special tooling and special facilities. [JTR 470]

§ 844.471 *Protection of Government's interest in special tooling.* [JTR 471]

§ 844.471–1 *Definition of special tooling.* The term "special tooling" includes jigs, dies, fixtures, moulds, gauges and

other similar equipment acquired or produced by the war contractor specially for the war contract or for the contract and other war contracts. The term does not relate to buildings, building equipment, and machine tools, nor tools such as cutting tools and hand tools which usually lose their utility through wear and tear rather than through obsolescense. [JTR 471.1]

§ 844.471–2 *Duty of protecting the Government's interest.* The provision, which is contained in the Statement of Principles for Determination of Costs (see § 845.551–2), relating to 'costs of special tooling allowable under terminated fixed-price contracts, requires protection of the interests of the Government either by transfer of title or by some other appropriate means. [JTR 471.2]

§ 844.471–3 *Methods of protecting the Government's interest.* (a) In most cases it will not be desirable for the Government to take title to special tooling. Generally, the contractor should be permitted to retain the special tooling, and the contracting officer should protect the Government's interest (1) by taking into consideration, in determining the rate of amortization, the use of the special tooling on other work of the contractor; (2) by obtaining a proper disposal credit in the settlement agreement as provided by paragraph (b) below; and (3) where there is a possibility that the tooling may be needed for Government purposes within a reasonable period, by appropriate arrangements for the use of the tooling.

(b) If the tooling is retained by the contractor or sold to a third party, its value or the proceeds of any sale should be treated as a disposal credit in the contractor's settlement proposal and not as a reduction of the cost of the special tooling subject to amortization. When the rate of amortization takes into account the continuing work of the war contractor, the disposal credit should not include the value of the tooling to the contractor for use on other work but only its ultimate disposal value. However, where the disposal value consists only of scrap and it has been the contractor's consistent practice to credit all tool scrap to overhead, such practice will be acceptable without applying the scrap value as a disposal credit. [JTR 471.3]

§ 844.472 *Protection of Government's interest in special facilities.* [JTR 472]

§ 844.472–1 *Definition of special facilities.* The term "special facility", as used in this subpart, means a facility acquired by the contractor solely for the performance of the contract, or for the contract and other war contracts, which is not of the same type or utility as those used in the contractor's other business. A machine which is standard for one contractor may be "special" in the hands of a contractor who does not use such a machine in his other business. The term "special facility" does not include jigs, tools, dies and fixtures of the type referred to as "special tooling" in § 844.471–1. [JTR 472.1]

§ 844.472–2 *Methods of protecting the Government's interest.* The methods for protecting the Government's interest in special facilities are discussed fully in Termination Cost Memorandum No. 9 of the Office of Contract Settlement (8004.9 of Title 32) [JTR 472.2]

SUBPART I—WAR DEPARTMENT ACCOUNTABILITY FOR TERMINATION INVENTORY

§ 844.490 *Scope.* This subpart applies only to the War Department. It prescribes special procedures with respect to the assumption and maintenance of accountability for termination inventory which the War Department is obligated to acquire. The procedures prescribed in this subpart, where appropriate, may also be applied with respect to the assumption and maintenance of accountability for all types of contractor inventory except as to plant equipment governed by the provisions of Subpart F of Part 848. [JTR 490]

§ 844.491 *Accountability defined.* With respect to termination inventory, the term "accountability" means the duty of maintaining records as prescribed herein, covering those items included in the inventory schedule, to which the Government is obliged to take title, and to Government furnished material, accountability for which is transferred under the provisions of § 844.493–2, and the disposition made thereof. In this connection, neither officers designated as accountable property officers nor contracting officers have responsibility, within the meaning of Army regulations pertaining to property, for termination inventory in possession of war contractors or of commercial warehousemen, unless such officers have been charged specifically with the care and safekeeping of the material. [JTR 491]

§ 844.492 *Designation of accountable property officers.* (a) Subject to such procedures as the chiefs of services may prescribe for purposes of uniformity, contracting officers under terminated prime contracts, the settlement of which will involve the acquisition by the Government of termination inventory, will request commanding officers of procurement districts or similar agencies to designate accountable property officers to be charged with the assumption and maintenance of accountability for termination inventory so acquired. Commanding officers of procurement districts or similar agencies will accomplish such designation and advise the contracting officer thereof. In all cases of terminated fixed price contracts, accountable property officers so appointed will be officers assigned to the property disposal functions for terminated contracts. The same accountable property officer may be designated for more than one contract and, insofar as practicable, only one accountable property officer will be designated at an installation concerned with property disposal activities as contemplated in this part. Any delegation of the property disposal function with respect to termination inventory to another agency or procurement district will also include the property accounting function as prescribed herein.

(b) An extra copy of each Standard Form No. 1034 covering payment under a final settlement agreement will in all cases be prepared and furnished to disbursing officers for the purposes hereinafter stated. Contracting officers, as the chief of service prescribes, (1) will show on each copy of Standard Form No. 1034 covering payment under a final settlement agreement, or on schedules attached thereto, the designation of the account name, and station of every accountable property officer charged with the assumption of accountability for termination inventory taken over by the Government in connection with that settlement, including termination inventory taken over from subcontractors, if any, or (2) will clearly state on the face of all copies of the Standard Form No. 1034 that acquisition of property by the Government is or is not involved in the settlement covered thereby. In the event the latter alternative is followed, the contracting officer subsequently will furnish the fiscal director of the service command in which the accountable property officer for the prime contractor is stationed advice of the account, name, and station of every accountable officer concerned with termination inventory involved therein. The fiscal director of the service command, upon receipt of a copy of a Standard Form No. 1034 covering a final settlement which indicates that the acquisition of property by the Government is involved will be required to ascertain that the listing of accountable officers is subsequently received. In any case, whether the procedure outlined in either (1) or (2) are followed, the fiscal director of the service command to which the list of accountable property officers is furnished will notify any other interested service command fiscal director of the accounts and stations of any accountable property officers included on such list located within the territorial limits of that service command.

(c) Where pursuant to prior regulations, officers other than those assigned to property disposal functions have been charged with the accountability function with respect to termination inventory, transfers of accountability to officers assigned to property disposal functions will be effected only with respect to material stored with war contractors or commercial warehousemen. The accountability function in all other cases will continue in the present accountable property officers until satisfactory conclusion of each case.

(d) Commanding officers of War Department installations where termination inventory is stored awaiting disposition instructions will designate officers to be accountable for such property. At installations where officers have previously been designated to be accountable for supplies stocked at the installations, such officers will also be assigned the accountability function with respect to termination inventory unless operational and organizational conditions render such action inadvisable.

(e) Where a new property account is established because of the designation of an accountable property officer as herein prescribed, a copy of the pertinent order

will be furnished to the fiscal director of the service command having jurisdiction over the new account. [JTR 492]

§ 844.493 *Assumption of accountability.* [JTR 493]

§ 844.493–1 *Termination inventory acquired from war contractors.* Accountability for termination inventory, the title to which is transferred from a war contractor to the Government, will be assumed by accountable property officers designated in accordance with the provisions of § 844.492. Accountability will vest in such officers for all items included on the adjusted inventory schedules to which the Government takes title in accordance with §§ 844.482 and 844.411–8. As a basis for the assumption of accountability for such items, the inventory schedules will be supported by the following documents:

(a) As to material stored with a war contractor, by a conformed copy of the storage agreement executed by the contracting officer;

(b) As to material removed from a war contractor's premises prior to execution of the final settlement agreement, by an authenticated copy of the acknowledgment of receipt furnished to the contractor pursuant to § 844.466–2, together with any supporting lists or schedules; and

(c) As to material the title to which is transferred to the Government in a final settlement agreement with the prime contractor or in a special agreement with a subcontractor, but pursuant to such agreement is left on the war contractor's premises, by conformed copies of the schedules of such material referred to in the agreement executed by the contracting officer. [JTR 493.1]

§ 844.493–2 *Government furnished termination inventory.* The contracting officer or his representative responsible for the property disposal function in connection with a terminated war contract under which Government property previously has been furnished to the contractor by the War Department, will forward to the officer holding accountability for such Government material, lists thereof on inventory schedules or on other suitable forms. When the material is not to be promptly removed from the contractor's premises, the officer presently holding accountability for the material will transfer accountability therefor in accordance with § 844.495–1 to the accountable officer designated for the terminated contract. Except as set forth above, existing accountability instructions will be observed. [JTR 493.2]

§ 844.494 *Property accounting records.* [JTR 494]

§ 844.494–1 *Purposes.* The War Department maintains property accounting records of termination inventory (a) to provide a means for accounting for the material, and (b) to facilitate the physical handling and authorized disposition of the material. [JTR 494.1]

§ 844.494–2 *Records to be maintained.* (a) Property accounting records as contemplated herein will be dependent upon and included in the files pertaining to the property disposal function. Such records must clearly set forth all items included on inventory schedules, to which the Government accepts title, and to Government furnished material, accountability for which is transferred under the provisions of § 844.493–2, and the disposition made thereof. For this purpose a file will be established for each contract, or group of contracts where two or more contracts are grouped for termination settlement purposes. All documents pertaining to accountability for termination inventory will be included in the file. These documents will be assigned property voucher numbers in a single series for each accountable property officer's account and recorded in a voucher register showing date, description of document and contract number.

(b) In lieu of establishing an individual record for each item or termination inventory, inventory schedules are authorized to be used as work sheets. This is for the purpose of reflecting the disposition of the items listed thereon or the authorized transfer of accountability therefor. Under this procedure, as relief from accountability is accomplished, the assigned credit voucher number and the quantity will be entered opposite the particular item on the schedule. Where there are numerous transactions with respect to a particular item, auxiliary records (stock record cards or other suitable forms) will be established, or the transactions will be recorded on the schedules so as to provide a complete and accurate accounting for the original quantity of the item. In order to avoid a duplication of records for the property disposal and property accounting functions, the records prescribed herein will be utilized for both purposes. [JTR 494.2]

§ 844.494–3 *Cost-plus-a-fixed-fee prime contracts.* In the case of cost-plus-a-fixed-fee prime contracts, title to the material acquired in connection with performance of the contract is already vested in the Government and accountability has been established. When this material becomes termination inventory, and where such action will simplify the task of record keeping, the procedures outlined in § 844.494–2 (b) may be applied. [JTR 494.3]

§ 844.494–4 *Storage installations.* With respect to termination inventory stored at War Department installations awaiting disposition instructions, a jacket file system of record keeping may be maintained for that type of property. Under this jacket file method of accounting, files will be maintained similar to those required by § 844.494–2. These records must provide for showing storage area location (aisle, bay, etc.) for each item appearing on the termination inventory schedules, so as to permit prompt location of any items. [JTR 494.4]

§ 844.495 *Relief from accountability.* [JTR 495]

§ 844.495–1 *Shipments of termination inventory on War Department order.* (a) As to authorized shipments of termination inventory which require transfer of accountability to another accountable property officer and those with respect to a sale by the War Department, copies of properly completed Vendor's Shipping Documents, War Department Shipping Documents, or Shipping Tickets, whichever form is in current use at the installation concerned, will serve as valid credit vouchers to the applicable property account. Where, however, the shipment is made in connection with a sale by the War Department, in addition, the procedures prescribed in section II, AR 35–6660 (AR 35–6665 when published) with respect to sales of property will be observed. Where practicable, to avoid duplicating the listing of items on the shipping document, a copy of the inventory schedule or applicable portion thereof will be appended.

(b) Where Vendor's Shipping Document forms are used, the certificates appearing thereon which are usually required to be executed for purposes of payment will be deleted inasmuch as payment will be supported by the termination settlement agreement, and not by the Vendor's Shipping Document.

(c) Distribution of copies of completed shipping document forms, regardless of type, will be the same as is prescribed for the War Department Shipping Document except that where shipment is made to a War Department installation, a copy of the shipping document will be forwarded for property audit purposes by the shipping accountable property officer to the fiscal director of the service command in which the consignee is located. Only in respect to shipping documents initiated in connection with sales (see paragraph (a), above) will the distribution require the furnishing of copies to disbursing officers.

(d) All copies of shipping documents prepared for shipments of termination inventory must bear the notation "Termination Inventory." In addition, shipping documents covering shipments of termination inventory from storage under a storage agreement with a war contractor or from storage in a commercial warehouse, must bear the notation "Shipped from Storage" and must indicate the station of the contracting officer under the storage or warehouse agreement involved.

(e) When copies of inventory schedules or applicable portions thereof are appended to shipping documents to avoid duplicating the listing of material, reference in the body of the shipping document to the schedules must be sufficient to permit positive identification in the event such schedules become detached. If items are listed individually on shipping documents, the page number of the inventory schedule and the item number on the page will be included in listing each item on the shipping document.

(f) When termination inventory, other than work in process, in an unserviceable condition is to be shipped, requiring transfer of accountability to another accountable property officer, or in connection with a sale by the War Department, the property will be listed on a separate shipping document and the following statement will be included thereon:

The property listed hereon is in an unserviceable condition. Appropriate inspec-

tion by those concerned with determination of responsibility for its condition has been made.

(Signed) _____
Accountable Shipping Officer.

[JTR 495.1]

§ 844.495–2 *Shipment of termination inventory on disposal agency order.* Where, at the direction of a disposal agency, termination inventory is delivered to a disposal agency, other Government agency, or buyer, an authenticated copy of the delivery order received from the disposal agency cross-referenced to the receipt of the common carrier or transportation agency on file at the station, will constitute a valid credit voucher to the property account for the material so delivered. Where bill of lading files are not maintained at the same station as that of the accountable property officer, he will secure from the transportation officer an authenticated memorandum copy of the bill of lading for association with the related disposal agency order. In the case of direct delivery to the buyer, his written acknowledgment of receipt on the delivery order will constitute a valid credit voucher to the property account for the material so delivered. Whenever the delivery order is not complete in detail as to quantity and nomenclature of the items ordered to be delivered, a shipping document will be originated and a copy filed in support of the delivery order. [JTR 495.2]

§ 844.495–3 *Losses in storage.* (a) Instances of losses of or damage to termination inventory in storage under storage agreements with war contractors or commercial warehousemen will be reported to the contracting officer under the applicable agreement for appropriate action with respect to the liability, if any, of the contractor or warehousemen under the terms of the storage agreement. The contracting officer will advise the accountable property officer in writing of (1) the amount of the loss, (2) his findings with respect to the war contractor's or warehouseman's liability, (3) the amount of liability acknowledged by the war contractor or by the warehousemen, (4) what action has been initiated to collect amounts which may be due the Government, and what disposal instructions have been issued in the case of damaged property. The contracting officer's written advice will in all cases, regardless of the nature of the findings, serve as an acceptable credit voucher to the accountable property officer's account for the material: *Provided,* That where damaged property is to be disposed of, accountability instructions applicable to such disposition will be observed.

(b) Instances of losses of or damage to termination inventory in storage at War Department installations awaiting disposition instructions will require action as prescribed in War Department Technical Manual 14–904 (Accounting for Lost, Damaged or Destroyed Property). [JTR 495.3]

§ 844.495–4 *Discrepancies disclosed upon removal of termination inventory acquired under final settlement agreement.* Relief from accountability for discrepancies disclosed upon removal from a war contractor's premises of termination inventory, the title to which has previously been transferred to the Government by terms of the final settlement agreement, will be accomplished in accordance with the procedure set forth in § 844.495–3 (a). [JTR 495.4]

§ 844.495–5 *Disposition of scrap.* (a) Where termination inventory taken over by the War Department is subsequently determined to be scrap under the provisions of § 844.446–3, the contracting officer will furnish the interested accountable property officer with a list of such material together with written indication of the scrap determination and disposition instructions. In cases where material is shipped to a salvage officer, a copy of the shipping document, supported by the above mentioned lists and written instructions of the contracting officer together with receipt of the common carrier or transportation agency (or cross reference thereto under circumstances outlined in § 844.495–2), will constitute a valid credit voucher to the account. When the material is turned over to a local salvage officer on an informal list, the salvage officer's acknowledgment of receipt of material and the written instructions of the contracting officer will be considered a valid credit voucher to the property account. Where sales of such scrap are made by the contracting officer, the instructions set forth in § 844.495–1 (a) will be observed.

(b) Where termination inventory taken over by the War Department is destroyed or abandoned pursuant to the provisions of § 844.447–2, an authenticated copy of the contracting officer's authorization listing the items to be destroyed or abandoned, will constitute a valid credit voucher to the property account. [JTR 495.5]

§ 844.496 *Discrepancies incident to shipment.* [JTR 496]

§ 844.496–1 *Receiving procedures.* (a) At War Department installations and commercial warehouses receiving shipments of termination inventory for storage awaiting disposition instructions, bundles, bales, cartons, and other packages, comprising such shipments, will ordinarily not be opened to verify quantities. However, the provisions of paragraph 23b, AR 55–150 with respect to determining whether carriers have fulfilled their obligations under bill of lading agreements, will be observed. This will involve verification of the number of bundles, bales, cartons, and other packages or, in the case of bulk shipments where the unit of measure is other than by weight, the quantities involved. In every case an inspection will be made to determine evidence of damage. If discrepancies are disclosed, action will be taken in accordance with §§ 844.496–2 and 844.496–3.

(b) At War Department installations receiving items of termination inventory for use or consumption at such installations or for stocking and subsequent issue to other activities of the War Department, usual receiving and accountability procedures will be followed. [JTR 496.1]

§ 844.496–2 *Termination inventory received at War Department installations.* (a) Shortages or damage disclosed in shipments of termination inventory received at War Department installations will require action at such installations as set forth in this section.

(b) If the material was shipped from storage under the terms of a storage agreement with a war contractor or commercial warehouseman, the prescribed Report of Survey procedure will be followed. This procedure is set forth in paragraph 4 of AR 35–6340 and in War Department Technical Manual 14–904. Where it has been determined in the survey proceedings that the shortages or damages cannot be attributed to receiving station personnel and there is any question as to liability of the war contractor or warehouseman the instructions contained in paragraphs 174 and 182, TM 14–904 will be observed.

(c) If the material was removed and shipped by the Government from a war contractor's premises without passing through intervening storage under a storage agreement with such contractor, and it appears that the carrier or other transportation agency may be liable for the shortages or damage or that the discrepancies are attributable to receiving station personnel, the Report of Survey will be processed as prescribed in (b) above. Where it is obvious that the delivering carrier or other transportation agency is not responsible for the shortage or damage, nor the receiving station personnel, or where there is an overage, except as hereinafter provided in this paragraph the discrepancies will be listed on WD QMC Form No. 445 (Over, Short & Damaged Report) prepared in triplicate. One copy will be attached to the receiving voucher and two copies will be forwarded to the station initiating the shipment, marked for the attention of the contracting officer under the terminated contract. The contracting officer upon receipt of the O. S. & D. report will, in the event the shortages are, in his opinion, excessive or of sufficient importance (1) direct that Government personnel intensify their check, (2) consider the advisability of requesting an investigation of the conduct of the contractor, or (3) initiate such other action as he may deem advisable. In any event, he will advise the receiving accountable property officer in writing of the action taken or the reason for non-action. One of the copies of the O. S. & D. report received by the contracting officer may be used in accomplishing this advice. The burden will be upon the receiving accountable property officer to determine that he has been furnished such written advice with respect to each O. S. & D. report initiated by him except those relating to overages. With respect to discrepancies which are determined to be inconsequential as defined in paragraph 137a., War Department Technical Manual 14–904, appropriate notation will be made on the debit voucher copy of the shipping document and the preparation and distribution of O. S. & D. reports in such cases will not be required. [JTR 496.2]

§ 844.496–3 *Termination inventory received at commercial warehouses.* The procedures outlined in § 844.496–2 will be observed in connection with shortages or damage disclosed in shipments of termination inventory received by commercial warehouses. Officers accountable for such material will request commercial warehousemen to report all discrepancies and furnish such information with respect thereto as may be required in complying with the provisions of § 844.496–2 [JTR 496.3]

§ 844.496–4 *Discrepancies reported by Government agencies outside the War Department.* (a) With respect to shipments of termination inventory to Government agencies outside the War Department which are covered by Government bills of lading providing for payment of freight charges by the War Department, the shipping accountable officer, when discrepancies in shipments are reported to him, will be charged with the administrative duty of adjusting the reported discrepancies by observing the procedures set forth in § 844.496–2, where appropriate, or in the case of shipments from War Department storage installations by initiating Report of Survey-Discrepancies Incident to Shipment (WD AGO Form No. 15–1). In all cases, receiving agencies will be requested by shipping accountable property officers to furnish all information and data necessary to complete the action set forth above.

(b) With respect to shipments of termination inventory to Government agencies outside the War Department, the freight charges upon which are to be paid by an agency other than the War Department, where discrepancies in shipment are reported to the shipping accountable property officer and it has been determined that the shortages or damage are not the delivering carrier's responsibility and cannot be attributed to receiving agency personnel, the instructions set forth in paragraph (a) above, will be observed. In regard to shipments as outlined in this paragraph, receiving agencies are responsible for resolving any question as to liability of a delivering carrier or receiving agency peronnel and initiating action with respect to the enforcement of liability, if any. Shipping accountable property officers will cooperate with the receiving agency in obtaining information and data necessary to carry out these functions. [JTR 496.4]

§ 844.497 *Direct settlement on company-wide basis.* (a) Where direct settlement of war contracts on a company-wide basis has been authorized pursuant to Subpart E of Part 848 and the designated officer is in the War Department, the instructions contained in this subpart, are applicable to all termination inventory the title to which is accepted by the Government in connection with the settlement. In such cases, the designated officer will take the action required of contracting officers as set forth in this subpart.

(b) Where War Department contracts are involved in a direct settlement program and the designated officer is in the Navy Department, the instructions contained in this subpart are not for application. (See § 848.855–9 (d)). Under Navy Department procedures, officers of the War Department holding accountability for Government property previously furnished to the assigned war contractor will be furnished with a certified copy of a Navy expenditure invoice evidencing disposition of such property. This certified copy of the invoice will be utilized as an authorized credit voucher to the account of the interested accountable property officer. [JTR 497]

§ 844.498 *Accountability for material neither stored with war contractor nor removed from war contractor's premises.* Where material owned by a war 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 an agreement, accountability will not be established until such time as the material is removed by the Government, a storage agreement with the war contractor is executed, or the Government by other means accepts the property, as, for example, in the final settlement agreement. [JTR 498]

PART 845—GENERAL BASIS FOR SETTLEMENT OF PRIME CONTRACT AND SUBCONTRACT CLAIMS

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§ 845.500 *Scope of part.* This part deals with the policies and principles common to settlements with prime contractors and subcontractors. The procedures peculiar to settlements with subcontractors are covered by Part 846 and the procedures peculiar to settlements with prime contractors are covered in Part 847. [JTR 500]

SUBPART A—METHODS OF SETTLEMENT

§ 845.510 *Scope.* This subpart discusses generally the various methods of

settling termination claims of both prime contractors and subcontractors and provides guides for the selection of a particular method. [JTR 510]

§ 845.511 *Basic objective.* The basic objective both of the act and the approved contract termination articles is to provide war contractors with fair compensation for their termination claims as expeditiously as possible in order to facilitate maximum war production during the war and to expedite reconversion from war production to civilian production as war conditions permit. [JTR 511]

§ 845.512 *Authorized methods of settlement.* [JTR 512]

§ 845.512–1 *Statutory provisions.* The act provides that fair compensation to war contractors shall be determined (a) by agreement with the war contractor, (b) by determination without agreement, (c) by any combination of these two methods, or (d) by arbitration. [JTR 512.1]

§ 845.512–2 *Contract provisions.* The uniform termination articles for prime contracts and subcontracts and earlier similar articles also provide for fixing fair compensation to war contractors (a) by negotiated agreement, (b) by determination based on a formula, or (c) by any combination of these two methods. [JTR 512.2]

§ 845.513 *Settlement by agreement.* The negotiated agreement is the most expeditious and most satisfactory method of settling termination claims. This method will be used for settlement whenever feasible. Other methods of settlement will be resorted to only when a termination claim cannot be fairly settled by agreement. [JTR 513]

§ 845.514 *Settlement by determination without agreement.* (a) When any termination claim cannot be wholly settled by agreement, the claim or unsettled part will be settled by determination without agreement.

(b) Where the Government is making the settlement, the determination will be made in accordance with § 847.750 and following.

(c) Where a war contractor is making the settlement with his subcontractor, the provisions of § 846.625 will govern. [JTR 514]

§ 845.515 *Settlement by combined methods; partial negotiated settlement.* [JTR 515]

§ 845.515–1 *Approvals of subcontract settlements and dispositions of inventory.* During the course of negotiations, the contracting officer from time to time will approve subcontract settlements and dispositions of termination inventory and credits arising therefrom in order to expedite or facilitate the settlement. Such approvals shall be final according to their terms, for the purpose of settling the terminated war contract involved. [JTR 515.1]

§ 845.515–2 *Minimum partial settlements.* (a) Ordinarily, the contracting officer should not attempt to make partial settlements covering particular items of the prime contractor's proposal during the course of the negotiations. To do so may delay or impede the negotiation of the complete final settlement. Such settlements may be made, however, to cover payments for completed articles which are a part of the termination claim.

(b) Whenever he considers it appropriate, the contracting officer may agree with the prime contractor on a partial settlement fixing an amount which the Government agrees to be the minimum amount due on the entire claim without determining that this amount is due on particular elements of the claim or that additional amounts may not be due. This will assure the contractor that he will not be required to refund any part of this minimum amount, but otherwise leaves the final amount due on the entire claim to be negotiated. [JTR 515.2]

§ 845.515–3 *Partial settlement upon failure to negotiate complete settlement.* (a) When the contracting officer after diligent effort has not been able to negotiate a complete settlement of the termination claim, he may negotiate a partial settlement agreement covering the issues on which agreement can be reached whenever:

(1) Such issues are clearly separable, and

(2) The agreement will not prejudice the interest of the Government in disposing of the unsettled part of the claim.

(b) The remainder of the claim will then be settled by determination without agreement. [JTR 515.3]

§ 845.516 *Settlement by arbitration.* (a) Section 13 (e) of the act authorizes the contracting agency and the contractor by agreement to submit the termination claim to arbitration. The chief of the service or bureau may authorize this method to be used whenever he believes that the basic objectives of the act will be better served by its use than by resort to the other methods provided.

(b) War contractors are authorized to resort to arbitration under general law in accordance with § 846.625 [JTR 516]

§ 845.517 *Settlement of two or more claims jointly.* With the consent of the war contractor, the contracting officer or officers concerned may make or approve the joint settlement of two or more termination claims of the same contractor under several war contracts with the same or different services or bureaus. In such cases, accounting work should be consolidated to the greatest extent practicable. One settlement agreement covering the several contracts or several settlement agreements may be used. The agreement should apportion the total amount of the settlement among the several contracts on some reasonable basis, but precise allocations to the particular contracts are not required. [JTR 517]

SUBPART B—SETTLEMENT PROPOSALS FOR FIXED-PRICE CONTRACTS

§ 845.520 *Scope.* This subpart states the information required for negotiated settlements between the Government and prime contractors, and between war contractors and their subcontractors, and describes the forms for presenting settlement proposals. [JTR 520]

§ 845.521 *General information required for negotiation.* [JTR 521]

§ 845.521–1 *Need for information.* In settling the termination claim of a war contractor by agreement, the Government or the war contractor making the settlement must have adequate information to support the claim as a basis for the negotiations. This information must be sufficient to permit a sound business negotiation for a fair settlement. It may be presented in various ways, as indicated in § 845.523. Whichever of these methods is followed, it is essential to bear in mind that the purpose is not to make an exact determination of costs or a detailed application of any formula, but rather to provide adequate data for the exercise of sound and informed business judgment in reaching a settlement. [JTR 521.1]

§ 845.521–2 *Nature of information needed.* The information in the war contractor's proposal for settlement should support the amount he requests to compensate him fairly for the termination of the contract, without recognizing any profit on work not done. Ordinarily, this amount should cover the work done and preparations and commitments made for the terminated portion, plus a reasonable profit on the work done, and post-termination expenses, less any credits for the proceeds or value of any termination inventory retained or disposed of by the war contractor, but it should not include any amount for completed articles invoiced at the contract price in accordance with § 842.252. [JTR 521.2]

§ 845.521–3 *Duty to submit promptly.* (a) Each war contractor should prepare and submit his own claim as promptly as possible without waiting for the claims of his subcontractors. Likewise, a war contractor should promptly transmit up the contractual chain all his settlements with his subcontractors which require approval by the Government.

(b) War contractors who delay unreasonably in submitting their claims will lose interest on them for the period of the delay in accordance with § 845.572–3 (d). [JTR 521.3]

§ 845.522 *Standard forms for war contractors' proposals for settlement.* [JTR 522]

§ 845.522–1 *Purpose of standard forms.* (a) In order to expedite the preparation and review of settlement proposals, the Director of Contract Settlement has prescribed Standard Forms for settlement proposals under fixed price war supply contracts. The Forms are for use by prime contractors of all departments and agencies of the Government and by their subcontractors.

(b) The forms are designed to present the information required both for settlement of the claim and for disposal of termination inventory. [JTR 522.1]

§ 845.522–2 *Proposal forms for claims under $1,000* The Short Form (Form 1a) is for settlement proposals amounting to

less than $1,000 after deducting disposal credits for the entire inventory. It consists of a single sheet without supporting schedules. [JTR 522.2]

§ 845.522–3 *General proposal forms.* The general forms intended for use in settlement proposals, regardless of amount, consist of the following:

(a) Form 1: Designed primarily for settlement proposals on the inventory basis, supported by the inventory and accounting schedules referred to in §§ 845.522–4 and 845.522–5.

(b) Form 1b: Designed for settlement proposals on the total cost basis, supported by the inventory and accounting schedules referred to in §§ 845.522–4 and 845.522–5. [JTR 522.3]

§ 845.522–4 *Termination inventory schedules.* Termination inventory schedules for use in supporting settlement proposals on Forms 1 and 1b are as follows:

(a) Form 2a: For metals (in mill product form);

(b) Form 2b: For raw materials (other than metals), purchased parts, finished components, finished products, and miscellaneous;

(c) Form 2c: For work in process;

(d) Form 2d: For dies, jigs, fixtures, and special tools. [JTR 522.4]

§ 845.522–5 *Schedule of accounting information.* This form (Form 3) is used in presenting accounting information to facilitate accounting reviews and to reduce the need for field examinations. [JTR 522.5]

§ 845.522–6 *Specimen forms:* The standard forms and instructions for their use are reproduced in §§ 849.961 to 849.964, inclusive. These forms have been filled out with hypothetical figures to illustrate their method of use. [JTR 522.6]

§ 845.523 *Bases for presenting information for negotiated settlement.* [JTR 523]

§ 845.523–1 *General.* (a) There are various bases for presenting information for negotiating a settlement. The standard forms described in §§ 845.522 are predicated on some of these bases. The following sections discuss the bases and indicate which bases are appropriate for a particular standard form.

(b) Under a fixed-price contract, the contractor does not ordinarily have to prove his costs except on an over-all basis for renegotiation. He should, therefore, not be required to state his costs in unreasonable detail on termination, and should be permitted to use actual, standard, average, or estimated costs in preparing his proposal. Contractors should not be obliged to maintain unduly elaborate cost accounting systems for fixed-price contracts merely because they may be terminated. [JTR 523.1]

§ 845.523–2 *Inventory basis.* (a) Under the inventory basis, costs applicable to the terminated portion of the war contract will be determined essentially by pricing the inventory in detail at purchase or manufacturing cost and adding costs of settling with subcontractors and any other applicable costs. To the costs thus ascertained, the profit allowance, if any, is added.

(b) This method is especially practicable when the inventory consists largely of purchased materials and parts on which little or no work has been performed. It should also be used when dependable unit cost information is available for the pricing of work in process.

(c) This basis can be used in presenting settlement proposals on Short Form 1a and General Form 1. [JTR 523.2]

§ 845.523–3 *Total cost basis.* (a) Where the inventory method is not practicable, or will unduly delay settlement, an alternative method of computing the war contractor's own charges may be used. The costs chargeable to the entire contract to date of termination are summarized and a profit allowance, if any, is added. All payments previously made and to be made by the Government for completed units are then deducted. This is known as the "total cost method."

(b) If it is determined that the war contractor would have suffered a loss on the entire contract had it been completed, procedure under the inventory method remains unchanged, but no part of the loss on the completed portion should be included. Under the total cost method, however, the procedure is then as follows: from the total costs of the contract are deducted the payments for completed units adjusted upward to reflect the fact that the indicated cost of these units exceeds their contract price. Thus, if a 6 percent loss on cost were indicated, the contract price of the completed units would represent 94 percent of the indicated cost. By dividing the contract price by .94, the indicated cost of the completed units can be determined. The deduction of the higher amount will leave only the estimated cost applicable to the terminated portion of the contract.

(c) This basis may be used in presenting settlement proposals on Short Form 1a or General Form 1b. [JTR 523.3]

§ 845.523–4 *Percentage of completion basis.* (a) In submitting a proposal on Short Form 1a, the war contractor may base his proposal on a percentage of the contract price based on the estimated percentage of completion of work under the war contract, where that method will provide fair compensation for termination.

(b) In addition, the contracting officer may authorize this basis of settlement in any other case. Where the settlement exceeds $10,000 (computed in accordance with § 841.122), the case will be reported to the chief of the service or bureau, with a brief explanation of the nature of the case and the reason for authorizing this basis of settlement.

(c) Whenever the chief of any service or bureau considers that fair settlement in any other class of cases will be expedited by using this basis of settlement, he is authorized by general regulations to modify or permit deviation from the procedures prescribed by this subchapter to the extent necessary to permit such basis to be used. The chief of the service or bureau will promptly submit each such general regulation in writing to the Readjustment Branch, OP&M, in accordance with § 841.144–4, with a brief statement as to the reasons for its issuance. [JTR 523.4]

§ 845.523–5 *Other bases.* (a) In submitting a proposal on Short Form 1a, the war contractor may calculate his proposal by any alternative method which will provide fair compensation for termination.

(b) In addition, whenever the chief of any service or bureau considers that fair settlement in any other case or class of cases will be expedited by a basis for settlement other than those described in §§ 845.523–2 to 845.523–4, inclusive, he will submit to the Readjustment Division, ASF, or, Industrial Readjustment Branch, OP&M, a report recommending an alternative basis for such settlement, and requesting authority for its use in the particular case or class of cases.

(c) Any alternative method and standard shall be designed to compensate the war contractor fairly for the preparations made and work done on the terminated portion of the contract, including a reasonable profit on such preparations and work. [JTR 523.5]

§ 845.524 *Use of Form 1a (Short Form).* [JTR 524]

§ 845.524–1 *When used.* Form 1a may be used for submitting a claim, whenever:

(a) The contractor proposes to dispose of or retain all the termination inventory allocable to the terminated contract; and

(b) The net amount of the proposed settlement is less than $1,000 after deducting all credits for the disposal or retention of the entire inventory. [JTR 524.1]

§ 845.524–2 *Instructions for use.* (a) Neither the inventory schedules nor the schedule of accounting information referred to in §§ 845.522–4 and 845.522–5 need be submitted with Form 1a.

(b) The claim may be prepared on an inventory basis, total cost basis, or percentage of completion basis, or may be calculated by any other method that will provide fair compensation for the preparations made and work done for the terminated portion of the contract, including a reasonable profit on such preparations and work.

(c) Generally, if the claim is prepared on a cost basis, it may include:

(1) Costs incurred which are properly allocable to the terminated portion of the contract under recognized commercial accounting practices, including direct and indirect manufacturing, selling, and distribution, administrative and other costs incurred.

(2) Amounts of reasonable settlements of claims of subcontractors allocable to the terminated portion of the contract.

(3) Reasonable costs of preserving and protecting termination inventory in the possession of the war contractor and reasonable expenses of settling the claim.

(4) A reasonable profit with respect to the preparations made and the work done for the terminated portion of the contract, but no profit with respect to work which has not been done.

(d) Detailed instructions for the use of this form are set forth on the reverse

thereof and reproduced in § 849.964. [JTR 524.2]

§ 845.525 *Use of general proposal forms.* [JTR 525]

§ 845.525–1 *When used.* (a) Form 1 may be used for any settlement proposal under a fixed-price war contract, other than one on the total cost basis, regardless of the amount of the claim.

(b) Form 1b may be used only for a settlement proposal submitted on the total cost basis. [JTR 525.1]

§ 845.525–2 *Instructions for use of Forms 1 and 1b* (a) Form 1 is designed primarily for presenting proposals on the inventory basis, described in § 845.523–2. This basis should be used wherever practicable. The form may be used, however, for a proposal prepared on any other basis except the total cost basis.

(b) Where the inventory method is not practicable, war contractors may present their proposals on Form 1b on a total cost basis described in § 845.523–3. For purposes of property accountability and disposition, however, the contractor must submit inventory schedules listing all the termination inventory. Form 1b is not generally distributed but will be provided by any Government contracting office on request.

(c) Normally, proposals submitted on either Form 1 or 1b should cover all elements of the termination claim, including the contractor's own charges and settlements with subcontractors. However, to expedite approval and payment, partial proposals covering either all the war contractor's own costs, or his settlements with subcontractors, or his settlement expenses, may be filed separately as they are prepared. Otherwise, the war contractor will not submit portions of his own costs separately without the approval of the customer or contracting officer.

(d) Where the proposal is submitted on either Form 1 or Form 1b, the proposal must be supported by the Termination Inventory Schedules (Forms 2a, 2b, 2c, and 2d) and usually by a Schedule of Accounting Information (Form 3) referred to in §§ 845.522–4 and 845.522–5. [JTR 525.2]

§ 845.525–3 *Use of inventory forms.* (a) The termination of inventory schedules may be filed either with or in advance of the settlement proposal. They serve several purposes:

(1) To support the amount of inventory costs included in the settlement proposal; and

(2) To aid in arranging for the removal, storage, sale or other disposition of the termination inventory.

(b) Where inventory schedules covering substantial portions of the inventory can be prepared before other portions are completed, the partial inventory should be filed in order to expedite property removal and disposal.

(c) When schedules are submitted before submission of the settlement proposal, no additional schedules need be submitted with the settlement proposal. In submitting the settlement proposal, however, Schedule G should show and explain retentions or sales of termination inventory made or approved after submission of the inventory schedule and before submission of a settlement proposal, in order to reconcile the disposal credits shown on the inventory schedules with the settlement proposal. If the adjustments are numerous, it is suggested that the war contractor submit revised schedules. [JTR 525.3]

§ 845.525–4 *Schedule of accounting information.* The war contractor is required to file the Schedule of Accounting Information (Form 3) only once in connection with any termination, and need not file it if:

(a) The proposal is submitted on the Short Form (Form 1a); or

(b) The contracting officer or customer has waived its filing; or

(c) The contractor has already filed the form with the contracting officer or customer in connection with a previous termination. In that case, the contractor must file a statement showing any changes in the accounting information contained in the earlier form. [JTR 525.4]

§ 845.525–5 *Detailed instructions* Detailed instructions for the use of the Standard Contract Settlement Proposal Forms and the supporting schedules issued by the Office of Contract Settlement are reproduced in § 849.964. [JTR 525.5]

§ 845.526 *Departures from standard forms or use of other forms.* [JTR 526]

§ 845.526–1 *Deviations from forms.* All prime contractors and subcontractors are required to use the Standard Forms in submitting proposals for settlement of claims under terminated fixed-price war supply contracts, except as otherwise provided in this subchapter. Minor deviations from the requirements of the forms are permissible, without special approval, but any war contractor must obtain prior approval of the contracting officer or the customer for any substantial deviations. However, a war contractor receiving approval for deviations may not require his subcontractor to submit their proposals on other than the prescribed standard forms. [JTR 526.1]

§ 845.526–2 *Other forms.* Where the standard forms are not appropriate for any type of contract or for the basis of any class of proposals, the chief of any service or bureau, subject to § 841.144 may authorize modifications of the standard forms or some other suitable form for presenting such proposals. [JTR 526.2]

SUBPART C—BASIS FOR NEGOTIATED SETTLEMENT OF FIXED-PRICE CONTRACTS

§ 845.530 *Scope.* This subpart discusses the general principles governing negotiated settlements. The specific procedures applicable solely to settlements with subcontractors are stated in Part 826, and the procedures peculiar to settlement between the Government and prime contractors are stated in Part 827. [JTR 530]

§ 845.531 *General standards for negotiated settlement.* (a) The primary objective in negotiating a settlement is to agree on an amount to compensate the war contractor fairly and fully for the work done and the preparations made for the terminated portion of the contract, with such allowance for profit thereon as is reasonable under the circumstances.

(b) Such fair compensation for termination is inherently a matter of judgment and therefore cannot be measured exactly. In a given case, various methods may be equally appropriate for arriving at fair compensation; and differing amounts, resulting from reasonable variations of method and of sound judgment, may all be regarded as constituting fair compensation.

(c) Cost and accounting data may provide guides for ascertaining fair compensation but are not rigid measures of it. Other types of data, criteria, or standards may furnish equally reliable guides to fair compensation. Settlement by agreement should be facilitated to the maximum extent feasible. The amount of record keeping, reporting, and accounting, in connection with settlement of termination claims, will be reduced to the minimum compatible with the reasonable protection of the public interest. [JTR 531]

§ 845.532 *Standards for negotiated settlements based on costs and profits.* [JTR 532]

§ 845.532–1 *Application.* In negotiating the amount to be paid the contractor as fair compensation for his claim, it is not necessary to agree on the separate items to be allowed either for costs or profit. The parties may agree upon a total amount without agreeing on the particular elements entering into this amount. However, where the negotiation of the total amount is based on the consideration of costs and profit, the principles stated in §§ 845.532–2 to 845.533–4, inclusive, should be observed. [JTR 532.1]

§ 845.532–2 *Consideration of costs.* (a) The cost principles set forth in § 845.551 reflect certain policies regarding the types of costs which should ordinarily be taken into account in determining fair compensation for the termination of a war contract. Costs of the types allowed by these principles should be considered in a negotiated settlement based on costs. Conversely, such a settlement should not be made a means for reimbursing expenditures of the types excluded by these principles.

(b) Cost data should be considered as a basis for a business negotiation of a prompt and equitable settlement rather than for an attempt at an exact determination of costs. For the purpose of expediting settlements, costs should be estimated and approximated on reasonable bases, to the fullest extent practicable. Differences should be compromised and questions of doubt settled by agreement.

(c) The scope and function of cost principles and cost data, as outlined above, are not changed by the issuance of Termination Cost Memorandums by the Director of Contract Settlement pursuant to General Regulation No. 14 (see § 845.552–3). These Memorandums are designed to promote greater uniformity in the interpretation of the cost princi-

ples, but the principles themselves, insofar as they apply to negotiated settlements, are intended only as a general guide and not in any way as an inflexible rule. [JTR 532.2]

§ 845.533 *Allowance for profit on fixed-price contracts.* [JTR 533]

§ 845.533–1 *General.* (a) The contractor should be allowed a profit only on preparations made and work done for the terminated portion of the contract (excluding any allowance of profit on post-termination and settlement expenses, such as protection, preservation and disposition of termination inventory, settlement of the prime contract and any subcontracts thereunder, and like costs). Subject to this limitation, any reasonable method may be used to arrive at a fair profit. The most satisfactory criterion of a fair profit is ordinarily what the parties agreed upon, as evidenced by the amount of profit:

(1) Which both parties agreed upon or consented to at the time the contract was negotiated; or

(2) Which the contractor would have earned had the contract been completed; or

(3) Which the contractor agreed to accept in the event the contract was terminated.

(b) Ordinarily, ascertaining the profit the contractor would have earned, if the contract had been completed, would be complicated, time consuming, and in practice would frequently be inaccurate. Generally, the best substitute for this criterion will be the amount of profit which the parties agreed upon at the outset. Accordingly, in arriving at a reasonable profit, whether determined separately or as a part of the whole amount of the settlement, the following sections should be considered. [JTR 533.1]

§ 845.533–2 *Proportion of agreed profit.* (a) One method of arriving at a fair profit on the terminated portion of the contract is to allow the contractor the same proportion of the dollar amount of the profit which both parties agreed upon or contemplated at the time the contract was negotiated as the work performed by him on the terminated portion of the contract bears to the work contemplated by the entire contract.

(b) This proportion does not necessarily depend on the ratio of the costs incurred on the terminated portion to the total estimated costs, nor on the ratio of materials acquired for the terminated portion to the total materials needed. Thus, where the contractor has acquired materials not processed by him, these costs are not a fair index of the proportion of the work done by him. These factors should be considered, but the primary test is the extent and difficulty of the work done by the contractor (including engineering work, production scheduling, planning, technical study and supervision, arrangement and supervision of subcontracts, as well as other services) as compared with the total work required of him by the contract. Engineering estimates of the percentage of completion should not ordinarily be required but should be properly considered if available.

(c) Where the contract has required the arrangement of subcontracts and the supervision of their performance, this work should be considered in estimating the extent of completion, but the profit should not be measured by the amount of his payments to subcontractors for their termination claims. [JTR 533.2]

§ 845.533–3 *Approximate formula profit.* Where the application of the principles stated in § 845.533–2 is impracticable in any case or would delay its settlement, or where it appears that the contractor would not have realized a profit on the contract if it had been completed, another method may be used to determine the amount of profit. This method is to approximate the amount of the profit which the contractor would be entitled to receive under the formula contained in his contract if the parties had failed to agree. [JTR 533.3]

§ 845.533–4 *Profits on letter orders.* Where a letter order, letter contract, or other preliminary contractual instrument contains a provision allowing such profie on termination as is reasonable under the circumstances, no profit will be allowed to the war contractor if he has delayed the execution of a definitive contract for an unreasonable period without proper cause. [JTR 533.4]

§ 845.534 *Other principles.* [JTR 534]

§ 845.534–1 *Avoiding useless litigation.* To avoid forcing the contractor to unnecessary litigation to establish his legal rights against the Government under the uniform article, it will be appropriate in any case, where the contractor so desires, to approximate in the settlement the amount prescribed by the formula in that article. [JTR 534.1]

§ 845.534–2 *Overall limit on settlements.* The gross amount of the settlement, excluding sums paid to compensate for post-termination expenses and services, should not exceed the contract price, minus payments otherwise made or to be made under the contract. [JTR 534.2]

§ 845.535 *Price adjustment articles.* [JTR 535]

§ 845.535–1 *Effect of War Department price adjustment articles after termination.* (a) Many fixed-price supply contracts contain articles providing that, upon the occurrence of specified events, the contract prices of the items thereafter to be delivered will be readjusted either by negotiation or by formula (e. g., §§ 803.372–5, 803.372–6, 803.372–7, 803.373–5, 803.373–6, 803.377–4 and the articles formerly appearing in §§ 803.339, 803.360–1, 803.360–2, 803.360a, 803.360a–1, and 803.361 of this chapter). Other price adjustment articles provide that upon the occurrence of specified events the contract price of the items theretofore delivered as well as thereafter to be delivered will be adjusted either by negotiation or by formula (e. g., §§ 803.372–7, 803.373–6 and the articles formerly appearing in §§ 803.341–1, 803.341–2, 803.360–2 and 803.360a–1). Where the contract is terminated after the occurrence of an event giving rise to a right to a negotiation or computation looking to a price adjustment but before its completion, the adjustment negotiations or computations will normally be carried promptly to conclusion by the parties.

(b) Some price adjustment articles (e. g., Part 803, §§ 803.370 to 803.377–4, and former §§ 803.360–1, 803.360–2, 803.360a and 803.360a–1 of this chapter) specifically recognize the possibility of termination, and set out the effect to be given to these articles in the event of a formula settlement under the uniform termination article. In the case of a contract containing such an article, consideration should be given, in negotiating a settlement, to the rights of either party to a price adjustment. The negotiated settlement should not be used, however, to effect an adjustment in the price of items delivered in any period as to which there would have been no adjustment if the contract had continued to completion.

(c) In certain price adjustment articles providing for retrospective as well as prospective price adjustment (e. g. the standard articles formerly set out in §§ 803.341–1 and 803.341–2) there is no provision with respect to the relation between price adjustment and termination. If a contract containing such an article is terminated before the event giving rise to a right to a computation or negotiation looking to a price adjustment has occurred, neither party has any right to an adjustment of the contract price of articles delivered prior to termination. In such event, however, the limitations on certain types of cost contained in paragraph (i) in the Statement of Principles for Determination of Costs (§§ 845.551 and 845.551–2) shall apply only to the extent that such limitations would have applied if the contract had been completed and adjustment of the price had been negotiated or determined. In negotiating a settlement with respect to the terminated portion of the contract, due allowance may be made for high initial costs, if any, in accordance with the principle set forth in § 845.551–3. Furthermore, where weight is to be given to the indicated rate of profit on such a contract, consideration should be given to the fact that the contract contained a price adjustment article. The procedure set out in § 845.523–3 (b) shall not be applied in the case of contracts which contain an article permitting upward price adjustment and having retrospective effect, if the contract is terminated before the occurrence of the event giving rise to negotiation or determination of such price adjustment.

(d) Price adjustments and negotiations or computations relating thereto should, wherever practicable, be concluded prior to, and reflected in, the final settlement agreement. Care should be taken to exclude from the negotiated settlement of a termination claim any costs which have already been explicitly recognized as having been paid for in price for completed periods under a price adjustment article. See § 803.371–2 (h). [JTR 535.1]

§ 845.535–2 *Effect of Navy Department price adjustment articles after termination.* (a) Certain Navy Department fixed price contracts contain articles providing for the readjustment of contract prices by negotiation or

otherwise upon the occurrence of a specified event (the date of occurrence of which is hereinafter referred to as the "target date"). Where a contract contains such an article which specifically prescribes the effect to be given thereto upon termination, the provisions of paragraphs (b) and (c) below shall not apply.

(b) This paragraph applies to terminated fixed price contracts which contain the Uniform General Price Redetermination Article approved for use in Navy fixed price contracts, or any substantially similar article providing for the downward redetermination of contract prices by negotiation or otherwise upon the target date. This paragraph does not apply to any contract under which the price redetermination has been effected prior to the date fixed for termination.

(1) In the absence of unusual circumstances, where the contracting officer finds that, by reason of a termination, the target date will never be reached, the contracting officer shall not exercise any privilege he may have of accelerating the target date, and the termination settlement shall waive the Government's rights under the redetermination article.

(2) Where settlement of a termination claim is completed before redetermination is effected, the settlement agreement shall reserve to the Government any right it may have to redetermination, unless settled and released, or waived, as provided in subparagraph (1) above or paragraph (c) below.

(c) Where performance of work under a terminated contract has been substantially completed, and a termination settlement is effected on the total cost basis (Form 1b) prior to redetermination of price under any redetermination article, any claim of the contractor or the Government under the redetermination article, shall, wherever possible, be settled and released as part of the termination settlement. Redetermination shall not, however, be delayed substantially beyond the original or accelerated target date solely in order to permit the contractor to file his termination claim on Form 1b.

(d) Except as otherwise provided in this section, the readjustment or redetermination of prices shall proceed upon the terms and conditions stated in the contract, regardless of any termination thereof. [JTR 535.2]

§ 845.537 *Application to subcontracts.* Settlements of subcontracts will be approved or recognized where they are based on the principles stated in this subpart, except that the contracting officer may take into account the profit which he would have agreed to pay in procuring directly the same or a similar item, instead of the profit determined in accordance with § 845.533. [JTR 537]

§ 845.538 *Application of principles to war contracts without uniform termination article.* In settling by negotiation any terminated war contract which does not contain and is not amended to insert the uniform fixed-price termination article, the contracting officer or war contractor settling the claim should apply the principles stated in this subpart to the extent appropriate in the light of the provisions of the particular contract. [JTR 538]

SUBPART D—BASIS FOR FORMULA SETTLEMENT OF FIXED-PRICE CONTRACTS

§ 845.540 *Scope.* Under the uniform termination articles for fixed price supply prime contracts and subcontracts, if the parties fail to agree on the amount payable for termination, the amount will be determined under a formula prescribed by the uniform article which is substantially the same in both the prime contract and subcontract forms. This subpart discusses the amounts allowed under this formula. The procedure for making such formula settlements under prime contracts is prescribed in Subpart E of Part 847. Subcontract settlements without agreement are discussed in § 846.625. [JTR 540]

§ 845.541 *Items allowed by formula for fixed-price contracts.* [JTR 541]

§ 845.541–1 *Completed articles.* The war contractor is entitled to the contract price for all articles or services which have been completed in accordance with the contract and not theretofore paid for, and which do not represent unreasonable anticipation of production schedules, unless the parties agree on other disposition of such articles. (See § 842.252–1 (c).)

§ 845.541–2 *Contractor's own charges.* The war contractor is entitled to the actual costs incurred by him which are properly allocable to the terminated portion of the war contract under recognized commercial accounting practices, except costs allocable to completed articles paid for at the contract price. For this purpose, the principles for determining costs stated in § 845.551 apply to formula settlements under the uniform fixed-price prime contract article by its terms, and will be recognized by the Government as representing "recognized commercial accounting practices" under the uniform subcontract article. [JTR 541.2]

§ 845.541–3 *Subcontractors' claims.* The war contractor is entitled to the costs of settling and paying claims under terminated subcontracts allocable to the terminated portion of the war contract. For the purpose of computing the allowance for profit, the amounts paid or payable to subcontractors for materials delivered or services furnished by them before the effective date of termination should be treated as a part of the war contractor's own charges and not as part of the cost of settling termination claims of subcontractors. [JTR 541.3]

§ 845.541–4 *Post-termination and settlement expenses.* (a) The war contractor is entitled to his reasonable costs of preserving and protecting termination inventory in his possession, and any other reasonable costs incidental to the termination of work.

(b) He is also entitled to reasonable costs of obtaining settlement of the amount due on his termination claim. [JTR 541.4]

§ 845.541–5 *Allowance for profit.* As an allowance for profit on the terminated portion of the contract, the war contractor is entitled to percentages fixed in the contract on the costs of materials not processed by him and on the remainder of his costs, but the aggregate allowance for profit shall not exceed 6% of the whole of such costs. For the purpose of computing such profit, his costs shall not include any charge for interest on borrowings or for amounts paid by him in settling termination claims of subcontractors (see § 845.541–3). [JTR 541.5]

§ 845.541–6 *Limitation on aggregate amount.* The total amount payable to the contractor under §§ 845.541–1, 845.541–2, 845.541–3 and 845.541–5, before deducting disposal credits, shall not exceed the total contract price less payments otherwise made or to be made under the contract. [JTR 541.6]

§ 845.542 *Deductions under formula for fixed-price contracts.* [JTR 542]

§ 845.542–1 *Disposal credits.* From the amount payable under § 845.541, there shall be deducted the agreed price for any part of the termination inventory retained by the war contractor, and the proceeds of sale of any materials sold by him, which have not otherwise been paid or credited to the Government or customer. [JTR 542.1]

§ 845.542–2 *Deduction for property undeliverable due to loss or damage.* Under the uniform article for prime contracts, the risk of loss of termination inventory, except for normal spoilage, remains on the prime contractor until transfer of such property to the Government or to a buyer, or until 60 days after delivery to the Government of an inventory schedule covering it, whichever occurs first, unless the Government has expressly assumed such risk. Under the formula, if any such property is destroyed, lost, stolen or damaged so as to become undeliverable within these periods, any amounts payable for such property shall be deducted from the amounts otherwise payable to the prime contractor under § 845.541. [JTR 542.2]

§ 845.542–3 *Other offsets.* Under the uniform article for prime contracts, the amount payable to the prime contractor under § 845.541 is subject to deduction for any other claim which the Government may have against the prime contractor in connection with the contract. [JTR 542.3]

§ 845.542–4 *Unliquidated financing.* Under the uniform article for prime contracts, the amount payable to the prime contractor under § 845.541 is subject to deduction for all unliquidated partial or progress payments, payments on account theretofore made to the contractor, and unliquidated advance payments. [JTR 542.4]

§ 845.542–5 *Withholding of amounts for subcontractors.* Under the uniform article for prime contracts, the contracting officer in his discretion may deduct from the amount otherwise payable under § 845.541 the amount of any termination claim of any subcontractor to the extent that it does not cover ma-

terials delivered to the contractor, or services furnished to him for the production of completed articles. (See § 846.668) [JTR 542.5]

§ 845.543 *Application of other contract formulas.* Where any war contract contains a formula for determining the amount due if terminated, different from that prescribed in the uniform article for fixed-price contracts, the provisions of the formula in the particular contract will be followed in determining the amount due for its termination when the parties do not settle the claim by agreement, unless the formula fails to provide fair compensation in accordance with the act. [JTR 543]

SUBPART E—PRINCIPLES FOR DETERMINING COSTS

§ 845.550 *Scope.* (a) By order dated January 8, 1944, the Director of War Mobilization issued a statement of principles for determination of costs upon termination of Government fixed-price supply contracts. By order of the Director of Contract Settlement dated September 30, 1944, this statement of principles was amended in certain respects. The text of this statement of principles, as amended, is set forth in § 845.551 of this subpart, and the instructions for the application of these principles are stated in § 845.552.

(b) This subpart also contains other instructions as to costs, including those applicable to settlements of cost-plus-a-fixed-fee contracts and subcontracts. [JTR 550]

§ 845.551 *Statement of principles for determination of costs upon termination of fixed-price supply contracts.* [JTR 551]

§ 845.551–1 *General principles.*

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 [in § 845.551–2] 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.

[JTR 551.1]

§ 845.551–2 *Particular allowed costs.*

(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 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.

[JTR 551.2]

§ 845.551–3 *Initial costs.*

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.

[JTR 551.3]

§ 845.551–4 *Excluded costs.*

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) [§ 845.551–2]); 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 resonable 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.

[JTR 551.4]

§ 845.551–5 *Use of contractor's accounting methods.*

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.

[JTR 551.5]

§ 845.551–6 *Other costs.*

The failure specifically to mention in this statement any item of cost is not intended to imply that it should be included or excluded.

[JTR 551.6]

§ 845.552 *Application of statement of principles.* [JTR 552]

§ 845.552–1 *Application to formula settlements.* (a) The cost principles stated in § 845.551 apply to formula settlements of termination claims under the uniform articles for fixed price supply prime contracts and subcontracts.

(b) Paragraph (h) of the uniform article for prime contracts specifies that the statement of cost principles shall be followed in applying the formula. When issued, the uniform article referred to the statement issued by the Director of War Mobilization on January 8, 1944. The statement of cost principles as amended on September 30, 1944 is somewhat simpler to apply and administer. In the interest of uniformity, however, in applying the formula under a contract with the uniform clause, the contracting officer will follow the statement of cost principles as amended, whether or not the contract refers to the earlier form of the statement. If the contractor so desires, the contracting officer shall amend the contract to refer to the revised statement.

(c) In applying the formula under the fixed price supply subcontract article, the

Government will consider the statement of principles as representing "recognized commercial accounting practices." For this purpose, any subcontractor will be allowed the benefits of the amended form of the Statement whether his subcontract was made before or after its amendment. [JTR 552.1]

§ 845.552–2 *Application to negotiated settlements.* In settlements of prime contracts and subcontracts by agreement, the statement of principles will be taken into account to the extent stated in § 845.532–2. [JTR 552.2]

§ 845.552–3 *Interpretation in both formula and negotiated settlements.* (a) To promote uniformity in the interpretation of the statement of cost principles, the Director of Contract Settlement has issued General Regulation No. 14, including termination cost memorandums numbered 1 through 9. Additional memorandums will be issued as required from time to time.

(b) These memorandums represent an acceptable standard of accuracy in the accounting treatment of the costs to which they relate. They are intended to serve as accounting aids to personnel of prime contractors, subcontractors, and contracting agencies. Their function is to interpret, not to expand, the statement of cost principles; and accounting data may be accepted when determined on bases different from those set forth in the memorandums if such bases represent recognized commercial accounting practices and yield equitable results. [JTR 552.3]

§ 845.553 *Continuing costs after effective date of termination.* In some instances, it may be impossible to discontinue certain costs and expenses in connection with the performance of a war contract immediately after the effective date of termination in spite of all reasonable efforts by the war contractor to stop work promptly in accordance with the notice of termination. Where the war contractor proceeds as rapidly as is practicable, after receiving such notice, to discontinue such costs in accordance therewith, reimbursement for such costs should not be denied merely because they were incurred after the effective date of termination. However, a war contractor will not be reimbursed for "interest on borrowings" (§ 845.551–2 (j)) to the extent that such interest accrues after the effective date of termination. [JTR 553]

§ 845.554 *Allocation of advance planning expenses.* Where a contractor incurs reasonable preliminary expenses to plan or prepare in advance for termination, such expenses may be allocated on any fair basis to contracts terminated thereafter. [JTR 554]

§ 845.555 *Determination of allocability.* [JTR 555]

§ 845.555–1 *General basis.* Material claimed to be termination inventory must be properly allocable, both as to type and quantity, to the terminated war contract. In the case of a prime contract, the contracting officer must determine allocability. In the case of a subcontract, the next higher tier war contractor must determine allocability, subject to approval by the contracting officer when his approval of the settlement is required. [JTR 555.1]

§ 845.555–2 *Common items.* (a) Items which are reasonably usable on other work of the war contractor because they are materials, parts or components, common in nature to both the terminated contract and other work of the contractor, should not be listed on termination inventory schedules nor should any costs with respect thereto be included in his settlement proposal, to the extent that the items are reasonably applicable to the contractor's other work. The foregoing provision is not intended to prevent a war contractor from listing properly allocable items which cannot be used on other work except at a loss to the contractor. The determination of whether or not items are reasonably usable on other work of the contractor and without loss should be made as of the effective date of termination.

(b) In the settlement of a terminated contract common items properly allocable thereto may be taken into consideration in determining the amount to be paid, on the same basis as other termination inventory, and such items may be retained, sold or otherwise disposed of in the same way as other termination inventory in accordance with Part 844. For further instructions regarding common items, see Termination Cost Memorandum No. 3, Regulation No. 14 of the Office of Contract Settlement (Part 8004 of Title 32).

§ 845.555–3 *Allocability among several terminated contracts.* Where the chief of a service or bureau determines that termination inventory or terminated subcontracts allocable to two or more terminated war contracts cannot be allocated accurately among such contracts without unreasonable delay or effort by the war contractor or the Government, he may authorize the allocation of such inventory or subcontracts among such contracts on any reasonable basis without attempting to determine accurately the amount allocable to each contract. [JTR 555.3]

§ 845.555–4 *Material in excess of CMP and other WPB regulations.* Materials may be determined to be allocable to a terminated war contract without deciding whether they exceed any amount permitted under CMP or other regulations or orders of the War Production Board. The War Production Board is responsible for enforcing its regulations and orders. Contracting officers do not have such responsibility. [JTR 555.4]

§ 845.556 *Diversion of material and subcontracts to continuing war contracts.* [JTR 556]

§ 845.556–1 *General.* It is the policy of the Government, upon the termination of war contracts, to utilize material or subcontracts for continuing war production. A war contractor should, whenever practicable, divert termination inventory and subcontracts under terminated war contracts to his other war contracts or to those of another war contractor. Diversions should be made to continuing war contracts (a) with the War or Navy Department in accordance with this subchapter, or (b) with any other Department of the Government in accordance with this subchapter and any applicable regulation of such other Department. [JTR 556.1]

§ 845.556–2 *Diversion of contractor-owned material.* (a) Where a war contractor diverts material to any of his continuing war contracts, its cost may be included in the settlement of the terminated contract and a value agreed upon for its retention. In the event of subsequent termination of the continuing contract, the agreed value may be included in arriving at the cost of the material chargeable to the continuing contract. The material so diverted will be considered allocable to the continuing contract, if it is later terminated, to the extent that such material is within the reasonable quantitative requirement for completion of that contract, even though production schedules are anticipated or exceeded as a result of such diversion.

(b) Where a war contractor terminates subcontracts as a result of the diversion of material from a terminated war contract to his continuing war contracts, the charges incurred by reason of the termination of such subcontracts may be dealt with in either of the following ways:

(1) The war contractor may take such termination charges into consideration when calculating the amount at which he will agree to retain the materials for diversion to the continuing contract. If the continuing contract is later terminated, such agreed value plus such termination charges may be included in arriving at the cost of the material chargeable to the continuing war contract.

(2) The termination charges may be included in the termination claim under the original terminated war contract, in which event they shall not be considered in determining any agreed value at which the material is diverted to the continuing contract, nor shall they be included in arriving at the cost of the material to be included in a later termination settlement of the continuing war contract.

(c) If the price at which material is diverted to a continuing war contract cannot readily be agreed upon in advance of delivery owing to considerations beyond the control of the war contractor and induced by the nature of the transaction, diversion of the material may nevertheless be made. In such case, provisions may be made for pricing by mutual agreement at a future time not beyond the expiration of the continuing war contract, or the termination settlement thereof if it is subsequently terminated.

(d) Where termination inventory is transferred to another war contractor for use in connection with a fixed-price war contract, the transaction constitutes a sale rather than a diversion. If a saving to the Government may be effected, however, such transfer of material may be made even if it necessitates the termination of subcontracts of the other war contractor, and the cost of such termi-

nation may be taken into consideration in arriving at the proper price at which the material may be transferred, or may be paid by the Government when the contracting officer so determines. [JTR 556.2]

§ 855.556–3 *Diversion of Government-owned material.* Government-owned material remaining after termination of a war contract should be diverted by sale or by a transfer of accountability to continuing cost-plus-a-fixed-fee or other war contracts which by their provisions vest title to material in the Government, or should be diverted as Government-furnished material or equipment to fixed-price war contracts. [JTR 556.3]

§ 855.556–4 *Diversion of subcontracts.* (a) War contractors should, so far as practicable, divert subcontracts from terminated war contracts to continuing war contracts of the same or other war contractors where a saving to the Government may be effected and where the material covered by the subcontracts will be within the reasonable quantitative requirements for the completion of the continuing contract.

(b) Where the transfer of a subcontract to a continuing contract of the same war contractor necessitates the termination of existing subcontracts under the continuing contract, the termination charges thereon may be included in the war contractor's termination claim under the original terminated war contract.

(c) If the transfer of a subcontract to a continuing war contract of another war contractor necessitates the termination of existing subcontracts under the continuing contract, the termination charges may either (1) be reimbursed by the Government to the continuing war contractor with the approval of the contracting officer for that contract, or (2) be assumed by the war contractor under the original terminated war contract and included in his termination claim when this may be accomplished with the agreement of all parties concerned. [JTR 556.4]

§ 845.558 *Cost principles for cost and cost-plus-a-fixed-fee contracts.* In effecting a settlement of terminated cost and cost-plus-a-fixed-fee contracts, and of the cost portion of a terminated fixed-price contract, the provisions of the particular contract governing the types of 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, which definition is, in some material respects, different from the definition contained in § 845.551. [JTR 558]

SUBPART F—BASIS FOR SETTLEMENT OF COST-PLUS-A-FIXED-FEE CONTRACTS

§ 845.560 *Scope.* This subpart discusses special procedures applicable to the settlement of terminated cost-plus-a-fixed-fee prime contracts and subcontracts. Except to the extent inconsistent with this subpart, all other provisions of this subchapter are applicable to terminated cost-plus-a-fixed-fee contracts unless the context indicates otherwise. [JTR 560]

§ 845.560–1 *Types of contracts.* (a) The provisions of this subpart shall be applicable to the following:

(1) Cost and cost-plus-a-fixed-fee war contracts;

(2) That portion of a fixed-price prime contract which is on a reimbursable cost basis, where the estimated cost of that portion exceeds 50 per cent of the fixed-price portion, if the cost portion is terminated either in whole or in part or if the fixed-price portion is terminated in whole; and

(3) Letter orders, letter contracts, letters of intent and letter purchase orders which provide for current reimbursement of allowable costs.

(b) The provisions of this subpart shall not apply to any cost-plus-a-fixed-fee subcontract where any higher tier contract is not a cost-plus-a-fixed-fee contract. [JTR 560.1]

§ 845.560–2 *Pending cases.* The provisions of this subpart shall apply to pending cases, but action taken in accordance with the procedures in effect at the time the action was taken shall be deemed to constitute compliance with any comparable provisions of this subpart. Where the chief of any service or bureau determines that the use of any of the procedures set forth in this subpart will unduly delay the final settlement of a case pending on February 8, 1945, he may apply to the Readjustment Division, ASF, or the Industrial Readjustment Branch, OP&M, for authority to be relieved from the application of these procedures. [JTR 560.2]

§ 845.560–3 *Use of terms.* As used in this subpart, the following terms shall have the following meanings:

(a) *Cost-plus-a-fixed-fee contract.* The term "cost-plus-a-fixed-fee contract" means the types of contracts described in § 845.560–1.

(b) *Form 1034 cost vouchers.* The term "Form 1034 cost vouchers" means any voucher (including, in the Navy Department, vouchers on S&A Form 77) covering payment of costs to a war contractor, except vouchers covering only the following:

(1) Post-termination expenses; or

(2) Advance, progress, or partial payments; or

(3) Payments on partial or complete settlement agreements or on settlements by determination; or

(4) Payments to subcontractors of the types described in subparagraphs (1), (2), or (3) of this paragraph.

(c) *Reimbursed costs.* The term "reimbursed costs" means payments on Form 1034 cost vouchers to a war contractor for costs audited and allowed by the War or Navy Department up to the time of payment of the last Form 1034 cost voucher under the contract, whether or not subsequently recovered from the contractor as the result of a General Accounting Office exception. Payments in excess of audited and allowed costs, including progress payments on unsettled overhead, shall not be regarded as reimbursed costs.

(d) *Fixed-fee.* The term "fixed-fee" means any compensation under the contract in the nature of a fixed-fee for the contractor's services or a bonus for savings in cost or early delivery. [JTR 560.3]

§ 845.561 *Procedures prior to termination which are necessary to prompt settlement in the event of termination.* [JTR 561]

§ 845.561–1 *Prompt submission and audit of Form 1034 cost vouchers.* The contractor should present promptly to the service or bureau Form 1034 cost vouchers for all costs incurred in connection with the performance of a cost-plus-a-fixed-fee contract. This is essential in order that the service or bureau and the General Accounting Office may carry out their audits on a current basis and, so far as practicable, settle controversial or doubtful issues. Where the contractor, in the opinion of the contracting officer, does not present his costs with reasonable promptness, it may be necessary to reduce advance payments or other Government financing in order to protect adequately the Government's interests. In those cases where overhead is involved, progress payments against current overhead may be discontinued by the contracting officer in the War Department or the Cost Inspection Service in the Navy Department, to the extent necessary to insure prompt presentation of final vouchers. [JTR 561.1]

§ 845.561–2 *Clearance of informal inquiries.* Every effort will be made during performance of the contract to provide satisfactory answers to all informal inquiries raised during the course of audit by the General Accounting Office. Clearance of informal inquiries is of special importance in view of the procedure that a Notice of Exception (Standard Form 1100) will be issued by the General Accounting Office where a satisfactory reply has not been made within 60 days from the date of the inquiry. [JTR 561.2]

§ 845.561–3 *Submission of reclaim vouchers in the War Department.* Where deductions or refunds have been made to clear exceptions and the contractor desires to make a further claim for the amount deducted or refunded, the claim may be submitted in the form of a reclaim voucher. The voucher, if approved by the contracting officer, must be certified and supported by all available and necessary documentary evidence, including (a) questions raised by the informal inquiry and replies, if any, (b) copy of notice of exception (Standard Form 1100) and replies thereto, (c) any revision to the exception together with replies made to the revised exception, and (d) any additional evidence not theretofore submitted in support of the claim for reimbursement. The Fiscal Director, ASF, has instructed all disbursing officers that, prior to termination, where payment on the reclaim voucher is not made promptly, they should forward such reclaim voucher and supporting information to his office, prior to payment either for submission to the Comptroller General for advance decision, or for other appropriate action. After termination, the reclaim voucher will be sent by the disbursing officer in every case, prior to payment, to the Office of the Fiscal Director. [JTR 561.3]

§ 845.562 *General principles governing settlement of terminated contracts.* [JTR 562]

§ 845.562–1 *Necessity for complete and final settlement.* (a) As in the case of fixed-price contracts, it is the policy of the War and Navy Departments that the settlement of a terminated cost-plus-a-fixed-fee contract be complete and final. Settlement should be by agreement to the maximum extent feasible, but any contracts that cannot be settled by agreement must be settled by determination, as provided in § 845.568. Where agreement can be reached on only part of the issues, a settlement agreement covering these issues should be negotiated, subject to the provisions of § 845.515–3, and the remainder of the claim settled by determination.

(b) Each complete and final settlement, either by agreement or determination, will include not only unreimbursed costs and fixed-fee but also, for the purpose of finality, reimbursed costs under the contract. Upon final settlement all termination inventory must be accounted for as provided in § 844.451–1. [JTR 562.1]

§ 845.562–2 *Procedure required for settlement.* (a) No settlement covering reimbursed costs may be made except pursuant to the procedure set forth in § 845.563. This procedure requires notice to the General Accounting Office after payment of the last Form 1034 cost voucher submitted under the contract. The General Accounting Office is requested in the notice to furnish information as to any outstanding exceptions by an interim audit status letter sent promptly after receipt of the notice and by a final audit status letter sent on or prior to the date 60 days from receipt of the notice. The date 60 days from receipt of the notice or the date of receipt of the final audit status letter, whichever is earlier, is referred to in this subpart as the "audit status date". Within the period of 30 days after the audit status date a final effort is to be made to clear outstanding exceptions.

(b) Where there have been no reimbursed costs under the contract, the procedure set forth in § 845.563 need not be followed. In such cases, all claims of the Government or the contractor in connection with the terminated contract will be settled as provided in § 845.564. [JTR 562.2]

§ 845.562–3 *Partial termination.* (a) Where a cost-plus-a-fixed-fee contract is terminated in part, a settlement covering only the terminated portion will not be practicable unless it is clearly severable from the balance of the contract. Except as provided in paragraph (c) below, therefore, all costs will continue to be presented in the same manner, as prior to the notice of partial termination, until the contracting officer determines that performance (as distinguished from termination activity) is complete or that performance on any continued portion is only on subsidiary items or spare parts, or is otherwise not substantial, at which time the procedure set forth in § 845.563 will be followed.

(b) As promptly as practicable after a partial termination, unless the contract otherwise provides, subcontracts terminated as a result of the partial termination should be settled as provided in § 845.569 and the fixed-fee should be adjusted in accordance with § 845.566.

(c) Where the contracting officer determines that the terminated portion is clearly severable from the balance of the contract, the terminated portion and any related claims likewise severable and appropriate for settlement in connection with the terminated portion may be settled separately, in accordance with § 845.563 if the settlement includes reimbursed costs, or in accordance with § 845.564 if the settlement does not include reimbursed costs. [JTR 562.3]

§ 845.563 *Procedure where settlement includes reimbursed costs.* [JTR 563]

§ 845.563–1 *Action to be taken upon issuance of notice of termination.* (a) When a notice of partial or complete termination is issued, the office issuing the notice will, at the time of issuance, send a copy thereof to the General Accounting Office.

(b) The contracting officer will proceed immediately to take all possible preliminary steps looking toward a final settlement agreement, including approval of subcontract settlements under § 845.569, the consideration of accounting reports submitted pursuant to § 845.567–3, disposition of termination inventory, and discussion of points at issue. No final settlement agreement which includes reimbursed costs will be made, however, until the provisions of §§ 845.563 to 845.563–6, inclusive, have been complied with. [JTR 563.1]

§ 845.563–2 *Discontinuance of vouchers.* (a) Upon the effective date of complete termination, or in the case of a partial termination upon receipt of notice from the contracting officer that performance is complete or that performance on any continued portion is only on subsidiary items or spare parts or is otherwise not substantial, the contractor shall promptly discontinue the presentation of Form 1034 cost vouchers, except reclaim vouchers submitted under § 845.561–3, and except as provided in paragraph (b) below.

(b) Although discontinuance of the use of Form 1034 cost vouchers will permit speedier settlement, a contractor may elect to continue presenting costs on Form 1034 cost vouchers. A contractor who continues presentation of Form 1034 cost vouchers may at any time thereafter elect to discontinue the use of such vouchers. A contractor will not, however, be permitted during the same period of time to use both Form 1034 cost vouchers and settlement proposals in presenting his costs, except that during the continued use of Form 1034 cost vouchers a contractor may present settlement proposals which are to serve as a basis for the negotiation of a partial settlement authorized by § 845.564–2 (a).

(c) The contractor's election to discontinue the use of Form 1034 cost vouchers shall be made in such manner as the contracting officer (in the case of the Navy, the Cost Inspection Service) may require. A contractor who elects to discontinue Form 1034 cost vouchers will not be permitted to resume the use of such vouchers.

(d) After discontinuance of Form 1034 cost vouchers, the contractor will present unreimbursed costs on the settlement proposal form prescribed in § 845.565. On the basis of such settlement proposals, partial settlements may be made from time to time as provided in § 845.564–2 (b). [JTR 563.2]

§ 845.563–3 *Preparation of information for General Accounting Office.* (a) After the discontinuance of Form 1034 cost vouchers in accordance with § 845.563–2, the contracting officer, (in the case of the Navy, the Cost Inspection Service) will notify the appropriate disbursing officer in writing of the bureau voucher number of the last Form 1034 cost voucher submitted to him for payment.

(b) The disbursing officer will promptly prepare a list of all Form 1034 vouchers paid under the contract, showing:

(1) D. O. voucher number;
(2) Amount of voucher;
(3) Date of payment;
(4) Disbursing officer's name and symbol; and
(5) Total amount of voucher paid.

(c) In the War Department, within a period of 5 days from the date of payment of the last Form 1034 cost voucher, the disbursing officer will transmit to the contracting officer the information listed in paragraph (b) above. The contracting officer should verify the total number of vouchers listed with the total number indicated in the records of the procurement office and, if any discrepancies exist, request the disbursing officer to reconcile them. [JTR 563.3]

§ 845.563–4 *Notice to General Accounting Office of audit status date.* (a) As promptly as practicable after payment of the last Form 1034 cost voucher other than reclaim vouchers submitted under § 845.561–3, the contracting officer (in the case of the Navy, the disbursing officer) will transmit to the General Accounting Office by registered mail (return receipt requested) a notice fixing as the audit status date (1) the day 60 days from the date of receipt of the notice by the General Accounting Office or (2) the date of receipt of the final audit status letter, whichever is earlier. The notice shall contain the information set forth in the standard form of notice which is reproduced in § 849.935. Instructions for the use of this form are prescribed in § 849.935–1.

(b) In the War Department, a copy of the notice will be sent by the contracting officer directly to the Office of the Fiscal Director, ASF. In the Navy, copies of the notice will be sent to the contracting officer and Cost Inspection Service. [JTR 563.4]

§ 845.563–5 *Clearance of exceptions and reclaim voucher after termination.* (a) The General Accounting Office has advised the War and Navy Departments that:

(1) During the first 30 days of the audit status period the General Account-

ing Office will continue to issue informal inquiries before issuing exceptions and during the last 30 days of the audit status period only exceptions will be issued;

(2) Final audit status letters will contain exceptions only, with the result that informal inquiries either will be converted to exceptions at the time of issuance of that letter or will be deemed to have been cleared;

(3) Upon receipt of replies to exceptions the General Accounting Office will furnish prompt notice that the reply is satisfactory or will promptly issue a revised exception; and

(4) No exceptions (other than pro forma exceptions) will be issued after the audit status date.

(b) It is essential that the contracting officer (in the case of the Navy, the Cost Inspection Service) answer promptly exceptions and informal inquiries issued prior to the audit status date with respect to reimbursed costs which the contractor desires to include in the settlement. Informal inquiries should be answered not later than 5 days after the end of the first 30 days of the audit status period. Neither informal inquiries nor exceptions will be answered by advising the General Accounting Office as to the disposition to be made of the particular item in the final settlement, since no representative of the War or Navy Department can properly make such a representation prior to execution of the final settlement agreement.

(c) In the War Department, the answer to informal inquiries will be submitted to the General Accounting Office field representative. In the case of exceptions, the contracting officer will (1) submit the original of the reply to the Finance Officer for direct transmission to the Office of the Fiscal Director, ASF, and (2) forward signed copies to the General Accounting Office field representative and to the chief of the service. In the Navy, the answer to informal inquiries and exceptions will be made by Cost Inspection Service.

(d) After the audit status date a final attempt should be made by the War and Navy Departments to clear reclaim vouchers and exceptions with respect to reimbursed costs which the contractor desires to include in the settlement, and the General Accounting Office will advise promptly whether or not such items are cleared. Every effort should be made to effect such clearance within a period of 30 days, but this period may be extended by the contracting officer (in the Navy, after consultation with Cost Inspection Service) if it appears that further efforts to clear exceptions and reclaim vouchers will not unduly delay the final settlement. [JTR 563.5]

§ 845.563–6 *Authority to proceed with final settlement agreement.* (a) Subject to any final efforts to clear exceptions and reclaim vouchers in accordance with § 845.563–5 (d), the contracting officer may proceed with the final settlement agreement at any time after receipt of the final audit status letter, and if the final audit status letter has not been received on or before the seventh day following the audit status date he may proceed at any time thereafter on the basis that there are no outstanding exceptions. The contracting officer may include in the final settlement agreement all claims of the Government and the contractor under the terminated contract (whether or not audited by the General Accounting Office) except that no amount will be allowed in the settlement for reimbursed costs which are the subject of:

(1) An exception which is shown to be outstanding in a final audit status letter received on or before the seventh day following the audit status date, and which remains uncleared; or

(2) An exception cleared by deduction or refund and as to which the contractor has not presented a reclaim voucher; or

(3) A reclaim voucher not authorized for payment by the General Accounting Office.

(b) The contracting officer may, if the contractor so requests, refer any costs not authorized for inclusion in the settlement agreement under paragraph (a) above to the Readjustment Division, ASF, or the Industrial Readjustment Branch, OP&M, who may apply to the Under Secretary of War or the Secretary of the Navy for instructions. The final settlement agreement will give effect to such instructions.

(c) In negotiating the settlement, the provisions of the particular contract governing the types of reimbursable costs shall constitute the basis of negotiation. The contracting officer will have for his consideration the accountant's report submitted in accordance with § 845.567–3. Differences of opinion between the parties to the settlement as to the interpretation of the provisions of the contract and their application to the circumstances of the particular case should be settled by agreement whenever feasible. The negotiated settlement, however, will not be made the means of reimbursing contractors for costs which under the provisions of the contract are not allowable. No unreimbursed cost will be allowed which is identical in nature to an item of the contractor's own costs (as distinguished from reimbursement by the contractor of a cost incurred by a cost-plus-a-fixed-fee subcontractor) required to be excluded from the settlement under the provisions of this section. [JTR 563.6]

§ 845.564 *Procedure where settlement includes no reimbursed costs.* [JTR 564]

§ 845.564–1 *Where there have been no reimbursed costs under the contract.* Where there have been no reimbursed costs under the contract, a settlement of all claims of the Government or the contractor in connection with the terminated contract may be made without following the procedure prescribed in § 845.563. In negotiating the settlement, the provisions of the particular contract governing the types of reimbursable costs shall constitute the basis of negotiation. [JTR 564.1]

§ 845.564–2 *Partial settlements.* In addition to the authority to make a partial settlement upon failure to negotiate a complete settlement, as provided in § 845.515–3, and to furnish interim financing as provided in Part 843, partial settlements may be made without following the procedure prescribed in § 845.563, as follows:

(a) The contracting officer may make a settlement agreement at any time after partial or complete termination of the contract where the settlement includes only post termination expenses, fixed-fee, and settlements with subcontractors made pursuant to §§ 845.569–1 and 845.569–3.

(b) Where the contractor submits settlement proposals in accordance with § 845.565, the contracting officer may make partial settlements on the basis of such proposals from time to time in substantially the form prescribed in § 849.983–2. Under such partial settlements the Government and the contractor may agree upon a minimum amount due on the unreimbursed part of the claim without determining that this amount is due on particular elements of the claim or that additional amounts may not be due, leaving the final amount due on the entire claim subject to final negotiation or determination. No such partial settlement shall impair the right of recovery by the Government from the contractor of the amount of any claim or offset, whether or not it was in existence at the time of such partial settlement or any payment thereunder. [JTR 564.2]

§ 845.565 *Submission of settlement proposals.* (a) Except in those cases where the contractor elects to continue to present costs on Form 1034 cost vouchers as provided in § 845.563–2 (b), unreimbursed costs and fixed fee will be presented on the form set out in § 849.965, designated "Settlement Proposal for Use on Terminated Cost and Cost-Plus-a-Fixed-Fee Contracts".

(b) Settlement proposals will serve as the basis for interim financing and the negotiation of partial or complete settlements. They will not be sent to the disbursing officer inasmuch as no payments will be made directly on the basis of these proposals.

(c) Each partial settlement proposal should be numbered serially beginning with the number "1", and a separate number series will be maintained by the contractor for each cost-plus-a-fixed-fee contract. [JTR 565]

§ 845.566 *Adjustment of fixed-fee.* (a) The fee under a terminated cost-plus-a-fixed-fee contract should be adjusted on the basis of percentage of completion or other basis prescribed by the contract.

(b) Where the adjustment is to be made on the basis of the percentage of completion (which is equivalent to determining the amount of work performed on the contract), considerations similar to those set forth in § 845.533–2 should be applied in making the adjustment. In addition to the factors set forth in § 845.533–2 and any other relevant factors applicable to the particular case, it will be appropriate, unless the contract expressly provides otherwise, to consider the work done by the contractor in terminating the contract, in settling claims of subcontractors, and in disposing of termination inventory. A break-down of costs incurred by major classifications will usually furnish the contracting of-

ficer with a starting basis for judging the character and extent of the work done although such costs may not necessarily measure correctly the importance of such work in the performance of the contract. The ratio of costs incurred to the total estimated costs of performing the contract is only one factor in computing the percentage of completion of the contract, which may be either greater or less than that indicated by the ratio of costs incurred, depending upon the evaluation by the contracting officer of the considerations referred to above. [JTR 566]

§ 845.567 *Accounting procedures.* [JTR 567]

§ 845.567–1 *General.* As in the case of fixed-price settlements, accounting reports are advisory only. [JTR 567.1]

§ 845.567–2 *Review procedures.* The procedures and requirements for the accounting review of reimbursed costs are set forth (a) in the War Department, in TM 14–1000 "Administrative Audit Procedures for Cost-Plus-A-Fixed-Fee Supply Contracts" and (b) in the Navy, in the "Revised Cost Inspection Manual." Additional sections are also included in both of these manuals to deal with the different requirements applicable in the review of unreimbursed costs under terminated cost-plus-a-fixed-fee contracts. [JTR 567.2]

§ 845.567–3 *Accountant's report.* (a) The accountant will submit reports to the contracting officer covering partial settlement proposals of the contractor in accordance with the requirements of the individual service or bureau. When the war contractor has submitted a final settlement proposal, the accountant will prepare and submit to the contracting officer a final report to assist him in negotiating a final lump sum settlement. The report will list and comment on any uncleared General Accounting Office exceptions. [JTR 567.3]

§ 845.568 *Settlement by determination.* Where all or any part of the termination claim under a cost-plus-a-fixed-fee contract has not been settled by agreement, it will be determined by the contracting officer in accordance with the provisions of the contract governing the types of reimbursable costs, using the procedures for a formula settlement under a fixed-price supply contract insofar as applicable (Subpart E of Part 847). [JTR 568]

§ 845.569 *Settlement of subcontracts.* [JTR 569]

§ 845.569–1 *Fixed-price subcontracts.* Fixed-price subcontracts, terminated in whole or in part as a result of the termination or modification of a cost-plus-a-fixed-fee contract or under any other circumstances which require the Government to bear the cost of settling the terminated subcontract, will be settled as promptly as practicable in accordance with the provisions of Part 846. This procedure shall apply to any cost portion of a fixed-price subcontract, whether such portion is terminated or completed, subject to the provisions of the particular contract governing the types of reimbursable costs. [JTR 569.1]

§ 845.569–2 *Cost-plus-a-fixed-fee subcontracts where settlement includes reimbursed costs.* (a) Where the settlement of a terminated cost-plus-a-fixed-fee subcontract includes reimbursed costs, the settlement will be made in accordance with the provisions of § 845.563–6. If subcontract costs which have been reimbursed by the prime contractor are required under § 845.563–6 to be excluded from the agreement settling the prime contract, such costs and any unreimbursed costs identical in nature must likewise be excluded from the agreement settling the subcontract. The contracting officer in charge of the settlement of the prime contract may, however, if the parties to the subcontract settlement so request, refer any costs not authorized for inclusion in the settlement agreement for instructions as provided in § 845.563–6 (b). [JTR 569.2]

(b) Where the subcontract is terminated at a time when all or substantially all performance under the prime contract is completed, establishment of a separate audit status date for the subcontract will not be necessary, since the audit status date for the prime contract will serve as the audit status date for the subcontract. At the time when the contracting officer is authorized to proceed with the settlement of the prime contract under the provisions of § 845.563–6, the parties will proceed with final settlement of the subcontract.

(c) Where the subcontract is terminated prior to the time when all or substantially all performance under the prime contract is completed, settlement of the subcontract should not be delayed until the audit status date of the prime contract. In such cases a separate audit status date for the subcontract may be established when the contracting officer determines that performance under the subcontract is complete or that performance on any continued portion is only on subsidiary items or spare parts, or is otherwise not substantial. Upon such determination, (1) the subcontractor may request the prime contractor to discontinue inclusion of specific items of subcontract costs in Form 1034 cost vouchers, or (2) with the consent of the subcontractor, the contracting officer may proceed to settle the subcontract directly as provided in § 845.569–4. In either case no settlement which includes reimbursed costs will be made until the procedure set forth in §§ 845.563–2 to § 845.563–6, inclusive, has been followed with respect to the subcontract. As applied to the subcontract, this procedure includes preparation and transmission of a list of all Form 1034 cost vouchers under the prime contract covering specific items of costs incurred under the subcontract, establishment of an audit status date for the subcontract after payment of the last Form 1034 cost voucher covering a specific item of subcontract cost, and clearance of exceptions and reclaim vouchers pertaining to the subcontract. In the Navy, the Cost Inspection Service will assist the disbursing officer in obtaining the information necessary to prepare the list of vouchers.

(d) In submitting costs, the subcontractor shall use the settlement proposals prescribed in § 845.565 in those cases where the prime contractor discontinues the presentation of Form 1034 cost vouchers covering specific items of subcontract costs, or where direct settlement is being made with the subcontractor. On the basis of costs so submitted, partial settlements may be made with the subcontractor from time to time as provided in § 845.564–2 (b), if authorized or approved by the contracting officer. [JTR 569.2]

§ 845.569–3 *Cost-plus-a-fixed-fee subcontracts where settlement includes no reimbursed costs.* Where the subcontract settlement is of a type which includes no reimbursed costs, settlement of the subcontract may be made in accordance with § 845.564. [JTR 569.3]

§ 845.569–4 *Direct settlement of cost-plus-a-fixed-fee subcontracts.* With the written approval (in the case of the War Department) of the head of the local procurement district, depot, or other office, or, (in the case of the Navy) of the chief of the bureau settling the related prime contract, the contracting officer may settle directly all claims of a subcontractor under a terminated cost-plus-a-fixed-fee subcontract in accordance with the procedures set forth in §§ 845.563–2 and 845.569–3 and the applicable provisions of Subparts E and F of Part 846, in any case in which such action is deemed necessary or desirable. [JTR 569.4]

§ 845.569–5 *Navy Department procedure for payment of subcontract settlements.* If the particular prime contract does not provide for recognition of a subcontract settlement authorized or approved by the contracting officer, as a reimbursable item, the contract should be amended to so provide before the amount of settlement is presented by the prime contractor to a cost inspector for reimbursement. [JTR 569.5]

SUBPART G—INTEREST

§ 845.570 *Scope.* This subpart sets forth the methods of computing interest on termination claims of prime contractors and subcontractors pursuant to section 6 (f) of the act. [JTR 570]

§ 845.571 *Statutory provisions.* Section 6 (f) of the act provides for allowing interest on the amount due and unpaid from time to time on any termination claim at the rate of 2½ per cent per annum, with certain exceptions, stated in § 845.572–3 (d) and (e). [JTR 571]

§ 845.572 *Interest on termination claims of prime contractors.* [JTR 572]

§ 845.572–1 *"Date fixed for termination."* For the purpose of computing interest, the term "the date fixed for termination" shall have the meaning stated in § 841.121–6. [JTR 572.1]

§ 845.572–2 *"Amount due on termination claim."* For the purpose of computing interest, the term "amount due on the termination claim" means the amount determined to be due for fair compensation for the termination of the contract, less:

(a) The amount of any credits for retention or disposal of termination inventory; and

(b) Amounts paid or payable to subcontractors, except to the extent that payment is made by the prime contractor out of his own funds, as provided in § 845.572–3 (a). [JTR 572.2]

§ 845.572–3 *Computation of interest.* Interest on the amount due on the termination claim shall be computed for a period beginning on July 21, 1944 or 30 days after the date fixed for termination, whichever date is later, and ending with the date of final payment to the contractor, with the following exceptions:

(a) Interest shall commence to accrue on partial or final payments made by the prime contractor to subcontractors out of the prime contractor's own funds, as of the date of payment. In applying this provision, funds furnished by the Government to the prime contractor for the purpose of making payments to subcontractors shall not be considered as the prime contractor's "own funds".

(b) Interest shall cease to accrue on the amount due on the termination claim to the extent, and as of the date, of advance, progress or partial payments made on account of such claim after termination.

(c) Interest shall not accrue on the amount due on the termination claim to the extent, and for the period, that any advance, progress or partial payment made on account of the contract prior to termination remains unliquidated, where, under the terms of such payment, the contractor was not at any time liable for interest thereon.

(d) If the contractor unreasonably delays submission and settlement of his claim, no interest shall accrue for the period of such delay. Ordinarily a period of 60 days is considered reasonable for submission of the claim, and a longer period is considered an unreasonable delay, unless the contracting officer determines otherwise.

(e) If the contractor appeals or sues after a formula settlement, interest shall cease to accrue 30 days after the delivery to him of the findings, unless the amount allowed by the findings is increased upon the appeal or suit. [JTR 572.3]

§ 845.572–4 *Deduction of waived interest.* (a) If interest for the period after termination or after July 21, 1944, whichever is later, on any advance payment made by the Government, has been waived for the benefit of the contractor, the amount of the interest so waived allocable to the terminated contract or the terminated part of the contract shall be deducted from the interest otherwise payable on the termination claim. No excess of waived interest over statutory interest is to be deducted from the contractor's termination claim.

(b) If a war contractor has obtained a waiver of interest on a V or VT-loan for a period after July 21, 1944, he shall not include interest on account of his own termination claim in any settlement proposal with respect to any terminated contract which served as a basis for such waiver. The war contractor's right to interest upon such claims may be reserved by appropriate provisions in the settlement agreement. When the war contractor is no longer entitled to such waiver of interest, he may file a consolidated claim for interest in connection with all claims under terminated contracts which served as a basis for the waiver. This consolidated claim should be submitted separately from all other termination claims on the form set forth in § 849.966–1, and pursuant to the instructions set forth in § 849.966–2. Copies of this form may be obtained from any Federal Reserve Bank. [JTR 572.4]

§ 845.573 *Method of providing for interest in settlement agreements with prime contractors.* [JTR 573]

§ 845.573–1 *General.* In addition to the principal sum payable thereunder, each settlement agreement will provide for payment of interest computed substantially in accordance with the provisions of § 845.572 and §§ 845.573 to 845.573–3, inclusive, unless claim for interest is waived. Except as provided in § 845.572–4 (b), the settlement agreement will contain a release of all claims of the contractor for interest on the termination claim. (See, e. g., § 849.981–1, Article 4b). [JTR 573.1]

§ 845.573–2 *Where date of payment is estimated.* In including an allowance for interest in the settlement agreement, the date of payment may be estimated at not more than 20 days after the date of settlement. Where the date of payment is estimated, the settlement agreement will provide for the total amount of interest up to the estimated date of payment. (See, e. g., § 849.981–1, Article 4b. [JTR 573.2]

§ 845.573–3 *Where date of payment is not estimated.* Where the date of payment is not estimated, the settlement agreement will provide for the total amount of interest up to the date of settlement and an amount of interest per day thereafter until final payment. (See, e. g., § 849.981–1, Article 4b, footnote 3.) [JTR 573.3]

§ 845.574 *Payment by disbursing officer.* (a) Where any settlement agreement provides for an amount of interest per day from the date of settlement to the date of final payment, the voucher or invoice for the amount of settlement will state the amount due per day from the date of settlement, leaving the total amount to be computed by the disbursing officer.

(b) In such cases, the disbursing officer will compute the amount due for interest under the agreement from the date of settlement to the date he sends the check to the war contractor, and will enter the amount on the voucher, and include the total sum in the check. [JTR 574]

§ 845.575 *Interest on termination claims of subcontractors.* (a) Each war contractor, in settling with his subcontractors, shall allow interest on substantially the same basis and conditions as are applicable to a prime contractor. In allowing interest to subcontractors, the date of final payment should generally be estimated, but may not be estimated at more than 30 days after the date of settlement.

(b) In approving, ratifying, authorizing or making termination settlements with subcontractors, the contracting officer shall allow interest on the termination claim of the subcontractor on substantially the same basis and conditions as are applicable to a prime contractor. [JTR 575]

§ 845.576 *Disputes.* Any dispute as to the application of the statutory provision or this subchapter to the computation of interest in a particular case may be negotiated and settled by agreement. [JTR 576]

§ 845.577 *Review of computation.* The war contractor or contracting officer settling any claim will make such check of any computation of interest submitted to him as he deems necessary under the circumstances. [JTR 577]

SUBPART H—SETTLEMENT REVIEW BOARDS

§ 845.580 *Scope.* This subpart deals with the review of settlement agreements by settlement review boards within the Departments. [JTR 580]

§ 845.581 *Creation of settlement review boards.* The chief of each service or bureau shall establish one or more settlement review boards. Each board shall be composed of at least three responsible officers or civilian employees of the War or Navy Department. So far as practicable, in view of the volume of cases and the availability of qualified personnel, such a board should be established in each office authorized to negotiate final settlements. The duties of such boards may be assigned to the members of any boards or sections already in existence or charged with other duties. No person shall serve as a member of the settlement review board in reviewing a settlement in which he participated. [JTR 581]

§ 845.582 *Duty of board to review settlements.* [JTR 582]

§ 845.582–1 *Settlements required to be reviewed.* The settlement review board will examine, before its approval or execution by the contracting officer, each proposed settlement made by the Government or made by any war contractor with his subcontractor:

(a) Which provides for payment to any prime contractor or to any subcontractor of an amount in excess of $25,000, computed in accordance with § 841.122; or

(b) Which adjusts the fixed-fee upon the complete or partial termination of a cost-plus-a-fixed-fee prime contract or subcontract where the estimated cost of the terminated portion exceeds $50,000; or

(c) Which does not require review under paragraph (a) or (b), but which the chief of a service or bureau requires to be submitted for review by the board. [JTR 582.1]

§ 845.582–2 *Optional review.* Any contracting officer, in his discretion, may submit to the board any proposed settlement or matter in connection therewith at any time and generally should submit any novel or special problem upon which

he desires the advice of the board. [JTR 582.2]

§ 845.582–3 *Settlements and agreements not subject to review.* (a) Unless the chief of a service or bureau prescribes otherwise, the contracting officer may make partial payments under Part 823 without obtaining the approval of the review board.

(b) The settlement review board will rely on and will not review any action of a disposal board with respect to any disposition of termination inventory, but may consider the allocability of such inventory to the termination claim.

(c) To the extent that a settlement agreement is based upon a pretermination settlement agreement which has been approved by the appropriate settlement review board, it is not required to be reviewed by any such board, except for the purpose of determining whether the pretermination settlement is properly reflected therein.

(d) Settlements based on proposals properly submitted in accordance with § 845.524–1 on Form 1a are not subject to review or approval by a settlement review board. [JTR 582.3]

§ 845.583 *Scope of review by board.* (a) The sole function of the settlement review board is to determine the over-all reasonableness of the proposed settlement from the standpoint of protecting the Government's interest. The board is not intended to examine in detail every element entering into the determination of the amount to be paid. In order to determine, however, that negotiations have been conducted competently and in the light of adequate information, it will frequently be appropriate for the board to inquire into specific selected items of the proposed settlement.

(b) The board may vary the scope and intensity of the review according to the reliability of the contractor, the size and complexity of the proposed settlement, and any other relevant factors. Whenever review is required for subcontract settlements involving $25,000 or less, the board may, and generally should, limit its review to an inquiry as to whether the prime contractor or any intermediate subcontractor adequately examined the claim and whether it is reasonable to rely on the examination so made.

(c) Where the adjustment of the fixed-fee under a terminated cost-plus-a-fixed-fee war contract made pursuant to a contract formula and not by negotiated agreement is submitted for review, the function of the board in reviewing the adjustment will be to advise the contracting officer with respect to its reasonableness.

(d) The board may act upon records submitted by the contracting officer or may require the submission of additional information. [JTR 583]

§ 845.584 *Effect of action by review board.* [JTR 584]

§ 845.584–1 *Action by the board.* 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. The review board must act promptly on all matters submitted for its consideration or approval. Under section 6 (c) of the act, failure of any review board to act upon any settlement within thirty days after its submission to the board operates as approval by the board. [JTR 584.1]

§ 845.584–2 *Necessity for further approval.* (a) If the review board disapproves any proposed settlement, the contracting officer shall not execute it or approve it unless the head of the office in which the board is established approves the settlement.

(b) Where the proposed settlement exceeds $500,000 in amount, or such lesser amount as the chief of the service or bureau may prescribe, the contracting officer shall submit it, after approval by the review board, (1) in the War Department, to such higher authority as the chief of the service may prescribe, or (2) in the Navy Department, to the chief or assistant chief of the bureau, acting personally. The contracting officer shall not execute or approve the settlement until its approval by such authority.

(c) Except as provided in this section, the contracting officer may execute or approve the settlement agreement upon its approval by the review board. [JTR 584.2]

PART 846—SETTLEMENTS OF SUBCONTRACT CLAIMS

Sec.
846.600 Scope of part.

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§ 846.600 *Scope of part.* This part deals with policies and procedures particularly applicable to settlements with subcontractors and Part 847 with those particularly applicable to settlements with prime contractors. Part 845 covers the policies and procedures which apply generally to settlements with both subcontractors and prime contractors. [JTR 600]

SUBPART A—OBLIGATION OF WAR CONTRACTOR TO SETTLE SUBCONTRACTORS' CLAIMS

§ 846.610 *Scope.* This subpart discusses the obligation of the prime contractor and of each intermediate subcontractor to settle the claims of his subcontractors, and the procedure when he is unable to settle. [JTR 610]

§ 846.611 *Rights of subcontractors against Government.* Under the uniform termination article for fixed-price supply prime contracts, and earlier similar articles, subcontractors have no contractual rights directly against the Government upon the termination of a prime contract. The rights of such subcontractors are against the prime contractor or intermediate subcontractor who is directly obligated to them on the subcontract which they hold. The extent of these rights will depend upon the terms of the subcontract in question. As explained in § 846.660 and following, however, the Government in its discretion may undertake to settle the claims of subcontractors directly. [JTR 611]

§ 846.612 *Duty of prime contractor to settle termination claims of subcontractors.* [JTR 612]

§ 846.612–1 *Under fixed-price contracts.* Upon termination of a fixed-price prime contract, the prime contractor and each subcontractor is responsible for settling the termination claims of his im-

mediate subcontractors, subject to the approval of the contracting officer when required. [JTR 612.1]

§ 846.612–2 *Under cost-plus-a-fixed-fee contracts.* (a) Many cost-plus-a-fixed-fee contracts contain a termination article providing expressly that the prime contractor must settle the termination claims of his subcontractors. The uniform termination article for cost-plus-a-fixed-fee contracts contains this provision. Under terminated contracts containing an article of this type, the prime contractor is required to settle with his subcontractors.

(b) Under the termination article in some cost-plus-a-fixed-fee prime contracts, the Government agrees to assume the obligations of the prime contractor upon termination. In terminating such contracts, the contracting officer will make every effort to obtain the full cooperation of the prime contractor in settling such obligations. The prime contractor remains liable upon his subcontracts and other obligations, and is under a duty to lend all reasonable assistance in their settlement. The policy of the War and Navy Departments is to encourage the prime contractor to settle the termination claims of subcontractors in order to expedite payments to them.

(c) Upon termination of a contract containing either type of article, the prime contractor will take steps promptly to obtain settlement proposals for any terminated fixed-price subcontracts. In the case of cost-plus-a-fixed-fee subcontracts, the prime contractor will obtain the accounting data and vouchers necessary to permit (1) the negotiation of a settlement of such contract, or (2) final determination and payment of the reimbursable costs under such subcontract and any necessary adjustment of the fixed-fee thereunder. [JTR 612.2]

§ 846.613 *Inability of prime contractor to settle subcontract claims.* [JTR 613]

§ 846.613–1 *Exclusion from settlement.* Where the prime contractor cannot settle one or more terminated subcontracts on a fair basis which the contracting officer will approve (where his approval is required), the Government and the prime contractor may agree to exclude the amounts due to such subcontractors from the negotiated settlement, and to leave to later determination the amount due with respect to such subcontracts. [JTR 613.1]

§ 846.613–2 *Assumption by Government.* In appropriate cases, with the written approval of the head of the procurement office or bureau administering the settlement, 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 unsettled subcontracts, so far as related to the terminated portion of the prime contract. [JTR 613.2]

§ 846.613–3 *Terms of assumption.* Where the Government assumes the obligation of the prime contractor on any subcontract claim, the final settlement agreement or other supplemental agreement shall contain an article substantially in the form set forth in § 849.988–1. The maximum amount to be paid on the subcontract settlement shall be so fixed that the total payments under the terminated prime contract shall not exceed any maximum limit set for payments under the applicable termination article or under this subchapter. [JTR 613.3]

§ 846.613–4 *Application to subcontracts in lower tiers.* Where a subcontractor of any tier cannot settle with one or more of his subcontractors in the next tier below him, arrangements similar to those described in §§ 846.613–1 to 846.613–3, inclusive, may be made, with the written consent of the prime contractor and of all intervening subcontractors. [JTR 613.4]

§ 846.614 *Assignment of rights under subcontracts.* [JTR 614]

§ 846.614–1 *Obligation to assign under uniform fixed-price contract articles.* (a) Paragraph (b) (4) of the uniform fixed price termination article provides that the prime contractor shall assign to the Government, in the manner and to the extent directed by the contracting officer, all the right, title and interest of the prime contractor under the subcontracts terminated by reason of their relationship to the work terminated by the termination notice.

(b) This provision was designed to assure the Government's right to require the transfer to it of the property and rights under the subcontract 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.

(c) In this connection it was recognized in the preparation of the uniform 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. [JTR 614.1]

§ 846.614–2 *Obligation to assign under other articles.* Most current or earlier approved termination articles contain a similar provision requiring the prime contractor, at the direction of the contracting officer, to transfer to the Government his rights and benefits under terminated subcontracts as a part of the termination settlement. [JTR 614.2]

§ 846.614–3 *When assignments to be required.* Ordinarily the contracting officer will not require the prime contractor to assign rights under terminated subcontracts to the Government unless the contracting officer considers that the Government will obtain some pecuniary or administrative advantage from such assignment and specifically directs the contractor to make it. [JTR 614.3]

SUBPART B—BASES OF SETTLEMENT OF SUBCONTRACTS

§ 846.620 *Scope.* This subpart deals with the use of the approved fixed-price subcontract termination article as a basis for settlement, and also discusses the basis for settling terminated subcontracts which do not contain this article. The general bases for settling both prime contracts and subcontracts are discussed in Part 845. [JTR 620]

§ 846.621 *Approved subcontract termination article.* (a) The approved subcontract termination article is set out in § 849.936. This article provides fair compensation for termination in accordance with the act. The settlement of subcontracts will be greatly facilitated by the use of this subcontract article in first tier or more remote fixed-price subcontracts 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 (§ 845.551).

(b) Governmental policies applicable to the uniform prime contract termination article will also be recognized as applying to the subcontract article. These include the policy against reimbursing contractors at the contract rate on termination for completed undelivered articles which represent unreasonable anticipation of production schedules (see §§ 842.252 and 845.541–1), 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 (see § 842.215).

(c) For the sake of brevity, the approved subcontract article omits certain provisions of the uniform fixed-price termination article for prime contracts. Any war contractor may incorporate any of these omitted provisions in particular subcontracts for which they are appropriate.

(d) If the parties so desire, they may substitute for the first sentence of paragraph (a) of the approved subcontract article a provision for termination at the option of the buyer. Likewise, in paragraph (b) (2) (ii) of the article, they may reduce the figure of 2 per cent or may change the figure of 8 per cent to figures which are fair and reasonable under the circumstances of the particular subcontract; but the overall limit of 6 per cent must not be increased. [JTR 621]

§ 846.622 *Use of approved subcontract termination article.* [JTR 622]

§ 846.622–1 *Original subcontracts.* At the time of making any fixed-price subcontract for the manufacture of supplies, any prime contractor or subcontractor may insert in it the approved subcontract termination article (§ 849.936), if it is appropriate. Where any subcontract is a requirement or open end contract, the article should be made

to apply only to termination before the purchase of any minimum quantity contracted for, or to a termination of a firm order issued under the subcontract. [JTR 622.1]

§ 846.622–2 *Amendments of subcontracts to insert approved termination article.* The approved subcontract termination article (§ 849.936) may be inserted by amendment at any time in any fixed-price subcontract for the manufacture of supplies for which it is appropriate. [JTR 622.2]

§ 846.623 *General procedures for settlement.* In settling subcontract claims, war contractors will follow the principles and policies stated in Part 845 of this subchapter. In negotiating settlements of termination claims of subcontractors, the provisions of Subparts B and C of Part 845 apply to fixed-price subcontracts, and the provisions of Subpart F of Part 845 apply to cost-plus-a-fixed-fee subcontracts. So far as practicable, the contracting officer should make certain that the prime contractor and subcontractors are familiar with these principles. [JTR 623]

§ 846.624 *Settlement of subcontracts without approved article.* [JTR 624]

§ 846.624–1 *General rule.* Where, at the time of settlement, a subcontract does not contain the approved 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. Likewise, any settlement conforming to the principles stated in Subpart C of Part 845 will be considered fair and reasonable. [JTR 624.1]

§ 846.624–2 *Special cases.* (a) 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 assume the defense against, a demand by a subcontractor which is greater in amount than would be recognized by the principles stated in § 846.624–1.

(b) 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, or whether the Government should protect the prime contractor or intermediate subcontractor from the asserted liability. In general, the contracting officer should recognize the settlement where the terms of the subcontract were negotiated in good faith and do not unreasonably increase the rights of the subcontractor. [JTR 624.2]

§ 846.625 *Settlement of subcontract claims without agreement.* [JTR 625]

§ 846.625–1 *Recognition of judgments of subcontractors against war contractors.* (a) Where a subcontractor obtains a final judgment against a war contractor on a termination claim, the contracting officer should treat the amount of the judgment as the cost of settling the claim of the subcontractor, to the extent he deems it properly allocable to the prime contract, if:

(1) The subcontract does not contain unusual termination provisions unreasonably increasing the common law rights of the subcontractor, and

(2) The war contractor made reasonable efforts to settle with the subcontractor, and

(3) The war contractor gave prompt notice of the suit to the contracting officer and offered the Government control of its defense; and diligently defended the suit, or assisted the Government to defend it.

(b) The uniform cost-plus-a-fixed-fee prime contract termination article contains specific provisions to substantially the same effect (paragraph (d) (2) (B)).

(c) Where the foregoing conditions are not met, the contracting officer should allow the war contractor such part of the judgment as he considers a fair amount for settling the termination claim under the subcontract. [JTR 625.1]

§ 846.625–2 *Recognition of arbitration awards.* Where a war contractor and his subcontractor submit a termination claim to arbitration under general law, the contracting officer will recognize the amount of the award as the cost of settling the claim of the subcontractor, to the extent he deems it properly allocable to the prime contract, under the same conditions applicable to a judgment under § 846.625–1. [JTR 625.2]

§ 846.625–3 *Decision by appeal board.* (a) Section 13 (f) of the act authorizes any war contractor and his subcontractor, by agreement, to submit any dispute between them regarding any termination claim to the Appeal Board established under the act.

(b) The procedure for submitting such disputes is set forth in Regulation No. 15 of the Office of Contract Settlement.

(c) Under the act, any decision of the Appeal Board in such proceedings is final and conclusive as to the parties submitting the dispute and may not be questioned by the Government in settling any related claim, in the absence of fraud or collusion. [JTR 625.3]

§ 846.626 *Termination inventory of subcontractor.* All termination inventory of a subcontractor must be accounted for in accordance with § 844.451. [JTR 626]

SUBPART C—REVIEW OF SUBCONTRACT SETTLEMENT PROPOSALS BY WAR CONTRACTORS

§ 846.630 *Scope.* This subpart deals with the duty of a war contractor, in settling with his immediate subcontractors, to review their settlement proposals. [JTR 630]

§ 846.631 *Responsibility of subcontractors presenting claims.* In submitting his settlement proposal to the war contractor liable to him, a subcontractor is under a duty to prepare his proposal accurately in accordance with the terms of the subcontract. Each war contractor should advise his immediate subcontractors that the proposals submitted by them may be examined by Government accountants and that the materials covered by the subcontracts may be inspected by Government inspectors. This puts the subcontractor on notice that his claim will be used by the war contractor in compiling his own settlement proposal for submission, directly or indirectly, to the Government. [JTR 631]

§ 846.632 *Duty of war contractor to review settlement proposals of subcontractors.* (a) Each war contractor is primarily responsible for reviewing or examining in an appropriate manner all settlement proposals submitted to him by his immediate subcontractors. In making such review or examination, the war contractor should exercise the same standard of care that a business man would employ in the conduct of his own affairs.

(b) The contractor is required to examine the claims of his subcontractors (except the claims against them by their subcontractors) to an extent he considers adequate under the circumstances. In submitting his own claim, he must certify that he has so examined such claims, and that the settlements of his subcontractors' own charges are fair and reasonable, are allocable to the terminated portion of his contract, were negotiated in good faith, and are not more favorable to the subcontractors than he would make if reimbursement by the Government were not involved.

(c) The contractor must also certify that he has received from all his immediate subcontractors certificates with respect to their claims and that they are substantially in the form of his own certificate where the claims are for more than $1,000. With respect to the settlements with more remote subcontractors, the contractor must certify that he has no knowledge leading him to doubt their reasonableness or their allocability to his contract. [JTR 632]

§ 846.633 *Methods of review by contractors.* [JTR 633]

§ 846.633–1 *Office review.* (a) As a minimum, each war contractor will have qualified personnel make an office review of each settlement proposal submitted by his immediate subcontractors. This review may be made by accounting, engineering, legal or other qualified personnel, and should include an accounting review where the net amount of the proposed settlement, after deducting all disposal credits, is $1,000 or more.

(b) The reviewing personnel will prepare a memorandum of each office review and upon request by the contracting officer will make a copy thereof available to Government personnel. [JTR 633.1]

§ 846.633–2 *Responsibility for examination beyond office review.* Each war contractor should determine, in the first instance, to what extent he should examine any settlement proposal submitted by any of his immediate subcontractors, beyond the office review. In making this decision, he should consider:

(a) The amount and complexity of the proposed settlement,

(b) The report of the office review,

(c) Available reports of independent public accountants, and

(d) Any information available from personnel familiar with the operations under the subcontract. [JTR 633.2]

§ 846.633–3 *Types of examination beyond office review.* Where the war contractor determines that the subcontract claim should be further examined after the office review, he may take the following types of action, among others:

(a) The subcontractor may be requested to submit additional data or explanations in writing.

(b) The war contractor may have his reviewing personnel visit the subcontractor's plant to discuss his claim, with such examination of his records as may be appropriate.

(c) An examination may be made by qualified accounting personnel in accordance with the procedures outlined in the Termination Accounting Manual. [JTR 633.3]

§ 846.634 *Reports of reviews.* The war contractor settling the claim will retain in his files a copy of any report by reviewing personnel covering any office review or other examination, together with a copy of the subcontractor's settlement proposal. He will make these records available to the Government for any subsequent review requested by the contracting officer, or other authorized Government personnel [JTR 634]

SUBPART D—REVIEW OF SUBCONTRACT SETTLEMENTS BY GOVERNMENT PERSONNEL

§ 846.640 *Scope.* This subpart discusses the obligation of prime contractors and intermediate subcontractors to submit settlements with their subcontractors to Government personnel for review and approval. [JTR 640]

§ 846.641 *Provisions for approval.* [JTR 641]

§ 846.641–1 *Statutory provisions.* Section 7 (a) of the act directs the contracting agencies to limit or omit their review of settlements with subcontractors to the maximum extent compatible with the public interest. It also confers on the agencies broad authority to approve, ratify and authorize such settlements, to vary the scope and intensity of any review of them, and to authorize war contractors to make such settlements without review when the agency considers such action proper. [JTR 641.1]

§ 846.641–2 *Prime contract provisions.* Under the uniform fixed-price supply article, and certain other articles, the prime contractor must settle termination claims of subcontractors and must obtain approval or ratification of the contracting officer if he so requires. Other termination articles do not expressly require subcontract settlements to be approved by the contracting officer in a negotiated settlement. Nevertheless, because such articles provide that the prime contractor will be reimbursed for such of his costs as are "reasonably necessary", many prime contractors desire approval by contracting officers before making subcontract settlements. In addition, such articles generally require approval by the contracting officer of such settlements as a condition of reimbursing the prime contractor in a settlement by formula. [JTR 641.2]

§ 846.642 *Authority of war contractors to make final subcontract settlements of $10,000 or less without approval.* [JTR 642]

§ 846.642–1 *Policy.* (a) Under section 7 (a) of the act, contracting agencies are directed to authorize war contractors to make settlements with subcontractors without review by the contracting agency whenever the reliability of the war contractor, the amount or nature of the claims, or other reasons, appear to the agency to justify such action.

(b) In order to expedite settlements, the authority under the following sections will be used to the maximum extent practicable. [JTR 642.1]

§ 846.642–2 *Granting of authority.* (a) Whenever the chief of a service or, in the case of the Navy, the cognizant Navy material inspector, is satisfied that a war contractor will make adequate reviews of subcontractors' termination claims and proposals for retention or sale of termination inventory, he will authorize the contractor to make final settlements of his terminated subcontracts in accordance with this § 846.642. The authorization will follow substantially the form set forth in § 849.987–1. Authorizations granted hereunder by cognizant Navy material inspectors will be granted on behalf of all the bureaus of the Navy Department.

(b) In granting an authorization hereunder, the chief of any service or the cognizant Navy material inspector will ascertain from the war contractor whether he requires authorizations from other services or from the Navy Department and will notify such other services or the cognizant Navy material inspector by direct communication (1) that his service or the Navy Department has granted an authorization and (2) that the contractor reported a need for an additional authorization.

(c) Any service or Navy material inspector may grant an authorization hereunder in reliance upon the determination made by the first service or by the Navy Department and without making any independent check as to the adequacy of the contractor's review procedures. [JTR 642.2]

§ 846.642–3 *Extent of authority.* (a) In the absence of unusual circumstances, the service or the cognizant Navy material inspector should authorize the war contractor to settle any fixed price subcontract terminated by him as a result of the termination or modification of a prime contract with the service or any bureau of the Navy Department, or under any other circumstances which require the service or any such bureau to bear the cost of settling the terminated subcontract.

(b) Under the authorization, the war contractor may settle finally any subcontract claim whenever:

(1) The settlement involves not more than $10,000, after deducting (from the gross claim) amounts payable for completed articles or work at the contract price and settlements with lower tier subcontractors previously authorized under § 846.642 or § 846.643 or approved by the contracting officer, but without deducting other subcontract claims or disposal credits; and

(2) All the termination inventory under the subcontract, the cost of which is included in the claim of the subcontractor, is retained by the subcontractor or is sold by the war contractor or the subcontractor at the best price obtainable (see § 844.411–1) and the value or proceeds credited on the settlement, or is transferred to the Government with the consent of the contracting officer or his representative; and

(3) The settlement bears a certificate substantially as set forth in the form of authorization (§ 849.987–1).

(c) The contracting officer should not consent to the transfer of termination inventory to the Government unless it cannot be sold at an acceptable price within the period specified in § 844.413. In determining what is an acceptable price, he should fully consider the shipping and handling difficulties in delivering small amounts of property to the Government.

(d) Where the war contractor is affiliated with any subcontractor, he should not settle any claim of that subcontractor under the authorization. For this purpose, a contractor is considered to be affiliated with a subcontractor if they are under common control or if there is any common interest between them, by reason of stock ownership or otherwise, which is sufficient to create a reasonable doubt that the bargaining between them is completely at arm's length. The decision of the war contractor as to this question may be accepted by contracting officers of the Government in the absence of information to the contrary.

(e) The authority which may be delegated to war contractors under §§ 846.642 to 846.642–7, inclusive, to approve retentions or sales by a subcontractor of termination inventory does not include (1) the authority to approve retentions or sales of completed articles not delivered under the contract or of material treated as termination inventory in accordance with § 844.400–2, unless the cost of such articles and such material to be retained or sold and the amount of the subcontractor's termination claim, computed according to § 841.122, total less than $10,000; or (2) the authority to approve abandonment or discarding of worthless property without the approval of the contracting officer (in the case of the Navy, the local NMR&DA officer) or disposal board, required by § 844.447–2.

(f) All authorizations granted under § 846.642, substantially in the form prescribed by § 849.987–1 on November 1, 1944, shall be deemed to have been amended to conform to the revised form prescribed by § 849.987–1 on April 20, 1945, without further action by any service or bureau or war contractor. However, war contractors holding authorizations in the form prescribed on November 1, 1944, may, upon request, obtain from contracting officers revised, written authorizations in the form prescribed on April 20, 1945. [JTR 642.3]

§ 846.642–4 *Consolidation of claims.* Any number of separate settlements of $10,000 or less may be made with a single subcontractor. Claims which would normally be included in a single settlement proposal, such as a series of separate orders for the same item under one war contract, should be consolidated wherever possible, and must not be divided in such a way as to bring them within the authorization provided for in §§ 846.642 to 846.642–7, inclusive. [JTR 642.4]

§ 846.642–5 *Recognition of authorized settlements.* Where a war contractor settles in good faith with a subcontractor in accordance with an authorization hereunder, the Government will recognize the settlement, including credits for retention or disposal of termination inventory, as final and conclusive for the purpose of settling the terminated prime contract or adjusting the continuing prime contract (whether modified or not) to which the subcontract is allocable. Higher tier contractors shall also rely on such settlements. Such settlements are not subject to review under § 846.644 or § 845.582. [JTR 642.5]

§ 846.642–6 *Selective review.* (a) The chief of each service or the cognizant Navy material inspector who grants an authorization hereunder is responsible for making a selective review of settlements to determine whether the war contractor is making adequate reviews and fair settlements and whether his authority to settle without approval shall remain in effect. In the War Department, to avoid duplication of effort, the chief of each service may designate a single contracting officer or other official or office to make the selective review for the entire service.

(b) All contracting officers and Government personnel engaged in negotiating settlements with a war contractor holding an authorization should report to the appropriate authority of the service or to the cognizant Navy material inspector any irregularities or other information coming to their attention regarding the adequacy of the contractor's review procedures. [JTR 642.6]

§ 846.642–7 *Revocation of authority.* (a) The chief of a service or the cognizant Navy material inspector may revoke any authorization granted by him (or, in the Navy, heretofore granted by the chief of any bureau) by written notice to the war contractor and should do so promptly whenever he determines that the contractor's review procedures are not adequate or that improper settlements are being made. The revocation of an authorization shall take effect only from the date of receipt of written notice by the war contractor. The chief of the service or, in the case of the Navy, the cognizant inspector, will report each such revocation to the Readjustment Division, ASF, or the Industrial Readjustment Branch, OP&M, in accordance with § 849.895–1.

(b) Except as provided in this section, authorizations heretofore granted by the chief of any bureau of the Navy Department are not affected. [JTR 642.7]

§ 846.643 *Authority of war contractors to make final subcontract settlements under $1,000 without approval.* [JTR 643]

§ 846.643–1 *Authority.* Where a war contractor in good faith approves a settlement proposal properly submitted to him on Form 1a by his immediate subcontractor, the Government will recognize the settlement, including credits for retention or disposal of inventory, as final and conclusive for the purpose of settling the terminated prime contract or adjusting the continuing prime contract (whether modified or not) to which the subcontract is allocable, unless this authority has been revoked under § 846.643–2. [JTR 643.1]

§ 846.643–2 *Revocation.* Whenever, by selective checks or from other information, the chief of any service or bureau determines that the settlements by any war contractor under § 846.643–1 do not adequately protect the interests of the Government, he may revoke such authority of the war contractor to settle subcontracts under the jurisdiction of his service or bureau by so notifying the war contractor in writing. Such settlements made by the war contractor after delivery of such notice will be subject to review by the Government. The chief of the service or bureau will report each such revocation to the Readjustment Division, ASF, or the Industrial Readjustment Branch, OP&M, in accordance with § 848.898–1. [JTR 643.2]

§ 846.644 *When subcontract settlements to be reviewed and approved.* [JTR 644]

§ 846.644–1 *Mandatory review.* The contracting officer settling a terminated prime contract will require the prime contractor to submit to him for approval or ratification:

(a) Each settlement with a subcontractor in any tier which involves $10,000 or more (computed in accordance with § 841.122), and

(b) Such other settlements with subcontractors in any tier as the contracting officer may select in accordance with § 846.644–2. [JTR 644.1]

§ 846.644–2 *Selection of subcontract settlements for review and approval.* (a) The contracting officer may require the submission to him, for approval or ratification, of any settlement with any subcontractor in any tier unless made under the authority of §§ 846.642 or 846.643. Ordinarily, however, the contracting officer will be able to review and approve subcontract settlements involving less than $10,000 (computed in accordance with § 841.122) only in selected cases. In this connection the contracting officer will be guided:

(1) By the necessity for obtaining speedy and final settlement as well as the protection of the interests of the Government, and

(2) By the policy of the War and Navy Departments to rely to a high degree on the investigation made by the reviewing contractor of the basis for the settlement.

(b) From time to time, the contracting officer should require the submission to him, for his approval or ratification, of selected subcontract settlements in addition to those required to be submitted under § 846.644–1 (a). The contracting officer should make such selections in such manner as:

(1) To satisfy himself, by reviewing a reasonable number of their settlements, that the general procedures and personnel employed by any war contractor negotiating 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 war contractors through the selective check of the methods and procedures of some of them. In selecting settlements made by such other war contractors for submission, the contracting officer should consider whether their methods and procedures have been otherwise reviewed and any other relevant information readily available to him.

(c) Settlements so selected will be reviewed in accordance with standards prescribed in § 846.646. [JTR 644.2]

§ 846.644–3 *Optional submission for approval.* The prime contractor may submit any settlement with a subcontractor in any tier to the contracting officer for his approval or ratification. [JTR 644.3]

§ 846.644–4 *Selection and approval of subcontract settlements by Navy material inspector.* (a) The Navy material inspector cognizant of the prime contractor is authorized, as the representative of the contracting officer, to approve or ratify all subcontract settlements which do not exceed $25,000 (computed in accordance with § 841.122), unless the contracting officer specifically limits or withdraws such authority in a particular case as provided in § 842.253–3. When a subcontract settlement exceeds $25,000, the inspector will forward it to the contracting officer for his approval, and for submission to a review board in accordance with §§ 845.582 and following.

(b) The Navy material inspector cognizant of the prime contractor is responsible for selecting settlements for review and approval in accordance with § 846.644–2. The contracting officer will not himself make such selection unless extraordinary circumstances make this advisable. [JTR 644.4]

§ 846.645 *Method of submitting subcontract settlement for approval.* [JTR 645]

§ 846.645–1 *General procedure.* (a) The prime contractor should submit subtract settlements requiring approval to the contracting officer for approval or ratification from time to time as promptly as possible. In doing so, he should either:

(1) Include the amount of the settlement in a partial or final settlement proposal on the appropriate standard proposal form, or

(2) Submit the subcontract settlement separately, accompanied by certificates of the war contractor settling the claim, intervening war contractors, and the prime contractor, in the forms prescribed by the standard proposal forms.

(b) In either case, the subcontract settlement should be accompanied by the settlement proposal on which it is based. [JTR 645.1]

§ 846.645–2 *Navy procedure for submitting subcontract settlement proposals and settlements.* (a) When his settlement proposal is less than $10,000, computed in accordance with § 841.122, a subcontractor under a terminated Navy prime contract shall submit the proposal directly to the next higher tier war contractor.

(b) In all other cases, he shall submit his settlement proposal to the next higher tier war contractor via the Navy material inspector cognizant of the particular subcontractor and may also forward additional copies directly if he desires.

(c) Where the settlement proposal is submitted via the cognizant Navy material inspector, the inspector should review it in the manner provided in § 847.721–4 and promptly forward it with his comments to the Navy material inspector cognizant of the next higher tier war contractor, for submission to such war contractor for negotiation of a settlement.

(d) In submitting any subcontract settlement under a Navy prime contract in accordance with § 846.645–1, the higher tier war contractor shall attach a copy of the comments on the subcontractor's settlement proposal by the Navy material inspector cognizant of the subcontractor, if the proposal was submitted via such inspector. A subcontractor forwarding a subcontract settlement for approval or ratification, may forward it with his certificate directly to the next higher tier war contractor and need not transmit it via his cognizant Navy material inspector.

(e) The prime contractor will submit to his cognizant Navy material inspector all subcontract settlements which are required, or which he desires, to be approved or ratified, unless the contracting officer specifically directs otherwise in a particular case. [JTR 645.2]

§ 846.646 *Standards for approval of subcontract settlements.* (a) When a subcontract settlement is submitted to him for approval or ratification, the contracting officer should satisfy himself:

(1) That the settlement was arrived at in good faith and is not unreasonable in amount, and

(2) That the allocation to the prime contract of the charges included in the settlement is based on reasonable grounds.

(b) In determining whether to approve or ratify it, the contracting officer may examine 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 certificates of the prime contractor and intermediate subcontractors in accordance with § 846.645. The contracting officer may satisfy himself that the general procedures of any war contractor are adequate either by checking other settlements made by the war contractor or in any other appropriate manner. [JTR 646]

§ 846.647 *Subcontract settlements not submitted for approval.* The contracting officer may make a final settlement with the prime contractor without examining individual settlements with subcontractors other than those required to be submitted or voluntarily submitted for approval or ratification under § 846.644 unless special circumstances indicate the need for such examination. Any subcontract settlement shall become final and not subject to examination except as stated in § 846.648, if the settlement itself, or another settlement in which it is included, has been approved or ratified. [JTR 647]

§ 846.648 *Finality of subcontract settlement.* [JTR 648]

§ 846.648–1 *Statutory provisions.* Pursuant to section 7 (a) of the act, any settlement between a war contractor and his subcontractor which is authorized, approved or ratified by the contracting agency is final and conclusive as to the amount due except (a) to the extent otherwise agreed in the settlement; (b) for fraud; (c) upon renegotiation under the Renegotiation Act; or (d) by mutual agreement before or after payment. The act provides that no war contractor shall be liable to the United States on account of any amounts paid on such settlements, except for his own fraud. [JTR 648.1]

§ 846.648–2 *Amendment of subcontract settlement.* (a) Where a subcontract settlement has become final and conclusive on the Government for the purpose of settling the terminated prime contract or adjusting the continuing prime contract (whether modified or not) to which the subcontract is allocable, the contracting officer, except as provided in paragraph (b) below, will recognize as final and conclusive any amendment of such subcontract settlement, where:

(1) The amendment will result in benefit to the Government; or

(2) The Government's interests will not be affected by the amendment; or

(3) The amendment is expressly provided for in the subcontract settlement; or

(4) There has been a mistake, as defined in § 847.748–1 (b) (3), between the parties to the subcontract settlement; or

(5) Written approval is obtained (in the case of the War Department) from the head of the local procurement district, depot or other office, or (in the case of the Navy Department) from the chief of the bureau settling the related prime contract, upon his determination that the amendment will promote the purposes of the act.

(b) Where the amendment is made pursuant to subparagraph (4) or (5) of paragraph (a) above, the subcontract settlement, as amended, will be subject to approval by the contracting officer and review by a settlement review board to approval by the contracting officer tract settlement by §§ 846.644 and 845.582.

(c) Amendment of a subcontract settlement after final settlement of the related prime contract will be made only in accordance with the procedures set forth in § 847.748 relating to amendment of prime contracts. [JTR 648.2]

SUBPART E—PROTECTION OF SUBCONTRACTORS

§ 846.650 *Scope.* This subpart deals with special procedures for protecting subcontractors where the prime contractor is unable to meet his obligations. The requirements of Regulation No. 17 of the Office of Contract Settlement entitled "Protection of Termination Claims of Subcontractors" are effectuated in this subpart and Subpart F of this part. [JTR 650]

§ 846.651 *Supervision of payments to prime contractor for subcontractors.* [JTR 651]

§ 846.651–1 *Statutory provisions.* Section 7 (b) of the act provides:

(b) Whenever any contracting agency is satisfied of the inability of a war contractor to meet his obligations, it shall exercise supervision or control over payments to the war contractor on account of termination claims of subcontractors of such war contractor to such extent and in such manner as it deems necessary or desirable for the purpose of assuring the receipt of the benefit of such payments by the subcontractors.

[JTR 651.1]

§ 846.651–2 *When duty to supervise arises.* (a) The contracting officer shall be under no duty to make an investigation of the financial condition of any war contractor until he has received a request for protection from one or more subcontractors. If such request is made to him, the contracting officer shall take such steps as he considers reasonable to investigate the financial condition of the war contractor concerned. The identity of the contractor making the request shall not be disclosed except to Government personnel concerned with such investigation.

(b) In determining whether a war contractor is unable to meet his obligations, the contracting officer is required to act only on the basis of substantial evidence indicating that the contractor is insolvent or bankrupt or is involved in pending proceedings in insolvency, bankruptcy, receivership or corporate reorganization, or is in imminent danger of such proceedings. [JTR 651.2]

§ 846.651–3 *Methods of supervision.* Whenever the contracting officer is satisfied that a prime contractor, or a subcontractor with whom a direct settlement is made, is unable to meet his obligations, he shall:

(a) Follow substantially the procedure outlined in § 843.367 in making payments to the war contractor on account of termination claims of subcontractors, or

(b) Make such payments through a trustee or escrow agent, or

(c) Settle directly the termination claims of subcontractors in accordance with Subpart F of this part.

In his discretion, the contracting officer may take action under this paragraph in other cases where he deems it necessary or desirable for the protection of subcontractors. [JTR 651.3]

§ 846.652 *Supplemental payments to subcontractors.* [JTR 652]

§ 846.652–1 *Statutory provision.* Section 7 (f) of the Act provides:

(f) If any contracting agency determines that in the circumstances of a particular case equity and good conscience require fair compensation for the termination of a war contract to be paid to a subcontractor who has been deprived of and cannot otherwise reasonably secure such fair compensation, the contracting agency concerned may pay such compensation to him although such compensation already has been included and paid as part of a settlement with another war contractor.

[JTR 652.1]

§ 846.652–2 *Scope of statutory provision.* The payment that may be made under this provision is limited to fair compensation for the termination of a war contract. It does not include a payment on account of a claim for completed articles delivered or services performed pursuant to the subcontract or on account of any other claim that may arise under the terminated contract. [JTR 652.2]

§ 846.652–3 *Circumstances requiring payment.* Payment may be made under this provision only when it is not reasonably practicable for the subcontractor applying therefor to secure fair compensation for the termination of his contract from the war contractor liable to him, or from any other party, or by application of any of the procedures provided in § 846.651–3. In addition, the chief of a service or bureau must determine that in the circumstances of the particular case equity and good conscience require such payment. The determination will call for the exercise of sound judgment on the facts of each case. For example, many contractors, at the instance of representatives of the Government and in order to expedite war production, assumed risks in dealing with previously unknown or with over-extended customers, contrary to their normal peacetime practice. In such cases, considerations of fairness may make it appropriate to make payments to subcontractors who could not otherwise obtain fair compensation for the termination of their subcontracts. On the other hand, payments should not be made under section 7 (f) of the act to subcontractors who incurred the risk of non-payment in the course of normal business dealings. [JTR 652.3]

§ 846.652–4 *Request for authority to make supplemental payments.* Whenever the chief of a service or bureau considers that a subcontractor is entitled to receive a payment of fair compensation under the provisions of section 7 (f) of the act, he shall forward to the Readjustment Division, ASF, or the Industrial Readjustment Branch, OP&M, a report stating the essential facts of the case and the reasons for requesting the approval of such a payment. No such payment shall be made without such approval. [JTR 652.4]

SUBPART F—DIRECT SETTLEMENT OF SUBCONTRACTS BY GOVERNMENT

§ 846.660 *Scope.* This subpart deals with the direct settlement and payment by the Government of termination claims of subcontractors in individual cases. It does not apply to direct settlement on a company-wide basis pursuant to Subpart E of Part 848. The requirements of Regulation No. 17 of the Office of Contract Settlement entitled "Protection of Termination Claims of Subcontractors" are effectuated in this subpart and the preceding Subpart E of this part. [JTR 660]

§ 846.661 *Authority to settle subcontract claims directly under contract provisions therefor.* Where the Government by a termination article or other contract provision or by a settlement agreement has agreed to assume the obligations of a war contractor to any subcontractor, the contracting officer may settle the termination claim of the subcontractor directly, in accordance with the contract provision. [JTR 661]

§ 846.662 *Authority to settle subcontract claims directly where no contract provisions therefor.* [JTR 662]

§ 846.662–1 *Statutory provisions.* Section 7 (d) of the act authorizes the War and Navy Departments to settle directly termination claims of subcontractors to the extent that such action is deemed necessary or desirable for the expeditious and equitable settlement of such claims, and prescribes certain procedures to be followed for this purpose. [JTR 662.1]

§ 846.662–2 *Methods of direct settlement.* As used in this part, unless the context clearly indicates otherwise, the terms "settle directly" or "direct settlement" refer to:

(a) The negotiation or determination by a contracting agency of the amount due on account of the termination claim of a subcontractor and the payment of such amount to the subcontractor, or

(b) The payment to a subcontractor of the amount which has been determined to be due on his termination claim by a settlement which was made under any other authorized procedure and adopted and assumed by the contracting agency. [JTR 662.2]

§ 846.662–3 *When required.* Whenever the contracting officer is satisfied that a war contractor is, or is in serious danger of becoming, unable to meet his obligations, and where he considers that action under paragraph (a) or (b) of § 846.651–3 would fail to assure prompt payment of the termination claims of subcontractors of that war contractor, the contracting officer shall settle directly, subject to the provisions of § 846.662–5, the termination claims of such subcontractors. The duties of the contracting officer with respect to investigation of the financial condition of a war contractor, and the determination that a war contractor is, or is in serious danger of becoming, unable to meet his obligations shall be determined in accordance with § 846.651–2. [JTR 662.3]

§ 846.662–4 *When authorized.* (a) The contracting officer may settle directly the termination claim of any subcontractor in any other case in which such action is deemed necessary or desirable for the expeditious and equitable settlement of such claim.

(b) In the War Department such direct settlement, in cases where it is not required by contract or § 846.662–3, shall be limited to direct payment (§ 846.662–2 (b)) unless written permission to negotiate or determine directly the amount due on account of the termination claim has been granted by the head of the local procurement district, depot or other office. [JTR 662.4]

§ 846.662–5 *Limitation of authority.* The authority under § 846.662 shall not be used to settle any claim other than the claim or demand for fair compensation for the termination of the subcontract. [JTR 662.5]

§ 846.663 *Procedures in making direct settlement with subcontractors.* [JTR 663]

§ 846.663–1 *General.* In general, in any case where direct settlement with subcontractors is undertaken under § 846.622, the settlement and disbursement procedures specified for settlement with prime contractors shall be followed to the extent applicable. [JTR 663.1]

§ 846.663–2 *Acceptance of responsibility for direct settlement.* (a) Before undertaking to settle directly the termination claim of a subcontractor under § 846.662, the contracting officer shall send a written notice to the subcontractor in substantially the form set forth in § 849.933–2 or § 849.933–3, depending upon the method of direct settlement to be undertaken. Upon execution by the subcontractor of the consent provision of such notice, the Government shall become liable for the settlement of his claim to the extent and upon the conditions specified in such notice.

(b) The contracting officer shall also send written notice of the assumption of responsibility to the war contractor liable to the subcontractor on account of the termination of the subcontract which the Government is undertaking to settle. Such notice shall be in substantially the form set forth in § 849.933–4 or § 849.933–5, depending upon the method of direct settlement to be undertaken. [JTR 663.2]

§ 846.663–3 *Allocability.* In making direct settlement with a subcontractor under § 846.662 the contracting officer may apply the provisions of § 848.855–3, relating to the determination of allocability in the settlement of subcontract claims under company-wide settlement. [JTR 663.3]

§ 846.663–4 *Limitations on amount payable under prime contract.* Direct settlement with a subcontractor may be made under § 846.662 without regard to any limitation on the amount payable by the Government to the prime contractor. [JTR 663.4]

§ 846.663–5 *Set-offs, assignments and insolvency.* (a) The contracting officer may settle directly with a subcontractor under § 846.662 without regard to any assignment by, or insolvency or bankruptcy of, higher tier war contractors, and without regard to set-offs between contractors in the contractual chain. Such direct settlement shall be made without deduction for claims which the Government may have against the prime contractor or any other higher tier war contractor.

(b) Set-offs which the Government may have against the subcontractor with whom direct settlement is made shall be protected to the same extent that set-offs against prime contractors are protected in making payments on account of their termination claims.

(c) Payments to a subcontractor in direct settlement of his termination claim shall be made consistently with the terms of any assignments executed by that subcontractor of which the disbursing officer has knowledge. The disbursing officer may rely, however, on the subcontractor's statement with respect to outstanding assignments in the absence of actual knowledge to the contrary or notice given in accordance with the Assignment of Claims Act of 1940. [JTR 663.5]

§ 846.663–6 *Partial and final settlement agreements.* (a) When direct settlement of a claim of a subcontractor is accomplished by the first method mentioned in § 846.662–2 and the amount due is established by direct negotiation between the subcontractor and the contracting officer, a final settlement agreement will be executed substantially in the form set forth in § 849.988–6.

(b) When the contracting officer has undertaken to pay directly to a subcontractor an amount which has been determined to be due by agreement between the subcontractor and the next higher tier war contractor, the voucher or invoice shall be supported by the notice to the subcontractor (§ 849.988–3) on which the subcontractor has executed the consent provision. No formal direct settlement agreement is required. [JTR 663.6]

§ 846.663–7 *Release or assignment of claim.* (a) As a condition of the direct settlement of his claim by the Government under § 846.662, the subcontractor is required, upon final settlement, either to assign his termination claim to the Government or to release the Government and his purchaser from his liability thereon. The contracting officer ordinarily should obtain a release, but he should secure an assignment of the subcontractor's claim whenever he considers it necessary to protect any interest that the Government may have.

(b) The form of final settlement agreement for cases in which the amount is determined by direct negotiation with the subcontractor (§ 849.988–6) and the consent provision of the notice by which the Government adopts and assumes a settlement made under another procedure (§ 849.988–3) contain alternative clauses providing for either a release or an assignment.

(c) When the assignment of a claim is received from a subcontractor under a War Department prime contract, the contracting officer will forward the assignment directly to the Judge Advocate General, Attention: Chief, Litigation Division, Washington, D. C.; and he will forward a report of the action taken through channels to the Readjustment Division, ASF. In the Navy Department, the assignment will be forwarded directly to the Disbursing Division, Bureau of Supplies and Accounts, Washington, D. C.; and a report of the action taken will be forwarded directly to the Industrial Readjustment Branch, OP&M. [JTR 663.7]

§ 846.664 *Payments only if liability otherwise exists.* (a) Except for payments under § 846.652, and except to the extent required in order to give effect to the provisions of § 846.663–5, payments shall be made to subcontractors under Subpart E and this subpart only in cases where the Government would otherwise be required to bear the cost of settling the terminated subcontract.

(b) Where payment has been made to a prime contractor or a higher tier war contractor on account of any portion of the termination claim of a subcontractor, an additional payment on account of the same portion of that claim may be made only in accordance with § 846.652, or to the extent that the prior payment has been recovered by the Government. Where a sum has been paid to a prime contractor on account of the termination claim of a subcontractor but has not been paid to the subcontractor, Article 3 of the final settlement agreement with the prime contractor (§§ 849.981–1, 849.983–1) requires the prime contractor, upon request, to return to the Government the amount so payable to his subcontractor. Sums returned pursuant to this provision, or otherwise recovered, may be paid to the subcontractors in direct settlement of their termination claims. [JTR 663.7]

§ 846.668 *Application of payments to benefit of prime contractor.* (a) The uniform termination articles for fixed-price and cost-plus-a-fixed-fee prime contracts provide that, with certain exceptions, the obligation of the Government to make payments under the article shall be subject, in the discretion of the contracting officer, to deduction for the amount of any termination claim of any subcontractor. The purpose of this provision is 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 where this provision is used, 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.

(b) Other forms of approved termination articles contain similar provisions of various types, which are construed in the same manner. [JTR 668]

PART 847—SETTLEMENT OF PRIME CONTRACT CLAIMS

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§ 847.700 *Scope of part.* This part deals with the procedures peculiar to the settlement by the Government of the claims of prime contractors. The policies and procedures applicable to both prime contract and subcontract settlements are stated in Part 845. Those peculiar to subcontract settlements are stated in Part 846. [JTR 700]

SUBPART A—PREPARATION FOR SETTLEMENT

§ 847.710 *Scope.* The principles and forms for presenting claims of war contractors are discussed in Subpart B and Subpart F of Part 845. This subpart deals with the general responsibility of the contracting officer for negotiating the settlement and contains further provisions applicable to the preparation of claims under prime contracts. [JTR 710]

§ 847.711 *Responsibility of contracting officer for settlement.* [JTR 711]

§ 847.711–1 *General.* (a) The responsibility for negotiating the settlement rests on the contracting officer. To discharge this responsibility, he, or someone representing him, should take complete charge of all steps leading up to the final settlement agreement, to the maximum extent practicable. He should familiarize himself completely with all available information concerning the particular termination, and should con-

sider, as far in advance as possible, all accounting, legal, and other problems which are likely to arise in the course of the negotiation.

(b) He should take advantage of all information available to him relating to the terminated contract or the business of the contractor, including information developed by cost analyses, inspections, accounting reviews, or other investigations of the contractor's affairs which may have been conducted by the service or bureau to which he is assigned. He should actively supervise the disposition of termination inventory, the settlement of subcontract claims and the preparation of the prime contractor's settlement proposal.

(c) Before termination, where practicable and authorized by Subpart B to Part 842, and from time to time throughout the settlement proceedings, he should arrive at agreements and understandings by negotiation with the contractor which will expedite the final settlement of the claim. It is his responsibility to see that the prime contractor is diligent in carrying out his obligations and in preparing the claim and to facilitate this by eliminating as many controversial questions as possible in advance of the filing of the claim. [JTR 711.1]

§ 847.711–2 *Settlement team.* (a) For each important settlement, there should be a settlement team composed of qualified personnel with business, legal, engineering, accounting, disposal and other special training necessary to handle the various aspects of the settlement as they arise.

(b) In the War Department, the contracting officer or his principal representative will designate the members of the settlement team.

(c) In the Navy Department, the settlement teams in the field will consist of the Navy material inspector cognizant of the prime contractor or of a particular subcontractor, officers of the Cost Inspection Service and of the NMR&DA, and other qualified personnel. [JTR 711.2]

§ 847.711–3 *Action by settlement team.* (a) The members of the settlement team should not delay action until the prime contractor submits his claim. They should work with him continuously in disposing of termination inventory, in making and approving subcontract settlements, and in preparing his own settlement proposal, and should assist him to the maximum extent feasible in order to facilitate settlement. By cooperating during the preparation of the claim, the settlement team can frequently prevent delay, eliminate unnecessary work, and settle questions so as to expedite the preparation of the claim and the final settlement.

(b) The Navy settlement team in the field shall take all action with respect to the settlement which does not require submission to the contracting officer for his personal determination, and shall submit its recommendations to him with respect to other matters, in accordance with this subchapter. [JTR 711.3]

§ 847.712 *Responsibility of prime contractor to submit his settlement proposal.* [JTR 712]

§ 847.712–1 *General.* The prime contractor will file his settlement proposal with the contracting officer in the War Department or the cognizant Navy material inspector in the Navy Department as promptly as possible, on the forms and in the manner prescribed by Subpart B of Part 845 for fixed-price supply contracts and by Subpart F of Part 845 for cost-plus-a-fixed-fee prime contracts. [JTR 712.1]

§ 847.712–2 *Partial proposals.* Before the final proposal is submitted, the prime contractor, from time to time, should submit to the contracting officer in the War Department or his cognizant Navy material inspector any subcontract settlements which require approval. Likewise, any proposals for disposition or retention of termination inventory which require approval should be promptly submitted to the contracting officer or to NMR&DA. In this way, a substantial part of the claim can be definitely settled and finally acted on before the final settlement of the whole claim. [JTR 712.2]

§ 847.712–3 *Delay in submitting proposal.* If the prime contractor delays settlement of his claim by failure to file the settlement proposal or otherwise, the act requires the suspension of interest on his claim for the period of such delay. A period of 60 days will be considered as a reasonable time for submitting the settlement proposal, and any longer period an unreasonable delay, unless the contracting officer is satisfied that the contractor has been diligent in preparing his claim. [JTR 712.3]

§ 847.713 *Effect of settlement proposal.* The settlement proposal together with the supporting schedules constitute the basic representation of the prime contractor as to his termination claim. In submitting it to the Government, the contractor represents that the facts stated are true in accordance with his certificate. For any false certificates, he is subject to the penalties described in § 841.138. [JTR 713]

SUBPART B—REVIEW OF PRIME CONTRACT SETTLEMENT PROPOSALS

§ 847.720 *Scope.* In negotiating a settlement, the contracting officer should have as a guide reports prepared by qualified Government personnel on the prime contractor's settlement proposal. This subpart deals with the preparation and use of the reports for this purpose. [JTR 720]

§ 847.721 *Function of contracting officer as to review.* [JTR 721]

§ 847.721–1 *General responsibility.* (a) The contracting officer is responsible for passing upon the prime contractor's settlement proposal and settling with the contractor. For this purpose he must decide to what extent accounting and other personnel should review and verify the contractor's proposal.

(b) Contracting officers will reduce accounting examinations of termination claims to the minimum consistent with protecting the interests of the Government. Whenever practicable, they will rely on reasonable reviews of contractors' data rather than on detailed examinations. Wherever examinations appear to be necessary, they will be made in accordance with the principles of selective auditing.

(c) The accounting examination in connection with the settlement of the cost portion of a fixed-price contract should be in accordance with the usual administrative audit as carried out in the War or Navy Department for cost-plus-a-fixed-fee contracts. [JTR 721.1]

§ 847.721–2 *Use of accounting personnel.* In connection with termination settlements, Government accounting personnel will make such investigations, reviews, and examinations, as the contracting officer may direct or request for the purpose of determining whether the settlement proposal conforms with the termination provisions of the prime contract and is supported by the prime contractor's records and other evidence. [JTR 721.2]

§ 847.721–3 *Use of inspection, engineering and other personnel.* (a) Government inspectors, engineers and other personnel will frequently have information on: (1) The general reliability of the prime contractor; (2) the quality of his production; (3) the approximate quantity and physical condition of the then existing termination inventory, including raw materials, work in process, purchased parts and completed items; (4) whether the material for which reimbursement is claimed is reasonably allocable to the prime contract being terminated; (5) the fairness of the pricing on raw material and purchased parts, as determined by spot checks to the extent deemed necessary; (6) other significant items included in the proposal which, in their opinion, are incorrect or doubtful.

(b) The contracting officer should use such personnel to make investigations, reviews, and comments on the settlement proposal submitted by the prime contractor. [JTR 721.3]

§ 847.721–4 *Function of Navy material inspector.* (a) In the Navy Department, the material inspector cognizant of the prime contractor shall examine as promptly as possible each settlement proposal submitted to him and shall forward it to the contracting officer together with any comments which he believes will assist the contracting officer in negotiating with the prime contractor. Such comments should cover particularly the matters specified in § 847.721–3.

(b) In order to prepare the comments under this section, the Navy material inspector may request a representative of the Cost Inspection Service to furnish accounting advice on any items in the settlement proposal. The material inspector does not determine, however, the extent to which representatives of Cost Inspection Service will make a field accounting review of the settlement proposal.

(c) The material inspector is not expected to make a detailed count of inventory unless the contracting officer so requests, but should make such selective checks as he deems necessary to verify the substantial accuracy of the quantities stated. [JTR 721.4]

§ 847.722 *Office review.* [JTR 722]

§ 847.722–1 *When required.* In order to protect the Government's interests, qualified personnel will make at least an office review of each settlement proposal submitted by a prime contractor. Where the net amount of the proposal is $1,000 or more, such review will include an office accounting review. [JTR 722.1]

§ 847.722–2 *Basis of office review.* The office review is based upon supporting evidence submitted by the prime contractor with his settlement proposal and other information available in the office making the settlement. In general, the reviewing personnel analyze and test the information submitted by the contractor to determine inconsistencies or other indications that the items included are overstated or inapplicable. [JTR 722.2]

§ 847.722–3 *Scope of office accounting review.* Each office accounting review will be made in accordance with the provisions of the Joint Termination Accounting Manual. [JTR 722.3]

§ 847.722–4 *Report of office review.* Upon completion of the office review, the accountant or other reviewing personnel will furnish the contracting officer an appropriate report stating his conclusions as to the adequacy of the supporting information and the indicated reliability of the data submitted by the prime contractor. [JTR 722.4]

§ 847.723 *Examination beyond office review.* [JTR 723]

§ 847.723–1 *Use of further examination.* After such consultation with the reviewing personnel as he deems appropriate, the contracting officer will decide and instruct the accounting or other personnel what further examination, if any, is to be made of the termination claim. In making this decision, he should consider the following factors, among others:

(a) The amount and complexity of the proposed settlement.

(b) The conclusions as a result of the office review.

(c) Available reports of independent public accountants.

(d) Any information available from War or Navy Department personnel, familiar with the operations under the prime contract.

The contracting officer may properly rely upon the advice of the accounting or other reviewing personnel as to the extent of any such further examination required in any case. [JTR 723.1]

§ 847.723–2 *Types of additional examination.* Among the types of additional investigation which may prove to be appropriate are the following:

(a) The prime contractor may be requested to submit additional data or explanations.

(b) Government personnel may be instructed to visit the contractor's plant to discuss the proposal and to make any necessary reference to the accounting or other records, or other examination.

(c) Government accounting personnel may be requested to make an examination in accordance with the procedures outlined in this subchapter and in the Joint Termination Accounting Manual. [JTR 723.2]

§ 847.723–3 *Procedures for examination.* While the contracting officer is responsible for deciding whether or not further accounting or other examination is to be made, the accounting or other technical personnel will determine the procedures for actually making such examinations on the basis of their judgment and technical knowledge. [JTR 723.3]

§ 847.724 *Report to contracting officer.* [JTR 724]

§ 847.724–1 *Report of additional examination required.* Where any additional examination is made, the reviewing personnel will submit written reports to the contracting officer in an appropriate manner. [JTR 724.1]

§ 847.724–2 *Information regarding profit.* When the contracting officer so requests, the accountant will furnish him with accounting information on which to make a determination of an appropriate profit allowance. Accounting personnel should not make recommendations as to profit, unless requested to do so. [JTR 724.2]

§ 847.725 *Coordination with other accounting functions.* [JTR 725]

§ 847.725–1 *Coordination with renegotiation accounting.* Where accounting work has been done for renegotiation, it should be used so far as practicable to avoid duplication of effort. [JTR 725.1]

§ 847.725–2 *Consolidation of termination accounting for several prime contracts.* (a) Where two or more contracts with the same prime contractor are being terminated at one time, the termination accounting should be consolidated to the greatest extent practicable and the total costs apportioned to the various contracts on some reasonably satisfactory basis, in accordance with § 845.517.

(b) In the case of certain contractors, the responsibility for making the accounting review for all termination settlement proposals has been assigned to one service or bureau under the consolidated termination program. The procedures governing this program are discussed in Subpart B of Part 848. [JTR 725.2]

§ 847.725–3 *Use of previous termination settlements.* Where the prime contractor has had other termination claims settled, they should be reviewed, where practicable, for any pertinent information to insure that the same accounting policies are consistently followed in the various settlements. [JTR 725.3]

SUBPART C—NEGOTIATION OF FINAL SETTLEMENT AGREEMENT

§ 847.730 *Scope.* This subpart deals with the negotiation of the final settlement under a terminated prime contract. The principles to be observed are stated in Subpart C of Part 845 for fixed-price contracts, and Subpart F of Part 845 for cost-plus-a-fixed-fee contracts. [JTR 730]

§ 847.731 *Authority of contracting officer.* The contracting officer is authorized to settle termination claims and to make supplemental agreements relating to terminated prime contracts, consistently with this subchapter. [JTR 731]

§ 847.732 *Conduct of negotiation conferences with prime contractor.* The duty of the contracting officer will have required constant negotiation of elements of the settlement throughout the proceedings. These negotiations will usually culminate in one or more final conferences with the contractor. Ordinarily legal, accounting, technical and property disposition advisers will participate in these negotiations. Where the contracting officer has designated a representative to take charge of all or a part of the settlement, such representative will conduct the negotiations unless the contracting officer deems it appropriate, in the light of the complexity of the termination, or the problems to be discussed at the particular conferences, to participate personally, in which case the recommendations of his principal representative should carry special weight in the ultimate settlement. [JTR 732]

§ 847.733 *Use of accounting and other reports.* The accounting and other reports do not control the contracting officer in negotiating the amount of fair compensation for the termination. He will consider such reports together with all other relevant information and criteria in determining the amount of a proper settlement in accordance with the principles stated in Subpart C of Part 845. He will give such weight to the reports, and qualify their computations to such extent, as he considers reasonable under all the circumstances. [JTR 733]

SUBPART D—SETTLEMENT AGREEMENTS

§ 847.740 *Scope.* When the contracting officer and the prime contractor reach an agreement as to the total amount payable to the contractor on his termination claim, they will proceed to make a supplemental agreement for the settlement. This subpart deals with the terms and execution of such an agreement. [JTR 740]

§ 847.741 *Authority for settlement agreement.* The settlement agreement will recite that it is made pursuant to the Contract Settlement Act of 1944. Before making any such settlement agreement, each surety or guarantor should be notified, if the surety or guarantee agreement so requires, and the assent of any assignee, who has given notice under the Assignment of Claims Act, should be obtained where possible. [JTR 741]

§ 847.742 *General provisions of final settlement agreements.* [JTR 742]

§ 847.742–1 *Form for fixed-price prime contracts.* Forms of settlement agreements for fixed-price supply and construction prime contracts are contained in § 849.981. [JTR 742.1]

§ 847.742–2 *Form for cost-plus-a-fixed-fee contracts.* The forms of settlement for cost-plus-a-fixed-fee prime contracts are contained in § 849.983. [JTR 742.2]

§ 847.742–3 *Use of standard forms.* The final settlement agreement for a ter-

mination claim shall conform substantially to the appropriate prescribed form. [JTR 742.3]

§ 847.742–4 *Scope of agreements.* In the case of final settlement agreements for use after complete termination, all claims, rights, and obligations of either party (other than those expressly excepted and reserved) arising under the terminated war contract should be discharged and released by the agreement. [JTR 742.4]

§ 847.743 *Deductions and reservations in settlement agreement.* [JTR 743]

§ 847.743–1 *Renegotiation.* The settlement agreement will specifically reserve all rights and liabilities, if any, of the Government and the prime contractor under the Renegotiation Act. [JTR 743.1]

§ 847.743–2 *Deductions for damaged property and defects.* A reasonable deduction should be made for damaged property, defective materials and workmanship in termination inventory transferred to the Government, or retained or sold with the approval of the contracting officer in connection with the termination settlement, unless this factor has otherwise been taken into account in the negotiation. [JTR 743.2]

§ 847.743–3 *Deductions for Government claims in connection with the contract.* The agreement should cover any set-offs and counterclaims which the Government may have in connection with the terminated prime contract. [JTR 743.3]

§ 847.743–4 *Disposal credits.* The agreement or the settlement itself should credit to the Government the sales price or agreed price of any termination inventory sold or retained by the prime contractor in connection with the termination settlement. [JTR 743.4]

§ 847.743–5 *Provisions to protect subcontractors.* In the discretion of the contracting officer, the amount of the settlement may cover, or may be made subject to deduction to meet, any unsettled subcontract claims. In accordance with §§ 846.613 and 846.662, the agreement may make such provisions for direct payments to such subcontractors, escrow payments or otherwise, as the contracting officer may deem proper, to ensure the payment of such claims. [JTR 743.5]

§ 847.743–6 *Reserved rights.* Where rights of the Government and of the prime contractor are to be reserved and are not to be affected by the settlement agreement, the agreement should specify the extent of such reserved rights. For example:

(a) Rights and liabilities of either party under contract provisions relating to reproduction rights, patent infringements, inventions, applications for patent and patents, including rights to assignments, invention reports and licenses, covenants of indemnity against patent risks and bonds for patent indemnity obligations, together with all rights and liabilities under any such bond.

(b) Rights of the Government to take the benefit of any adjustments of royalties under the Royalty Adjustment Act (Public Law No. 768, 77th Congress, approved October 31, 1942) and to take the benefit of agreements reducing or otherwise affecting royalties paid or payable in connection with the performance of the contract.

(c) Rights and liabilities of either party under options, covenants not to compete, covenants of indemnity, and facilities agreements.

(d) Rights and liabilities relating to the settlement of any subcontractor's termination claim which the Government may have undertaken to settle directly. [JTR 743.6]

§ 847.743–7 *Maximum limit.* The agreement shall not provide for payment in excess of any maximum limit on compensation stipulated in the applicable termination article, or in this subchapter (see § 845.534–2), except with the approval of the Readjustment Division, ASF, or the Industrial Readjustment Branch, OP&M. [JTR 743.7]

§ 847.743–8 *Offsets and credits for payments previously made.* All other offsets against the amount payable on the termination claim and all advance, progress, partial and other payments previously made under the terminated prime contract will be taken into account appropriately. [JTR 743.8]

§ 847.743–9 *Anticipated litigation under cost-plus-a-fixed-fee prime contract.* Where there is substantial risk of later litigation (e. g., actions under the Wages and Hours Act, State taxes) affecting reimbursable costs under a terminated cost-plus-a-fixed-fee prime contract, the agreement may expressly except such items from the releases. [JTR 743.9]

§ 847.744 *Approval of settlement agreement.* [JTR 744]

§ 847.744–1 *Settlement review board.* If so required by § 845.582, the contracting officer will submit the proposed settlement agreement to the settlement review board for its review and approval before its execution on behalf of the Government. [JTR 744.1]

§ 847.744–2 *Other approval.* (a) Where the agreement involves more than $500,000, the contracting officer shall submit it for approval by such higher authority as may be required under § 845.584–2.

(b) A settlement agreement for a War Department prime contract does not require approval by the Director of Purchases Division, Headquarters, Army Service Forces, even though the amount of the settlement exceeds $5,000,000, unless it contains provisions requiring such approval under other sections of this chapter, such as §§ 803.306 to 803.308h, inclusive, of this chapter. [JTR 744.2]

§ 847.747 *Payment under settlement agreements.* [JTR 747]

§ 847.747–1 *Basis of payment.* When a termination claim has been settled by agreement, a voucher or invoice showing the amount agreed upon, less amounts previously paid thereon, will be prepared and certified in accordance with § 847.747–2, and presented to the disbursing officer for payment. The voucher or invoice will be supported by a copy of the settlement agreement. [JTR 747.1]

§ 847.747–2 *Form of certificate.* (a) The contractor will make the usual Form 1034 certificate on a voucher or invoice for final payment under a settlement agreement.

(b) The Comptroller General has prescribed the following new form of administrative certificate for such cases:

> Pursuant to authority vested in me, I certify that the within payment is due and payable under the terms of the attached settlement agreement, and that the title to all propery, if any, to be transferred to the Government under this agreement has been transferred.

(c) In such cases, the new form of certificate should be printed or typed on the reverse side of the Standard Form No. 1034 –Revised, with a reference stating "See decision of the Comp. Gen. 27 Sept. 1944, A–49009, A–51607, and A–51624". The form of administrative certificate on the face of the voucher should be stricken out, and the words "Certificate on Reverse Hereof" should be substituted. The words "payment in full in accordance with the attached settlement agreement" should be included in the description under "Articles or Services" on the face of the voucher. [JTR 747.2]

§ 847.748 *Amendments to settlement agreements.* [JTR 748]

§ 847.748–1 *Authority for amendments.* (a) Section 6 (c) of the act provides that where settlement of all or any part of any termination claim is made by agreement, the settlement shall be final and conclusive except, among other things, (1) to the extent otherwise agreed in the settlement or (2) by mutual agreement before or after payment.

(b) Subject to § 847.748–2, the contracting officer may, before or after final payment, amend any final settlement agreement made by a service or bureau on or after July 21, 1944, whenever:

(1) The amendment will result in benefit to the Government; or

(2) The amendment is expressly provided for in the agreement; or

(3) There has been a mistake or error in the written agreement consisting solely of a failure to express the true agreement between the parties in accordance with negotiations between them, or of a mutual mistake as to a material fact. The failure of a contractor to present or to present accurately, and of the Government to allow, a claim based on a cost incurred by the contractor or on a liability to which the contractor was subject, whether by reason of ignorance of such cost or liability or of its extent or for other reasons, shall not be regarded as a mutual mistake within the meaning of this section; or

(4) The chief of the service or bureau determines that such amendment will promote the purposes of the act, and the approval of the Readjustment Division, ASF, or the Industrial Readjustment Branch, OP&M, is first obtained. In such cases, the request for approval should contain a full presentation of the relevant circumstances.

(c) Each amendment entered into pursuant to paragraph (b) above shall recite that it is made pursuant to the act.

(d) The contracting officer may, before or after final payment, amend any final settlement agreement made by a service or bureau prior to July 21, 1944 only:

(1) Where the amendment will result in benefit to the Government; or

(2) Where the amendment is authorized by, and approved in accordance with, §§ 803.308a, 803.308b, or 812.1252 of this chapter, or by Navy Procurement Directives, paragraphs 11,401 and following, 11,441 and following, and 11,461 and following; or

(3) Where the amendment is otherwise authorized by law or applicable regulations.

(e) No amendment entered into pursuant to paragraph (d) above shall recite that it is made pursuant to the act. [JTR 748.1]

§ 847.748–2 *Review of amendments.* Where the amendment is made pursuant to (3) or (4) of § 847.748–1 (b), the settlement agreement, as amended, will be subject to review by the appropriate settlement review board, whether or not the original settlement agreement was required to be reviewed. [JTR 748.2]

SUBPART E—PROCEDURE FOR FORMULA SETTLEMENTS UNDER FIXED-PRICE CONTRACTS

§ 847.750 *Scope.* This subpart discusses the procedure for settling a termination claim when the contracting officer and the prime contractor fail to agree upon a settlement. [JTR 750]

§ 847.751 *When formula settlement used.* [JTR 751]

§ 847.751–1 *Failure of negotiations.* When, after diligent efforts to negotiate a settlement, any termination claim under a prime contract has not been settled by agreement or has been so settled only in part, the contracting officer will determine the amount due by formula. Whenever a prime contractor is unreasonably delaying a negotiated settlement by inaction or otherwise, the contracting officer will take action promptly to settle the claim by formula, especially where the interests of subcontractors may be adversely affected by the delay of the prime contractor. [JTR 751.1]

§ 847.751–2 *Demand by prime contractor.* Where a prime contractor has submitted his termination claim in substantially the form prescribed by this subchapter, he may make a written demand for findings of the amount due on his claim or the unsettled part thereof, under section 13 (a) of the act. Upon such demand, he is then entitled to such findings within ninety days after his demand. Section 13 (c) (3) of the act makes it clear, however, that the contractor is expected to negotiate in good faith for the settlement of his claim before demanding such findings. [JTR 751.2]

§ 847.751–3 *Application to subcontracts.* (a) Where the Government has expressly undertaken by agreement or under the act to settle directly the termination claim of a subcontractor, the subcontractor may demand findings with respect to his claim in accordance with section 13 (a).

(b) Likewise, such a subcontractor is entitled to appeal or sue under the act in the same manner and under the same restrictions as apply to prime contractors.

(c) Unless the Government has expressly undertaken to settle directly a subcontract claim, the subcontractor has no right to proceed against the Government under section 13 of the act. [JTR 751.3]

§ 847.752 *Procedure for proving amount due on the claim.* [JTR 752]

§ 847.752–1 *Kind of proof required.* Where a settlement is made by formula, the prime contractor has the burden of establishing, by proof satisfactory to the contracting officer, the amount due him on his termination claim. The contracting officer should generally accept photostatic or other copies of documents and records, and should not require original documents unless their authenticity is in dispute. [JTR 752.1]

§ 847.752–2 *Submission of evidence.* (a) The contracting officer will give the prime contractor not less than fifteen days' notice by registered mail to produce, on or before a stated date, his written evidence bearing on the amount due. The contractor may submit such vouchers, verified transcripts of books of account, affidavits and audit reports, and other documents as he may wish. The contracting officer may require the contractor to submit such additional documents and data as he considers necessary in the particular case, and may cause such accounting and other investigations and audits to be made as he deems appropriate.

(b) If the contractor wishes to present oral testimony, or if the contracting officer wishes testimony presented on behalf of the Government or by independent experts, or wishes to examine persons whose affidavits or reports have been submitted, the contracting officer, in his discretion, may hold a hearing, after due notice in writing to the contractor. 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 deems appropriate to support his claim. [JTR 752.2]

§ 847.752–3 *Preservation of evidence.* The contracting officer shall retain in the files of the office to which he is attached all written evidence and other data relied upon by him in making his findings and determination, except that copies of original books of account need not be made, and such books of account may be returned to the contractor with other original papers and documents in view of the contractor's obligation to preserve them for examination in accordance with section 19 (a) of the act. [JTR 752.3]

§ 847.753 *Basis of formula determination.* [JTR 753]

§ 847.753–1 *Items allowed.* The contracting officer will determine the amount due on the claim on the basis of the formula in the termination article of the contract, without duplicating amounts included in negotiated partial settlements. Where the contract does not contain any formula, the contracting officer will determine the amount due on the basis of the formula in the appropriate approved termination article. The items included in the formula of the uniform article for fixed-price supply prime contracts are discussed in Subpart D of Part 845. In applying the formula, the cost principles stated in § 845.551 will be followed in determining costs. [JTR 753.1]

§ 847.753–2 *Finality of approved action.* In making a formula settlement, the contracting officer will not re-examine settlements with subcontractors made with his approval, or within delegated authority, before or after the breakdown of negotiations, and will allow the costs of such settlements to the contractor under the applicable termination article as part of the formula settlement. Similarly the contracting officer will treat as final for the formula settlement any other action (such as dispositions of property) taken by the contractor before or after the breakdown of negotiations in reliance upon the approval of the contracting officer, or under delegated authority. [JTR 753.2]

§ 847.753–3 *Making of findings.* After reviewing the information in his own office and any additional data or evidence furnished by the prime contractor, the contracting officer will make his findings on the issues still in dispute and will transmit a copy of such findings to the contractor by registered mail. Where the contractor has properly demanded findings under section 13 (a) of the act, such findings must be delivered to him within ninety days after the receipt of the demand. The contracting officer may submit his proposed findings to the contractor for comment before making them final where he considers that such action may facilitate agreement or limit the area of disagreement. The findings will refer the contractor to his right of appeal within the Department and his right of appeal or suit in accordance with section 13 of the act. [JTR 753.3]

§ 847.753–4 *Report.* Where all or any part of a claim is settled by formula, the contracting officer will promptly forward to the chief of the service or bureau, and (directly) to the Readjustment Division, ASF, or the Industrial Readjustment Branch, OP&M, a copy of the findings prepared in accordance with § 847.754, together with a statement of the issues in dispute and the basis of the contracting officer's findings on such issues. [JTR 753.4]

§ 847.754 *Form of findings.* [JTR 754]

§ 847.754–1 *General.* The contracting officer will include in his findings the material prescribed by the following sections. [JTR 754.1]

§ 847.754–2 *Contractor's own costs.* The contractor's own costs to be paid under the formula settlement will be summarized. Ordinarily, this summary should substantially conform to the summary on the standard proposal forms

contained in §§ 849.962 to 849.963, inclusive, should be supported by such additional schedules and analyses as the contracting officer deems appropriate. [JTR 754.2]

§ 847.754–3 *Allowance for profit.* The findings should show the amount allowed by the contracting officer for profit. If the prime contract contains the uniform termination article, this item of profit should show separately (a) the amount allowed with respect to the cost of articles or materials not processed by the contractor, and (b) the amount allowed with respect to other costs of the contractor. If the contract contains any other form of termination article, the contracting officer will include in the findings a statement showing the method used in computing the profit allowed in accordance with the contract provision. [JTR 754.3]

§ 847.754–4 *Disposal credits.* If disposal credits are substantial or cannot be appropriately explained in the summary, the findings should include a supporting schedule. [JTR 754.4]

§ 847.754–5 *Subcontract settlements.* All settlements with immediate subcontractors should be listed with the name and address of each subcontractor and the amount of each settlement as approved by the contracting officer or otherwise authorized. [JTR 754.5]

§ 847.754–6 *Settlement expenses.* A schedule should be included for settlement and post-termination expenses, including the cost of preserving and protecting the property. This schedule will show briefly the major items by classification, with a description where necessary to clarify the figures. [JTR 754.6]

§ 847.754–7 *Aggregate amount due.* The total amount found to be due to the prime contractor will be stated. Any amounts payable to the contractor in connection with a partial negotiated settlement should be listed separately for purposes of information. [JTR 754.7]

§ 847.754–8 *Certificate of contracting officer.* The contracting officer should support his findings by a certificate stating that in his judgment the amount determined to be due for the termination is fair and equitable. [JTR 754.8]

§ 847.755 *Appeal from findings within the War and Navy Departments.* [JTR 755]

§ 847.755–1 *When allowed or required.* Under section 13 (c) of the act, the contractor in his discretion may resort to any procedure provided by the War or Navy Department for appeal from such formula findings within the time specified in his contract, or if no time is specified, within thirty days after the delivery of the findings to him. Furthermore, if so required by regulations of the Director, he must take such an appeal before resorting to appeal or suit under the act. No such regulations have as yet been issued by the Director. Any such findings revised upon appeal within the Department will, as revised, be treated as the findings of the Department for the purpose of any subsequent appeal or suit under the act. [JTR 755.1]

§ 847.755–2 *Modification of disputes article.* (a) Section 13 (c) of the act modifies the usual Disputes article as applied to termination settlements. Until the Director orders otherwise, the prime contractor may appeal from the findings of the contracting officer directly to the Appeal Board established by the act or may sue, without appeal within the Department. In either case the findings of the War or Navy Department are prima facie correct but are not conclusive even as to questions of fact.

(b) If the contracting officer refuses to make a negotiated settlement of all or any part of a termination claim, his action is not subject to appeal, either under the Disputes article or otherwise. However, if the prime contractor demands findings on his claim in accordance with section 13 (a) of the act, and they are not delivered to him within 90 days after his demand, he is entitled to appeal or sue without such findings. [JTR 755.2]

§ 847.755–3 *Effect of failure to appeal.* If the prime contractor does not take an appeal from the findings of the contracting officer within the time specified in the Disputes article of the contract, or within the thirty days, they become the findings of the War or Navy Department with respect to the amount due to the contractor on his termination claim or the unsettled part thereof. [JTR 755.3]

§ 847.755–4 *Duty of contracting officer on appeal.* (a) If the contractor appeals within the War or Navy Department from the decision of the contracting officer, the contracting officer will transmit (in the War Department, through channels; in the Navy, through the office of counsel for the bureau concerned) to the appeals agency specified in the contract, a true copy of his findings, a statement of the issues in dispute and the basis of the contracting officer's findings on such issues, and any other documents and papers required by the rules of the appeals agency. In his discretion, he may also submit such other schedules, office reviews, audit reports and records as he deems appropriate.

(b) The determination by the appeals agency becomes the determination of the Department with respect to the termination claim or unsettled part thereof. [JTR 755.4]

§ 847.756 *Appeal outside the Department.* [JTR 756]

§ 847.756–1 *Right of appeal.* If the contractor does not accept the decision of the appeals agency within the Department, the act allows him to appeal to the Appeal Board established by section 13 of the act, or to bring suit against the United States in the Court of Claims or in the United States District Court in accordance with subsection (20) of section 24 of the Judicial Code. This must be done within ninety days after delivery to him of the findings by the Department, or, if he appeals in the Department, within ninety days after the decision on his appeal, or within one year after his demand for findings, if they are not delivered. [JTR 756.1]

§ 847.756–2 *Duty of contracting officer on appeal.* (a) Immediately upon receipt of notice of the filing of an appeal, the contracting officer will forward all documents required to be preserved in accordance with § 847.752–3, or copies thereof, together with a statement of the issues in dispute and the basis of the contracting officer's findings on such issues, in the case of the War Department, directly to the Office of the Judge Advocate General, and in the case of the Navy, to counsel for the bureau.

(b) Direct comunication is authorized between the Office of the Judge Advocate General, ASF, and other offices within the War Department having information relative to such appeals. [JTR 756.2]

§ 847.756–3 *Appeal Board procedure.* Pursuant to sections 4 (b) (1) and 13 (d) (3) of the act, the Director of Contract Settlement has issued Regulation No. 15, which establishes rules of practice and procedure for the Appeal Board of the Office of Contract Settlement. [JTR 756.3]

§ 847.756–4 *Effect of findings on appeal.* In any suit or appeal, the findings of the Department are prima facie correct, and the burden is on the contractor to establish that the amount due on his claim exceeds the amount allowed by the findings of the Department. [JTR 756.4]

§ 847.757 *Notice and effect of appeals.* [JTR 757]

§ 847.757–1 *Effect on authority to settle.* The pendency of any appeal within the Department or before the statutory Appeal Board does not affect the authority of the chief of the service or bureau to settle the termination claim or any part thereof by a negotiated agreement with the war contractor at any time before the appeal is decided. [JTR 757.1]

§ 847.757–2 *Notice of appeal.* The chief of the service or bureau will notify the Readjustment Division, ASF, or the Industrial Readjustment Branch, OP&M, of each appeal which is taken to an appeals agency within the Department, and of each suit under section 13 (b) of the act. [JTR 757.2]

§ 847.758 *Payments under formula settlements.* [JTR 758]

§ 847.758–1 *Payment on account.* (a) Within thirty days after delivering to the contractor the findings in a formula settlement, the contracting officer will authorize a partial payment to the contractor of 90 per cent of the amount determined to be due, after deducting from the 90 per cent the amount of any outstanding interim financing applicable to the contract. Such payments shall be subject to § 843.345. Before approving such a partial payment, the contracting officer may require the contractor to submit a duly certified voucher or invoice therefor.

(b) Any such partial payment shall be made upon a voucher or invoice containing substantially the following statement:

The payment covered by this voucher is made pursuant to section 13 (a) of the Con-

tract Settlement Act of 1944 and is a partial payment of the amount due on the contractor's termination claim under Contract _____, as determined by the War [or Navy] Department in findings dated _____. This payment shall be applied against the amount finally payable by the Government to the contractor on such claim. If this payment, together with all other payments made on such claim, exceeds the amount finally payable to the contractor on such claim, the contractor agrees to repay the excess to the Government on demand.

(c) The contracting officer will furnish the disbursing officer with a certificate showing the amount determined by the findings to be due on the termination claim. [JTR 758.1]

§ 847.758–2 *Final payment.* (a) When the amount due the contractor on his termination claim has been finally determined, a voucher or invoice showing the amount so determined to be due, less amounts previously paid thereon, will be prepared in the usual form and will be presented to the disbursing officer for payment.

(b) The voucher or invoice should contain substantially the following statement:

The payment covered by this voucher is a full and final payment of the amounts due on the contractor's termination claim under Contract _____, as determined pursuant to section 13 (a) of the Contract Settlement Act of 1944 by the _____ [War or Navy Department, Appeal Board, Court of Claims, District Court] in findings dated _____.

(c) There will be attached to the voucher or invoice a certificate showing the amount determined to be due on the claim by the findings or decision referred to therein. [JTR 758.2]

SUBPART F—RECORDS OF SETTLEMENT

§ 847.760 *Scope.* This subpart specifies the records to be retained by the service or bureau, and those to be retained by war contractors, and fixes the responsibility for their maintenance by the service or bureau. [JTR 760]

§ 847.761 *Retention of records by Government.* [JTR 761]

§ 847.761–1 *Duty to retain.* The chief of each service or bureau will assure that adequate records are kept to substantiate termination settlements. The chief of each service or bureau, acting in accordance with applicable directives, will prescribe the manner in which termination settlement records are to be kept. Whenever practicable, termination settlement records for each settlement should be maintained in a single file. [JTR 761.1]

§ 847.761–2 *Period of retention.* Such records will be kept for at least (a) five years after final settlement of the terminated contract, or (b) five years after disposition of termination inventory relating to such contract, or (c) five years after termination of hostilities in the present war, as proclaimed by the President or by a concurrent resolution of the two Houses of Congress, whichever applicable period is longest. Thereafter such records will be destroyed only in accordance with applicable law and regulations. [JTR 761.2]

§ 847.761–3 *Records required to be retained.* Unnecessarily voluminous files should not be accumulated, particularly in the case of small settlements. The records or information listed below should be retained in the files of the Department in each case, to the extent applicable. Where any of this information is included in the Standard Proposal Forms filed by the contractor (see §§ 849.961 to 849.963, inclusive), or in other retained records, separate records of such information are not required.

(a) Copies of the prime contract, partial and final settlement agreements, and any other supplemental agreements material to the termination settlement, including any which adds or amends the termination article.

(b) Copies of the notice of termination, and termination instructions.

(c) Copies of settlement proposals submitted by the prime contractor, including all supporting statements, schedules and certificates.

(d) Copies of subcontract settlements expressly approved or ratified by the contracting officer, and copies of any reports of reviews of subcontract settlements by Government personnel.

(e) Records of partial payments or other interim financing, including applications in support thereof.

(f) Copies of authorizations to war contractors for final settlement of their subcontractors' claims and for the disposition of termination inventory, and of any revocation thereof.

(g) Reports of accounting or other reviews for the Government.

(h) Records of disposal of termination inventory, Government-furnished equipment and facilities, and of any credits arising therefrom, and copies of any storage agreements.

(i) Memoranda of important conferences with the contractor at which decisions were made affecting the settlement.

(j) Short report by the contracting officer prepared upon the conclusion of negotiations with the prime contractor, indicating the major considerations which led to his conclusion that the amount provided for in the settlement agreement was fair and reasonable.

(k) Recommendations or decisions by settlement review boards, property disposal boards and appeal boards.

(l) Copy of any findings made pursuant to section 13 (a) of the act as to the amount due on termination, with the additional records required by § 847.752–3.

(m) Copies of any final reports or recommendations of legal, accounting, property disposition and other technical personnel with respect to the settlement or the negotiation thereof.

(n) Documents and significant correspondence with regard to counterclaims, set-offs, litigation, and other matters affecting the settlement.

(o) Cutback records required by § 842.231–3.

(p) Copies of any delegation of authority by the contracting officer to any representative with respect to the settlement and of any revocation thereof.

(q) Any other records which the contracting officer deems necessary in a particular case. [JTR 761.3]

§ 847.761–4 *Application to direct settlements with subcontractors.* In the case of direct settlements with subcontractors, the same records will be maintained as prescribed in § 847.761–3 for settlements with prime contractors. [JTR 761.4]

§ 847.761–5 *Regulation No. 19 of the Office of Contract Settlement.* This section implements Regulation No. 19 of the Office of Contract Settlement (Part 8076 of Title 32). [JTR 761.5]

§ 847.762 *Examination of records by General Accounting Office.* [JTR 762]

§ 847.762–1 *Statutory provision.* Section 16 (c) of the act provides in part as follows:

The Comptroller General may investigate the settlements completed by each contracting agency for the purpose of reporting to the Congress from time to time on:

(1) Whether the settlement methods and procedures employed by such agency are of a kind and type designed to result in expeditious and fair settlements in accordance with and subject to the provisions of this Act and the orders and regulations of the Director;

(2) Whether such methods and procedures are followed by such agency with care and efficiency; and

(3) Whether such methods and procedures adequately protect the interest of the Government.

[JTR 762.1]

§ 847.762–2 *Arrangements for examination.* In carrying out its examination of records incident to the statutory authority set forth in § 847.762–1, it is the policy of the War and Navy Departments to assist the General Accounting Office in every way practicable. In order to facilitate this policy, the following informal understanding has been reached with the General Accounting Office:

(a) Representatives of the General Accounting Office will make arrangements for such examinations in advance, in the case of the War Department, with the responsible district office of the service involved, and, in the case of the Navy, with the contracting officer.

(b) Records will be reviewed at the places where such records are made available by the War and Navy Departments and will not be removed from such location by the General Accounting Office. [JTR 762.2]

§ 847.763 *War contractors' records.* (a) Section 19 (a) of the act makes it unlawful for any person willfully to secrete, mutilate, obliterate or destroy, or cause to be secreted, mutilated, obliterated or destroyed, any records of a war contractor relating to a war contract of $25,000 or more, or any records of a war contractor or any purchaser relating to any disposition of termination inventory, where the consideration involved is $5,000 or more, until (1) five years after such disposition of termination inventory; or (2) five years after the final settlement of such war contract; or (3) five years after the termination of hos-

tilities in the present war, whichever applicable period is longer.

(b) The uniform termination articles for fixed price and cost-plus-a-fixed-fee supply contracts require the contractor, for a period of three years after final settlement under the contract, to make available to the Government, at all reasonable times at the office of the contractor, all 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. These articles will require preservation of records in cases, if any, not covered by the act, for the period stated.

(c) General Regulation No. 11 of the Office of Contract Settlement authorizes destruction of war contractors' records upon compliance with its provisions relating to the making and retention of photographs and microphotographs. [JTR 762]

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§ 848.800 *Scope of part.* Parts 841 to 847, inclusive, of this subchapter prescribe the procedures generally applicable to terminations. This part deals with certain variations from these procedures or supplements to them in the case of special classes of war contracts or war contractors. It also deals with reporting procedures required for termination. [JTR 800]

SUBPART A—CONSTRUCTION CONTRACTS

§ 848.810 *Scope.* The policies and procedures prescribed by Parts 841 to 847 apply to terminations of war contracts for construction, except to the extent inappropriate because of the nature of these terminations. This subpart deals with the principal variations from the general procedures. [JTR 810]

§ 848.811 *Procedure for suspensions of performance under construction contracts.* [JTR 811]

§ 848.811–1 *Suspensions under war contracts.* The provisions of § 842.217, restricting the use of suspensions of performance, apply to construction contracts for military purposes. [JTR 811.1]

§ 848.811–2 *Suspensions under civil works contracts.* The provisions of § 842.217 do not apply to River and Harbor and Flood Control construction contracts. When work is suspended under such fixed-price construction contracts, the supplemental agreement made under § 842.217–3 will be subject to the approval of the Chief of Engineers, and will provide:

(a) For compensating the contractor for all completed work and for the expense of demobilizing his plant and organization;

(b) For adjusting the contract price applicable to the remainder of the work under the contract, if and when the Government requests its resumption; and

(c) For terminating the contract for the convenience of the Government, if the contracting officer and the contractor disagree as to the adjusted contract price for the remainder of the work which the Government desires resumed. [JTR 811.2]

§ 848.812 *Basis of settlement for fixed-price construction contracts.* [JTR 812]

§ 848.812–1 *General.* The approved termination article for fixed-price prime contracts for construction differs from the approved articles for fixed-price prime contracts for supplies primarily in the basis of settlement. Under the construction article, the settlement covers not merely the terminated portion of the contract as under the supply contract article, but also covers all completed work done under the contract as well. Thus the settlement, whether by agreement or by formula, compensates the contractor for all the work done up to the time of termination, and for his preparations to complete the contract and for his post-termination expenses. [JTR 812.1]

§ 848.812–2 *Mobilization costs.* In all fixed-price construction contracts there is a "mobilization cost" which is similar in many respects to "starting load costs" under fixed-price supply contracts. [JTR 812.2]

§ 848.813 *Negotiated settlement.* [JTR 813]

§ 848.813–1 *Methods.* In negotiating a settlement under a terminated fixed-price construction contract, the policies and procedures prescribed in Subpart C of Part 845 apply except that the compensation will cover all work previously done, as stated in § 848.812–1. [JTR 813.1]

§ 848.813–2 *Profit allowance.* As under a supply contract, the prime contractor under a fixed-price construction contract is not allowed any profit on work not done before termination. In determining the profit allowance, the contracting officer should take into account the factors stated in § 845.533 but should apply them to all work previously done under the contract. [JTR 813.2]

§ 848.814 *Formula settlement for terminated fixed-price prime contract for construction.* [JTR 814]

§ 848.814–1 *Under War Department article.* Under the fixed-price construction contract article of the War Department, if the contracting officer and the prime contractor do not agree within 90 days on the amount payable for the termination, the contractor is entitled to the following amounts:

(a) The costs incurred by him with respect to the contract, including those for completed portions of the contract;

(b) The cost of settling subcontracts;

(c) A percentage of the estimated profit on the total contract, based on the extent of completion of work under it; and

(d) Post termination expense for the protection of property and for settlement.

The total amount shall not exceed the total contract price, and is subject to deduction for any payments previously made, any unsettled claims for labor or materials, and any claim of the Government under the contract. [JTR 814.1]

§ 848.814–2 *Under Navy Department article.* Under the fixed-price construction contract article of the Navy Department, the prime contractor is entitled to the following amounts:

(a) The contract price adjusted downward equitably to reflect the elimination of the terminated portion of the work without including any allowance for anticipated profit on the terminated work or for expenses covered by (b) below;

(b) His costs incident to termination and not covered by the adjusted price, including the cost of any property transferred to the Government and the cost of its protection, and any other reasonable expenses incident to termination, approved by the contracting officer, plus a profit of 6 percent on the total of these items; and

(c) The costs of settling terminated subcontracts. The total amount shall not exceed the total contract price, and is subject to deduction for any payments previously made to the contractor, and any unsettled claims for labor or materials or any claims of the Government under the contract. [JTR 814.2]

§ 848.815 *Basis of settlement for cost-plus-a-fixed-fee construction contracts.* The procedures prescribed by Subpart E of Part 845 for settling terminated cost-plus-a-fixed-fee contracts apply to terminated cost-plus-a-fixed-fee construction contracts. [JTR 815]

SUBPART B—CONSOLIDATED TERMINATION PROGRAM FOR SELECTED CONTRACTORS

§ 848.820 *Scope.* This subpart deals with the consolidated termination program established by the War and Navy Departments for selected contractors, the designation of offices under that program, and their functions. [JTR 820]

§ 848.821 *Scope of consolidated termination program.* [JTR 821]

§ 848.821–1 *Nature and purpose of the program.* (a) The consolidated termination program (hereafter in this subpart sometimes called "the program") provides for the assignment of selected contractors to particular services of the War Department or offices of the Navy Department for accounting reviews of settlement proposals and disposition of termination inventories.

(b) The purpose of the program is to avoid the duplication of accounting and property disposal work which results when a number of services, bureaus, or war contractors have supply contracts with a particular war contractor and make independent accounting reviews and property disposal decisions relative to termination claims arising under such contracts. [JTR 821.1]

§ 848.821–2 *Procedures for consolidated termination program.* (a) The special feature of the program is reliance by one service or bureau upon the accounting reports and property disposal decisions of another service or bureau and reliance by contractors upon the work of Government personnel. The other provisions of this subchapter are applicable to claims handled under the program, except to the extent inconsistent with this subpart.

(b) Where the office designated in accordance with § 848.822 delays unduly in submitting an accounting or property disposal report, or where such reports are not considered satisfactory by the contracting officer, he may report the facts to the Readjustment Division, ASF, or the Industrial Readjustment Branch, OP&M. [JTR 821.2]

§ 848.821–3 *Cooperation on pretermination planning.* The designated office (a) will cooperate with contracting officers engaged with assigned contractors in advance preparations for termination under Subpart B of Part 842; (b) will make such accounting reviews of proposals for pretermination settlement agreements, and reviews of the property disposal actions involved therein, as may reasonably be requested by any such contracting officer; and (c) to the extent practicable, will work out pretermination arrangements with the assigned contractor relating to the methods and procedures used in the preparation of settlement proposals and the disposition of property under the consolidated termination program. [JTR 821.3]

§ 848.822 *Assignment of contractors.* [JTR 822]

§ 848.822–1 *Qualification of contractors.* Contractors who make written application in accordance with § 848.822–2 will be selected for participation in the program, subject to the limitations imposed by the availability of Government personnel, and to the following considerations:

(a) Whether the assignment will result in more expeditious settlement of termination claims than under the usual procedures;

(b) Whether the contractor has a large number of War or Navy Department prime contracts or subcontracts for similar articles sold to numerous different war contractors;

(c) Whether the contractor has or will have such a large volume of termination claims that utilization of government personnel will be economical; and

(d) Whether the contractor has demonstrated that he can efficiently process both his own settlement proposals and those of his subcontractors. [JTR 822.1]

§ 848.822–2 *Application of contractors.* Written applications of contractors for assignment under the program should generally be filed with the chairman of the termination coordination committee for the area in which the contractor is located, but may be filed with any service or bureau. Each such application will contain the following information:

(a) (1) Name of contractor and its subsidiaries.

(2) Address of principal office.

(3) Name and location of contractor's plants, including subsidiaries.

(4) Statement of the plants and subsidiaries to which this program will be applicable.

(5) A brief description of the major products being manufactured, indicating the services or bureaus for which they are manufactured.

(b) (1) The total number and dollar amount of all prime contracts with Government contracting agencies.

(2) The percentage of such total number and dollar amount of prime contracts applicable to each service or bureau.

(c) (1) The number and dollar amount, estimated if necessary, of all subcontracts relating to prime contracts with Government contracting agencies.

(2) The percentage, estimated if necessary, of such total number and dollar amount of subcontracts applicable to each service and bureau.

(d) (1) The approximate number of, and dollar amount of the terminated portions of, both prime contracts and subcontracts terminated to date, and during the preceding 4 months.

(2) The percentage, estimated if necessary, of such number and dollar amount applicable to each service and bureau.

(e) (1) The approximate number of, and dollar amount of the terminated portions of, war contracts terminated which have not been settled to date.

(2) The percentage, estimated if necessary, of such number and dollar amount applicable to each service and bureau.

(f) If more than one plant or company is to be included under the program, the information requested in (b) through (e) should be set forth for each such plant or company.

(g) A statement that all termination claims of the contractor under War or Navy Department prime contracts or subcontracts of any tier thereunder will be handled under the program, except as provided in § 848.827.

(h) A statement that the contractor will make all reasonable efforts to bring about the prompt settlement and payment of the termination claims of subcontractors under the terminated war contracts of the contractor. In furtherance of this undertaking the contractor will agree:

(1) To make prompt reviews, where necessary, of the termination claims of his subcontractors, undertake to negotiate the settlement of such claims, and process them in accordance with applicable regulations;

(2) To accept and promptly to exercise any authority granted to him by statute, regulation or special authorization from a contracting agency, (i) to settle the termination claims of his subcontractors, (ii) to take appropriate action with respect to termination inventories of such subcontractors, or (iii) to make partial payments to such subcontractors;

(3) To make application for a fund under § 843.364 in the event that the claims of his subcontractors under any terminated contract are substantial and that partial or final payments to such subcontractors cannot otherwise be made without unreasonable delay;

(4) To make partial payments out of such fund to such subcontractors promptly after receipt of proper application therefor, in all cases in which the assigned contractor is entitled to receive payment or credit from the Government in the full amount of such payment, and, in other cases, promptly to take appropriate action under applicable regulations by completing and forwarding the prescribed forms on each application of such subcontractors for partial payments. [JTR 822.2]

§ 843.822–3 *Recommendation of termination coordination committee.* (a) When an application is filed with a termination coordination committee, the committee will arrange to have it investigated. Normally, this investigation will be conducted by the service of the War Department having the predominant interest in the applicant's war contracts, as indicated by the application, or where the Navy Department has such predominant interest, by the appropriate local office of the Navy Department. After such investigation, the application will be forwarded, in accordance with paragraph (b) below, with the recommendation of the committee. Such recommendation shall include:

(1) Plants of the contractor and its subsidiaries to be assigned.

(2) The department to which the contractor is to be assigned and, in case of assignment to the War Department, the designated office or offices.

(3) A brief description of the functions, personnel and operations of any resident officers of the War and Navy Departments previously assigned to the contractor.

(4) A brief description of the termination organization in each plant of the contractor and its subsidiaries. The promptness with which subcontractors' claims are being processed and paid and the contractor's efficiency with respect to the presentation of his claim and disposal of inventories should be indicated.

(b) The recommendation, with the original of the contractor's application attached, will be forwarded for review, coordination and approval to the Readjustment Division, ASF, or the Industrial Readjustment Branch, OP&M, depending on which department is recommended to handle the assigned contractor. In the case of the War Department, the recommendation will be forwarded through the channels of his service (1) by the member of the committee to whose service the contractor is recommended for assignment, or, if there be no such member, (2) by the chairman. In the case of the Navy Department, the recommendation will be forwarded by the appropriate Navy member of the committee.

(c) Information copies of the recommendation and the contractor's application will be forwarded directly to the Readjustment Division, ASF, and the Industrial Readjustment Branch, OP&M.

(d) In the case of the War Department, applications filed with the chief of a service will ordinarily be referred to the representative of that service on the appropriate termination coordination committee for recommendation in accordance with this section. If that service has no representative on that committee, such applications will be forwarded to the Readjustment Division, ASF, which will arrange for necessary investigation and coordination. In the case of the Navy Department, applications filed with the chief of a bureau will be forwarded to the Industrial Readjustment Branch, OP&M, which will arrange for necessary investigation and coordination. [JTR 822.3]

§ 843.822–4 *Selection of contractors.* (a) The Readjustment Division, ASF, and the Industrial Readjustment Branch, OP&M, will review and coordinate recommendations with the services or offices involved. They will then assign contractors, or, in some cases appropriate divisions thereof, to individual services or to the Navy Department.

(b) When a war contractor has been assigned to a designated office, that office will notify the contractor in writing of the selection and of the scope of the work to be handled by the designated office for the services and bureaus. Information copies of the notice will be forwarded to the Readjustment Division, ASF, and the Industrial Readjustment Branch, OP&M.

(c) Contractors selected prior to the effective date of this regulation will be requested to take action with respect to the claims of their subcontractors in accordance with § 843.822–2 (h). [JTR 822.4]

§ 843.822–5 *Designated office.* (a) In the War Department, the chief of the service to which the contractor has been assigned will designate a single office within his service responsible for all work required to expedite the settlement of termination claims of the assigned contractor in accordance with the provisions of this regulation. Specifically, the designated office will be responsible for the following:

(1) Conducting all activities related to accounting matters as set forth in § 843.824.

(2) Conducting all activities related to the disposal of property, as set forth in § 843.825, including the determination of the existence of inventory and its allocability to the terminated contract. When a War Department office checks the existence and allocability of inventory to a terminated Navy Department prime contract or subcontract, such office may request the cognizant Navy material inspector to furnish such reasonable technical assistance as may be necessary. Similarly, such assistance may be requested from other services of the War Department where terminated prime or subcontracts of such services are involved.

(3) Expediting, with the assistance of property disposal, accounting and other personnel, the conclusion of agreements as to general policies and methods governing the preparation and submission of individual claims and the disposition of termination inventories; insuring the effective continuing operation of the program under such agreements; and effecting promptly any changes in such agreements made necessary by changing conditions. In this connection, the designated office will devote particular attention to furnishing guidance and assistance in matters not specifically within the normal scope of accounting and disposal personnel by furnishing opinions or decisions on which such personnel may rely as a basis for their recommendations or determinations.

(4) Supervising and coordinating the activities of all personnel involved, with the objectives of expediting the filing of claims by the contractor and of processing the claims within a minimum period of time subsequent to filing.

(b) In the Navy Department, the designated office will consist of the following:

(1) The Cost Inspection Service, which will be responsible for designating a Cost Inspection Service Office to conduct activities set forth in paragraph (a) (1) above.

(2) The Material Redistribution and Disposal Administration, which will be responsible for designating a Field Disposal Office to conduct activities set forth in paragraph (a) (2) above except that determination of the existence of inventory and its allocability to the terminated contracts will remain the responsibility of the material inspector.

(3) The Material Inspection Service, which will designate the cognizant Inspection Office to be responsible for activities designated in paragraph (a) (3) and (4) above. This office will also check the existence and quantity of inventories, spot check the price of raw materials and purchased parts, and determine the allocability of inventories to the terminated contract. When an Inspection Office checks the existence of inventory and its allocability to a terminated War Department prime contract or subcontract thereunder, the Inspection Office may request the appropriate War Department office to furnish such reasonable technical assistance as may be necessary. [JTR 822.5]

§ 843.822–6 *Responsibility with respect to contracts terminated prior to assignment.* The designated office shall have no responsibility with respect to terminations incurred prior to the date of assignment to the program. Such office may, however, upon request of the terminating service, assume responsibility for processing such prior terminations in accordance with this subchapter. [JTR 822.6]

§ 843.823 *Authority for direct communication.* When a contracting officer desires information regarding a claim

involving a contractor assigned to a designated office under this program, his request for such information will be made directly to that designated office. Any designated office is authorized to communicate directly with war contractors, contracting officers or appropriate offices of the services or bureaus as to any matters relating to the terminated contracts of the assigned contractor. [JTR 823]

§ 848.824 *Accounting review of settlement proposals of war contractors.* [JTR 824]

§ 848.824–1 *Procedures.* (a) All settlement proposals of the assigned contractor will be filed with the designated office, except as provided in § 848.827. That office will make office accounting reviews of such proposals, and will make further accounting reviews as requested by a contracting officer or by a higher tier war contractor. Even without, or in advance of, such requests, the designated office will make field accounting reviews, where such examination would be made in accordance with the established practice of the designated office. [JTR 824.1]

(b) The Joint Termination Accounting Manual applies to the review and examination of settlement proposals under the consolidated termination program in the same manner as any other settlement proposals.

(c) With respect to subcontractors' settlement proposals included as part of the assigned contractor's settlement proposal, the designated office may make office accounting reviews. Where field accounting reviews of such subcontractors' settlement proposals are required to be made by Government personnel, arrangements for such reviews will be made by the designated office. [JTR 824.1]

§ 848.824–2 *Recognition of accounting reports.* Contracting officers, prime contractors, and subcontractors under prime contracts of the War and Navy Departments will accord accounting reports made under this program the same recognition as accounting reports prepared by their own personnel. [JTR 824.2]

§ 848.825 *Property disposal functions of designated office.* [JTR 825]

§ 848.825–1 *Responsibility and authority for disposal.* (a) The designated office in the case of a contractor assigned to the War Department, or the NMR&DA in the case of a contractor assigned to the Navy Department, shall have the authority and responsibility with respect to termination inventories, whether arising under War or Navy Department prime contracts or subcontracts thereunder, which the contracting officer for the War Department, or the NMR&DA for the Navy Department, has under Part 844 of this subchapter, except as modified by this subpart. When the designated office is in the War Department, and the prime contract is a War Department contract, such authority and responsibility of the designated office shall also extend to termination inventories of subcontractors of the assigned contractor, other than another assigned contractor and his lower tier subcontractors. When the designated office is in the Navy Department, or the prime contract is a Navy Department contract, the designated office shall have no authority or responsibility with respect to termination inventories of subcontractors of the assigned contractor.

(b) A designated office, required to take action under this section (1) shall take such action in accordance with the procedure of the War Department service to which the contractor is assigned, or of the Navy Department; and (2) may arrange to have such action taken by another office within its service or its Department.

(c) Property disposal personnel of the designated office shall promptly begin disposal action with respect to termination inventory to the extent possible before receipt of a copy of the inventory schedules, except items included in production or supply lists or significant materials referred to in § 848.825–6; and for the purpose of such disposal action, reliance will be placed on the contractor's representations as to allocability.

(d) The responsibility and authority of the designated office with respect to disposal of termination inventory as set forth in paragraphs (a) and (b) above include the approval of sales and retentions by the contractor, and the reporting to disposal agencies and removal and storage, in accordance with Part 844, of those portions of the termination inventories which have not otherwise been disposed of. When the designated office is in the War Department, such authority and responsibility shall also include any required review by a disposal board of property disposal action. When the designated office is in the Navy Department, any required review shall be made in accordance with usual Navy Department procedures.

(e) Where the designated office is in the War Department, the provisions of Subpart I of Part 844 shall apply to termination inventory, title to which has been taken by the Government, and accountability for such property will be established by an accountable property officer in the service of the designated office. In such cases, however, where the termination inventory includes Government-owned property previously furnished to the contractor by the War Department, the requirements of § 844.493–2 will be observed. Where the designated office is in the Navy Department, the records prescribed in Subpart I of Part 844 will not be required, even though the inventory relates to War Department contracts.

(f) Whenever the disposal of termination inventory allocable to a prime contract included in the consolidated termination program requires the shipment thereof at the expense of the Government, Government bills of lading shall be issued, and the cost thereof shall be charged in the department of which the designated office is a part without regard to whether or not the termination inventory in question is allocable to terminated prime contracts of the War Department or the Navy Department or to the prime contracts of any other Governmental agency. [JTR 825.1]

§ 848.825–2 *Recognition of property disposition reports.* Contracting officers, prime contractors, and subcontractors under prime contracts of the War or Navy Department will recognize and accept as final and conclusive for all purposes the prices and other terms and conditions on which any termination inventory has been retained, disposed of or otherwise properly accounted for by the assigned contractor with the approval of the designated office. [JTR 825.2]

§ 848.825–3 *Survey.* When a war contractor is assigned to a designated office, property disposal personnel of that office should make a comprehensive survey of the war contractor's procedures for property disposal. [JTR 825.3]

§ 848.825–4 *Preparation of inventory schedules.* The designated office (in the case of the Navy, the cognizant Navy material inspector) will advise the contractor in the preparation of his inventory schedules. Contractors will be required to list on separate schedules the items of material included in production and supply lists which the contracting officer or the Navy material inspector has previously furnished to the contractor. Contractors will submit inventory schedules for both War and Navy Department contracts directly to the designated office (in the case of the Navy, the cognizant Navy material inspector). [JTR 825.4]

§ 848.825–5 *Examination of inventory schedules.* The designated office will determine whether inventory schedules are in satisfactory form for storage and removal purposes. [JTR 825.5]

§ 848.825–6 *Disposal of inventory.* Approval by the designated office of dispositions of inventory submitted by the contractor is subject to the following limitations:

(a) *Production and supply items.* Production and supply items are materials which the War or Navy Department requires for its own use. A list of such items required by the Navy Department is included in the Navy Material Inspection Service Manual on Contract Termination. (This Manual may be obtained by designated offices from the Readjustment Distribution Center, formerly the Joint Army-Navy Termination Regulation Distribution Office, 90 Church Street, New York 7, New York.) Lists of items required by services of the War Department may be published from time to time. The designated office shall not dispose, or approve the disposition, of items included in production and supply lists, but shall forward copies of the inventory schedules listing such items to the contracting service or, in the case of Navy contracts, to the Navy material inspector cognizant of the contractor, to be handled in accordance with the procedures applicable to the disposition of such items. If no shipping instructions have been received ten days before expiration of the plant clearance period, the designated office shall proceed with removal and storage of the production and supply items.

(b) *Material subject to special arrangements.* Each service or bureau

which has a special arrangement under § 844.452–3 or Chapter 10 of the Navy Material Inspection Service Manual on Contract Termination with respect to the disposition of termination inventory will furnish the designated office with copies or summaries thereof, together with instructions and procedures to be followed, and no action with respect to any such termination inventory shall be taken except in accordance therewith; but if no shipping instructions have been received ten days before expiration of the plant clearance period, the designated office shall proceed with removal and storage of such inventory.

(c) *Significant materials.* (1) The designated office will exercise its judgment as to what significant items of material, if any, in addition to those included in paragraphs (a) and (b), should be submitted to the contracting service or bureau for consideration. In the case of War Department contracts, the designated office shall report the existence and quantities of such items directly to the contracting service, and, in the case of Navy Department contracts, to the cognizant Navy material inspector, with a request that disposition instructions be sent promptly to the designated office, if such items are desired.

(2) The designated office shall take no action with respect to the disposition of such significant materials for a period of fifteen days from the date of reference. If at the expiration of such period the designated office has not received disposition instructions covering such materials, and in no event later than the expiration of the plant clearance period, it shall proceed with their disposition. [JTR 825.6]

§ 848.826 *Reporting and routing procedures.* [JTR 826]

§ 848.826–1 *War Department procedure.* In the case of contracts assigned to a designated office in the War Department, property disposal personnel of that office will prepare a report covering the following points:

(a) Approval of inventory schedules as to form.

(b) The extent of examinations made to verify the existence of materials included in the inventory schedules.

(c) Comments as to the allocability of that material to the terminated contract.

(d) A summary of disposal actions which have been taken with respect to the inventory, including approvals of sales or diversions by the contractor, scrapping determinations, and property to which title has been taken for the Government. [JTR 826.1]

§ 848.826–2 *Navy Department procedure.* (a) In the case of contractors assigned to the Navy Department, the Navy material inspector will approve inventory schedules as to form, and forward them to the Field Disposal Officer and Field Accounting Officer. He will then determine and report to those officers on the quantity and existence of such materials, their allocability to the contract and the pricing of the raw materials and purchased parts. The Field Accounting Officer will attach the inventory schedules to the reviewed settlement proposal and forward them to the Navy material inspector.

(b) The Field Disposal Officer will report to the Navy material inspector immediately on property dispositions made prior to the receipt of the approved schedules, and, at the time disposal action is completed, but in no event later than the end of the plant clearance period, will report to such inspector on credits established, approvals of sales or retentions by the contractor, scrapping determinations, and property which has been stored or removed. [JTR 826.2]

§ 848.826–3 *Forwarding of settlement proposals.* (a) Where a claim relates to a War Department prime contract, the settlement proposal, with the inventory schedules and accounting and property disposal reports attached, will be forwarded to the contracting officer. Where a claim relates to a subcontract under a War Department prime contract, the proposal, with the schedules and reports attached, will be delivered to the assigned contractor for transmission to his customer.

(b) Where a claim relates to a Navy Department prime contract, or to a subcontract under a Navy Department prime contract and the amount of the claim exceeds $10,000, the settlement proposal, with the inventory schedules and accounting and property disposal reports attached, will be forwarded to the Navy material inspector cognizant of the assigned contractor.

(c) Where a claim not exceeding $10,000 relates to a subcontract under a Navy Department prime contract, the settlement proposal, and related accounting and property disposal reports attached, will be delivered to the assigned contractor for transmission to his customer. [JTR 826.3]

§ 848.827 *Limitations on authority of designated office.* (a) In exceptional cases the contracting officer under a prime contract may limit the authority of a designated office with respect to that contract and subcontracts thereunder. Each such case shall be reported immediately by the designated office to the Readjustment Division, ASF, and to the Industrial Readjustment Branch, OP&M.

(b) Accounting personnel of a designated office in the War Department shall have no responsibility with respect to any cost-plus-a-fixed-fee contracts except those of the service of the designated office. Accounting personnel of the designated office in the Navy Department shall have no responsibility with respect to any War Department cost-plus-a-fixed-fee contracts.

(c) Material to which the Government has title under cost-plus-a-fixed-fee contracts or other contracts shall be disposed of as provided in § 844.432–2.

(d) Settlement proposals and proposed property disposal actions may be submitted by the assigned contractor as a subcontractor to the designated office, notwithstanding the fact the higher tier war contractor has authority to take final action with respect thereto. Nothing in this subpart, however, shall impair any such authority of a higher tier war contractor, or prevent the assigned contractor from submitting any settlement proposal or proposed property disposal action to such higher tier war contractor where that contractor has authority to enter into a final settlement agreement or to authorize property disposal action without further approval.

(e) The designated office shall have no responsibility with respect to the removal of plant equipment (as defined in Subpart H of Part 844) covered by facilities contracts of other services of the War Department or bureaus of the Navy Department. [JTR 827]

§ 848.828 *List of assigned contractors.* A list of the contractors assigned under the consolidated termination program (and of those assigned under the program for company-wide settlement of termination claims) is set forth in Appendix D.[1] This list will be revised from time to time as additional contractors are brought into either program. [JTR 828]

§ 848.829 *Maritime Commission claim.* (a) The Maritime Commission has requested that, to the extent deemed feasible by the War and Navy Departments, claims under its prime contracts and subcontracts thereunder be included in the consolidated termination program. Such claims may be included by the Readjustment Division, ASF, in the case of a contractor assigned to a service of the War Department, and by the Industrial Readjustment Branch, OP&M, in the case of a contractor assigned to the Navy Department.

(b) Where claims of an assigned contractor under Maritime Commission contracts have been included in the program, the designated office shall take action thereon in accordance with this subpart. If the designated office is in the War Department, it may apply thereto the procedures applied to claims under contracts of its service. If the designated office is in the Navy Department, it may apply thereto Navy Department procedures.

(c) Where a claim relates to a Maritime Commission prime contract, the settlement proposal, with the inventory schedules and accounting and property disposal reports attached, will be forwarded by the designated office to the contracting officer. Where a claim relates to subcontracts under a Maritime Commission prime contract, the proposal, with the schedules and reports attached, will be delivered by the designated office to the assigned contractor for transmission to his customer, and a copy thereof will be forwarded directly to the contracting officer under the prime contract.

(d) The designated office may take action in accordance with § 848.825 with respect to termination inventory under Maritime Commission prime contracts and subcontracts thereunder, unless and except to the extent that the Maritime Commission has furnished a list of items of termination inventory required by the Commission for its own use. Items appearing on any such list shall be forwarded to the Maritime Commission in accordance with its shipping instructions. If no shipping instructions have

[1] Filed with the Division of the Federal Register.

been received ten days before the expiration of the plant-clearance period, the designated office shall proceed with the removal and storage of such items. [JTR 829]

SUBPART C—TERMINATION COORDINATION COMMITTEES; AUDIT COORDINATION COMMITTEES

§ 848.830 *Scope.* This subpart deals (a) with the termination coordination committees established by the War and Navy Departments for the coordination of activities and interchange of information relative to contract terminations in particular areas and (b) with the termination functions of the audit coordination committees established by the two Departments in particular areas. [JTR 830]

§ 848.831 *Termination coordination committees.* [JTR 831]

§ 848.831–1 *Organization of committees.* Each termination coordination committee is composed, for the War Department, of representatives of the services having district or regional procurement offices in the area served by the committee, and, for the Navy Department, of representatives, functioning in that area, of the Material Inspection Service, Navy Material Redistribution and Disposal Administration and Industry Cooperation Division, OP&M (all referred to in §§ 848.831–2 and 848.832 as "services"). The chairman of each audit coordination committee in the area is an ex-officio member of the termination coordination committee. Representatives of other contracting agencies may also participate as members of such committees. The responsibility for designating the chairman of each termination coordination committee is vested, for the War Department, in the services designated by the Readjustment Division, ASF, and for the Navy Department, in the Industrial Readjustment Branch, OP&M. [JTR 831.1]

§ 848.831–2 *Where formed.* (a) There are set forth in § 848.837: (1) the areas for which termination coordination committees have been formed, and (2) the responsibility for the designation of the chairmen, by reference to a service of the War Department, or to the Navy Department.

(b) Where the local office of a service operates in more than one of the areas listed in § 848.837, representatives should be appointed by that office to the termination coordination committee for each area. [JTR 831.2]

§ 848.832 *Functions of termination coordination committees.* (a) The termination coordination committees shall perform within their respective areas the following functions:

(1) Exchange information regarding termination problems of mutual interest to the different services.

(2) Coordinate the activities of the services in the training of contractor personnel on termination matters and the dissemination of public information regarding this regulation and termination procedures.

(3) Coordinate advance preparations with contractors for termination.

(4) Recommend to the Readjustment Division, ASF, and the Industrial Readjustment Branch, OP&M, in accordance with §§ 848.822–3 and 848.833, the designation of contractors for the consolidated termination program described in Subpart B of this part.

(5) Coordinate such other termination activities as may be specifically directed or approved by the Readjustment Division, ASF, or the Industrial Readjustment Branch, OP&M.

(b) The chairman of each termination coordination committee is responsible for performance by the committee of the foregoing functions. Each committee will have a full-time secretary appointed by the chairman from the personnel of his service. Under the direction of the chairman, the secretary shall furnish information regarding the committee's activities to interested Government personnel and contractors.

(c) The functions of the committees will be performed through subcommittees on specific subjects, such as training and information, pretermination planning, and interim financing.

(d) Any accounting matter, within the functions of the audit coordination committees, as described in § 848.835, will be referred to the audit coordination committee for the area through its chairman.

(e) It is not within the authority of the termination coordination committees to issue their own interpretations of this subchapter or to perform any functions otherwise assigned by this subchapter. [JTR 832]

§ 848.833 *Correspondence.* (a) Committee recommendations for the assignment of contractors under the consolidated termination program will be forwarded by the committee representative of the service or of the Navy Department to which assignment is recommended, through its regular channels. An information copy of each recommendation will be sent directly to the Readjustment Division, ASF, and to the Industrial Readjustment Branch, OP&M. All other formal communications from or to a termination coordination committee will be addressed to or initiated by the chairman of the committee through the regular channels of his service or of the Navy Department. An information copy of any communication from the committee will be sent directly to the Readjustment Division, ASF, and to the Industrial Readjustment Branch, OP&M, but action will be taken only after receipt through regular channels of the original communication. Two copies of the minutes of each meeting will be sent directly to the Readjustment Division, ASF, and to the Industrial Readjustment Branch, OP&M.

(b) Inquiries to higher authority relating to individual cases or problems of operation or administration which are the specific responsibility of the chief of a service or bureau should not be initiated by or forwarded through a termination coordination committee, but should be initiated by the interested office of that service or bureau and forwarded through its regular channels. [JTR 833]

§ 848.834 *Audit coordination committees.* [JTR 834]

§ 848.834–1 *Organization of committees.* Each audit coordination committee is composed of an accounting representative of each of the services of the War Department and of the Cost Inspection Service of the Navy Department (all referred to in § 848.834 through § 848.836 as "services") in each area in which such services desire representation. Accounting representatives of other contracting agencies may also participate as members of such committees. [JTR 834.1]

§ 848.834–2 *Where formed.* (a) The areas for which audit coordination committees have been formed are the same as those listed in § 848.837.

(b) No new committee will be organized and no committee will be dissolved without written authority from the Joint Army-Navy Audit Committee described in § 841.142–4. [JTR 834.2]

§ 848.835 *Functions of audit coordination committees.* [JTR 835]

§ 848.835–1 *General.* In addition to the duties with respect to continuing war contracts assigned to the audit coordination committees, each such committee shall make appropriate local arrangements for the interchange of accounting information among the services, and to the fullest extent feasible, will otherwise coordinate their termination accounting activities so as to minimize duplication of dealings with contractors. In carrying out this program, the audit coordination committees should endeavor to develop the desired coordination on the most flexible basis, taking into consideration local conditions. [JTR 835.1]

§ 848.835–2 *Assistance to termination coordination committees.* Upon request by any subcommittee of the termination coordination committee for an area, the audit coordination committee serving the same area shall assign one of its members to advise that subcommittee on accounting matters. [JTR 835.2]

§ 848.835–3 *Control file.* Each audit coordination committee will establish a control office and maintain therein a control file of all contractors in the area served by the committee concerning which a service has compiled accounting information. The control file will be designed to show what accounting work, if any, has been performed by each service represented on the committee with respect to:

(a) Pre-termination accounting surveys and agreements;

(b) Field examinations of contractors' termination settlement proposals;

(c) Audits of cost-plus-a-fixed-fee contracts;

(d) Unit cost studies and examinations made in connection with forward pricing;

(e) Audit and distribution of overhead under Master Ship Repair and Alteration and similar type contracts;

(f) Renegotiation of contracts; and

(g) Any other reviews in which the accounting information compiled is

deemed sufficiently important to warrant listing. [JTR 835.3]

§ 848.835–4 *Access to information.* Access to accounting information and work papers in the possession of a service will be granted only to representatives of the War or Navy Department or other contracting agencies; except that such information and papers may be made available to another war contractor to the extent, and subject to the limitations and conditions, which the contractor to which the information relates may in writing authorize. Nothing in this section shall authorize or require any departure from any applicable regulations relating to the disclosure of classified information. [JTR 835.4]

§ 848.835–5 *Physical possession of accounting information.* The audit coordination committees shall not have physical possession of or control over accounting information. Such information should remain in the possession of the service which compiled it. Representatives of other services or contracting agencies should arrange with the service having the information to review it in the office of that service. [JTR 835.5]

§ 848.835–6 *Elimination of duplication.* Before undertaking termination accounting work with respect to a war contractor, a service should normally inquire of the local control office to determine what accounting information regarding that contractor is available in the offices of other services. Existing pertinent accounting information should be utilized in order to eliminate duplication of effort. [JTR 835.6]

§ 848.835–7 *Reliance on accounting information.* The accounting information obtained by a service through the audit coordination committee from another service will be accorded the same recognition as information compiled by the accounting personnel receiving such information. [JTR 835.7]

§ 848.835–8 *Limitation of functions.* The functions of the audit coordination committees with respect to terminations are limited to those described in §§ 848.835 to 848.835–7, inclusive, and do not include any administrative responsibility with respect to particular contractors. It remains the duty of the service responsible for termination settlement (or accounting matters related thereto), or in the case of contractors assigned under the consolidated termination program, the designated office, to determine questions of accounting policy and procedure. [JTR 835.8]

§ 848.836 *Correspondence.* All correspondence relating to the functions and operations of an audit coordination committee will be transmitted by the chairman of that committee through the regular channels of his service to the Joint Army-Navy Audit Committee described in § 841.142–4. An information copy of each letter will be sent directly to the Office of the Fiscal Director, Headquarters, ASF, and to the Director, Cost Inspection Service, Bureau of Supplies and Accounts, Navy Department. [JTR 836]

§ 848.837 *Areas for which committees formed.* (a) This section sets forth: (1) the areas for which termination coordination committees and audit coordination committees have been formed, and (2) the responsibility for the designation of the chairmen of the termination coordination committees, by reference to a service of the War Department, or to the Navy Department:

Atlanta.....Navy Department

States of North Carolina, South Carolina, Georgia, Florida, Tennessee, Alabama, and Mississippi.

Boston.....Navy Department

States of Maine, New Hampshire, Vermont, Rhode Island, and Massachusetts except the counties of Berkshire, Hampshire, Hampden, and Franklin in western Massachusetts.

Chicago.....Ordnance Department

State of Iowa; counties of Crawford, Richland, Grant, Iowa, Lafayette, Green, and Rock in the State of Wisconsin; counties of Hancock, McDonough, Fulton, Macon, Sangamon, Macon, Moultrie, Coles, and Clark and all counties north thereof in the State of Illinois; and the counties of Benton, White, Carroll, Cass, Miami, Wabash, Huntington, Wells, and Adams and all counties north thereof in the State of Indiana.

Cincinnati.....Ordnance Department

State of Kentucky; that portion of the State of Ohio which is south of the counties of Mercer, Auglaize, Shelby, Champaign, Madison, Franklin, Fairfield, Licking, Muskingum, Guernsey, and Belmont; and that portion of the State of Indiana which is south of the counties of Benton, White, Carroll, Cass, Miami, Wabash, Huntington, Wells, and Adams.

Cleveland.....Ordnance Department

That portion of the State of Ohio which is north of the counties of Darke, Miami, Clark, Fayette, Pickaway, Hocking, Perry, Morgan, Noble, Belmont, and Jefferson.

Detroit.....Ordnance Department

That portion of the State of Michigan which is between Lakes Michigan and Huron (the area known as the Lower Peninsula).

Dallas.....Chemical Warfare Service

States of Louisiana, Texas, and Oklahoma and the counties of Howard, Sevier, Little River, Miller, Lafayette and Hempstead in the State of Arkansas.

Denver.....Army Air Forces

States of Colorado, New Mexico, and Wyoming.

Kansas City.....Army Air Forces

States of Kansas and Nebraska; and the counties of Benton, Carroll, Madison, Franklin, Sebastian, Crawford, Washington, and Polk of the State of Arkansas; and the counties of McDonald, Barry, Stone, Carlstian, Greene, Dade, Lawrence, Newton, Jasper, Barton, Mercer, Grundy, Livingston, Carroll, Saline, Pettis, Benton, Hickory, Dallas, Polk, Cedar, and Vernon of the State of Missouri.

Los Angeles.....Army Air Forces

State of Arizona; Clark County in Nevada; and the southern part of the State of California including the counties of Santa Barbara, Kern, and San Bernardino, and all counties south thereof.

Milwaukee.....Navy Department

State of Wisconsin except the counties of Crawford, Richland, Grant, Iowa, Lafayette, Green, Rock, and except all counties west of Iron, Vilas, Oneida, Lincoln, Marathon, Wood, Juneau, and Sauk; and that portion of the State of Michigan known as the Upper Peninsula.

Minneapolis-St. Paul.....Corps of Engineers

States of Minnesota, North Dakota, and South Dakota and the counties of Douglas, Bayfield, Ashland, Burnett, Washburn, Sawyer, Price, Polk, Barron, Rusk, Taylor, St. Croix, Chippewa, Pierce, Pepin, Eau Claire, Clark, Buffalo, Trempealeau, Jackson, La Crosse, Monroe, Dunn, and Vernon in the State of Wisconsin.

New York.....Army Air Forces

Lower New York State consisting of the counties of Ulster, Dutchess, Sullivan, Orange, Putnam, Rockland, Westchester, Bronx, New York, Kings, Richmond, Queens, Nassau, and Suffolk; and that portion of the State of New Jersey north of Mercer, Burlington, and Ocean Counties.

Philadelphia.....Quartermaster Corps

States of Delaware, Virginia, District of Columbia and the State of Maryland excluding the counties of Garrett and Allegheny; and the counties of Mercer, Burlington, Ocean, and all counties south thereof in the State of New Jersey; and that portion of the State of Pennsylvania which is East of the counties of Potter, Clinton, Centre, Huntingdon and Franklin.

Pittsburgh.....Ordnance Department

State of West Virginia; the counties of Garrett and Allegheny in the State of Maryland; the counties of Potter, Centre, Clinton, Huntingdon, Franklin, and all counties west thereof in the State of Pennsylvania; and the counties of Jefferson and Belmont in the State of Ohio.

Rochester.....Army Air Forces

State of New York except the counties of Ulster, Dutchess, Sullivan, Orange, Putnam, Rockland, Westchester, Bronx, New York, Kings, Richmond, Queens, Nassau, and Suffolk in lower New York State.

St. Louis.....Ordnance Department

State of Arkansas except the counties of Benton, Carroll, Madison, Franklin, Sebastian, Crawford, Washington, Polk, Howard, Sevier, Little River, Miller, Lafayette, and Hempstead; that portion of the State of Missouri which is east of the counties of Mercer, Grundy, Livingston, Carroll, Saline, Pettis, Benton, Hickory, Dallas, Greene, Christian, and Stone; and that portion of the State of Illinois south of the counties of Hancock, McDonough, Fulton, Macon, Sangamon, Macon, Moultrie, Coles, and Clark.

San Francisco.....Navy Department

State of Utah; State of Nevada except Clark County; and the northern part of the State of California including the counties of San Luis Obispo, Kings, Tulare, Inyo, and all counties north thereof.

Seattle.....Army Air Forces

States of Washington, Oregon, Idaho, and Montana.

Springfield, Mass.....Ordnance Department

State of Connecticut and the counties of Berkshire, Hampshire, Hampden, and Franklin in western Massachusetts.

SUBPART D—TERMINATION OF WAR CONTRACTS WITH WAR SUPPLIES LIMITED (CANADA)

§ 848.840 *Scope.* This subpart contains the procedures and policies to be followed upon termination at the option of the Government of prime contracts between any service or bureau and War Supplies Limited. These procedures and policies are set forth in and are con-

sistent with a letter of understanding dated January 8, 1945 signed by the Secretary of the Navy, the Under Secretary of War, and the President of War Supplies Limited. War Supplies Limited is referred to in this subpart as the "Corporation". These procedures and policies supersede anything to the contrary contained in any termination provision forming part of any contract between the War or Navy Department and the Corporation. [JTR 840]

§ 848.841 *Application of the Contract Settlement Act of 1944 and this subchapter.* Neither the act nor this subchapter applies to war contracts of the War or Navy Department made or to be performed outside the continental limits of the United States, except to the extent that, as set forth in § 841.111–3, some or all of the provisions thereof are made applicable to any such contracts. The termination and settlement of prime contracts between the War or Navy Department and the Corporation are governed by this subchapter to the extent set forth in this subpart. Except as set forth in §§ 848.843–3, 848.843–4 and 848.843–5, the termination and settlement of subcontracts under such contracts will be governed by the policies and procedures of the Canadian Government rather than those set forth in this subchapter. [JTR 841]

§ 848.842 *Termination article.* A special termination article, set forth in § 849.938, is provided for fixed-price supply contracts between the Corporation and the War or Navy Department. This article will be inserted in all such contracts at the time of execution, and may be included by amendment in such existing contracts, either prior or subsequent to the service of a notice of termination. [JTR 842]

§ 848.843 *Procedures for settlement.* [JTR 843]

§ 848.843–1 *Notice of termination.* (a) The service or bureau will send appropriate notice of termination of a Corporation contract and related documents to the Washington office of the Corporation at 1205 15th Street, N.W., Washington, D. C.

(b) The service or bureau and the Corporation will agree on the number of copies of each instrument required for files and distribution. [JTR 843.1]

§ 848.843–2 *Settlement by the Corporation.* (a) Except as provided in § 848.843–3, the Corporation, acting through the Canadian Department of Munitions and Supply, will settle and pay the termination claims of its subcontractors (including United States subcontractors) in accordance with the principles and procedures applied generally by the Canadian Government in the termination at its option of its own war contracts. In the case of United States subcontractors, the Corporation may rely on such assistance in checking, verifying and certifying claims and inventories as may be available from the representatives of the War and Navy Departments, if any, located in the United States subcontractors' plants. Such assistance will be made available by the services and bureaus, on request, to the extent that it is possible to do so without substantially impairing the performance by such representatives of their other functions.

(b) The service or bureau will review with the Corporation the progress of any termination settlement if advice has not been received of its completion within three months after the effective date of the termination. [JTR 843.2]

§ 848.843–3 *Settlement by service or bureau.* (a) Upon notice to the Corporation, a service or bureau may settle directly or settle and pay directly termination claims of United States subcontractors to the extent that such service or bureau deems such action necessary or desirable for the expeditious and equitable settlement of such claims. In such cases, the service or bureau shall obtain any necessary authority in accordance with §§ 846.661, 846.662, and 846.667, and in effecting such settlements shall follow to the extent applicable the procedures of § 846.663. The service or bureau will promptly report to the Corporation the amount of each such direct settlement and any amount which it has elected to pay directly upon such settlements.

(b) Whenever a United States subcontractor requests a service or bureau to settle or settle and pay its termination claim, the service or bureau may agree to do so in accordance with the provisions of this section.

(c) To assist the service or bureau to make direct settlements with United States subcontractors, the Corporation will upon request, notify the service or bureau of any set-off or counterclaim that it or any higher tier Canadian customer may have against the particular United States subcontractor; will assign to the service or bureau all its interest under any United States subcontract to be settled by such service or bureau; will use its best efforts to obtain any necessary consent of any Canadian war contractor to such direct settlement; and will render, and endeavor to cause Canadian war contractors to render, such further assistance as may be requested. [JTR 843.3]

§ 848.843–4 *Termination inventory on settlement by the Corporation.* (a) Except as provided in paragraph (b) below, any termination inventory in the plants of subcontractors shall be retained, disposed of, or otherwise accounted for under the policies and procedures of the Canadian Government.

(b) A United States subcontractor may retain or dispose of termination inventory at prices considered reasonable by the Corporation. Where, at any time after the termination of a United States subcontract, it appears likely to the Corporation or to the subcontractor that, after final settlement, there will be any such termination inventory not so retained or disposed of, the subcontractor may prepare inventory schedules, in the form and manner required by § 844.427, in order to start the plant clearance period referred to in § 844.413. Such schedules will be submitted, in the case of the War Department, to the contracting officer of the service with which the Corporation executed the prime contract, and in the case of the Navy, to the Navy material inspector cognizant of the subcontractor. After the submission of such schedules, the responsibility for the removal and storage of the termination inventory therein listed will be that of the service or bureau. Such responsibility shall be governed by and fulfilled in accordance with the applicable provisions of Part 844.

(c) Except as provided in paragraph (b) above, or unless otherwise agreed, no termination inventory (except articles completed and on hand at the effective date of termination) will be turned over to the War or Navy Department as part of any termination settlement with the Corporation. The object will be to express the whole obligation of the War or Navy Department on the termination of each contract with the Corporation as a specified dollar amount. [JTR 843.4]

§ 848.843–5 *Termination inventory on settlement by service or bureau.* Where the service or bureau settles directly the termination claims of a United States subcontractor, his termination inventory shall be dealt with and accounted for in accordance with Part 844. [JTR 843.5]

§ 848.843–6 *Certificate.* On the basis of settlements made by the Corporation and any settlements made (but not paid) by the service or bureau, the Corporation will determine the net amount, if any, which is fairly and reasonably owing by the War or Navy Department on account of a terminated prime contract and will certify this amount to the service or bureau on the form of certificate set forth at § 849.989–1. [JTR 843.6]

§ 848.843–7 *Settlement agreement.* On the basis of the certificate the service or bureau will prepare a settlement agreement in the form set forth at § 849.989–2. The settlement agreement will be executed by both parties, and payment, if any, will be made thereon in usual course. [JTR 843.7]

§ 848.844 *Basis of settlement.* [JTR 844]

§ 848.844–1 *General basis of certificate.* (a) The net amount certified by the Corporation for payment will, in general, be based upon the net amounts found to be due under settlements made with subcontractors, other than those United States subcontractors whose claims are to be paid directly by the War or Navy Department, (so far as such amounts are properly allocable to the terminated contract between the Corporation and the War or Navy Department), less appropriate credits for retention or disposal of termination inventory, tools and equipment.

(b) The amount of any such credit may be established either by appraisal or by actual sale, as the Corporation in its discretion in each instance may deem proper. In no event, however, will the amount determined to be owing by the War or Navy Department include any charges, costs, or expenses which under any agreement between the Corporation or the Canadian Government and the War or Navy Department are not to be included as factors of cost. [JTR 844.1]

§ 848.844–2 *Effect of certificate.* The certificate by the Corporation will be accepted as the basis for the settlement agreement with the Corporation without further inquiry by the service or bureau, except as further inquiry may be made pursuant to § 848.844–3, and except that any formal or patent errors, discrepancies or omissions in the certificate may be resolved directly by such service or bureau by agreement with the Corporation. [JTR 844.2]

§ 848.844–3 *Resolution of substantial issues.* Any service of the War Department will refer through channels to the Readjustment Division, ASF, and any bureau of the Navy Department will refer to the Industrial Readjustment Branch, OP&M, any substantial issues, whether of a general or specific nature, which may arise in connection with the termination of contracts with the Corporation. The Readjustment Division, ASF, and the Industrial Readjustment Branch, OP&M, will resolve any such issues, where necessary, by agreement with the Corporation. [JTR 844.3]

§ 848.844–4 *Profit restrictions.* All payments made by the War or Navy Department to the Corporation on account of terminated contracts will remain subject to the basic agreement set forth in a letter September 10, 1942, from the Corporation to the Under Secretaries of War and Navy and to the Chairman of the Maritime Commission with reference to the limitation of profits derived under contracts placed by the War or Navy Department with the Corporation. [JTR 844.4]

SUBPART E—DIRECT SETTLEMENT OF WAR CONTRACTS ON A COMPANY-WIDE BASIS

§ 848.850 *Scope.* This subpart deals with the direct settlement on a company-wide basis of termination claims of war contractors assigned to the War or Navy Department for settlement pursuant to Regulation No. 16 of the Office of Contract Settlement. The procedures described in this subpart do not apply to the direct settlement of individual subcontracts under Subpart F of Part 846 of this subchapter. [JTR 850]

§ 848.851 *Definitions.* As used in this subpart, the following terms shall have the following meanings. [JTR 851]

§ 848.851–1 *Applicable prime contract.* The term "applicable prime contract" means the terminated prime contract that is being settled, or where a subcontract in any tier is being settled, the prime contract to which that subcontract relates. [JTR 851.1]

§ 848.851–2 *Assigned contractor.* The term "assigned contractor" means a war contractor assigned, under § 848.853, to a service or bureau for company-wide settlement. [JTR 851.2]

§ 848.851–3 *Company-wide settlement.* The term "company-wide settlement" means the direct settlement on a company-wide basis of termination claims of an assigned contractor by the chief of a service or bureau who is authorized to act for all services of the War Department, all bureaus of the Navy Department, and (in some cases) for other contracting agencies, with respect to terminated war contracts of the assigned contractor. [JTR 851.3]

§ 848.851–4 *Customer.* The term "customer" means the purchaser from an assigned contractor under a subcontract. [JTR 851.4]

§ 848.851–5 *Designated officer.* The term "designated officer" means the chief of the service or bureau authorized to conduct company-wide settlement with an assigned contractor, or his duly authorized representative. In the case of the Navy Department, a Navy material inspector may be a designated officer, in which case he shall exercise all powers and have all responsibilities of a chief of a bureau so designated under this subpart. [JTR 851.5]

§ 848.851–6 *Other contracting agency.* The term "other contracting agency" means a contracting agency, as defined in section 3 (g) of the act, other than the War Department and the Navy Department, on behalf of which the War or Navy Department has been authorized to settle terminated war contracts of an assigned contractor pursuant to Regulation No. 16 of the Office of Contract Settlement. [JTR 851.6]

§ 848.852 *Authority.* [JTR 852]

§ 848.852–1 *Statutory authority.* Section 7 (c) of the act provides that the Director shall prescribe policies and methods for the settlement as a group, or otherwise, by a contracting agency of termination claims of a war contractor under contracts with one or more services or bureaus within an agency, with other agencies, or with other war contractors, to the extent he deems such action necessary or desirable for the expeditious and equitable settlement of such claims. The Director is also authorized, after consulting with the contracting agencies concerned, to provide for assignment of war contractors to a contracting agency for such settlement. [JTR 852.1]

§ 848.852–2 *Regulation No. 16 of Office of Contract Settlement.* Regulation No. 16 of the Office of Contract Settlement directs the contracting agencies to conduct a program of company-wide settlement for the purpose of facilitating expeditious and equitable settlement and payment of termination claims of certain war contractors holding large numbers of subcontracts. [JTR 852.2]

§ 848.852–3 *Authority of designated officer.* (a) The designated officer is authorized to settle the termination claims of the assigned contractor arising under prime contracts of the War or Navy Department or other contracting agency, or under subcontracts in any tier that were terminated as a result of the modification or termination for the convenience or at the option of the Government of any prime contract of the War or Navy Department or other contracting agency or under other circumstances which require the Government to bear the cost of settling the terminated subcontract.

(b) When the designated officer is in the Navy Department, the Cost Inspection Service, Bureau of Supplies and Accounts, will designate a field accounting officer, and the Navy Material Redistribution and Disposal Administration (NMR&DA) will designate a field disposal office, to perform respectively the accounting and property disposal work. The designated officer has primary responsibility for the expeditious and equitable settlement of the termination claims of the assigned contractor in accordance with the provisions of this regulation. The field accounting office and the field disposal office will perform their respective functions with respect to accounting reviews and property disposition matters, but the designated officer shall have authority to coordinate their functions in order to expedite settlement and property disposal.

(c) The designated officer of the War Department, or the designated officer, NMR&DA and Navy Material inspector, in the case of a contractor assigned to the Navy Department, shall have the authority and responsibility with respect to termination inventory under war contracts of the assigned contractor and his lower tier subcontractors (other than another assigned contractor and his lower tier subcontractors, or a contractor subject to the provisions of Subpart B of this part) which the contracting officer for the War Department, or the contracting officer, NMR&DA and Navy Material inspector for the Navy Department has under Part 844. [JTR 852.3]

§ 848.853 *Assignment of contractors.* [JTR 853]

§ 848.853–1 *Regulation No. 16 of Office of Contract Settlement.* (a) Pursuant to Regulation No. 16 of the Office of Contract Settlement, a committee composed of representatives of the Office of Contract Settlement and the War and Navy Departments, after consultation with the contracting agencies concerned, will select the war contractors for company-wide settlement, will assign each of those contractors to a contracting agency, and will specify the contracting agencies on behalf of which the designated agency shall have authority to settle termination claims of the assigned contractor. Applications for assignment may be filed with any contracting agency.

(b) Regulation No. 16 declares that, in general, expeditious and equitable settlement of termination claims will be advanced by company-wide settlement in the case of those contractors:

(1) Who are subcontractors under numerous war contracts for the production of articles for different purchasers;

(2) Whose volume of war business and termination claims, actual and anticipated, is sufficiently large to make such settlement lead to the economical utilization of Government personnel;

(3) Whose terminated war contracts are of such character that they can efficiently be settled by one contracting agency on behalf of other contracting agencies; and

(4) Who have efficient termination organizations.

Among contractors who meet these conditions, preference is to be given to those upon whom large numbers of lower tier

subcontractors depend for payment of their claims. [JTR 853.1]

§ 848.853–2 *Applications of contractors.* A contractor applying to the War Department for company-wide settlement will file its application with the Readjustment Division, ASF. A contractor applying to the Navy Department will file its application with the Industrial Readjustment -Branch, OP&M. Each such application will contain the following:

(a) (1) Name of contractor.

(2) Address of principal office.

(3) Number and location of contractor's plants.

(4) Statement of the plants (including those of subsidiaries, if any) to which this program will be applicable.

(5) A brief description of the major products being manufactured.

(6) The total number and dollar amount of the undelivered portion, estimated if necessary, of all prime contracts held by the contractor.

(7) The percentage of such total number and dollar amount of prime contracts applicable to each contracting agency, and to each service or bureau.

(8) The number and dollar amount estimated if necessary, of the undelivered portion of all subcontracts held by the contractor.

(9) The percentage, estimated if necessary, of such total number and dollar amount of the undelivered portion of all subcontracts applicable to each contracting agency, and to each service or bureau.

(10) The approximate number of, and dollar amount of the terminated portions of, both prime contracts and subcontracts, terminated to date, and during the past four months.

(11) The percentage, estimated if necessary, of such total number and dollar amount applicable to each contracting agency, and to each service or bureau.

(12) The approximate number of, and dollar amount of the terminated portions of, war contracts which have not been settled to date.

(13) The percentage, estimated if necessary, of such number and dollar amount of unsettled terminations applicable to each contracting agency, and to each service or bureau.

(14) The approximate number of subcontractors, and the approximate number and dollar amount of the undelivered portion of all the subcontracts, under the war contracts of the contractor.

(15) Such other information regarding the contractor's war business as, in the judgment of the contractor, will show that his assignment for company-wide settlement is appropriate and will make possible a proper assignment of the contractor to a service or bureau for company-wide settlement.

(b) If more than one plant is to be included under the program, the information listed in (a) above as to each such plant.

(c) A statement by the contractor that he is willing to enter into a master agreement for company-wide settlement substantially in the form set forth in § 849.986–1, and that he has a termination organization capable of complying with the provisions of this subpart. [JTR 853.2]

§ 848.853–3 *Processing of applications.* (a) Each application of a contractor for company-wide settlement will normally be referred to a service or bureau for investigation and recommendation. Where desirable, the assistance and advice of the appropriate termination coordination committee should be secured. When a service or bureau recommends that a contractor be assigned for company-wide settlement, its recommendation shall include:

(1) Plants of the contractor to be assigned.

(2) The service or bureau to which the contractor should be assigned.

(3) A brief statement describing the functions, personnel, and operations of any resident officers of the War and Navy Departments previously assigned to the contractor.

(4) A brief statement describing the contractor's termination organization. The promptness with which subcontractors' claims are being processed and paid, and the contractor's efficiency with respect to the presentation of his own claims, should be indicated.

(b) The application of a contractor, together with any recommendation of a service or bureau regarding him, will be referred by the Readjustment Division, ASF, or the Industrial Readjustment Branch, OP&M, to the committee appointed pursuant to Regulation No. 16 of the Office of Contract Settlement. [JTR 853.3]

§ 848.853–4 *Assignment of designated officer.* When a contractor has been assigned to the War Department by the committee, the Readjustment Division, ASF, will assign that contractor to a designated officer. When a contractor has been assigned to the Navy Department, the Industrial Readjustment Branch, OP&M, will assign that contractor to a designated officer. [JTR 853.4]

§ 848.854 *Master agreement for company-wide settlement.* (a) Prior to the commencement of company-wide settlement, the assigned contractor and the designated officer will enter into a master agreement for company-wide settlement substantially in the form set forth in § 849.986–1. That agreement shall be numbered and distributed as a contract of the designated officer. By that agreement, the contractor undertakes not to file settlement proposals with any contracting officer other than the designated officer, and not to seek compensation from any customer for the termination of any war contract, except in the case of contracts that have been excluded from company-wide settlement pursuant to Article 3 of that agreement.

(b) The form of master agreement set forth in § 849.986–1 may be varied to meet the needs of particular cases in accordance with the principles stated in § 841.144–2. Any deviation from that form shall be considered substantial if it changes Article 2, relating to the scope of the settlement; Article 4, relating to the basis of settlement; or Article 5, relating to settlements with and payments to subcontractors.

(c) As promptly as possible after the execution of a master agreement with an assigned contractor, the Readjustment Division, ASF, and the Industrial Readjustment Branch, OP&M, will publish notice of such agreement in such manner as to inform all contracting officers that termination claims of the assigned contractor are to be settled on a company-wide basis. A list of the contractors assigned under this program (and of those assigned under the consolidated termination program) is set forth in Appendix D.[1] This list will be revised from time to time as additional contractors are brought into either program. [JTR 854]

§ 848.855 *Procedure.* [JTR 855]

§ 848.855–1 *General.* Each termination claim of the assigned contractor that is settled under the program shall be settled in accordance with the procedures applicable to the settlement of prime contract claims in the service or bureau of the designated officer, except as such procedures are modified by the provisions of this subpart. [JTR 855.1]

§ 848.855–2 *No-cost settlements.* Where the assigned contractor determines that he will present no claim on account of the termination of a prime contract, the designated officer will be responsible for the execution of a no-cost settlement agreement (§§ 849.981–3 and 849.981–4 of this subchapter), unless such an agreement has previously been executed. Where the assigned contractor determines that he will present no claim on account of the termination of a subcontract, he will normally conclude a no-cost settlement with his customer, but the designated officer may enter into no-cost settlement agreements relating to subcontracts where he considers it advisable. [JTR 855.2]

§ 848.855–3 *Notice of termination.* In accordance with Article 3 of the master agreement, the assigned contractor, within fifteen days (or such other time as the master agreement may provide) after receipt of a notice of termination of any prime contract or of any subcontract on account of which he intends to file a claim, will furnish a copy or abstract of such notice of termination to the designated officer. [JTR 855.3]

§ 848.855–4 *Notice to contracting officer under prime contract.* Immediately upon receipt of such notice, the designated officer will notify the contracting officer under the applicable prime contract, using substantially the form of notice set forth in § 849.986–2 of this subchapter. [JTR 855.4]

§ 848.855–5 *Exclusion of claims.* The master agreement gives the Government the option to exclude any termination claim from the scope of company-wide settlement, and provides that this option must be exercised within 30 days (or such longer period as the parties may agree) after receipt by the designated officer of notice that the contract has been terminated. This option will be exercised by the designated officer if he determines that the claim should be excluded (a) in the interest of continued war production or (b) by reason of the complexity

[1] Filed with the Division of the Federal Register.

or special character of the contract or (c) for some other substantial reason. In deciding whether or not to exclude a claim, he will consider the advice of the contracting officer under the applicable prime contract, and he will exclude the claim if he is advised by that contracting officer that such exclusion is in the interest of continued war production. Where a claim is to be excluded, the assigned contractor should be notified in writing as promptly as possible. [JTR 855.5]

§ 848.855–6 *Notice to customer.* As soon as the designated officer has determined that a subcontract termination claim of the assigned contractor is to be included in the program, or earlier in the discretion of the designated officer, a notice will be sent to the customer substantially in the form set forth in § 849.986–3 of this subchapter. Such notice will be sent by the designated officer or by the assigned contractor with the indorsement of the designated officer. [JTR 855.6]

§ 848.855–7 *Settlement proposals.* The assigned contractor will submit to the designated officer his settlement proposals and inventory schedules on the standard forms, except as otherwise authorized by the designated officer. In the Navy Department, the procedures and functions of the Navy material inspector with respect to settlement proposals and inventory schedules shall be those established in §§ 842.253–3, 844.416–2, 846.644–4, 847.721–4 except as otherwise provided in this subpart, or as directed by the designated officer. The designated officer may permit items of termination inventory, general and administrative overhead, post-termination expenses, and profit, which are chargeable to two or more contracts, to be appropriately apportioned among the several contracts on such reasonable basis as he may determine. Settlement proposals shall not include any charge on account of completed articles delivered by the assigned contractor (or shipped, but not received) prior to termination, or thereafter in accordance with the notice of termination. [JTR 855.7]

§ 848.855–8 *Allocability.* (a) Except in the situation described in paragraph (b) below, the designated officer shall satisfy himself, on the basis of such evidence as he deems sufficient, that the terminated subcontract on which a termination claim of the assigned contractor is based is a war contract and that the terminated portion thereof is allocable to the terminated or modified portion of a prime contract. This requirement may be met:

(1) In the case of a termination claim not in excess of $25,000 without deducting disposal credits or claims of subcontractors, by a copy of a notice of termination from the customer of the assigned contractor substantially in the form set forth in §849.944–2 or a certificate of the customer substantially in the form set forth in § 849.986–4. Further evidence of such allocability should not be required unless there is reason to believe that the subcontract of the assigned contractor was not directly or indirectly required for the performance of the terminated or modified portion of a prime contract.

(2) In the case of a termination claim in excess of $25,000, by a certificate substantially in the form set forth in § 849.986–4 from the prime contractor and each intervening subcontractor as to the subcontract immediately under his contract in the contractual chain. The assigned contractor should secure such certificates in the ordinary case, but other affirmative evidence of allocability may be accepted in the discretion of the designated officer.

(b) Where the subcontract on which the claim is based was not terminated as a result of the modification or termination for the convenience or at the option of the Government of a prime contract, but was terminated under other circumstances which require the Government to bear the cost of settling the terminated subcontract, appropriate proof of those circumstances should be required.

(c) The allocability of the costs and termination inventory of the assigned contractor to his terminated subcontract shall be established in the same manner as under other settlement procedures. [JTR 855.8]

§ 848.855–9 *Disposal of property.* (a) Except as provided in paragraph (b) below, the designated officer of the War Department, or the designated officer, NMR&DA and Navy material inspector, in the case of a contractor assigned to the Navy Department, should begin to effect the disposal of termination inventories as early as possible and without awaiting the submission of settlement proposals or inventory schedules. For the purpose of taking property disposal action, reliance will be placed on the contractor's representations as to allocability.

(b) Disposition of termination inventory in accordance with paragraph (a) above shall be subject to the following limitations:

(1) *Production and supply items.* Disposition or approval of disposition of production and supply items shall be made in accordance with the procedure specified for such items in § 848.825–6 (a).

(2) *Materials subject to special arrangements.* Materials held under special arrangements pursuant to § 844.452–3 of this subchapter will be disposed of in accordance with the procedures established by § 848.825–6 (b); but if no shipping instructions have been received ten days before the expiration of the plant clearance period, disposition thereof shall proceed in accordance with Part 844 of this subchapter.

(3) *Other materials requested by the contracting officer.* Any other materials requested by the contracting officer under the applicable prime contract shall be disposed of in accordance with such request to the extent that such materials have not otherwise been disposed of before the receipt of such request. Disposition of termination inventory shall not be delayed pending receipt of such a request.

(4) *Significant materials.* The designated officer of the War Department, or the Navy material inspector in the case of a contractor assigned to the Navy Department, will exercise his judgment as to what significant items of material, if any, in addition to those included in subparagraphs (1) and (2), should be submitted to the contracting officer under the applicable prime contract for consideration. The existence and quantities of such items shall be reported directly by the designated officer to the contracting officer with a request that disposition instructions be sent to him promptly if such items are desired. No action with respect to the disposition of such materials shall be taken for a period of fifteen days from the date of reference. Thereafter, and in no event later than expiration of the plant clearance period, disposition of such materials shall proceed in accordance with Part 844 of this subchapter.

(c) Where any disposal action is dependent upon the amount of a contractor's claim or the cost of the inventory, the claim or inventory under each terminated war contract of the assigned contractor shall be considered separately unless termination inventories under two or more claims have been so physically intermingled that the separate disposal of each inventory is not considered feasible, in which case they shall be considered as one inventory.

(d) The designated officer of the War Department, or the NMR&DA in the case of a contractor assigned to the Navy Department, will be responsible for taking all necessary action under § 844.452 of this subchapter with respect to that portion of the termination inventory which is not disposed of, and for the storage and removal thereof. Where the designated officer is in the War Department, accountability for the termination inventory of the assigned contractor shall be taken in accordance with Subpart I of Part 844 of this subchapter by an accountable property officer in the service of the designated officer. Where the designated officer is in the Navy Department, the records prescribed in that subpart will not be required, although the inventory relates to War Department contracts, but NMR&DA shall proceed in accordance with Chapter VIII of the NMR&DA Handbook.

(e) Whenever the disposal of termination inventory allocable to a prime contract included in company-wide settlement requires the shipment thereof at the expense of the Government, Government bills of lading shall be issued, and the cost thereof shall be charged in the department of which the designated officer is a member without regard to whether or not the termination inventory in question is allocable to terminated prime contracts of the War Department or the Navy Department or to the prime contracts of any other Governmental agency. [JTR 855.9]

§ 848.855–10 *Review of settlement proposals.* The designated officer shall have the same responsibility and discretion with respect to the review of settlement proposals of the assigned contractor that a contracting officer has in the

case of settlement proposals of prime contractors under Subpart B of Part 847 of this subchapter, and the same duty with respect to the negotiation of final settlement agreements that a contracting officer has under Subpart C of Part 847 of this subchapter. Accounting reviews of settlement proposals submitted under the company-wide settlement program should not be in greater detail than under ordinary procedures. [JTR 855.10]

§ 848.855–11 *Settlement agreements.* Each settlement reached by negotiation shall be embodied in a final settlement agreement, which shall be numbered and distributed as a supplement to the master agreement. Each such agreement may relate to one or more contracts, and shall contain substantially the provisions of the appropriate prescribed form or forms of settlement agreement (§§ 849.981, 849.983, and 849.988–6 of this subchapter) adapted to meet the needs of the particular case. Where the agreement settles a claim under a subcontract, it will contain either a release of the Government and the customer from liability on account of the termination of the subcontract, or an assignment of the claim to the Government. At the time of final settlement of a subcontract claim, the designated officer will decide which alternative to adopt. Ordinarily he should obtain a release, but he should secure an assignment of the subcontractor's claim whenever he considers it necessary to protect any interest that the Government may have. Assignments shall be forwarded and reported in accordance with § 846.663–7 (c) of this subchapter. [JTR 855.11]

§ 848.855–12 *Contract price limitation.* Termination claims under subcontracts of an assigned contractor may be settled and paid without regard to any limitation on the amounts payable by the Government under the applicable prime contracts. [JTR 855.12]

§ 848.855–13 *Copy of settlement to contracting officer and customer.* The designated officer shall forward to the contracting officer under the applicable prime contract an executed original of each final settlement agreement or of findings determining the amount due in the case of a formula settlement. Where feasible, in order to facilitate duplication, the stencils or other duplicating medium used in producing the settlement agreement shall also be forwarded to the contracting officer under the applicable prime contract. Where a subcontract is settled, a copy of the final settlement agreement or of findings determining the amount due shall be forwarded to the customer. [JTR 855.13]

§ 848.855–14 *Reviews.* Any required review of settlements or property disposal actions by an assigned contractor or his subcontractors (other than another assigned contractor and his lower tier subcontractors or, in the case of property disposal actions, a contractor subject to the provisions of Subpart B of this part) shall be accomplished by boards established in the service, bureau, or office of the designated officer. In the Navy Department, required reviews of property disposal actions shall be made by a disposal board or boards established pursuant to Part 844 of this subchapter, and where a Navy material inspector is the designated officer, a settlement review board shall be established in his office, which board shall exercise all the functions with respect to the review of settlement proposals set forth in §§ 845.581 to 845.584–2 of this subchapter. [JTR 855.14]

§ 848.856 *Authority and responsibility with respect to contracts of assigned contractors.* [JTR 856]

§ 846.856–1 *Designated officer.* The designated officer shall have all the powers and duties with respect to the settlement of the termination claims (to be included in company-wide settlement) of an assigned contractor which this regulation grants to, or imposes upon, the contracting officer under the applicable prime contract or the chief of the service or bureau of such contracting officer. In the case of war contracts of other contracting agencies, the designated officer shall also have all the powers with respect to the settlement of termination claims thereunder which are granted to the War or Navy Department by or pursuant to regulations of the Director of Contract Settlement, and shall exercise those powers and perform those duties in accordance with this subchapter. Without limiting the generality of the foregoing:

(a) The designated officer shall take action in connection with the advance preparations for termination of assigned contractors in accordance with Subpart B of Part 842. Nothing in this subpart, however, shall impair the validity or alter the effect of any such advance preparations, including pretermination settlement agreements, made by an assigned contractor prior to his assignment under the program, but the designated officer may exercise any powers reserved to the Government to amend such pretermination settlement agreements.

(b) Subject to the provisions of this subchapter, the designated officer shall have authority to grant to an assigned contractor authorizations to settle claims of his subcontractors, to take action with respect to termination inventories of such subcontractors, and to make partial payments to such subcontractors under all his War and Navy Department prime contracts and subcontracts thereunder.

(c) The designated officer may rely on copies of contractual instruments, notices of termination and other records and documents in the possession of the assigned contractor. [JTR 856.1]

§ 848.856–2 *Contracting officer under applicable prime contract.* After delivery of the notice of termination of a war contract of an assigned contractor that is to be included in company-wide settlement, the contracting officer under the applicable prime contract shall have authority and responsibility in connection with the settlement thereof only with respect to (a) the matters mentioned in the notice from the designated officer (§ 849.986–2 of this subchapter), (b) any matters relating to the cancellation or modification of the notice of termination, and (c) any other matters with respect to which the designated officer requests his advice or assistance. [JTR 856.2]

§ 848.856–3 *War contractor.* (a) Nothing in this subpart shall impair or modify any authority granted to an assigned contractor or to his subcontractors by or pursuant to this subchapter to negotiate final settlements, to approve the disposition of termination inventory, or to make partial payments. Use of any such authority by the customer or other higher tier contractor will not be required in connection with any termination claim of the assigned contractor that is included in direct settlement, since the assigned contractor agrees in Article 2 of the master agreement (§ 849.986–1 of this subchapter) that he will submit his termination claims only to the designated officer.

(b) The assigned contractor agrees, in Article 5 of the master agreement (§ 849.986–1 of this subchapter), to exercise diligently any authority granted to him with respect to settlements with, termination inventories of, and partial payments to his subcontractors. Where approval or other action by a contracting officer is required on any such matters, the designated officer has authority to grant such approval or take such action. Accordingly, all termination claims of subcontractors that should be included in a termination claim of an assigned contractor settled under this subpart should be finally settled without any action by a contractor above the assigned contractor in the contractual chain or by any contracting officer other than the designated officer. [JTR 856.3]

§ 848.856–4 *Action in case of excluded contracts and price adjustments.* Where a terminated war contract of an assigned contractor is excluded from company-wide settlement in accordance with § 848.855–5 of this subchapter, the designated officer (in the Navy Department, the officers named in § 848.852–3 (b) of this subchapter) shall, nevertheless, proceed with the accounting and property disposal work in connection with such contract in the manner, and with the effect, set forth in Subpart B of this part, except to the extent that the contracting officer under the applicable prime contract may limit his authority. At the request of that contracting officer, the designated officer shall also render any reasonable assistance with respect to equitable adjustments resulting from change orders under prime contracts of the assigned contractor. [JTR 856.4]

§ 848.857 *Payments under terminated contracts of assigned contractors.* [JTR 857]

§ 848.857–1 *Interim financing.* The designated officer shall have the authority and responsibility with respect to interim financing for the assigned contractor and his subcontractors (other than another assigned contractor and his lower tier subcontractors) which the contracting officer under the applicable prime contract has under Part 843 of this subchapter, except with respect to termination claims that are excluded from company-wide settlement. [JTR 857.1]

§ 848.857–2 *Set-offs.* Settlements of the termination claims of assigned contractors and payments thereunder shall be made without regard to any set-offs that may exist between contractors in the contractual chain. Set-offs in favor of the Government shall be protected by appropriate withholding only when such set-offs are against the assigned contractors, and only to the same extent that set-offs against prime contractors are protected under usual disbursement procedures. [JTR 857.2]

§ 848.857–3 *Assignments and insolvency.* Settlements of the termination claims of assigned contractors, and payments thereunder, shall be made without regard to any assignment by, or insolvency or bankruptcy of, higher tier war contractors. Payments under terminated contracts of an assigned contractor shall be made consistently with the terms of known assignments executed by that contractor. The designated officer may rely, however, on the contractor's statement with respect to outstanding assignments in the absence of actual knowledge to the contrary or notice given in accordance with the Assignment of Claims Act of 1940. [JTR 857.3]

§ 848.857–4 *Disbursements.* (a) Partial and final payments on account of the termination claims of an assigned contractor shall be made by a disbursing officer of the contracting agency that entered into the applicable prime contract on the basis of vouchers or invoices approved by the designated officer.

(b) Where the applicable prime contract is a contract of any service of the War Department, the designated officer will forward the voucher or invoice, with supporting documents, to the disbursing officer designated to make payments on termination claims of the assigned contractor. One such disbursing officer will be designated for each assigned contractor. That officer will make all payments to the assigned contractor on account of his termination claims under War Department prime contracts or subcontracts thereunder included in a company-wide settlement.

(c) Where the applicable prime contract is a contract of any bureau of the Navy Department, the designated officer will forward the voucher or invoice, with supporting documents, to the Termination Branch, Disbursing Division, Bureau of Supplies and Accounts, Navy Department, Washington 25, D. C. That Branch will make all payments to the assigned contractor on account of his termination claims under Navy Department prime contracts or subcontracts thereunder.

(d) Where the applicable prime contract is a contract of another contracting agency, the designated officer will forward the voucher or invoice, with supporting documents, in accordance with instructions to be furnished to the designated officer by that other contracting agency. [JTR 857.4]

§ 848.858 *Direct communication authorized.* Designated officers, other contracting officers, and interested offices of the services and bureaus may communicate directly with each other on any matters related to the settlement of termination claims of assigned contractors. [JTR 858]

§ 848.859 *Cooperation.* Each service or bureau interested in any contract which a designated officer of another service or bureau is authorized to settle will cooperate, to the fullest extent possible, with the designated officer, and will deliver information relating to such contract, make available the services of personnel, and furnish other assistance, as requested. [JTR 859]

SUBPART F — GOVERNMENT-OWNED PLANT EQUIPMENT UNDER WAR DEPARTMENT CONTRACTS

§ 848.860 *Scope.* This subpart applies only to the War Department. It deals with the policies and procedures of the War Department with respect to the removal, storage, maintenance, sale or other disposition of Government-owned plant equipment covered by a War Department facilities contract. These policies and procedures are based in part upon the requirements of section 12 (g) of the Act, section 14 (a) of the Surplus Property Act and Regulation No. 6 of the Surplus Property Board dated 24 May 1945 (Part 8306 of Title 32). [JTR 860]

§ 848.860–1 *Property excluded.* This subpart does not deal with plant equipment (a) owned by Reconstruction Finance Corporation as successor to Defense Plant Corporation, (b) covered by Emergency Plant Facilities Contracts (see 5 F.R. 4147) or other contracts under which the War Department has a contractual right to acquire title so long as title has not passed to the Government, except under the conditions set out in § 848.864–2 (f), (c) located in a Government-owned plant, except as provided in § 848.860–2 (d), (d) furnished under training school contracts, or (e) which is or is treated as contractor inventory under the provisions of Part 844. [JTR 860–1]

§ 848.860–2 *Definitions.* (a) *"Plant equipment".* The term "plant equipment" means any Government-owned machinery, tools, special tooling, and equipment and any other Government-owned property, which is located in a war contractor's plant and is covered by a War Department facilities contract, except land and buildings located on land owned by or leased to the Government.

(b) *Idle plant equipment.* The term "idle plant equipment" means plant equipment which is no longer required by a war contractor in possession for performance of any war contracts. Plant equipment not actually in use will not be considered idle so long as it is reasonably expected that it will be required in the completion of performance of such contracts.

(c) *Facilities contract.* The term "facilities contract" means an oral or written lease, rental agreement or other contract or subcontract, or provisions of a supply, construction, or other contract or subcontract, specifically governing the acquisition, use, retention, storage, maintenance or disposition of Government-owned plant equipment furnished to or acquired by the war contractor by or from the Government (directly or through an intervening war contractor) for any war production purpose except incorporation in end products.

(d) *Contractor's plant.* The term "contractor's plant" includes the structures, buildings or premises in or upon which the war contractor performs his war production and which are (1) owned by the war contractor or (2) leased by the war contractor from a party other than the Government. The term will also include a building or structure owned by the Government and leased to a war contractor, provided that such building or structure is on land (i) owned by the war contractor or (ii) leased by the war contractor from a party other than the Government. The chief of the service may make some or all of the provisions of this subpart, except § 848.864–2, applicable to readily severable plant equipment located in any plant leased by a war contractor from the Government.

(e) *Contracting officer.* The term "contracting officer" shall include his representatives as defined in § 844.416–1.

(f) *Intervening war contractor.* The term "intervening war contractor" means any higher tier war contractor or subcontractor under whom the war contractor holds the plant equipment.

(g) *Application.* The term "application" means an application for disposition of plant equipment, together with supporting schedules, submitted in accordance with § 848.863.

(h) *Option.* The term "option" shall include any right given to the war contractor under a facilities contract to acquire title to plant equipment whether on specified terms or upon terms to be negotiated, including any right of first refusal.

(i) *Dismantle or dismantling.* The terms "dismantle" or "dismantling" include severance of the plant equipment when it is attached to the contractor's plant. [JTR 860.2]

§ 848.861 *General policies.* [JTR 861]

§ 848.861–1 *Plant clearance.* (a) Section 12 (g) of the act provides that whenever a war contractor no longer requires for the performance of any war contract any Government-owned machinery, tools and equipment installed in his plant for the performance of a war contract, the war contractor may demand their removal and, upon receipt of such demand in writing, the Government, upon such conditions as may be prescribed under the Act, will remove such machinery, tools and equipment within a period of 60 days unless the Government and the war contractor, by a facilities contract or otherwise, have made or make other provisions for the retention, storage, maintenance or disposition of such machinery, tools and equipment.

(b) General Regulation No. 4 of the Office of Contract Settlement, dated 23 September 1944 (Part 8059 of Title 32), promulgated to implement section 12 (g) of the act, requires the Government under certain conditions to remove Government-owned machinery, tools and equipment from the private plants of war

contractors when no longer needed by such contractors for war production or for national defense and which are not to be retained by them. Regulation No. 4 further requires the owning agencies to waive or release, upon such terms and conditions as may be deemed appropriate, existing obligations under facilities contracts for the retention of such equipment in war contractors' plants to the extent consistent with the necessity for retention for war production or national defense purposes.

(c) Upon application of the war contractor, the War Department will remove readily severable plant equipment if the contracting officer determines that:

(1) The retention of the plant equipment in place is not required for war production or in the interests of national defense;

(2) the Government has no right to have such plant equipment held in standby or storage, or such rights have expired or have been waived pursuant to § 848.861–3; and

(3) the war contractor has fulfilled his contractual obligations as to dismantling and preparation of the plant equipment for storage and shipment.

Such removal will be effected whether or not the contractor has fulfilled his obligations as to the care and maintenance of the plant equipment; however, such removal shall not relieve the war contractor of any liability for failure to perform such obligations.

(d) The War Department will permit the severance of plant equipment, which is not readily severable, only if the contracting officer shall have given prior written authorization therefor. Such authorization shall be given if such plant equipment is required for redistribution for war production or in the interests of national defense. Such authorization may be given if (1) the estimated net proceeds to the Government from the plant equipment when severed will substantially exceed the estimated cost to the Government of the severance and removal, including the cost of repairing any damage to the war contractor's plant to the extent that the Government may be liable therefor in accordance with § 848.861–2, or (2) the war contractor in possession has requested such authorization and the plant equipment is of such a nature or is so attached to or embodied in the war contractor's plant, that the Government's failure to remove it will materially interfere with his other war production or reconversion to civilian production. Plant equipment, after severance pursuant to such authorization, will be removed in accordance with the policies and procedures set forth in this subpart with respect to readily severable plant equipment. [JTR 861.1]

§ 848.861–2 *Costs of dismantling and removing plant equipment.* (a) The obligation to perform the operation of (1) dismantling plant equipment, (2) preparing and preserving it for storage, (3) preparing it for shipment and (4) removing it from the war contractor's plant, and the question of whether any or all of such operations shall be performed at Government expense, are not uniformly treated in facilities contracts. This is largely the result of periodic changes in standard forms. Many facilities articles and leases obligate the war contractor to perform the operation of dismantling plant equipment at his own expense but obligate the Government to remove the plant equipment at the Government's expense. A few facilities contracts obligate the war contractor to perform the operation of dismantling but provide for the reimbursement of his costs of so doing. Some contracts contain provisions obligating the Government to remove plant equipment from the war contractor's plant or provide that the war contractor's expense of removal will be reimbursed to him by the Government, and are silent on the dismantling and preparing for shipment in which case "remove" and "removal" may fairly be interpreted to include dismantling and preparing for shipment. Similarly, the contract, while providing that the war contractor shall prepare for shipment, may be silent on other matters, in which case "prepare for shipment" may fairly be interpreted to include dismantling.

(b) The War Department will bear the cost of severance of plant equipment which is not readily severable in the following cases only:

(1) Where the facilities contract expressly requires the Government to bear the cost of severance and such severance has been authorized pursuant to § 848.861–1; or

(2) Where the facilities contract is silent as to who shall bear the cost of severance and such severance has been authorized by the contracting officer (i) for purposes of redistribution for war production or in the interests of national defense, or (ii) because the estimated net proceeds to the Government of the plant equipment when severed will substantially exceed the costs of severance and removal.

(c) Except to the extent that the facilities contract expressly imposes such costs on the war contractor, the War Department will bear the costs of dismantling, preparation for storage or shipment and removal of (1) all plant equipment which is readily severable and (2) plant equipment which is not readily severable, but which has in fact been severed with the authorization of the contracting officer under § 848.861–1 if the authorization has been given (i) for purposes of redistribution for war production or in the interests of national defense or (ii) because the estimated net proceeds to the Government of the plant equipment when severed will substantially exceed the costs of severance and removal.

(d) With the exception of the few instances in which it is necessary to comply with express covenants for reconversion, it is the policy of the War Department (see §§ 802.238–2 and 810.1003 of this chapter) that the Government will not bear any part of the cost of reconverting the contractor's plant to commercial production. In connection with the dismantling of plant equipment and its removal from the contractor's plant, this policy is interpreted to prohibit reimbursement of the contractor (or the assumption by the Government of the obligation to perform the work) for any items of expense relating to the restoration, repair, or alteration of the premises in order to correct a condition which was created by or resulted from the installation of the plant equipment. (For example, reimbursement will not be made for the cost of removal of footings or filling of pits which were constructed for the installation of the plant equipment. Similarly, reimbursement will not be made for the costs of repairing or filling holes or apertures in floors, walls or roofs which were made as an incident to installations and remain after dismantling and removal.)

(e) It is recognized, however, that incidental structural damage may in some cases be caused to the premises by the operations of dismantling the plant equipment or removing it from the plant. Wherever such damage is directly and intentionally caused in the process of performing an operation which the Government is obligated by the terms of the particular contract to perform (or for the performance of which the Government is obligated to reimburse the contractor), the obligation will be interpreted to include the repair of such incidental damage at Government expense. (For example, assuming the contract is construed to require the Government to remove but not to dismantle plant equipment or to reimburse the contractor for doing so, the obligation would include the expense of opening or destroying and the subsequent rebuilding of a wall, partition or floor in cases where the removal of the plant equipment, as distinguished from its dismantling, required such opening or destruction. In case the contract obligates the Government to dismantle the plant equipment or to reimburse the contractor for doing so, the obligation would include the expense of the repair of any structural damage directly and intentionally caused in the process of dismantling.) [JTR 861.2]

§ 848.861–3 *Waiver of storage and stand-by rights.* (a) In order to expedite plant clearance, contracting officers will waive or modify the Government's stand-by and storage rights where:

(1) There has been no determination by the chief of the service or bureau that retention of the plant equipment at the war contractor's plant is necessary for war production or in the interest of nation defense; and

(2) The war contractor requires the space presently occupied by such plant equipment for other war production or for reconversion to civilian production; and

(3) Adequate space and transportation facilities are available to effect removal of the plant equipment. In addition the contracting officer, without waiving such rights, may permit the war contractor to remove plant equipment from its present location to another location in his plant if the space presently occupied is needed for other war production or for reconversion to civilian production.

(b) Prior to the receipt of an application, the Government's storage and stand-by rights may be waived upon such terms and conditions and with or without consideration, as the chief of the service may direct. After receipt of the application the waiver of such rights in accordance with paragraph (a) will be without consideration. [JTR 861.3]

§ 848.862 *Advance preparations.* At the earliest practicable time, and prior to the time when the plant equipment becomes idle contracting officers should initate discussions and, where appropriate, enter into agreements with war contractors on the following matters:

(a) The preparation of satisfactory schedules of plant equipment to be submitted with the application for disposition. In this connection it is necessary that as far as possible comparison and correlation be made of the property records of the war contractor, the property records of the accountable property officer and the facilities contract under which the plant equipment is held. Wherever possible, differences in the descriptions of an item of plant equipment should be reconciled and eliminated. To the greatest extent possible, resolution of problems of liability for losses of and damage to plant equipment should be made in advance of the time for mass plant clearance.

(b) The methods of facilitating the verification of schedules of plant equipment to be removed and the inspection for condition required by § 848.866. In particular, wherever possible, arrangement should be made for the inspection by Government personnel of power-driven plant equipment while still under power.

(c) Determinations as to which plant equipment will be required by the Government for purposes of supply, war production or War Department industrial reserve.

(d) Determinations as to exercise or waiver of options as well as the method of financing in case the option is exercised.

(e) Determinations as to the items of plant equipment to be removed, the approximate date or dates of removal, and the estimated storage requirements therefor. In this connection inquiry should be made concerning the storage space available at the war contractor's plant, the duration of its availability and if storage is not required by the facilities contract the terms upon which the contractor is willing to make it available.

(f) Determinations as to what items of plant equipment may be disposed of to the contractor in possession pursuant to § 848.864–2 and what items of plant equipment, not readily severable, may be abandoned pursuant to § 848.864–4.

(g) Determinations in respect to plant equipment that may be treated as unserviceable and subsequent disposition thereof as set out in § 848.864–3.

(h) Determinations in respect to preparation for shipment or storage pursuant to SWPA Manual "Guide for the Storage of Plant Equipment and Termination Material" and arrangements for the procurement of materials required in connection therewith.

(i) The waiver of rights under the facilities contract to stand-by or storage referred to in § 848.861–3. [JTR 862]

§ 848.863 *Procedures relating to applications for disposition of plant equipment.* [JTR 863]

§ 848.863–1 *When applications are submitted.* (a) War contractors in possession of idle plant equipment will submit applications for disposition of such plant equipment, including supporting schedules, promptly after it becomes idle. However, applications for the removal of plant equipment which is not readily severable may be submitted only after severance of such plant equipment pursuant to the authorization of the contracting officer under § 848.861–1 (d). Preparation and submission of applications will not be delayed because of contract provisions for stand-by or storage, but the plant clearance period will not be deemed to run as to plant equipment which the Government requires the war contractor to hold in stand-by or storage pursuant to the facilities contract. Where substantial portions of the plant equipment become idle at one time, partial applications may be submitted. War contractors should not, however, repeatedly submit partial applications covering minor amounts of plant equipment.

(b) The receipt of an application by the contracting officer in satisfactory form as provided in § 848.863–4 will start the running of the plant clearance period as to the items of plant equipment which have been listed in the removal schedules: *Provided,* That a waiver of option rights has been executed by the war contractor.

(c) When items of plant equipment submitted on a purchase schedule are not approved for purchase, they must be relisted by the war contractor on a removal schedule in order to start the running of the plant clearance period as to such items. [JTR 863.1]

§ 848.863–2 *To whom applications are submitted.* A prime facilities contractor will submit applications to his contracting officers. A facilities subcontractor will submit his application through the intervening war contractor unless the rights and obligations of the intervening war contractor with respect to the plant equipment have been extinguished. The subcontractor will forward an information copy directly to the contracting officer, but the plant clearance period will not commence to run until the contracting officer has received the application from the intervening war contractor. [JTR 863.2]

§ 848.863–3 *Action by intervening war contractor.* Where an intervening war contractor receives an application for the disposition of plant equipment, he will execute the waiver contained therein or will indicate thereon his intention to exercise any option he may have to acquire any of the plant equipment listed thereon. Thereupon, he will promptly forward the application to the contracting officer. [JTR 863.3]

§ 848.863–4 *Requirements as to form.* Applications will be submitted on Office of Contract Settlement Form 5 and 5a which are reproduced in §849.974–1 and in accordance with the instructions set forth therein. The information required by that Form and such instructions must be furnished in a manner satisfactory to the contracting officer. Deviations from the form may be permitted by the contracting officer. [JTR 863.4]

§ 848.863–5 *Acceptance of applications.* The contracting officer upon receipt of an application (other than an information copy forwarded under § 848.863–2) will determine promptly whether it is satisfactory in form. If the application is not satisfactory, he will return it, together with a statement of its deficiencies, to the war contractor in possession of the plant equipment directly, or if appropriate, to the intervening war contractor, within ten days after its receipt. The application will be deemed to have been returned on the date it is mailed, or delivered by hand, to such war contractor. If the application has not been returned within ten days after its receipt, it will be considered satisfactory in form for purposes of plant clearance. [JTR 863.5]

§ 848.863–6 *Notice to war contractor in possession.* Within twenty days after he receives an application satisfactory in form, the contracting officer will notify the war contractor in possession which items the Government:

(a) Requires to be dismantled and prepared for storage or shipment in accordance with instructions furnished (where practicable the shipping instructions should be furnished within the twenty day period);

(b) Is willing to dispose of to the war contractor in possession:

(1) In accordance with the terms of the the option;

(2) In accordance with § 848.864–2;

(c) Requires to be placed in standby or stored with the war contractor pursuant to the facilities contract; or

(d) Is willing to dispose of to an intervening war contractor pursuant to his option under the facilities contract with the Government.

Within the same period the contracting officer will notify the intervening war contractor whether the Government is willing to dispose of any items to him which he expressed a desire to acquire under his option. [JTR 863.6]

§ 848.863–7 *Redistribution within the War Department.* Idle plant equipment under a War Department facilities contract will be redistributed by the service concerned for supply, war production, War Department industrial reserve or other authorized purposes in accordance with Part 826 of Subchapter B. [JTR 863.7]

§ 848.864 *Disposition of plant equipment.* [JTR 864]

§848.864–1 *Sales pursuant to options.* (a) Many facilities contracts give the war contractor an option to purchase plant equipment and other facilities furnished thereunder. Such options may be exercised in conformity with the terms therof except as provided in paragraph (d) below. If those terms do not

provide a specific price or a formula by which a specific price may be determined, sales may be made in accordance with the pricing policies set forth in § 848.864–2 (b).

(b) When the facilities contract provides that the option may be exercised only at the conclusion of a stand-by or storage period, the war contractor's right to exercise such option will be accelerated whenever the Government waives its rights to stand-by or storage pursuant to § 848.861–3.

(c) When an intervening war contractor (1) has exercised such an option with respect to any item of plant equipment and (2) has performed all acts required of him under the facilities contract which are necessary to the passage to him of title to such item, then, upon written notice from the contracting officer to the war contractor in possession, (i) the obligation of the Government with respect to the removal of such item from the plant of the war contractor in possession shall cease and (ii) the war contractor in possession shall look to such intervening war contractor for the removal of such item.

(d) Where, in order to permit a war contractor in possession to purchase plant equipment located in his plant, an intervening war contractor waives his option rights with respect to such plant equipment, such waiver shall not affect the right of the intervening war contractor, under that option or otherwise to purchase other plant equipment covered by the same option. If an intervening war contractor refuses to waive his option rights with respect to any plant equipment which a war contractor in possession desires to purchase under § 848.864–2, or otherwise prevents such purchase, the contracting officer shall not sell such plant equipment to the intervening war contractor except strictly in accordance with the terms of the option rights of such intervening war contractor.

(e) An application by any war contractor for the removal of any item of plant equipment shall include a waiver of any rights of such war contractor to exercise any option to purchase such item of plant equipment. [JTR 864.1]

§ 848.864–2 *Sales to war contractors in possession not pursuant to options*—(a) *Sales authorized.* Subject to any contractural rights of intervening war contractors which have not been waived, any item of plant equipment may be sold under authority of Surplus Property Board Regulation No. 6 and this § 848.864–2 to a war contractor in possession of such plant equipment whether or not it is idle; *Provided,* That:

(1) The following items of plant equipment may not be sold:

(i) Plant equipment which, to the knowledge of the contracting officer, is required by the Government for war production or in the interests of national defense;

(ii) Plant equipment of the types listed on Exhibit A of Surplus Property Board Regulation No. 6, unless the war contractor in possession employs less than 500 wage earners;

(iii) Plant equipment in the possession of the Aluminum Company of America or any of its subsidiaries, unless written approval of the sale has been obtained from the Surplus Property Board through the Director, Readjustment Division, ASF;

(2) Where the plant equipment is idle, the contracting officer has complied with the requirements of § 848.863–7;

(3) Care should be taken to avoid sales of individual items of plant equipment which are integral parts of a balanced production-line installation, when such sales would substantially lessen the utility or ultimate sales value of the installation.

(4) The price at which the plant equipment is to be sold has been established in accordance with the pricing policy set out in paragraph (b);

(5) The sale has been approved by a disposal board if required by paragraph (d);

(6) The contract of sale is not executed after (i) the plant equipment has been reported to a disposal agency as surplus in accordance with § 848.864–6 or (ii) the War Department has taken possession of the plant equipment (for example, by executing an agreement for its storage as contemplated in § 848.865–4, or by allowing the contractor to store it for the account and risk of the Government as contemplated in § 848.865–3 or by executing a receipt therefor as contemplated in § 848.865–8);

(7) If the cost to the Government of the plant equipment to be sold is $1,000,000 or more, the contract of sale will not be executed until receipt by the contracting officer of a favorable reply from the Attorney General to the report required by paragraph (c);

(8) The contract of sale complies with paragraph (e); and

(9) The sale is in accordance with all applicable regulations of the War Production Board and the Office of Price Administration;

(b) *Pricing policies.* All sales of plant equipment to war contractors in possession shall be made in accordance with the following pricing policies:

(1) All sales of used standard general-purpose machine tools as defined in Surplus War Property Administration Regulation No. 3 (see Part 8303 of Title 32) and of used standard machines listed in § 8306.5 (a) of Surplus Property Board Regulation No. 6 (Title 32) shall be made at prices in accordance with said Regulation No. 3 and Surplus Property Board Special Order No. 2 (see Exhibit D of said Regulation No. 6).

(2) All sales of plant equipment for which fixed prices are not established by applicable pricing regulations shall be sold at the fair value thereof. Plant equipment which is readily severable shall in no event be sold at prices which are less than the net proceeds that could reasonably be expected to be obtained by the Government if the property were offered for sale to the public generally. In order to prevent windfalls to the war contractor or the owner of the plant in respect of plant equipment not readily severable, primary consideration shall be given to the value of the plant equipment to such war contractor or owner for the purpose for which it is to be used. In this connection consideration shall be given to the cost of purchasing and installing plant equipment of equal value to such war contractor or owner for such purpose.

(3) In determining fair value consideration shall be given, where appropriate, to such factors as original cost, replacement and reproduction cost (new), observed depreciation and obsolescence, estimated depreciation resulting from application of the depreciation rates which the Bureau of Internal Revenue would normally apply for income tax purposes, current market value of similar items, age and extent of prior use, location, quantity and condition of the items, and any other pertinent factors. In the case of plant equipment which is not readily severable, consideration should, however, also be given to the estimated proceeds which would be realized and the estimated expenses which the Government would be required to bear if the plant equipment were to be dismantled, removed and offered for sale to the public generally.

(4) In estimating reproduction or replacement cost (new), it shall be assumed that adequate trained supervision, labor and suitable materials are available. Allowances for overtime and for extensive change orders during construction should be excluded. The contracting officer may employ appraisers to the extent deemed necessary or desirable.

(5) In the case of the sale of any plant equipment which is not governed by a fixed price schedule the contracting officer may request the advice and assistance of the Reconstruction Finance Corporation in the establishment of the price required by subparagraph (2). The request may be addressed to the regional office of the Reconstruction Finance Corporation for the region in which the property is located.

(c) *Submission of data to the Attorney General.* In any case where it is proposed to dispose of items of plant equipment which cost the Government $1,000,000 or more, the contracting officer will immediately prepare and forward to the Director, Readjustment Division, ASF, a report of such proposal for transmission to the Attorney General as contemplated by section 20 of the Surplus Property Act of 1944. This report will contain the following information:

(1) Name of the contractor in possession.

(2) A copy of the facilities contract under which the plant equipment to be sold is held and all supplemental agreements thereto. (Schedules attached to the facilities contract may be omitted).

(3) General description of all plant equipment held by the purchaser under the particular facilities contract.

(4) Description of the plant equipment proposed to be sold and the cost thereof to the Government.

(5) Statement as to whether any item of plant equipment proposed to be sold is included within paragraph (a) (1) (2), of this section.

(6) Statement as to the location of each item of plant equipment to be sold and whether the land on which it is located is owned by the purchaser or is leased by the purchaser from a party other than the Government. If the land is leased to the purchaser summarize briefly the provisions relating to duration and termination of the lease.

(7) Statement as to whether the plant equipment to be sold is idle and (i) if idle, whether it is currently being held in standby or (ii) if not idle, whether a notice of complete termination of war contracts being performed with the plant equipment has been served or whether complete cessation of work under such contracts is otherwise imminent.

(8) The amount of the offer or proposed sale price and all other terms and conditions of the proposed sale, to the extent available at the time of submission.

(9) A statement that the purchaser has represented that he plans to use the items purchased in his production.

(10) A brief statement by the purchaser as to what in general he intends to produce with the plant equipment proposed to be sold.

(d) *Review by disposal board.* (1) All sales of plant equipment will be subject to review and approval by disposal boards established as described in § 844.449–1 except as follows:

(i) Sales of plant equipment as specific prices fixed by (b) (1).

(ii) Sales where the cost, estimated if necessary, of the plant equipment sold is not in excess of $25,000.

(2) If review and approval are required under paragraph (1), the chief of a service may require an additional prior review and approval by a disposal board, established in his office under § 821.106 of this chapter, or, in the case of the Army Air Forces, in the headquarters office of a command, where the cost (estimated if necessary) of the material to be disposed of by the sale exceeds $500,000 and it is proposed to sell such material at more than 25 percent below such cost.

(e) *Provisions in contracts of sale.* Every contract of sale made pursuant to this section will contain (i) a recitation that it is made under the authority of section 14 (a) of the Surplus Property Act and regulations issued thereunder, (2) a waiver by the purchaser of any purchase options, rights of refusal or similar privileges with reference to other plant equipment which the contractor may have under the same facilities contract, and (3) an article substantially in the following form:

Representation as to use in production. The Purchaser represents that he intends that all property being acquired under this contract shall be used in his production and that he is not acquiring any of such property for the purpose of reselling it, directly or indirectly, at a profit.

(f) *Property covered by Emergency Plant Facilities Contracts.* (1) Where property in the possession of a war contractor is covered by an Emergency Plant Facility Contract under which:

(i) The expense of construction or equipment is initially borne by the contractor;

(ii) The Government reimburses him for the expense by monthly payments over a specified period;

(iii) Title does not pass to the Government until full reimbursement has been made; and

(iv) Reimbursement may be accelerated at the option of the Government;

such property shall be deemed to be plant equipment for the purposes of this section except in cases where the Government owns or where on completion of the payments the Government will own, or have a leasehold interest in, land on which buildings or other facilities have been constructed or installed pursuant to the contract.

(2) The war contractor in possession of property deemed to be plant equipment pursuant to subparagraph (1) above may acquire such plant equipment free and clear of the Government's right under the contract to obtain title: *Provided,* That (i) all the requirements of paragraphs (a) through (e) have been complied with and (ii) the written approval of the Director, Readjustment Division, ASF, shall have first been obtained. Requests for such approval will be submitted through channels and will contain a full statement of all pertinent information. [JTR 864.2]

§ 848.864–3 *Determinations and dispositions of unserviceable plant equipment and small lots.* The contracting officer will make prompt determinations and dispositions of unserviceable plant equipment and will dispose of small lots of plant equipment in accordance with the provisions of Subpart D of Part 844. [JTR 864.3]

§ 848.864–4 *Discard or abandonment of worthless items.* (a) The contracting officer may discard or abandon items of plant equipment when he determines that they are worthless; *provided, however,* That if the cost, estimated if necessary, of the items to be discarded or abandoned exceeds $1,000, the written approval of a disposal board established as described in § 844.449–1 is first obtained upon a certification in accordance with paragraph (a) hereof.

(b) Plant equipment which is not readily severable from the war contractor's plant and which has no substantial value to the war contractor, may be considered worthless if the estimated cost of dismantling, removal and sale of such plant equipment (including the cost of repairing any damage done to the war contractor's plant to the extent that the Government may be liable therefor) exceeds the estimated net return to the Government upon sale of such plant equipment when dismantled and removed.

(c) If the cost of the items to be discarded or abandoned as worthless exceeds $1,000, the contracting officer will certify to a disposal board (1) that reasonable efforts have been made to dispose of the items without success by offering them to at least three persons dealing in such items, or that such offer would be useless; (2) that in his opinion the items are worthless, or that the costs of sale and any other expenses which the Government is required to bear would exceed the estimated proceeds of such sale; and (3) that in his opinion the items should be discarded or abandoned. Where plant equipment is not readily severable and is to be discarded or abandoned as worthless it will not be necessary to offer such plant equipment to dealers in accordance with clause (1). [JTR 864.4]

§ 848.864–5 *Procedures as to certain scrambled facilities.* (a) As used in this section the term "structure" is defined to mean plant equipment which:

(1) Is held under a War Department facilities contract;

(2) Is not readily severable;

(3) Is (i) a separate building or (ii) a complete structural addition to a building in which the Government otherwise has no interest, such as a wing, and in which a war contractor carries on part or all of his war production.

(b) Any structure which cost the Government $50,000 or less will be disposed of by the contracting officer. A contracting officer of a service other than the Corps of Engineers will obtain the advice and assistance of the Division Engineers having jurisdiction over the area in which the structure is located in any case where it is desirable to ascertain the value of the structure or the cost of its severance and removal.

(c) Where the contracting officer of a service other than the Corps of Engineers considers it necessary or desirable for the Government to take any action under this Part with respect to a structure having a cost to the Government in excess of $50,000 or with respect to other plant equipment located within such a structure, except redistribution of plant equipment for the purpose of supply, war production, War Department industrial reserve or modernization of arsenals, he shall submit the matter through channels to the Director, Readjustment Division, for instructions as to the extent to which the Chief of Engineers is to participate in such action. He shall also send a copy of his submission to the Chief of Engineers through the Division Engineer having jurisdiction over the area in which the structure is located.

(d) Notwithstanding paragraph (c) any application for disposition of a structure or plant equipment located therein will be filed with the contracting officer as contemplated by § 848.863. [JTR 864.5]

§ 848.864–6 *Other sales and transfers.* (a) A sale of plant equipment may be made to any person if the chief of the service determines that such sale will facilitate the prosecution of the war or will be for the purpose of war production. The pricing policies set forth in § 848.864–2 will be applicable to such sales.

(b) Transfers of plant equipment may be made to another service or bureau or to another Government agency. Such transfers shall be made at the fair value as fixed by the chief of the service, unless transfer without reimbursement or transfer of funds is otherwise authorized by law. (See Part 823 of this chapter). In this connection Surplus Property Board Special Order No. 12, June 16, 1945, authorizes owning agencies to transfer to Reconstruction Finance Cor-

poration (as successor to Defense Plant Corporation) without reimbursement special attachments which are attached to machines or machine tools owned by it in any case when the contracting officer determines that such special attachments have no commercial value separate from the machines to which they are attached, or that the cost of the care and handling and disposition of such special attachments, separate from the machines to which they are attached, would exceed the estimated proceeds of disposition.

(c) Items of idle plant equipment, which have not been disposed of under the preceding provisions of §§ 848.864 to 848.864–6, inclusive, or which are not to be disposed of under Subpart D of Part 844 as unserviceable or as small lots, shall be deemed to be surplus and shall be promptly reported to the appropriate disposal agency in accordance with Part 827 of this chapter. [JTR 864.6]

§ 848.865 *Removal and storage.* [JTR 865]

§ 848.865–1 *Dismantling.* (a) Where dismantling of plant equipment is required in connection with its removal or storage, the work incident to such dismantling should be done by the war contractor in possession unless otherwise directed by the contracting officer. (See § 848.861–2 as to who shall bear the expense of dismantling.)

(b) When plant equipment is dismantled the war contractor will use reasonable care to prevent injury or damage to the plant equipment in effecting such dismantling and, to the extent that inspection of the plant equipment by the Government is required by § 848.866, he will allow the contracting officer a reasonable opportunity to inspect the plant equipment before it is dismantled.

(c) Where the contractor is unable to dismantle the plant equipment, the contracting officer shall make appropriate arrangements therefor. Contracting officers of services other than the Corps of Engineers may obtain the advice and assistance of the appropriate Division Engineer in any case involving the severance or removal of plant equipment which is not readily severable. [JTR 865.1]

§ 848.865–2 *War contractor's right to remove and store at his own expense.* A war contractor may remove any idle plant equipment from his plant and store it elsewhere at his own risk and expense at any time before the expiration of the plant clearance period provided that:

(a) Any provisions to the contrary in the facilities contract have been waived; and

(b) The plant equipment is not required to be held in place for war production or in the interests of national defense; and

(c) If the plant equipment is not readily severable its severance has been authorized by the contracting officer under § 848.861–1 (d).

In order to ascertain whether the plant equipment is required by the Government for such purposes, and except as the facilities contract may otherwise provide, the war contractor will give the contracting officer twenty (20) days' notice in writing of his intention to remove and if upon the expiration of such period the contracting officer has not advised him that the plant equipment is required to be held in standby or furnished him with shipping instructions, the plant equipment may be removed by him from his plant as provided in such notice. [JTR 865.2]

§ 848.865–3 *War contractor's right to store for account and risk of Government.* The war contractor may store idle plant equipment for the account and at the risk and expense of the Government in his own plant or elsewhere if (a) prior to the end of the plant clearance period the Government does not enter into a storage agreement with him or remove the idle plant equipment which the Government is obligated under the principles stated in § 848.861–1 to remove, and (b) he has fulfilled all unwaived contractual obligations as to dismantling and preparation for extended storage or shipment and as to standby and storage. In such case he shall exercise reasonable care in its transportation and preservation. The war contractor must deliver to the contracting officer: (1) twenty (20) days' notice in writing in advance of the date fixed for removal; and (2) a certified statement that the removal schedule in the application as originally submitted, or as modified in such statement, represents a concurrent physical inventory of the items to be removed. Notice of removal may be delivered before or after the expiration of the plant clearance period, but submission of the notice will not shorten such period. [JTR 865.3]

§ 848.865–4 *Storage by the Government.* (a) Where under the principles stated in § 848.861–1 the Government is obligated to remove idle plant equipment from a war contractor's plant, such plant equipment, when it is surplus, will, if possible, be removed directly to installations operated by disposal agencies. Where there is a shortage in transportation or storage space, and the war contractor is willing, the contracting officer may store such plant equipment with the war contractor.

(b) Where storage arrangements cannot be made under paragraph (a), the contracting officer will arrange to store the plant equipment in installations operated by the services or with other contractors or commercial warehouses.

(c) All plant equipment, except scrap and salvage items stored with the war contractor, must be packed, crated, and marked as prescribed in § 848.865–7 prior to its being placed in storage. When plant equipment is stored with the war contractor, it may be left unpacked and uncrated, provided that it is properly tagged or marked to identify it with the facilities contract under which it is currently being furnished and provided that it is properly preserved. [JTR 865.4]

§ 848.865–5 *Storage with contractor under standard storage agreement.* Agreements with war contractors for the storage of idle plant equipment should be made substantially in accordance with the form of standard storage agreement set forth in § 849.974–3. [JTR 865.5]

§ 848.865–6 *Compensation for storage.* When storage of the plant equipment is desired by the Government pursuant to § 848.865–5 the war contractor will be compensated for such storage only to the extent that it exceeds the period, if any, during which the war contractor is then obligated to store such plant equipment without compensation. [JTR 865.6]

§ 848.865–7 *Preparation for shipment or storage.* (a) Preparation for shipment or storage except in the case of scrap and salvage, ordinarily includes preserving, packing, boxing, crating, tagging and marking. Contracting officers will inform war contractors of the manner in which plant equipment is to be prepared for shipment or storage. They may prescribe standard specifications, usual commercial practice or any other standards dictated by the Government's requirements in the particular case. The SWPA Manual "Guide for the Storage of Plant Equipment and Termination Material" will be used as a guide for determining the manner in which plant equipment is to be prepared for shipment or storage. If the facilities contract contains no provisions covering the manner of preparation for shipment or storage or if the manner prescribed by the provisions does not meet the then requirements of the Government, the contracting officer will arrange with the war contractor to modify the contract provisions with regard to preparation for shipment or storage in accordance with the Government's then requirements.

(b) Where the facilities contract provides exacting standards or specifications covering preparation for shipment or storage and it appears in the interest of the Government that they be relaxed, the contracting officer may waive in whole or in part the obligation of the contractor to prepare for shipment in accordance with such provisions: *Provided, however,* That where the war contractor has been compensated for such performance, an adjustment by him will be made in favor of the Government. [JTR 865.7]

§ 848.865–8 *Acknowledgment of receipt for plant equipment removed.* When plant equipment is removed from a war contractor's plant by the Government, the contracting officer will furnish the war contractor with a receipt for the plant equipment removed which will include a statement of any respects in which the plant equipment is defective. The receipt will be executed substantially in accordance with the form provided in § 849.974–2. Whenever feasible such receipt will be executed on copies of the removal schedules of the application to be retained by the war contractor. Whenever the plant equipment is removed from the war contractor's plant in lots, copies of the covering shipping documents may be used for the purpose of the receipt or reference may be made in the receipt to item identification numbers on the removal schedules. As the form of receipt provided in § 849.974–2 may operate as a release of the war contractor by the Government with respect to items of plant equipment covered thereby, the receipt will not be delivered

until the procedures prescribed in § 848.866 have been carried out to the satisfaction of the contracting officer. [JTR 865.8]

§ 848.866 *Verification of plant equipment for storage or removal by the Government.* (a) The contracting officer will be responsible for verification of the quantities and condition of items listed on the war contractor's application of items listed on the war contractor's application for disposition of plant equipment as to which the contractor has demanded removal. This verification is to be made in order to ascertain whether the items listed on the war contractor's application for disposition are items furnished under the facilities contract and whether the Government is receiving the quantities listed in the condition required by the facilities contract. The verification will be made prior to the time of dismantling, wherever practicable, and in any event prior to execution of the receipt provided for in § 848.865–8 or of a storage agreement made pursuant to § 848.865–5. Where practicable, verification will be made of compliance with requirements as to preparation for shipment or storage and of the accuracy of the tagging and marking of the plant equipment when prepared for shipment or storage, including verification of the number of packages listed on shipping documents at the time of shipment. The shipping documents should be checked against the removal schedule to ascertain that credit is not allowed on the shipping documents for items not listed on removal schedules unless shipment of the items has been verified and the removal schedules corrected.

(b) Ordinarily one hundred per cent verification is not required. The extent of selective checks as to quantities and condition prior to dismantling, tagging and marking of items prepared for shipment or storage and as to quantities listed on shipping documents should depend upon the original cost of particular items, the number of items to be checked, the nature of the plant equipment, past experience with the war contractor in possession, previous inspection by Government representatives, the reliability of the war contractor's inspection organization, the results of the checks performed, and any other relevant factors. The verification will include an inspection for condition as provided in paragraph (c) with respect to each item not certified by the contractor to be operating or capable of operating satisfactorily on the operation for which it was originally procured.

(c) Wherever items of plant equipment are inspected for condition, the inspection will include but will not be confined or limited to the following types of examination: (1) visual examination for evidence of damage to major elements; (2) visual examination of exposed wearing surfaces for evidence of abuse or lack of reasonable care; (3) reasonable check as to the functioning of operating controls (under power, if not disconnected). Ordinarily the inspection for condition will not require (i) dismantling for inspection, (ii) power, performance or accuracy tests, or (iii) precision measurements. In every case where the contracting officer or the representative making an inspection for condition is of the belief that an item of plant equipment may not be in the condition required by the contract, he will arrange with the contractor for a joint inspection of such item.

(d) Personnel making selective checks of plant equipment as herein provided will note the items selected and the results of their checks as to quantities and condition on one copy of the removal schedules or on supplemental schedules to be attached thereto, referencing the item number on the removal schedules. In every case such copy, properly authenticated by Government representatives charged with supervision of the selective checks, will be furnished to the contracting officer who will retain such authenticated copy as part of the permanent file. [JTR 866]

§ 848.867 *Property accounting requirements.* [JTR 867]

§ 848.867–1 *Written advice with regard to defective items.* As provided in paragraph 103 of TM 14–910, War Department Industrial Property Accounting Manual for Cost-Plus-A-Fixed-Fee Supply Contracts, or paragraph 80 of TM 14–911, Accounting for Government Property Under Fixed Price Contracts, the contracting officer will advise the accountable property officer in writing as to the items of plant equipment listed on the removal schedule which are not in the condition required by the contract, and his findings as to the contractor's liability therefor under the applicable contract provisions. [JTR 867.1]

§ 848.867–2 *Movement of items from the war contractor's plant.* Movement of items of plant equipment on War Department order from the war contractor's plant will require the preparation of shipping documents, or other forms authorized for use in lieu thereof, as prescribed in paragraph 97, TM 14–910, or paragraph 77a, TM 14–911. Movement on disposal agency order will require the action prescribed in § 844.495–2. Shipping documents covering shipments of plant equipment hereunder will be marked "Plant Clearance Equipment". In addition, those documents covering shipments of such equipment from storage under a storage agreement with a war contractor, or from storage in a commercial warehouse, must bear the notation "Shipped from Storage," and must indicate the station of the contracting officer under the storage or warehouse agreement involved. Instances of losses of or damage to plant equipment in storage under storage agreements with war contractors or commercial warehousemen require action as provided in § 844.495–3 (a) of this subchapter. [JTR 867.2]

§ 848.867–3 *Discrepancies incident to shipment.* Discrepancies incident to shipment of plant equipment removed from a war contractor's plant will require action as prescribed in § 844.496 of this subchapter. [JTR 867.3]

§ 848.867–4 *Sale of items of plant equipment.* When items of plant equipment are sold, the contracting officer will furnish the accountable property officer with a list of the items sold, making reference to the sales document. Such list must make reference to the voucher on which deduction was made in case the proceeds are deducted from amounts due the war contractor. In the event direct payment is to be made by the war contractor and in cases of sales by the contracting officer to third parties, the procedures prescribed in section II, AR 35–6660 (AR 35–6665, when published) with respect to sales of property will be observed. [JTR 867.4]

§ 848.867–5 *Plant equipment scrapped, abandoned or transferred to Defense Plant Corporation.* (a) Where plant equipment is determined to be unserviceable in accordance with Subpart D of Part 844, lists of such items together with the written determination of the contracting officer will be furnished to the accountable property officer and the instructions set forth in §§ 848.867–4 or 844.495–5 (a), whichever is appropriate will be observed.

(b) Where items of plant equipment are discarded or abandoned pursuant to the provisions of § 844.864–4 or transferred to Reconstruction Finance Corporation as successor to Defense Plant Corporation pursuant to the provisions of § 848.864–6 (b), a list of such items together with the written determination of the contracting officer to discard, abandon or transfer the equipment will be furnished to the accountable property officers. Such lists and written determination will constitute a valid credit voucher to the property accounts for the items involved. Where under the provisions of § 848.864–4 the approval of a disposal board is required, an authenticated copy of such approval will be attached to the written determination of the contracting officer. [JTR 867.5]

§ 848.867–6 *Storage under a storage agreement.* A copy of each storage agreement, together with a list of the items to be stored and their quantities and condition, will be furnished by the contracting officer to the accountable property officer designated in the storage agreement. In the event such officer is different from the officer holding accountability prior to execution of the storage agreement, the contracting officer will also furnish a list of items under the storage agreement to such former officer in order that shipping documents may be accomplished to reflect the transfer of accountability. [JTR 867.6]

§ 848.867–7 *Final accounting procedures.* (a) In the event that removal of all of the plant equipment furnished under a facilities contract is demanded by a war contractor, the contracting officer may consider the inspection and verification as provided in § 848.866 as meeting the requirements of a physical inventory of the property as prescribed in paragraph 105, TM 14–910 or paragraph 84, TM 14–911.

(b) Upon removal, storage or other disposition of all of the items of plant equipment indicated by the war contractor as being in his possession or control, the contracting officer will request from

the accountable property officer a report in duplicate of all items which his records indicate have not been accounted for under the contract. Compliance with such request may be considered as satisfying the requirements of paragraph 105 of TM 14–910 and paragraph 84 of TM 14–911, for a report of shortages at contract termination or completion.

(c) One copy of the report required in paragraph (b) will be furnished by the contracting officer to the war contractor who will be afforded an opportunity to furnish evidence that the items have been previously returned to the Government and allowed a reasonable length of time in which to make a search for the items to be accounted for. Copies of documents evidencing disposition, as provided herein, of any items accounted for by this means will be furnished to the accountable property officer. The contracting officer will then advise the accountable property officer in writing with respect to all items remaining to be accounted for after the action outlined above has been completed, and the provisions of paragraph 103, TM 14–910 or paragraph 80, TM 14–911, whichever is applicable, will be observed. [JTR 867.7]

§ 848.868 *Settlement of liability for losses of and damage to plant equipment.* (a) If a facilities contract is included in a supply, construction or other contract which has been terminated in whole or in part, or if a separate facilities contract has been terminated in whole or in part, the liability of the war contractor for loss of and damage to plant equipment furnished to or acquired by the war contractor under the facilities contract may be settled by negotiation in and as a part of any negotiated settlement of such terminated contract. (See § 841.121–19.) Where not settled by agreement, it may be settled in accordance with the provisions of the contract, using the procedures for a formula settlement under a fixed-price supply contract insofar as applicable (see Subpart E of Part 827).

(b) In any case where the procedure described in paragraph (a) is not or cannot be availed of, the amount and extent of the liability of the war contractor for shortages and defective condition of plant equipment furnished under the facilities contract will be disposed of by mutual agreement of the parties or by the decision of the contracting officer in accordance with the Disputes Article (see § 803.326) or other applicable provisions of the contract. Any determination of fact by the contracting officer will be subject to appeal by the war contractor under the Disputes Article or other applicable provisions of the contract. The contracting officer will arrange for the remission by the war contractor of the amount of the liability or for the deduction of such amount from any sums which may be due the war contractor under the contract or will advise the appropriate Government office to effect collection of the sum owed by the war contractor. [JTR 868]

§ 848.869 *Authority to contract.* Wherever in this subpart the Government is authorized or required to bear expenses incurred or to be incurred or to make arrangements for dismantling, preservation and preparation for storage or shipment, removal, storage, repair of damage or any other work to be done with respect to any plant equipment in connection with the clearance of a war contractor's plant, the chief of the service is authorized to negotiate and enter into contracts therefor. In addition the chief of the service is authorized to amend or modify existing contracts whenever such action is rendered necessary or desirable by action taken under and in accordance with the provisions of this Part. Each such contract, or amendment or modification of an existing contract, will recite that it is executed pursuant to section 12 (g) of the act. The necessary funds will be procured from the service administering the prime facilities contract under which the plant equipment concerned is held. [JTR 869]

SUBPART H—REPORTS ON PROPERTY DISPOSITION

§ 848.880 *Scope.* This subpart covers the preparation and submission of reports concerning the disposition of property and related matters. [JTR 880]

§ 848.883 *Report of sales of plant equipment.* [JTR 883]

§ 848.883–1 *General description.* Government-owned plant equipment to be reported on sales reports shall include all Government-owned plant equipment in privately owned plants and Government-owned plants including emergency plant facilities, excluding only (a) plant equipment in permanent industrial installations of the Army and Navy such as arsenals, proving grounds, shore establishments, and similar permanent installations, (b) plant equipment in Army and Navy installations used or useful for activities of the Army and Navy other than the production of matériel, munitions, and supplies, (c) plant equipment declared surplus, (d) plant equipment outside the continental limits of the United States, and (e) plant equipment classified as scrap or salvage. Sales of items of Government-owned plant equipment, costing $350 or more, falling in the classes in Schedule B to Surplus Property Board Regulation No. 6, shall be reported separately for each such class. In addition, a line-entry shall be made for each sale of other Government-owned plant equipment, including Schedule B items costing less than $350. These sales will be identified as "other sales" and will not be classified by commodity classification. For this class of sale, therefore, fill in only Columns (a), (b), (c), (d), (h) and (i) on the Forms SPB–9 described in § 848.833–2. [JTR 833.1]

§ 848.883–2 *Form.* In the War Department the chief of each service shall submit on or before the 12th day of August 1945, and of each succeeding month, to the Readjustment Division, ASF, the original and three copies of a Form SPB–9 for each sale to a single purchaser of plant equipment accomplished during the preceding month, together with a transmittal sheet showing the number of original SPB–9 reports attached, and the total cost and sales price of property listed thereon. Reports Control Symbol AA–M2–34 has been assigned to this report. This form is available at A. G. Depots. [JTR 883.2]

§ 848.883–3 *Block and column entries.* The following information will be entered in the respective columns of Form SPB–9:

Block 2 State the name and address of the reporting agency.

Block 3 Indicate the month covered by the report.

Block 4 Indicate the date on which the SPB–9 form was transmitted to the office of the chief of service.

Block 5 Enter the complete name and address of purchaser. Reports of sales in the month to a single purchaser should be assembled consecutively.

Block 6 The name of the reporting officer should be typed in this block in addition to his signature. If continuation sheets are used, it is necessary to sign only the top sheet.

Column (a) Item Number. Assign each entry a consecutive item number. Where consecutive items on a single page repeat information identical with the stub information of a preceding item, repetition of such stub information is not necessary.

Column (b) Enter the number of the relative facilities contract. Write "none" if there is no relative facilities contract number. The facilities contract number need be given only in the case of Class 1 and Class 2 sales described in the instructions for Column (d) below.

Column (c) Indicate "yes" if a waiver of options was obtained. Indicate "no" if a waiver of options was not obtained. If a facilities contract does not contain an option provision, state "no option." This information is necessary only in the case of Class 1 sales described in the instructions for Column (d) below.

Column (d) Enter the code number for the class of purchaser or sales as follows: (The prime or sub-contractor referred to in class of sales 1 and 2 is the holder of the prime or sub-facilities contract).

Code No.	*Class of sale or purchaser*
1	Government-owned plant equipment in contractors' plants sold to prime contractors in possession.
2	Government-owned plant equipment in contractors' plants sold to sub-contractors in possession.
3	Government-owned plant equipment in contractors' plants sold to others.
4	Sales of plant equipment in emergency plant facilities.
5	All other sales by owning agencies of Government-owned plant equipment.

Columns (e) and (f) Description and Standard Commodity Classification. Enter a short description, such as one key word or an abbreviation of one or more words, and the code number of the commodity classification as shown in Exhibit B to Surplus Property Board Regulation 6 where the item sold is within these classifications. Sales of other classes of plant equipment are to be reported as "other sales." In these cases, do not enter a Standard Commodity Classification code number, but fill in Columns (a), (b), (c), (d), (h), and (i).

Column (g) Enter the number of units sold.

Column (h) Enter the total cost of the number of units sold. The cost of units sold

should be the procurement cost in dollars (estimate if not known) for the units entered in Column (g). For machine tools and other metal working machinery and production equipment, costs should be reported f. o. b. manufacturer or vendor to owning agency.

Column (i) Enter the sales price for the units reported on each line. It will be necessary in some cases to estimate the sales price since there may be lump or bulk sales.

Column (j) Indicate by code the price policy under which the sale was made as follows:

Code No.	*Price policy*
1	Priced under a fixed price schedule under paragraphs (a) and (b) of the pricing policy contained in Surplus Property Board Regulation 6 to be coded only in the case of classes 1 and 2 sales as described in the instructions for Column (d) above).
2	Priced as readily severable plant equipment under paragraph (c) of the pricing policy contained in Surplus Property Board Regulation 6 (to be coded only in the case of classes 1 and 2 sales as described in the instructions for Column (d) above).
3	Priced as non-severable plant equipment under paragraph (d) of the pricing policy contained in Surplus Property Board Regulation 6 (to be coded only in the case of classes 1 and 2 sales as described in the instructions for Column (d) above).
4	Priced in accordance with option provisions in a facilities contract.
5	All clases 3, 4, and 5 sales described in the instructions for Column (d) above.

[JTR 883.3]

SUBPART I—MONTHLY REPORTS ON STATUS OF TERMINATIONS

§ 848.890 *Scope.* This subpart covers the preparation and submission of monthly reports covering settlement of terminated war contracts and related matters. [JTR 890]

§ 848.891 *Responsibility for submitting reports.* [JTR 891]

§ 848.891–1 *Reports within War Department.* In the War Department, the chief of each service shall submit each month to the Readjustment Division, Headquarters, Army Service Forces, an original and one copy of each report in the manner prescribed in §§ 848.892 to 848.898–2, inclusive. Each such report shall be submitted on or before the 10th day of the month following the one reported upon, except that reports on plant clearance, as prescribed in § 848.897, shall be filed on or before the 12th day of the month [JTR 891.1]

§ 848.891–2 *Reports within Navy Department.* In the Navy Department, reports shall be submitted as follows:

(a) Each Bureau shall submit:

(1) The report on the status of terminated fixed price contracts (see § 848.892).

(2) The report on the status of terminated cost-plus-a-fixed-fee contracts (see § 848.893).

(3) The partial payment report (Subparts A, B, and C only, see § 848.894).

(4) The report on subcontract settlement delegations (see § 848.895).

(5) The report on findings and appeals (see § 848.896).

(b) The Finance Division, OP&M, shall submit the partial payment report (Subpart D only, see § 848.894–3).

(c) NMR&DA shall submit:

(1) The report on plant clearance (see § 848.897).

(2) The report on the consolidated termination and company-wide settlement programs (see § 848.898).

(d) The Bureau reports and the Finance Division, OP&M, report shall be submitted to the Industrial Readjustment Branch, OP&M, on or before the 10th of the month following the one reported upon; the NMR&DA reports shall be submitted to the Property Disposition Branch, OP&M, on or before the 15th of the month following the one reported upon. [JTR 891.2]

§ 848.891–3 *How amounts to be shown.* In all reports, amounts will be shown to the nearest whole dollar. [JTR 891.3]

§ 848.892 *Report on status of terminated fixed-price contracts.* [JTR 892]

§ 848.892–1 *General description.* This report will list all fixed price prime contracts (except facilities contracts and agreements reached by the use of change orders) terminated for the convenience or at the option of the Government, the settlement of which was effected during the month or was pending at the end of the month, regardless of the amount of the contract, where formal notice of its termination has been given. It will also list all claims under terminated fixed price subcontracts (whether under fixed price or cost-plus-a-fixed-fee contracts) the settlement of which has been assumed by the Government, and will summarize terminations of a company-wide settlement contractor arising from termination of subcontracts held by him with another war contractor in accordance with instructions under §848.892–6. [JTR 892.1]

§ 848.892–2 *Form.* (a) In the War Department, this report will be submitted on W.D., A.G.O. Form No. 505, Control Approval Symbol PDE–10. This form is available at AG Depots.

(b) In the Navy Department, this report will be submitted on NAVEXOS Form Nos. 753, 754 and 755. The forms are available in the Industrial Readjustment Branch, OP&M, Navy Department, Washington 25, D. C. Part I of this report will be submitted on Form NAVEXOS 755; Part II on Form NAVEXOS 753; and Part III on Form NAVEXOS 754 (see § 848.892–3). [JTR 892.2]

§ 848.892–3 *Arrangement.* (a) The reports will be prepared to show separately the results in each War Department procurement office or Navy Department termination unit. Each assigned contractor under the company-wide settlement program will be considered as a separate procurement office or termination unit.

(b) The reports will be prepared in the various parts and sections described below. The terminations listed within each section will be arranged in chronological order based on the effective date of termination. Part One will not be required by the War Department.

PART ONE

Section I. Terminations initiated during the month.

Section II. All other terminations, including transfers-in (terminations received for settlement from another terminating office) reported for the first time, regardless of the effective date of termination.

PART TWO

Section I. Terminations settled during the month. All dates and amounts for terminations in this group must agree with the corresponding data on the final settlement proposal form and the supplemental agreement. In the event that a settlement with a prime contractor excludes certain subcontract claims, pursuant to § 846.613–1 of this subchapter, which are not assumed by the Government for direct settlement, the names of the excluded subcontractors and the reason for their exclusion will be noted.

Section II. Terminations rescinded during the month.

Section III. Terminations transferred-out (terminations transferred from the terminating office to another office for settlement) during the month. See § 848.892–6 (b) (2) for handling of "company-wide settlement" transfers. In the War Department, the chief of the service is responsible for "zero balancing" all intra-service transfers.

PART THREE

Section I. Terminations in process of settlement. For the Navy Department, this will include cases in Section II of Part I but not in Section I thereof.

Section II. Suspense Terminations, which are those as to which the terminated contract is—

(a) in litigation,

(b) before a Board of Appeals at a higher level than the terminating service or bureau,

(c) a War Supplies, Ltd. termination pending three months or more after the effective date of termination; or

(d) unsettled for reasons beyond the control of the service or bureau, including those cases under appeal in the Court of Claims, a U. S. District Court, or a U. S. Circuit Court of Appeals.

[JTR 892.3]

§ 848.892–4 *Columnar entries.* (a) The following information will be entered in the respective columns of the report form:

Column 1—*Number.* The number of the terminated contract.

Column 2—*Name of Contractor.*

Column 3—*Item.* Sufficient information will be given to permit identification of the item or items, the production of which has been terminated.

Column 4—*Partial or Complete.* Partial terminations should be indicated by "P" and complete terminations by "C". 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 contract is terminated.

Column 5—*Date of Termination Notice.* The date on which the contractor was notified of the proposed termination by the responsible office or bureau.

Column 6—*Effective Date of Termination.* The date specified in the notice of termination as the effective date. In the event that no date is specified in the notice, the best estimate will be used until final information is obtained.

Column 7—*Amount of Contract.* The total amount of the contract, including supplements. If a contract is partially terminated and later terminated with respect to the continued portion, each such termination will normally be treated as a separate transaction (see § 848.892–6 (a)), but the value is to be listed in this column in parentheses.

Column 8—*Total Contract Price of Items Cancelled.* The best estimate is to be used until final figures can be ascertained. Final figures must agree with the amount shown as "Not to be completed" on the settlement proposal form.

Column 9—*Contractor's Claim—Date of Filing.* The date on which the prime contractor's claim for his own charges was received by the contracting agency. In the case of the Navy, this is the date on which the claim is received by the cognizant Navy material inspector. Settlement proposals, which are improper as to form and which will therefore be returned to the contractor for revision or correction without submission to the contracting officer, should not be reported. In the event of interim proposals, show the original date prefixed by "I". The date of the most recent interim proposal or of the final proposal will be shown below this original date prefixed by "I" or "F", whichever is applicable. Addition or adjustment of interest in the final settlement proposal does not constitute a change in date of filing.

Column 10—*Contractor's Claim—Amount Exclusive of Subcontractors.* The dollar amount of the prime contractor's own charges. This amount will be Line 13 plus Line 16 of Settlement Proposal Form 1, Line 2 plus Line 3 of Settlement Proposal Form 1a, and Line 13 plus Line 15 of Settlement Proposal Form 1b. If interest is added in final settlement in excess of that shown on the settlement proposal, the corresponding addition should be made to the amount of the proposal. The difference between the amount of final claim and the amount entered in Column 17 for completed cases will represent the net change resulting from negotiation. Where the contractor submits interim proposals, the latest amount proposed to date will be shown opposite the most recent proposal date, and previous proposal figures will be omitted.

Column 11—*Subcontractors' Claims—Submitted—Number.* The number of first tier subcontractors' claims submitted by the prime contractor to the office administering the termination, or settled by the prime contractor under delegation of authority. This will not include "no cost" settlement agreements made by prime contractors with their subcontractors.

Column 12—*Subcontractors' Claims—Submitted—Amount.* The total dollar amount of all first tier subcontractors' claims submitted by the prime contractor to the office administering the termination. The amount of subcontractors' claims must be as shown on Line 14 of Settlement Proposal Form 1 or 1b.

Column 13—*Subcontractors' Claims—Approved—Number.* The number of first tier subcontractors' claims which have been approved by the contracting officer or his representative, or by prime contractors where authority has been granted to settle without Government approval.

Column 14—*Partial Payments—For Benefit of Prime Contractor.* The total amount of partial payments made to the prime contractor solely for his use and benefit.

Column 15—*Partial Payments—For Benefits of Subcontractors.* 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 subcontractors or are paid direct to subcontractors.

Column 16—*Details of Final Settlement—Date.* 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. Where approval by the chief of the service or bureau is required, the transaction must be considered as pending until this approval is received.

Column 17—*Details of Final Settlement—Gross Amount Excluding Subcontractors.* The gross amount of the settlement agreement including expenses subsequent to termination but excluding that portion of the contractor's settlement represented by settlements with subcontractors. Differences between Columns 10 and 17 represent negotiated reductions between the contractor's final claim (see Column 10 above) and the final settlement.

Column 18—*Details of Final Settlement—Amount Subcontractors.* The amount payable to subcontractors by the prime contractor, and included in the final settlement. Differences between Columns 12 and 18 represent negotiated reduction made by the contracting officer in the subcontractors' settlements previously approved by the prime contractor and submitted to the contracting officer for approval.

Column 19—*Details of Final Settlement—Disposal Credits.* Enter the amount credited to the Government by the prime contractor for receipts from sales or retention of termination inventory included in his gross settlement proposal.

Column 20—*Details of Final Settlement—Net Amount of Settlement.* The net settlement of the proposal. This is Column 17 plus 18 minus 19.

Column 21—*Details of Final Settlement—Amount Allowed for Property Taken over by the Government.* 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 cost cannot be assigned to this inventory, as in some settlements on a total cost basis, the best possible estimate will be given. Do not include the value of, or loss on, items scrapped, retained, abandoned, or disposed of by contractor.

(b) For War Department terminations in process of settlement, the space occupied by Columns 16, 17, 18, 19, 20, and 21 will be used to explain briefly the status of plant clearance and settlement action. As to plant clearance, each termination must show one of the following remarks:

(1) No inventory involved
(2) Awaiting inventory list
(3) Inventory clearance in process
(4) Inventory cleared

As to settlement action, each termination must show one of the following remarks:

(1) Awaiting information from contractor as to cost or "no cost" settlement
(2) Awaiting claim
(3) Awaiting office review or audit
(4) Negotiating (use only where accounting review is completed)
(5) Awaiting supplemental agreement

(c) For Navy Department terminations in process of settlement, the remarks column of NAVEXOS 754 shall show such remarks as are requested by the Industrial Readjustment Branch, OP&M, from time to time.

(d) Other pertinent remarks will be added when they are of assistance in explaining the status of the termination settlement. In the case of suspense terminations (Part Three, Section II of the Report) a brief statement should be added explaining why the termination cannot be settled by the contracting officer. Where this information appears in the findings and appeals report (§ 848.896) a cross reference to such report will be sufficient.

(e) In terminations 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 those submitted to date as shown in Column 11. [JTR 892.4]

§ 848.892–5 *Summary.* (a) A summary will be prepared for each report in both numbers and dollars.

(b) In the War Department, this report will be submitted on WD, AGO Form No. R 5056, Control Approval Symbol RCC–22.

(c) In the Navy Department, this report will be submitted on NAVEXOS Form 2091.

(d) *Line entries.* The following information will be entered in the respective lines of the form:

Line 1—*In process of settlement—Active per last report.* This will agree with Line 13 of the previous month's report.

Line 2—*In process of settlement—Suspense per last report.* This will agree with Line 14 of previous month's report.

Line 3—*Adjustments in last report—(Dollars only).* Net adjustments during the current month in the contract price of items cancelled in Lines 1 and 2 above. The service terminating a prime contract shall make no reduction in the reported amount of any prime contract due to the assumption by another designated officer of the settlement responsibility in company-wide settlement of a subcontract allocable to such a prime contract.

Line 4—*Added this month.* Terminations listed on this month's report for the first time regardless of the effective date of termination. This will exclude transfers-in.

Line 5—*Transferred-in (Other procurement offices of same service).*

Line 6—*Transferred-in (Company-wide settlement).* Those transfers-in from other services will be entered.

Line 7—*Total—Lines 1 through 6.*

Line 8—*Settled this month.*

Line 9—*Rescinded this month.*

Line 10—*Transferred-out (Other procurement offices of same service).*

Line 11—*Transferred-out (Company-wide settlement).*

Line 12—*Total—Lines 8 through 11.*

Line 13—*In process of settlement—Active this report.* This group will be subdivided as below.

Line 13a—*Less than four months.* This group includes terminations with effective dates which have not yet been reached, those effective during the month of report, and any of the preceding three months.

Line 13b—*4 through 6 months.* This group includes terminations with effective dates falling in the fourth, fifth and sixth month preceding the month of report.

Line 13c—*7 through 12 months.* This group includes terminations with effective dates falling in the seventh, eighth, ninth, tenth, eleventh and twelfth month preceding the month of report.

Line 13d—*Over 12 months.* This group includes those terminations with effective dates falling in a month earlier than the twelfth month preceding the month of report.

Line 13e—*Total.* Lines 13a through 13d.

Line 14—*In process of settlement—Suspense this report.*

Line 15—*Total in process.* Line 13e plus Line 14. Also Line 7 minus Line 12.

[JTR 892.5]

§ 848.892–6 *Special cases*—(a) *Successive partial terminations.* (1) Where successive partial terminations are made under one prime contract, each such termination will be treated as a separate transaction, unless it is intended to settle all partial terminations in one settlement 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 terminations should be listed under the "Rescinded" section of the report. The total terminations to date under the contract will be picked up as a single termination under the date of the latest termination.

(b) *Company-wide settlements.* (1) The designated officer engaged in the company-wide settlement of an assigned contractor shall prepare a separate monthly contract termination status report with respect to the termination of such assigned contractor.

(2) As to prime contracts:

(i) The terminating agency will report the termination as a "termination in process of settlement" until such time as transfer to the designated officer has been effected, after which it will be reported as a "termination in process of settlement" by the designated officer.

(ii) At the time of transfer to the designated officer, the service or bureau terminating the contract will notify the designated officer of the contract price of items cancelled, the effective date of termination, and other pertinent data. The designated officer will acknowledge receipt and notify the service or bureau as to the month in which the termination will be picked up on the designated officer's Monthly Contract Termination Status Report. Upon receipt of this advice, such service or bureau will list the termination as transferred-out in the month indicated in the acknowledging letter.

(3) As to claims of a company-wide settlement contractor arising from termination of subcontracts held by him with another war contractor which are assumed by the Government for direct settlement

(i) Claims settled during the month will be reported on a single line immediately below the prime contract terminations reported as settled during the month. A notation will be made across Columns 3, 4, 5, 6, 7, and 8 as follows: "Subcontract Claims Awaiting Settlement Under Company-wide Settlement Program". The number of subcontract claims submitted will be entered in Column 11; the amount of these claims will be entered in Column 12; the number of subcontract claims approved will be entered in Column 13; the net settlement will be entered in Columns 18 and 20; and the amount allowed for property taken over by the Government in Column 21. All such subcontract claims will be entered on the report on a net basis after exclusion of disposal credits.

(ii) Claims awaiting settlement will be reported on a single line immediately below the prime contract terminations pending settlement at the end of the month. A notation will be made across Columns 3, 4, 5, 6, 7, and 8 as follows: "Subcontract Claims Awaiting Settlement Under Company-wide Settlement Program". The number of subcontract claims submitted will be entered in Column 11; the amount of these claims in Column 12; the number of claims approved but not yet settled in Column 13; and any partial payments thereon in Column 15.

(iii) A summary report will be submitted showing an analysis of the information included in (i) and (ii), above, in the manner prescribed by § 848.889.

(c) *Terminations under the consolidated termination program.* Settlement of contracts held by companies under the consolidated termination program will be reported by the terminating service or bureau.

(d) *Subcontract settlements negotiated or reviews made by office other than terminating office (War Department only).* Where settlement negotiation as to certain subcontract settlements are conducted by an office other than the terminating office within the same service, the office terminating the prime contract will retain reporting responsibility except in the case of company-wide settlements, and of subcontract claims assumed by the Government.

(e) *Settlements excluding certain subcontractors.* Where a prime contractor's claim has been completely settled except for one or more subcontract claims which are assumed by the Government for direct settlement (including those assumed under company-wide settlement or which are excluded from the settlement by agreement with the prime contractor pursuant to § 846.613–1) the prime contract and all such subcontracts as are settled with it will be reported as settled. The entire contract price of items cancelled under the prime contract will be reported as settled.

(f) *Subcontract claims assumed by the Government.* Each such obligation assumed by the Government, excluding those assumed under the company-wide settlement program, will be reported as a separate termination and treated as a termination of a prime contract made upon the effective date of the notice of termination from the higher tier contractor. Columns 7 and 8 of the fixed price form or Column 7 of the CPFF form will be marked "Sub Claims Assumed", and no amounts will be entered.

(g) *Revisions in dates and amounts previously reported.* Whenever dates or amounts shown are revised from those shown on the immediately preceding report, the revised figures will be preceded by "R" except as to the date of filing claim. All dates and amounts applicable to terminations settled must be in agreement with the corresponding data on the final settlement proposal form.

(h) *Corrections of previously reported settlements.* When corrections are made in terminations previously reported as settled (Part Two, Section I of the report), a separate sheet of the status report form headed "Corrections" will be submitted. For each correction to be made, the information as shown in all columns of the report as originally submitted will be shown with the corrected figures immediately below those originally submitted. [JTR 892.6]

§ 848.893 *Report on status of terminated cost-plus-a-fixed-fee contracts.* [JTR 893]

§ 848.893–1 *General description.* This report will list all cost-plus-a-fixed-fee prime contracts terminated for the convenience or at the option of the Government, the settlement of which was effected during the month or was pending at the end of the month, regardless of the amount of the contract. The report will include prime contract terminations accomplished according to "Changes Articles". [JTR 893.1]

§ 848.893–2 *Form.* (a) In the War Department, this report will be submitted on W.D., A.G.O. Form No. 0405, Control Approval Symbol RCC 21. The form is available at AG Pentagon Depot, Washington 25, D. C.

(b) In the Navy Department, this report will be submitted on NAVEXOS Form No. 2094 (but Columns 8 through 11 will not be used, and Columns 17, 18, and 19 will not be filled in until the audit status date). The form is available at the Industrial Readjustment Branch, OP&M. [JTR 893.2]

§ 848.893–3 *Arrangement.* See § 848.–892–3. [JTR 893.3]

§ 848.893–4 *Columnar entries.* (a) The following information will be entered in the respective columns of the report form. Columns 14 to 22, inclusive, will be entered for complete terminations and for severable partial terminations only.

Column 1—*Contract Number.*

Column 2—*Contractor's Name and Location of Facility.*

Column 3—*Item.* Sufficient information will be given to permit identification of the item or items, the production of which has been terminated.

Column 4—*Partial or Complete.* Partial terminations should be indicated by "P" and complete terminations by "C". 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 contract is terminated.

Column 5—*Date of Termination Notice.* The date on which the contractor was notified of the proposed termination by the responsible office or bureau.

Column 6—*Effective Date of Termination.* The date specified in the notice of termination as the effective date. In the event that no date is specified in the notice, the best estimate will be used until final information is obtained.

Column 7—*Estimated Value of Work or Items Cancelled.* Estimated value of the terminated portion of the contract.

Column 8—*Subcontracts Terminated—Number.* The total number of subcontracts terminated, i. e., the number on which stop work orders were issued under the termination.

Column 9—*Subcontracts Terminated—Settled Without Claim—Number.*

Column 10—*Subcontracts Terminated—Settled With Claim—Number.*

Column 11—*Subcontracts Terminated—Settled With Claim—Amount.*

Column 12—*Partial Payment for Benefit of Prime Contractor.* The total amount of partial payment made to the prime contractor solely for his use and benefit, including the amount of withdrawals from advance payment accounts authorized for termination financing under Subpart C of Part 843 of this subchapter.

Column 13—*Partial Payments for Benefit of Subcontractors.* 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 subcontractor or are paid direct to subcontractors.

Column 14—*Date of Discontinuation of Vouchers.* The date on which the contractor's election to discontinue the use of cost vouchers becomes effective. So long as voucher reimbursement continues, this column will be left blank. For terminations where there have been no reimbursed costs, enter "no reimbursed costs".

Column 15—*Audit Status Date.* The audit status date referred to in the notice to the GAO requesting date on uncleared exceptions.

Column 16—*Estimated Amount to be paid Contractor.* The estimated reimbursement yet to be made for past and future expenses, and unpaid balance of fee, including amounts to be paid in connection with settlement of subcontract claims.

Column 17—*GAO Exceptions Outstanding—Number.* The number of GAO exceptions outstanding against cost vouchers at the end of the month.

Column 18—*GAO Exceptions Outstanding—Amount.* The amount of GAO exceptions outstanding against cost vouchers at the end of the month.

Column 19—*Vouchers Paid.* The amount of reimbursement made to the contractor on cost vouchers prior to discontinuance of cost vouchers pursuant to § 845.563–2.

Column 20—*Settlement Proposal—Date of Filing.* In the event of partial proposals, the date should be prefixed by "P". Final proposals should be prefixed by "F". The date of the first and of the most recent proposal should be shown.

Column 21—*Settlement Proposal—Amount.* The amount of the contractor's settlement proposal, before deductions of previous payments to contractors (Line 13 minus Line 14 of Column 4 of the Settlement Proposal Form). When interim proposals are submitted by the contractor, the amount of the total submitted to date will be shown opposite the most recent proposal date and previous proposal figures will be omitted.

Column 22—*Amount of Final Settlement.* The amount of the settlement agreement applicable to the settlement proposal submitted by the contractor before deduction of previous payments. Any variation between amounts in Columns 21 and 22 represent negotiated adjustments.

Column 23—*Date of Settlement.* For complete termination, this is 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 partial terminations, this is the date of the adjustment of fixed fee or final settlement of all subcontractor claims whichever is later.

(b) (1) For War Department reports only, either on an attached sheet or immediately below the entries described above, beginning in Column 1 and extending across the page, remarks pertinent to each termination in process will be shown. Remarks will contain the following information:

(i) Status of plant clearance;

(ii) Status of GAO audit, including number of vouchers yet to be audited by GAO;

(iii) Status of overhead audit by service, if overhead audit is required;

(iv) Number of vouchers to be finalized upon settlement of the terminated contract;

(v) The date and number of the final and last cost voucher;

(vi) The number of final GAO exceptions cleared by deductions on which reclaim vouchers will be submitted, and the amount involved in such vouchers;

(vii) Estimated date of final settlement.

(2) Navy Department reports shall also contain such remarks as are requested by the Industrial Readjustment Branch, OP&M, from time to time.

(c) In the case of suspense terminations (Part Three, Section I of the report) a brief statement should be added explaining why the termination cannot be settled by the contracting officer. Where this information appears in the findings and appeals report (§ 848.896) a cross reference to such report will be sufficient. [JTR 893.4]

§ 848.893–5 *Summary.* See § 848.892–5. [JTR 893.5]

§ 848.893–6 *Special cases.*—(a) *Successive partial terminations.* See § 848.892–6 (a).

(b) *Terminations under the consolidated termination program.* See §848.892–6 (c).

(c) *Settlements negotiated or reviews made by office other than terminating office (War Department only).* See § 848.892–6 (d).

(d) *Settlements excluding certain subcontractors.* See § 848.892–6 (e).

(e) *Subcontract claims assumed by Government.* See § 848.892–6 (f).

(f) *Revisions in dates and amounts previously reported.* See § 848.892–6 (g). [JTR 893.6]

§ 848.894 *Report on partial payments.* [JTR 894]

§ 848.894–1 *General description.* This report will summarize the receipt, approval, reduction, or rejection during the month of partial payment applications in connection with terminations pending settlement, and withdrawals from advance payment accounts for use as partial payment. This report will not include transactions under § 843.364–4. [JTR 894.1]

§ 848.894–2 *Form.* (a) In the War Department, this report will be submitted on W. D., A. G. O. Form No. 271 (Termination Partial Payment Status Report), Control Approval Symbol RCC–12. The form is available at AG Depots.

(b) In the Navy Department, this report will be submitted on Form No. OCS–R4. This form is available at the Industrial Readjustment Branch, OP&M. [JTR 894.2]

§ 848.894–3 *Line entries.* (a) The following information will be entered in the respective lines of the War Department report form:

Line 1—*Applications on Hand—1st of Month (Prime Contractor).* This will include the number and amount of applications for partial payments originated in the name of a prime contractor, whether for his own benefit or for the establishment of a fund from which payments may be made to subcontractors. The number and amount of applications shown on this line must agree with that shown on Line 8 of the previous month's report.

Line 2—*Applications Received During Month (Prime Contractor).* This will include the number and amount of applications received during the month of the type described in Line 1.

Line 3—*Total.* Line 1 plus Line 2.

Line 4—*Applications Approved During Month (Prime Contractor).* The number of applications approved and the amount actually approved for payment. If this is less than the amount originally applied for, the reduction will be shown on Line 5.

Line 5—*Applications Reduced During Month (Prime Contractor).* The amount by which the total payments under all applications approved during the month were less than the payments requested in such applications. This amount plus the amount shown on Line 4 will equal the total originally applied for under all applications approved during the month.

Line 6—*Applications Rejected or Withdrawn During Month (Prime Contractor).* The number and amount of applications rejected or withdrawn in their entirety during the month.

Line 7—*Total.* Line 4 plus Line 5 plus Line 6.

Line 8—*Applications on Hand—End of Month (Prime Contractor).* The number and amount of applications (at amount of original application) on hand at the end of the month. The dollar amount shown in this column should equal Line 3 minus Line 7.

Line 9—*Applications on Hand—End of Month—Received Prior to 1st of Month (Prime Contractor).* The number and amount of applications included in Line 8 which were received in the contracting office prior to the first of the month.

Line 10—*Applications on Hand—1st of Month (Subcontractor).* This will include the number and amount of applications for partial payments originated in the name of a subcontractor. The number and amount of applications shown on this line must agree with that shown on Line 17 of the previous month's report.

Line 11—*Applications Received During Month (Subcontractor).* This will include the number and amount of applications received during the month of the type described on Line 10.

Line 12—*Total.* Line 10 plus Line 11.

Line 13—*Applications Approved During Month (Subcontractor).* The number and amount of applications actually approved for payment. If this is less than that originally applied for, the reduction will be shown in Line 14.

Line 14—*Applications Reduced During Month (Subcontractor).* The amount by which the total payments under all applications approved during the month were less than the payments requested in such applications. This amount plus the amount shown in Line 13 will equal the total originally applied for under all applications approved during the month.

Line 15—*Applications Rejected or Withdrawn During Month (Subcontractor).* The number and amount of applications rejected or withdrawn in their entirety during the month.

Line 16—*Total.* Line 13 plus Line 14 plus Line 15.

Line 17—*Applications on Hand—End of Month (Subcontractor).* The number and dollar amount of applications (at amount of original application) on hand at the end of

the month. The dollar amount shown in this column should equal Line 12 minus Line 16.

Line 18—*Applications on Hand—End of Month—Dated Prior to 1st of Month (Subcontractor)*. The number and amount of subcontractor applications included in Line 17 for which the date of application (not the date of receipt in the contracting office) was prior to the first of the month for which the report is prepared.

Line 19—*Withdrawals from Advance Payment Funds and Controlled Accounts for Purpose of Partial Payments (Complete Termination)*. The number and amount of withdrawals from advance payment and controlled accounts for purposes of termination partial payments in accordance with Part 843 of this subchapter. The information entered on this line will be restricted to advance payment withdrawals for purposes of termination partial payments applicable to complete terminations.

(b) In preparing the Navy Department report, the line entries shall be made in accordance with the definitions and instructions that accompany Form OCS–R4. [JTR 894.3]

§ 848.894–4 *Supporting list.* (a) The War Department form will be supported by a list of applications included in Lines 9 and 18 above, showing as to each:

(1) Name of subcontractor.

(2) Name of prime contractor and contract number of prime contract.

(3) Date of application.

(4) Date application received by contracting officer.

(5) Dollar amount of application.

(6) Name of administering district.

(7) Reason for delay.

(b) In the Navy, the report form will also be supported by the following lists:

(1) A list of payments approved during the month as to which the amount of the payment plus prior unliquidated partial, progress, and advance payments and credits from the disposal or retention of inventory included in the applicant's own charges is less than 75% of the applicant's own charges. This list shall show:

(i) Contract number.

(ii) Name of contractor.

(iii) Amount of payment requested.

(iv) Amount of payment approved.

(2) A list of overpayments outstanding and not referred to collection agencies at end of month. This list shall show:

(i) Contract number.

(ii) Name of contractor.

(iii) Amount of overpayment outstanding.

(iv) Date overpayment was established. [JTR 894.4]

§ 848.895 *Report on subcontract settlement delegations.* [JTR 895]

§ 848.895–1 *General description.* This report will list all war contractors to whom a service or the Navy Department has, pursuant to § 846.642–2, delegated authority to make final settlement of terminated subcontracts, or as to whom it has revoked such authority, pursuant to § 846.642–7 or § 846.643–2, during the month. [JTR 895.1]

§ 848.895–2 *Form.* No standard form is prescribed in either the War or Navy Departments. The report will be headed "Subcontract Settlement Delegations". In the War Department, the report will show Control Approval Symbol RCT–10. [JTR 895.2]

§ 848.895–3 *Contents.* The report will consist of a list, in alphabetical order, setting forth:

(a) The name and address of each war contractor to whom the service or the Navy Department has during the month, pursuant to § 846.642–2, delegated authority to make final settlement of terminated subcontracts, together with a statement as to whether (1) such delegations cover only specific contracts (enter contract numbers), under the service or the Navy Department, or cover all contracts (each type to be listed in separate groups), and (2) the service or the Navy Department made such delegation on its own authority, or in reliance on a prior delegation to another service or to the Navy Department, in which latter case the name of such other service or of the Navy Department shall be given.

(b) The name and address of each war contractor as to whom the service or the Navy Department has during the month, pursuant to § 846.642–7 or § 846.643–2, revoked authority to make final settlement of terminated subcontracts, together with the reasons for such revocation.

(c) The date each delegation was granted or revoked. [JTR 895.3]

§ 848.896 *Report on findings and appeals.* [JTR 896]

§ 848.896–1 *General description.* A separate report will be submitted for each dispute or which findings have been ordered pursuant to section 13 of the Contract Settlement Act (including disputes arising under section 17 of the Contract Settlement Act) regardless of whether a prime contractor or subcontractor is involved, or whether or not a termination is involved. Cases should be first reported in the month during which findings were ordered, and should be reported monthly through the month in which the findings are accepted, or other settlement is accomplished, or in which the contractor makes an external appeal. [JTR 896.1]

§ 848.896–2 *Form.* In the War and Navy Departments, this report will be submitted on Form OCS–R5, Budget Bureau No. 17–R017. This form is available at the Readjustment Division, Headquarters, Army Service Forces, and at the Industrial Readjustment Branch, OP&M. [JTR 896.2]

§ 848.896–3 *Contents.* (a) The following information will be entered in the respective lines of the report form:

Line 1—*Type of dispute.* Enter a check mark under "a" if the dispute has arisen under Section 17 of the Act and under "b" if the dispute has arisen under other sections. If the dispute involves other sections as well as Section 17, check both "a" and "b".

Line 2—*Contract number.* The complete contract number.

Line 3—*Name of contractor.* The full name of the contractor holding the contract.

Line 4—*Business address of contractor.* The usual business address of the contractor. The location of the plant where the contract was being performed should also be shown under "a" if this location is different from the usual business address.

Line 5—*Item(s) cancelled.* The item, or type or class of items, being produced under the contract.

Line 6—*Effective date of termination.* The date specified in the notice of termination as the effective date.

Line 7—*Contract Price of Items Cancelled.* The dollar amount of the contract price of the terminated items. The original estimate should be entered under "a", while the latest estimate should be entered under "b".

Line 8—*Contractor's claim.* The dollar amount claimed by the contractor as representing his charges applicable to the portion of the contract not to be completed. The claim, as it stood at the date findings were ordered, should be entered under "a", and the latest claim should be entered under "b"

Line 9—*Date findings ordered.* The date on which the contracting agency determined to prepare written findings on an unsettled claim or the date of receipt by the contracting agency of the contractor's demand for such findings. The date should be entered under "a" if the findings were ordered at the request of the contractor, and under "b" if ordered through a determination of the contracting agency. A summary of the disagreement between the contractor and the contracting agency should be given under Line 13 (Remarks).

Line 10—*Findings.* The delivery of written findings. The date on which the original findings were mailed and the amount of the findings should be entered under "a", and the date and amount of any subsequent revision in the findings should be entered under "b". If more than one revision is made in the findings, the latest revision should be entered under "b", and interim revisions under Line 13 (Remarks). Modification in findings made during review by higher echelons within the procurement agency should be considered as a revision in the findings rather than an internal appeal.

Line 11—*Internal appeals.* Appeal by the contractor from the conclusions of the written findings, through the appeals machinery of the procurement agency. The date of such appeal should be entered under "a", the date of action on such appeal under "b", and the amount determined under "c". (See Line 10 for reporting revisions in findings arising during review by higher echelons within the procurement agencies.) Other pertinent results of internal appeals should be summarized under Line 13 (Remarks). Disputes submitted to arbitration or mediation under section 13 (e) or 13 (f) of the Contract Settlement Act will also be considered as internal appeals. The report prepared for the month in which the dispute is submitted to arbitration or mediation should show under Line 13 a statement to the effect that the case is being submitted to arbitration or mediation, the date on which the dispute was submitted to arbitration or mediation, the name and address of the arbitrator, and the nature of the dispute.

Line 12—*Acceptance of findings or other settlement.* Settlement of the claim at any stage short of external appeal. The date of such acceptance or other settlement should be entered under "a" and the amount of the settlement under "b". When settlement is accomplished by means of arbitration or mediation, a statement should be included under Line 13 giving a concise summary of the dispute.

Line 13—*Report on findings and appeals—Remarks.* Wherever Lines 9, 11 and 12 request that pertinent information or a concise summary be furnished as to the nature of the dispute, sufficient data should be included to indicate as precisely as practicable the character of the controversy and the points at issue, with particular emphasis on questions of law or policy. The purpose of this is to furnish information as to the kind and type of disputes which may be hampering settlements by negotiation.

(b) It should be noted that information for Lines 2 and 7 of this section may

not be available for cases arising under section 17 of the Contract Settlement Act. [JTR 896.3]

§ 848.897 *Report on plant clearance.* [JTR 897]

§ 848.897–1 *General description.* This report will summarize (a) clearance requests received during the month, (b) clearance requests completed during the month, (c) clearance requests pending at the end of the month, and (d) the period of time required to complete clearance under clearance requests or the period of time for which clearance has been pending under clearance requests. Clearance requests covering contractor inventory will be recorded separately from those covering Government-owned plant equipment. The plant clearance figures for the reports on consolidated terminations, and the reports on company-wide settlements shall be included. The reporting agency will be the service or bureau which has the disposal responsibility regardless of the original terminating agency. It should be noted that the plant clearance status of Government-owned plant equipment is to be reported only by the agency owning the equipment. [JTR 897.1]

§ 848.897–2 *Form.* (a) In the War Department, this report will be submitted on W. D., A. G. O. Form No. 294, Control Approval Symbol RCC 11. This form is available at AG Depots.

(b) In the Navy Department, this report will be submitted on Form No. OCS–R6, Budget Bureau No. 17–RO18. This form is available at the Property Disposal Branch, OP&M. [JTR 897.2]

§ 848.897–3 *Line entries and definitions.* (a) The following information will be entered in the respective lines of the War Department report form, subdivided as between clearance requests received from prime contractors and subcontractors, and as between contractor inventory and Government-owned plant equipment.

Line 1—*Number of Clearance Requests—Pending—1st of Month.* The number of clearance requests pending at the first of the month. This must agree with Line 7 on the preceding month's report.

Line 2—*Number of Clearance Requests—Received.* The number of clearance requests received during the month.

Line 3—*Number of Clearance Requests—Total Before Disposition.* Line 1 plus Line 2.

Line 4—*Number of Clearance Requests—Returned to Contractor.* The number of clearance requests returned to the contractor during the month.

Line 5—*Number of Clearance Requests—Completed.* The number of clearance requests which were completed.

Line 6—*Number of Clearance Requests—Total Disposition.* Line 4 plus Line 5.

Line 7—*Number of Clearance Requests—Pending—End of Month.* The number of clearance requests on hand at the end of the month which had not been completed. (Line 3 minus Line 6.)

Line 8—*Clearance Requests Completed—Within 40 Days.* The number of clearance requests completed during the month within 40 days after date of receipt.

Line 9—*Clearance Requests Completed—41 Through 60 Days.* The number of clearance requests completed during the month in 41 through 60 days after date of receipt.

Line 10—*Clearance Requests Completed—Over 60 Days—Within Waiver.* The number of clearance requests completed during the month which required more than 60 days to complete but which were completed within a period covered by a waiver.

Line 11—*Clearance Requests Completed—Over 60 Days—Beyond Waiver.* The number of clearance requests completed during the month which requires more than 60 days to complete, for which no waiver was obtained or which were completed beyond the period covered by a waiver.

Line 12—*Clearance Requests Completed—Total Completed.* The sum of Lines 8, 9, 10 and 11. This total must agree with Line 5.

Line 13—*Clearance Requests Pending—40 Days or Less.* The number of clearance requests pending at the end of the month which had been pending for 40 days or less after date of receipt.

Line 14—*Clearance Requests Pending—41 Through 60 days.* The number of clearance requests pending at the end of the month which had been pending for 41 through 60 days after date of receipt.

Line 15—*Clearance Requests Pending—Over 60 Days—Within Waiver.* The number of clearance requests pending at the end of the month which had been pending for more than 60 days, but within a period covered by a waiver.

Line 16—*Clearance Requests Pending—Over 60 Days—Beyond Waiver.* The number of clearance requests pending at the end of the month which had been pending for more than 60 days, and for which no waiver had been obtained or which were pending beyond the period covered by a waiver.

Line 17—*Clearance Requests Pending—Total Pending.* The sum of Lines 13, 14, 15 and 16. This total must agree with Line 7.

Line 18—*Residual Cost—60 Day Items—Within Waiver.* The approximate cost of items not yet removed included in clearance requests (Line 15) which had been pending for more than 60 days but not beyond the period covered by a waiver. For Government-owned plant equipment, the cost F. O. B. Manufacturer will be used for this purpose.

Line 19—*Residual Cost—60 Day Items—Beyond Waiver.* The approximate cost of inventory not yet removed included in clearance requests (Line 16) which had been pending for more than 60 days and for which no waiver was obtained, or which were pending beyond the period covered by a waiver. For Government-owned equipment, the F. O. B. cost will be used.

Line 20—*Residual Cost—Total 60 Day Residual Cost.* The sum of Lines 18 and 19. This represents the approximate cost of inventory not yet removed included in all clearance requests which had been pending over 60 days.

(b) In preparing the War Department report, the following definitions will apply.

(1) *Contractor inventory.* Termination inventory and property to which termination inventory procedures are applicable (§ 844.400–2) but excluding Government-owned plant equipment.

(2) *Government-owned plant equipment.* Government-owned machinery, tools, equipment and readily severable facilities to which plant clearance policies as to Government-owned facilities (§ 848.861–1) are applicable.

(3) *Clearance requests.* A listing by prime contractor or subcontractor of specific items of property to be removed from his plant unless otherwise disposed of. In the case of Government-owned plant equipment, this is the removal schedule. Purchase schedules will not be considered as clearance requests. Items submitted on purchase schedules which are disapproved by the contracting officer will be picked up when the removal schedule covering these items is presented.

(4) *Clearance request completed.* Removal from the plant of the contractor or subcontractor concerned of the last item of inventory included in a clearance request. For this purpose, removal is effected by physical removal by the Government (or issuance of shipping instructions), approval of retention of inventory by the contractor or subcontractor, approval of sale by a contractor or subcontractor to a third party, execution of a storage agreement between the Government and the contractor or subcontractor, or on the physical removal (after 60 days and after the expiration of the notice period) by the prime contractor or subcontractor to another location for storage at Government expense. In the cases where the contractor or subcontractor moves termination inventory to another location for storage at own expense, clearance is not achieved until one of the above defined actions is completed.

(5) *Waiver.* Execution of a written agreement between the prime contractor or subcontractor and the contracting officer to extend the 60 day clearance period.

(c) In preparing the Navy Department report, the line entries shall be made in accordance with the definitions and instructions that accompany Form OCS–R6. [JTR 897.3]

§ 848.897–4 *Supporting list.* In both the War and Navy Department, the plant clearance report will be supported by a list of clearance requests which, at the end of the month, had been pending for more than 60 days. As to each such request, the following information will be submitted:

(a) Name and address of contractor.

(b) Contract number if request is from a prime contractor.

(c) Name and address of prime contractor, and number of prime contract (if request is from a subcontractor).

(d) Approximate cost of property not yet removed.

(e) Reason for delay.

(f) Action being taken to complete clearance.

(g) Expiration date of waiver, if waiver obtained. [JTR 897.4]

§ 848.898 *Report on consolidated termination and company-wide settlement programs.* [JTR 898]

§ 848.898–1 *General description.* (a) In the War Department this report will summarize Governmental action during the month as to terminated war contracts held by contractors assigned to a designated office under the consolidated termination program.

(b) In the Navy Department this report will summarize Governmental action during the month as to terminated war contracts held by contractors assigned to a designated office under the consolidated termination program, or to a designated officer for company-wide settlement. [JTR 898.1]

§ 848.898–2 *Form.* (a) In the War Department, this report will be submitted

on W. D., A. G. O. Form No. 436, Control Approval Symbol RCC 18. Instructions for completing this form are set forth in ASF Circular No. 247, 1945, and Army Air Forces ATSC letter of March 28, 1945.

(b) In the Navy Department, present instructions apply. The instructions as to a progress report or property disposal are set forth in OP&M letter to NMR&DA dated February 19, 1945, the contents of which were forwarded to MRDO's by NMR&DA circular letter 47–45. Reports covering accounting reviews shall continue to be furnished by Cost Inspection Service. [JTR 898.2]

§ 848.899 *Report on company-wide settlement subcontractor analysis.* [JTR 899]

§ 848.899–1 *General description.* This analysis will summarize terminations of a company-wide settlement contractor arising from termination of subcontracts held by him with another war contractor. [JTR 899.1]

§ 848.899–2 *Form.* (a) In the War Department this analysis will be submitted on WD AGO Form R–5075, Reports Control Symbol RCC–24. In the case of the Army Service Forces, the analysis will be forwarded with the Summary of Monthly Contract Termination Status Reports, and in the case of the Army Air Forces will be forwarded with the Air Technical Service Command Monthly Contract Termination Status Report.

(b) In the Navy Department, the report will be submitted on Navexos Form No. 2204. [JTR 899.2]

§ 848.899–3 *Line entries.* The following information will be entered in the respective lines of WD AGO Form R–5075 and Navexos Form No. 2209:

SECTION I. Subcontractor terminations settled.

Line 1 *Settled without claim.* Enter the number of terminations settled without claim and the contract price of items canceled by these terminations.

Line 2 *Settled with claim, less than 4 months.* Enter the number, the contract price of items canceled, amount of claim, and amount of settlement for terminations settled within 4 months of the effective date of termination.

Line 3 *Settled with claim; 4 through 6 months.* Enter the number, contract price of items canceled, amount of claim, and amount of settlement for terminations settled in 4 through 6 months after the effective date of termination.

Line 4 *Settled with claim; 7 through 12 months.* Enter the number, contract price of items canceled, amount of claim, and amount of settlement for terminations settled in 7 through 12 months after the effective date of termination.

Line 5 *Settled with claim; over 12 months.* Enter the number, contract price of items canceled, amount of claim, and amount of settlement for terminations settled in more than 12 months after the effective date of termination.

Line 6 *Settled with claim; total.* Enter the sum of lines 2 through 5 of columns (b), (c), (d), and (e). The amounts in columns (b), (d), and (e) must agree with the summary figures in columns (11), (12), and (18) of WD AGO Form 535, Reports Control Symbol PDE–10, as provided in paragraph 892.6.

SEC. II. Subcontractor terminations in process of settlement; with claim.

Line 1 *In process with claim; less than 4 months.* Enter the number of terminations, the contract price of items canceled, the amount of claim, and the number and amount of partial payments for terminations which have been in process of settlement less than 4 months after the effective date of termination.

Line 2 *In process with claim; 4 through 6 months.* Enter the number of terminations, the contract price of items canceled, the amount of claim, and the number and amount of partial payments for terminations which have been in process of settlement 4 through 6 months after the effective date of termination.

Line 3 *In process with claim; 7 through 12 months.* Enter the number of terminations, the contract price of items canceled, the amount of claim, and the number and amount of partial payments for terminations which have been in process of settlement 7 through 12 months after the effective date of termination.

Line 4 *In process with claim; over 12 months.* Enter the number of terminations, the contract price of items canceled, the amount of claim, and the number and amount of partial payments for terminations which have been in process of settlement over 12 months after the effective date of termination.

Line 5 *In process with claim; total.* Enter the sum of lines 1 through 4 of columns (b), (c), (d), (e), and (f). The amounts in columns (b), (d), and (f) must agree with the summary figures in columns 11, 12, and 15, WD AGO Form 535, Reports Control Symbol PDE–10, as provided in paragraph 892.6.

SEC. III Subcontractor terminations in process of settlement; without claim.

Line 1 *In process without claim; less than 4 months.* Enter the number and contract price of items canceled and number and amount of partial payments for terminations in process less than 4 months after the effective date of termination for which no claim has been received.

Line 2 *In process without claim; 4 through 6 months.* Enter the number and contract price of items canceled and number and amount of partial payments for terminations in process 4 through 6 months after the effective date of termination for which no claim has been received.

Line 3 *In process without claim; 7 through 12 months.* Enter the number and contract price of items canceled and number and amount of partial payments for terminations in process 7 through 12 months after the effective date of termination for which no claim has been received.

Line 4 *In process without claim; over 12 months.* Enter the number and contract price of items canceled and number and amount of partial payments for terminations in process over 12 months after the effective date of termination for which no claim has been received.

Line 5 *In process without claim; total.* Enter the sum of line 1 through 4 of columns (b), (c), (d), and (e).

Remarks: The following will be entered in this section:

a. Amount allowed for property taken over by the Government. This will agree with column 21 of the Monthly Contract Termination Status Report, § 848.892–6 (b) (3) (i).

b. Number of Claims approved. This will agree with column 13 of the Monthly Contract Termination Status Report, § 848.892–6 (b) (3) (i).

c. Any other pertinent information pertaining to this report.

[JTR 899]

PART 849—FORMS AND INSTRUCTIONS

Sec.
849.800 Scope of part.

SUBPART C—TERMINATION ARTICLES AND RELATED FORMS

849.830 Scope.
849.831 Uniform termination article for fixed price supply prime contracts.
849.832 Uniform termination article for cost-plus-a-fixed-fee prime contracts.
849.833 War Department termination article for fixed-price construction prime contracts.
849.835 War Department termination articles for preliminary contractual instruments.
849.836 Approved termination article for fixed-price supply subcontracts.
849.837 Form of supplemental agreement to insert or amend termination article.
849.838 Termination article for fixed price supply prime contracts with War Supplies Limited.
849.839 Short-form termination article for certain fixed-price supply and construction contracts.

SUBPART D—FORMS RELATING TO TERMINATION NOTICE AND INSTRUCTIONS

849.840 Scope.
849.841 Forms of telegraphic termination notice to prime contractors.
849.842 Forms of letter termination notice to prime contractors.
849.843 Instructions to prime contractors on termination.
849.844 Forms of notice and instructions for subcontractors.

SUBPART E—FORMS RELATING TO INTERIM FINANCING

849.850 Scope.
849.851 Forms for 1944 V-Loan guarantee agreement and explanatory notes.
849.852 T-Loan forms.
849.853 Specimen forms of application for partial payment.
849.854 Form of supplemental agreement for controlled partial payments.
849.855 Form of Agreement for Subcontractors' Payment Fund.

SUBPART F—FORMS FOR SETTLEMENT PROPOSALS

849.860 Scope.
849.861 Specimen proposal on Short Form (Form 1a).
849.862 Specimen proposal on Form 1 with supporting schedules (Forms 2 and 3).
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849.864 Instructions for use of standard proposal forms.
849.865 Settlement proposal for use on terminated cost and cost-plus-a-fixed-fee contracts.
849.869 Proposal for settlement of interest claims where interest on a V- or VT-loan has been waived.

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849.871 Form of receipt for the removal of contractor inventory from contractors' plants.
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SUBPART H—FORMS RELATING TO SETTLEMENT

Sec.
849.980 Scope.
849.981 Settlement agreement for fixed-price prime contracts.
849.983 Settlement agreements for cost-plus-a-fixed-fee contracts.
849.984 Pretermination settlement agreement.
849.985 Form of notice to General Accounting Office of audit status date.
849.986 Forms relating to direct settlement on a company-wide basis.
849.987 Forms for settlements of subcontracts by war contractors.
849.988 Forms relating to direct settlement with subcontractors.
849.989 Settlements of contracts with War Supplies Limited.

§ 849.900 *Scope of part.* This part contains forms and instructions relating to termination for use in accordance with this subchapter. [JTR 900]

SUBPART C—TERMINATION ARTICLES AND RELATED FORMS [1]

§ 849.930 *Scope.* This subpart contains forms of approved termination articles for various types of prime contracts and certain related forms. It also contains the approved termination article for fixed-price subcontracts. [JTR 930]

§ 849.931 *Uniform termination article for fixed price supply prime contracts.*

ART. ___. *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 [Navy] 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 subcontract 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 article 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 (1) above; and (iii) a sum equal to _____ % [2] of the part of the amount determined under subdivision (1) which represents the cost of articles or materials not processed by the contractor, plus a sum equal to _____ % [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 (1), 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.

[1] Subparts A and B are reserved.

[2] In the War Department the chief of each 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.

In the Navy Department the percentages to be inserted at Notes 1 and 2 are 2% and 8% without variation.

(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, as amended by Regulation No. 5 of the Office of Contract Settlement dated September 30, 1944.[1] 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.

[JTR 931]

§ 849.932 *Uniform termination article for cost-plus-a-fixed-fee prime contracts.*

ARTICLE ___. *Termination by the Government.*

(a) *Notice of Termination of Contractor's Right to Proceed.* The performance of work under this contract may be terminated by the Government in whole, or from time to time in part, (1) whenever the contractor shall default in performance, or shall so fail to make progress in the prosecution of the work hereunder as to endanger performance (which shall be considered as a default for purposes of this contract) of this contract in accordance with its terms, and shall fail to cure such fault or failure within a period of ten days (or such longer period as the contracting officer may allow) after receipt from the contracting officer of a notice specifying the fault or failure, or (2) whenever for any reason the contracting officer shall determine any such termination is for the best interests of the Government. 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 _____ 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, the termination shall not be for the default of the contractor, unless the contracting officer finds that the contractor is then in gross or willful default under this contract. Termination of work hereunder shall be effected by delivery to the contractor of a Notice of Termination specifying whether termination is for the default of the contractor or at the option of the Government, the extent to which performance of work under the contract shall be terminated, and the date upon which such termination shall become effective.

(b) *Certain obligations of the contractor.* 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, with the approval or ratification of the contracting officer to the extent that he shall require such approval or ratification (which approval or ratification shall be final for all the purposes of this Article), all subcontracts (whether fixed-price or cost-plus-a-fixed-fee), obligations, commitments, liabilities and claims, the cost of which would be reimbursable in accordance with the provisions of this contract in whole or in part; (6) transfer title (to the extent that title has not already been transferred) 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, (ii) the plans, drawings, information and other property which, if the contract had been completed, would be required to be furnished to the Government, and (iii) the jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for the performance of this contract for the cost of which the contractor has been or will be reimbursed under this contract; (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 (whether or not title thereto has been transferred to the Government for security or otherwise) 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: *And Provided further,* That the proceeds of any such transfer or disposition 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; (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 the protection and preservation of property which is in the possession of the contractor and in which the Government has or may acquire an interest. The contractor shall proceed immediately with the prosecution of the work required under this contract notwithstanding any delays in connection with the adjustment of the fixed fee in accordance with this Article.

(c) The contractor and the contracting officer may agree upon the whole or any part of the amount or amounts, including an amount with respect to the fixed fee payable under this contract, payable in connection with the contractor's claim under the contract in the event of the total or partial termination of work pursuant to this Article.

(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 in connection with 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) All costs and expenses reimbursable in accordance with this contract, not previously paid to the contractor for the performance of this contract prior to the effective date of the Notice of Termination and such of these costs as may continue for a reasonable time thereafter with the approval of or as directed by the contracting officer (which approval shall not be unreasonably withheld): *Provided, however,* That the contractor shall proceed as rapidly as practicable to discontinue such costs.

(2) The cost (so far as not included in payments under subparagraph 1 above) of settling and paying claims either arising out of the termination of work under subcontracts or orders or with respect to any other obligations, commitments and liabilities the cost of which would be reimbursable in accordance with the provisions of this contract or arising in connection with the termination of this contract in whole or in part and properly chargeable to this contract: *Provided:*

(A) Any such claim has been settled by negotiation or otherwise and (1) the contracting officer has approved or authorized such settlement in writing or (2) such settlement of a fixed-price subcontract or order calls for payment of an amount not in excess of the amount which would be payable under paragraph (b) of the Approved Termination Provision for Use in Fixed Price Orders or Subcontracts for the Manufacture of Supplies under Government War Contracts, as amended by General Regulation No. 6 of the Director of Contract Settlement [§ 849.936]; or

(B) A final judgment has been rendered against the contractor by a court of competent jurisdiction determining the liability of the contractor with respect to any such claim, and the contractor has (1) given the contracting officer prompt notice of the initiation of the proceedings in which judgment was rendered and offered in writing to give the Government complete control of the defense of the proceedings, and (2) diligently defended the suit or, in the event that the Government has assumed control of the defense of the proceedings, rendered such reasonable assistance as has been requested by the Government: *And provided further,* That with respect to a judgment determining the liability of the contractor under any subcontract or order one of the following conditions is satisfied:

(i) The contracting officer has approved in writing such subcontract or order of the provisions of such subcontract or order dealing with the rights of the parties thereto upon its termination in whole or in part;

(ii) Such subcontract or order (if fixed price) provides in the event of termination thereof in whole or in part for payments to the subcontractor or supplier of an amount not in excess of the amount which would be payable under paragraph (b) of the Approved Termination Provision referred to in paragraph (d) (2) (A) above.[1]

(3) Any other reasonable cost, approved or ratified by the contracting officer (which approval or ratification shall not be unreasonably withheld), incidental to the termination of work under this contract, including legal, accounting, clerical and other costs and expenses (taking into account a reasonable allocation of executive, administrative, and office expenses of the contractor properly allocable to the termination of such work) incidental to:

(i) Termination of subcontracts or orders hereunder;

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[1] See § 845.551.

[1] Where existing contracts are being amended to include this articles, the following subparagraph (iii) may be inserted following subparagraph (d) (2) (B) (ii):

"(ii) * * *; or

"(iii) such subcontract or order was entered into prior to the effective date of this amendment and contains no provision dealing with the rights of the parties in the event of its termination, or if it contains a termination provision, such provision does not unreasonably increase the common-law rights of the subcontractor, provided that in either case the approval by the contracting officer to such subcontract or order was not required by the terms of this contract."

(ii) Cessation of work in accordance with the Notice of Termination and the determination of the amounts due to subcontractors and other third parties;

(iii) Obtaining payment from the Government, but only to the extent reasonably necessary for the preparation and presentation of settlement proposals and cost evidence in connection therewith, provided that termination is not due to default of the contractor, and;

(iv) Protection, disposition, removal, storage, and transportation (including delivery costs into and out of storage resulting from directions of the contracting officer), pursuant to paragraphs (b) (7) and (b) (9) hereof, of property in which the Government has or may acquire an interest under this contract (including any Government furnished equipment).

(4) A portion of the fixed fee payable under the contract, determined as follows:

(i) In the event of the termination of this contract at the option of the Government and not for the default of the contractor, there shall be paid a percentage of the fee equivalent to the percentage of the completion of work contemplated by the contract, less fixed fee payments previously made hereunder.[2]

[(i) In the event of the termination of this contract at the option of the Government and not for the default of the contractor, there shall be paid a portion of the fee set forth in Article —, less fixed fee payments previously made hereunder, computed as follows:

(a) *For completed work.* That portion of the total fixed fee which the number of completed articles delivered to and accepted by the Government bears to the total number of completed articles called for under the contract; plus,

(b) *For work in process.* A sum equal to —% [here insert same percentage originally used in computing fixed fee] of the costs and expenses reimbursable in accordance with this contract for the performance of this contract prior to the effective date of the notice, including the amount or amounts due for supplies or materials delivered or services furnished by a subcontractor but exclusive of any cost attributable to completed articles delivered and accepted and the cost of articles not processed by the contractor.[2]]

[2] This form of subparagraph (d) (4) (i) is for War Department use.

Where the fee to be paid the contractor is based upon units of production, appropriate changes should be made in subparagraph (d) (4) (i) to provide for the payment of all fixed fees which have accrued at the effective date of the Notice of Termination, less fixed fee payments previously made.

Where existing contracts are being amended to include this Article, the following subparagraph may be inserted at the end of subparagraph (d) (4) (i):

"In addition to the payment of a fee based upon a percentage of the completion of the contract as above provided, the contracting officer in his discretion may allow to the contractor an additional amount (not in excess of the total fee payable under the contract less all amounts paid on account of the fixed fee) as compensation for the services performed by the contractor in connection with the termination of this contract at the option of the Government, including, without limitation, services rendered in connection with the disposition of property in which the Government has or may acquire an interest and the settlement of the liability of the contractor to subcontractors and third parties. In computing the amount of any such additional payment, the contracting officer shall take into account the efficiency, and reasonable value of such services performed by the contractor."

[3] This form of subparagraph (d) (4) (i) is for Navy Department use.

(ii) In the event of the termination of this contract due to the fault of the contractor, the total fixed-fee payable to the contractor under this contract shall be such proportionate part of the fee (or, if this contract calls for articles of different types such part of the fee which is reasonably allocable to the type of article under consideration) as the total number of articles delivered to and accepted by the Government bears to the total number of articles of a like kind called for by this contract.[4]

If the amount so determined is less than the total payment of fixed fee theretofore made to the contractor the contractor shall repay to the Government the excess amount thereof.

(e) *Amendment of contract to adjust fixed fee in event of partial termination.* In case only a part of this contract is terminated the fixed fee payable with respect to the work to be performed shall be equitably adjusted and such adjustment shall be reduced to writing as an amendment to this contract prior to final settlement hereunder.

(f) *Partial payments.* The Government shall make advance and 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. Any such partial payment or payments in the discretion of the contracting officer, may be made to the contractor or directly to, or in escrow for, any subcontractor or third party.

(g) *Limitations on the liability of the Government.* 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 deductions in respect 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.

(h) *Contractor's records.* Unless a longer period is otherwise provided for in this contract, or by applicable statute, the contractor for a period of five 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.

[JTR 932]

[4] In lieu of subparagraph (d) (4) (ii), the chief of a service or bureau may authorize the use of any other appropriate provision for revision or adjustment of the fixed-fee by reason of the default of the contractor. He may also authorize inclusion in this article or elsewhere in the contract appropriate provisions relating to excusable delay and the right of the Government to take over the property and plant in the event of default.

§ 849.933 *War Department termination article for fixed-price construction prime contracts.*

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.

(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 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, 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 * * * 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.

[JTR 933]

§ 849.935 *War Department termination articles for preliminary contractual instruments.* [JTR 935]

§ 849.935–1 *Form of termination article for letter order for supplies (no price stated) or for letter order for fixed price or cost-plus-a-fixed-fee construction.*[1]

ARTICLE ___. (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. 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 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* [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 _____ percent (__%) of so much of the estimated cost set forth in paragraph 1 as is allocable to such work].

(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 [or fee] in the event of a termination for the convenience of the Government) will be treated and resolved as a dispute under the "Disputes" article incorporated in this order by reference.[2]

[1] In using this form for cost-plus-a-fixed-fee construction letter orders, the words in italics should be omitted and the words in brackets should be included. In using the form for letter orders for supplies with no price stated or for fixed price construction, the words in italics should be included and the words in brackets should be omitted.

[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. 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.

(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.

[JTR 935.1]

§ 849.935–2 *Form of termination article for letter order for supplies with price stated.*

ARTICLE ___. (a) [Same as § 849.935–1 (a)]
(b) [Same as § 849.935–1 (b)]
(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. 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 - 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.

(e) [Same as § 849.935–1 (e)]
(f) [Same as § 849.935–1 (f)]
(g) [Same as § 849.935–1 (g)]
(h) [Same as § 849.935–1 (h)]

[JTR 935.2]

§ 849.936 *Approved termination article for fixed-price supply subcontracts.*

ARTICLE ___. (a) The buyer may terminate work under this order in whole or in part at any time by written or telegraphic notice, whenever (1) the Government requests the termination of this order or (2) a contract between the buyer and a third person, including the Government, requiring for its performance articles or services of the kind or type covered by this order is terminated, in whole or in part, or amended, so as to eliminate or reduce such requirements. Such notice shall state the extent and effective date of such termination; and, upon the receipt thereof, the seller will, as and to the extent directed by the buyer, stop work under this order and the placement of further orders or subcontracts hereunder, terminate work under orders and subcontracts outstanding hereunder, and take any necessary action to protect property in the seller's possession in which the buyer has or may acquire an interest.

(b) If the parties cannot by negotiation agree within a reasonable time upon the amount of fair compensation to the seller for such termination, the buyer in addition to making prompt payment of amounts due for articles delivered or services rendered prior to the effective date of termination, will pay to the seller the following amounts without duplication:

(1) The contract price for all articles or services which have been completed in accordance with this order and not previously paid for.

(2) (i) The actual costs incurred by the seller which are properly allocable or apportionable under recognized commercial accounting practices to the terminated portion of this order, including the cost of discharging liabilities which are so allocable or apportionable, and (ii) a sum equal to 2% of the part of such costs representing the costs of articles or materials not processed by the seller, plus a sum equal to 8% of the remainder of such costs, but the aggregate of such sums shall not exceed 6% of the whole of such costs. For the purpose of subdivision (ii) such costs shall exclude any charge for interest on borrowings and shall exclude the cost of discharging liabilities for parts, materials and services not received by the seller before the effective date of termination.

(3) The reasonable costs of the seller in making settlement hereunder and in protecting property in which the buyer has or may acquire an interest.

Payments made under this paragraph (b), exclusive of payments under subparagraph (3), shall not exceed the aggregate price specified in the order, less payments otherwise made or to be made.

(c) With the consent of the buyer, the seller may retain at an agreed price or sell at an approved price any completed articles, or any articles, materials, work in process or other things the cost of which is allocable or apportionable to this order under paragraph (b) (2) above, and will credit or pay the amounts so agreed or received as the buyer directs. As directed by the buyer, the seller will transfer title to, and make delivery of, any such articles, materials, work in process or other things not so retained or sold. Appropriate adjustment will be made for delivery costs or savings therein.

(d) The provisions of this Article ___ shall not limit or affect the right of the buyer to terminate this order for the default of the seller.

[JTR 936]

§ 849.937 *Form of supplemental agreement to insert or amend termination article.*

This supplemental agreement entered into this _____ day of _____, 194__, by the United States of America, hereinafter called "the Government" represented by _____ (Authorized _____ executing this contract and _____ officer)

_____ hereinafter called "the Contractor",

Witnesseth that:

Whereas, the Contractor and the Government have entered into Contract No. _____ under date of _____, 194__, [together with certain amendments and supplements thereto]; 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, this Supplemental Agreement is entered into pursuant to authority contained in the Contract Settlement Act of 1944,

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 insert the appropriate approved article for termination at the convenience of the Government.)

[JTR 937]

§ 849.938 *Termination article for fixed-price supply prime contracts with war supplies limited.*

ARTICLE ___. *Termination at the option of the Government.* (a) The performance of work under this contract may be terminated by the Government in whole, or from time to time in part, whenever the Contracting Officer shall determine that any such termination is for the best interests of the Government. Termination 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.

(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) settle all claims arising out of such termination of orders and subcontracts to the extent provided in and in accordance with the principles and procedures agreed upon between the War and Navy Departments and the Contractor by letter dated January 8, 1945, as the same may from time to time be amended; (5) 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 any of the orders or subcontracts so terminated with respect to which it may have been determined that the termination claims thereunder will be settled and paid by the Government; (6) deliver to the Government any plans, drawings, information and other property which, if the contract had been completed, would be required to be furnished to the Government; and (7) complete performance of such part of the work as shall not have been terminated by the Notice of Termination.

(c) The amount or amounts to be paid to the Contractor by reason of the total or partial termination of work under this contract shall be determined in accordance with the principles laid down in the agreement dated January 8, 1945, as the same may be from time to time amended, between the War and Navy Departments and the Contractor relating to the settlement of termination claims under contracts between the War or Navy Departments and the Contractor, or under orders or subcontracts relating to the performance of any such contracts, and

the Government shall pay to the Contractor the amount or amounts so determined.

(d) 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, 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.

(e) The obligation of the Government to make any payments under this Article shall be subject to deductions in respect of any claim which the Government may have against the Contractor in connection with this contract.

[JTR 938]

§ 849.939 *Short-form termination article for certain fixed-price supply and construction contracts.* The following short form of termination article may be used in accordance with § 842.212–2.

ARTICLE _____ *Termination at the option of the Government.* The performance of work under this contract may be terminated by the Government whenever the Contracting Officer shall determine that such action is for the best interests of the Government. If this contract is so terminated, fair compensation, within the meaning of the Contract Settlement Act of 1944 (Public No. 395, 78th Cong.), as the same may from time to time be amended, will be provided for the contractor.

[JTR 939]

SUBPART D—FORMS RELATING TO TERMINATION NOTICE AND INSTRUCTIONS

§ 849.940 *Scope.* This subpart contains forms for telegraphic and letter notice of termination, and instructions to prime contractors on termination. It also recommends forms of such notice and instructions to subcontractors.

§ 849.941 *Forms of telegraphic termination notice to prime contractors.* [JTR 941]

§ 849.941–1 *Telegraphic notice to fixed-price prime contractors.* The following form of notice will be used in accordance with § 842.243.

XYZ CORPORATION
New York, New York

Your contract No._____ is hereby terminated effective [Here insert "Immediately" or "On_____ 194__" (inserting the date), or "As soon as you have delivered thereunder including previous deliveries the following items" (listing items), or "On _____ 194__, on which date you will reduce delivery rate as follows" (inserting instructions as to reduced rate of delivery).] Immediately stop all work. Terminate subcontracts and place no further orders except to extent [Here insert, if applicable, "Necessary to perform any portion thereof not terminated hereby or"] that you or a subcontractor wish to retain and continue for own account any work in process or other materials. Telegraph similar instructions to all subcontractors and suppliers. If this termination will result in release of labor, facilities, or production tools, you are requested to notify contracting officer named below [In the case of the Navy, substitute "Your cognizant inspector"] immediately and cooperate with him in arranging meeting with WPB and WMC. Letter and instructions follow.

Captain JOHN DOE,
Contracting Officer.

[JTR 941.1]

§ 849.942 *Forms of letter termination notice to prime contractors.* [JTR 942]

§ 849.942–1 *Letter termination notice to prime contractors under fixed-price (lump sum) supply or construction contracts.* The following form of termination notice will be used in accordance with §§ 842.243 to 842.245, inclusive.

LETTER TERMINATION NOTICE TO PRIME CONTRACTORS UNDER TERMINATED FIXED-PRICE (LUMP SUM) SUPPLY OR CONSTRUCTION CONTRACTS

[At the top of the Notice set out all special details relating to the particular termination: e. g., name and address of company, number of prime contract terminated, service or bureau involved, appropriation or allotment, etc.

Two alternative forms of paragraph No. 1 are set out below. If this written termination notice confirms a telegraphic notice previously sent, use the first of the alternative paragraphs No. 1 below. If no previous telegraphic notice has been sent, use the second.]

1. *Effective date of termination.* This letter will confirm the Government's telegram to you dated _____, 194__, terminating [in part] your Contract No. _____ (hereinafter sometimes referred to as "the Contract") for the convenience of the Government. Such termination is effective on the date and in the manner stated in such telegram, reference to which is hereby made [*or* copy of which is attached hereto.] (*or*)

1. *Effective date of termination.* You are notified that your Contract No. _____ (hereinafter sometimes referred to as "the Contract") is hereby terminated [in part] for the convenience of the Government. Such termination will be effective:

[Here insert either "immediately upon your receipt of this Notice" *or* "on_____, 194__" (inserting the date), *or* "as soon as you have delivered under the Contract the following number of each of the items listed below, including those heretofore delivered, to wit: _____" or "on _____, 194__, on which date you are hereby directed to reduce the rate of delivery under the Contract as follows:" (here insert instructions as to reduced rate of delivery).][1] If this termination will result in a release of labor, facilities, or production tools, you are requested to notify the Contracting Officer named below [In the case of the Navy, substitute "your cognizant inspector"] immediately and cooperate with him in arranging a meeting with representatives of the War Production Board and the War Manpower Commission.

2. *Enclosed instructions.* Enclosed herewith is a statement entitled "Instructions to Prime Contractors under Terminated Fixed-Price (lump sum) Supply or Construction Contracts", which outlines certain of your principal rights and obligations. Prompt settlement of your claim depends in large measure on your thorough cooperation in following the procedure outlined in these Instructions. Your attention is called particularly to section 2 of such Instructions which sets forth your duties in regard to stopping work and giving notice to your subcontractors.

3. *Disposal of termination inventory.* (a) You are authorized and urged to retain or dispose of all termination inventory in accordance with section 4 of the Instructions, except for the following property:

[Here list all property which the Government wishes to take over, or desires to have used for a particular purpose, and give full instructions relating thereto. Also set forth any special instructions for disposal or protection of property.]

(b) In connection with final settlement of your claim (other than a "no-cost" settlement, see paragraph 6 below), it will be necessary to establish that all your termination inventory and that of your subcontractors has been properly accounted for, as provided in the Joint Termination Regulation of the War and Navy Departments, § 844.446–1. You should, therefore, advise each of your immediate subcontractors that, in connection with his settlement with you (other than a "no-cost" settlement, see paragraph 5 below, or a settlement based on a properly submitted Standard Form 1a of the Office of Contract Settlement) he should furnish you a certificate in substantially the form prescribed in the Joint Termination Regulation, § 849.973.

4. *Completed articles.* Acceptable completed articles which have been shipped prior to the effective date of termination, and such other completed articles as are accepted and delivered after the effective date of termination in accordance with directions of the Contracting Officer, will be treated for all purposes as articles delivered under the contract. The termination notice will be appropriately amended, whenever necessary, to reinstate such completed articles in the unterminated portion of the contract. You will, therefore, invoice such completed articles under the contract in the usual way and not include them in your termination inventory. All other completed articles will be included in your termination inventory. You will be advised by the service or bureau (in the Navy by your cognizant Navy material inspector) as to what completed articles, if any, will be accepted for delivery under the contract.

5. *Settlements with subcontractors.* (a) Your rights and duties in settling the claims of your immediate subcontractors are outlined in Section G of the Instructions.

[Add the following two sentences where appropriate.]

There is enclosed herewith an authorization to you to settle claims of your immediate subcontractors of $10,000 or less and to make partial payments. Its use will facilitate settlements.

(b) In order to speed up final settlements with your fixed-price subcontractors, you should send to each either with, or as soon as possible after, the notice of termination—(1) a set of the Standard Forms of the Office of Contract Settlement for use by all fixed-price war supply contractors in submitting settlement proposals and (2) a copy of a "No-Cost" Subcontract Settlement Agreement for use by a subcontractor who wishes to waive any termination claim against you (Joint Termination Regulation, § 849.957–2). If you do not already have copies of these documents, they will, upon request, be promptly furnished you by the Contracting Officer named below [*or* appropriate Navy material inspector]. In no event should the sending of the notice of termination be delayed.

6. *Submission of settlement proposal.* (a) The Government desires to settle your termination claim by negotiation and on such terms as will speedily and fairly compensate you therefor. To assist you in prompt submission of your settlement proposal, there is enclosed one set of the Standard Forms of the Office of Contract Settlement.

[Include the following subparagraph (b) unless it appears clearly inappropriate in view of the size of the prime contract terminated or for other obvious reasons known to the Contracting Officer. If this subparagraph is included, there should be enclosed three copies of the "No-Cost" Prime Contract Settlement Agreement referred to therein.]

(b) If you wish to waive any termination claim against the Government, please sign

[1] The language within the brackets is designed principally for supply contracts. In the case of construction contracts, the following alternative language is recommended:

[Here insert either "immediately upon your receipt of this Notice" *or* "on_____, 194__" (inserting the date), *or* "as soon as you have completed the following work:" (here state the work to be completed.)]

and return all three copies of the enclosed "No-Cost" Prime Contract Settlement Agreement (Joint Termination Regulation, § 849.981–3). One copy signed by the Contracting Officer will be returned for your files.

[Include the following paragraph 7 in the case of terminated prime contracts containing a patent provision requiring the contractor to make a disclosure of, and to deliver to the Government instruments of license or assignment respecting, all inventions, discoveries and patent applications made by the contractor in performing the contract.]

7. *Patents.* Your attention is also called to the provisions of the Contract requiring you to make a disclosure of, and to deliver to the Government instruments of license or assignment respecting, all inventions, discoveries and patent applications made by you in the performance of the Contract. You are urged to forward such disclosures and instruments of license or assignment to the Contracting Officer promptly, inasmuch as these contractual obligations should be complied with before execution of the final settlement agreement.

8. The office named below will be in charge of the settlement of your claim. As to any matters not covered by this Notice or by the Instructions, you should consult the Office named below [or the appropriate Navy material inspector].

9. Please acknowledge receipt of this Notice and indicate intent to file or not to file a claim, as shown below.

Enclosures:

_____
Contracting Officer

_____
Name of Office

_____
Address

Acknowledgment of notice and intent to file or not to file a claim

The undersigned hereby acknowleges receipt of a signed copy of the foregoing Notice _____ 194__, and [strike out whichever is inapplicable] { intends / does not intend } to file a termination claim. Two copies of this Notice, both signed, are herewith returned.

_____
Name of Contractor

By _____

_____
Title

[JTR 942.1]

§ 849.942–2 *Letter termination notice to prime contractors under cost-plus-a-fixed-fee supply contracts.* The following form of termination notice will be used in accordance with §§ 842.243 to 842.245, inclusive. With appropriate changes, this form may be used for construction contracts.

LETTER TERMINATION NOTICE TO PRIME CONTRACTORS UNDER COST-PLUS-A-FIXED-FEE SUPPLY CONTRACTS

[At the top of the Notice set out all special details relating to the particular termination: e. g., name and address of company, number of prime contract terminated, service or bureau involved, appropriation or allotment, etc.

Two alternative forms of paragraph No. 1 are set out below. If this written termination notice confirms a telegraphic notice previously sent, use the first of the alternative paragraphs No. 1 below. If no previous telegraphic notice has been sent, use the second.]

1. *Effective date of termination.* This letter will confirm the Government's telegram to you dated _____, 194__, terminating [in part] your Contract No. _____ (hereinafter sometimes referred to as "the Contract") for the convenience of the Government. Such termination is effective on the date and in the manner stated in such telegram, reference to which is hereby made [*or* copy of which is attached hereto.] (*or*)

1. *Effective date of termination.* You are notified that your Contract No. _____ (hereinafter sometimes referred to as "the Contract") is hereby terminated [in part] for the convenience of the Government. Such termination will be effective:

[Here insert either "immediately upon your receipt of this Notice" *or* "on_____, 194__" (inserting the date), *or* "as soon as you have delivered under the Contract the following number of each of the items listed below, including those heretofore delivered, to wit: _____" *or* "on _____, 194__, on which date you are hereby directed to reduce the rate of delivery under the Contract as follows:" (here insert instructions as to reduced rate of delivery).] If this termination will result in a release of labor, facilities, or production tools, you are requested to notify the Contracting Officer named below immediately and cooperate with him in arranging a meeting with representatives of the War Production Board and the War Manpower Commission.

2. *Enclosed instructions.* Enclosed herewith is a statement entitled "Instructions to Prime Contractors under Terminated Cost-Plus-a-Fixed-Fee Supply Contracts", which outlines certain of your principal rights and obligations. Prompt settlement of your claim depends in large measure on your thorough cooperation in following the procedure outlined in these Instructions. Your attention is called particularly to section 2 of such Instructions which sets forth your duties in regard to stopping work and giving notice to your subcontractors.

3. *Disposal of termination inventory.* (a) You are authorized and urged to retain or dispose of all termination inventory in accordance with section 4 of the Instructions, except for the following property:

[Here list all property which the Government wishes to take over, or desires to have used for a particular purpose, and give full instructions relating thereto. Also set forth any special instructions for disposal or protection of property.]

(b) In connection with final settlement of your claim, it will be necessary to establish that all your termination inventory and that of your subcontractors has been properly accounted for, as provided in the Joint Termination Regulation of the War and Navy Departments, § 844.446–1. You should, therefore, advise each of your immediate subcontractors that, in connection with his settlement with you (other than a "no-cost" settlement, see paragraph 4 below, or a settlement based on a properly submitted Standard Form 1a of the Office of Contract Settlement) he should furnish you a certificate in substantially the form prescribed in the Joint Termination Regulation, § 849.973.

4. *Settlements with subcontractors.* (a) Your rights and duties in settling the claims of your immediate subcontractors are outlined in section 6 of the Instructions.

[Add the following two sentences where appropriate.]

There is enclosed herewith an authorization to you to settle claims of your immediate subcontractors of $10,000 or less and to make partial payments. Its use will facilitate settlements.

(b) In order to speed up final settlements with your fixed-price subcontractors, you should send to each—either with, or as soon as possible after the notice of termination—(1) a set of the Standard Forms of the Office of Contract Settlement for use by all fixed-price war supply contractors in submitting settlement proposals and (2) a copy of a "No-Cost" Subcontract Settlement Agreement for use by a subcontractor who wishes to waive any termination claim against you (Joint Termination Regulation, § 849.987–2). If you do not already have copies of these documents, they will, upon request, be promptly furnished you by the Contracting Officer named below [*or* appropriate Navy material inspector]. In no event should the sending of the notice of termination be delayed.

[Include the following paragraph 5 in the case of terminated prime contracts containing a patent provision requiring the contractor to make a disclosure of, and to deliver to the Government instruments of license or assignment respecting, all inventions, discoveries and patent applications made by the contractor in performing the contract.]

5. *Patents.* Your attention is also called to the provisions of the Contract requiring you to make a disclosure of, and to deliver to the Government instruments of license or assignment respecting, all inventions, discoveries and patent applications made by you in the performance of the Contract. You are urged to forward such disclosures and instruments of license or assignment to the Contracting Office promptly, inasmuch as these contractual obligations should be complied with before execution of the final settlement agreement.

6. The office named below will be in charge of the settlement of your claim. As to any matters not covered by this Notice or by the Instructions, you should consult the Office named below [*or* the appropriate Navy material inspector].

7. Please acknowledge receipt of this Notice as indicated below.

Enclosures:

_____
Contracting Officer

_____
Name of Office

_____
Address

Acknowledgment of notice

The undersigned hereby acknowledges receipt of a signed copy of the foregoing Notice _____, 194____. Two copies of this Notice, both signed, are herewith returned.

_____
Name of Contractor

By_____

_____
Title

[JTR 942.2]

§ 849.943 *Instructions to prime contractors on termination.* [JTR 943]

§ 849.943–1 *Instructions to prime contractors under terminated fixed-price (lump sum) supply or construction contracts.*

INSTRUCTIONS TO PRIME CONTRACTORS UNDER TERMINATED FIXED-PRICE (LUMP SUM) SUPPLY OR CONSTRUCTION CONTRACTS

SECTION 1—INTRODUCTION

1. Introductory.
2. Termination procedure policy.
3. Effective date of termination and date fixed for termination.
4. Incorporation of uniform termination article for fixed-price supply contracts.
5. Necessity for prompt action.
6. Confirmation of oral approval.
7. Application of these instructions.

SECTION 2—ACTION TO BE TAKEN UPON RECEIPT OF NOTICE OF TERMINATION

8. Cessation of work and notification to your immediate subcontractors in compliance with the Notice of Termination.
(a) Discontinuance of work.
(b) Notice to subcontractors.
(c) Form of notice and instructions to subcontractors.
(d) Completed articles.
(e) Pending legal proceedings.
(f) Other action.

9. Initial conference with representatives of contracting officer.
10. Notice to workers and cooperation with War Manpower Commission.

SECTION 3—PREPARATION OF SETTLEMENT PROPOSAL

11. Submission of proposal and supporting papers.
(a) Particular forms to be used.
(i) Form [1] a—Claims under $1000.
(ii) Other Forms.
(b) Elements of your claim and methods of submission.

SECTION 4—DISPOSAL OF TERMINATION INVENTORY

12. Contract obligations of contractors with respect to disposal of inventory.
13. Preparation of inventory schedules.
(a) Supply contracts.
(b) Common items.
(c) Construction contracts.
14. Methods of disposing of termination inventory.
(a) General policies.
(b) Authority to dispose of termination inventory without Government approval.
(1) Retention or sale of items at inventory cost.
(2) Disposition of items under $100.
(c) All other dispositions.
(d) Proceeds.
15. Transfer of termination inventory and subcontracts to continuing war contracts.
(a) Transfers.
(b) Reimbursement of costs.

SECTION 5—PLANT CLEARANCE AND REMOVAL OF FACILITIES

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SECTION 1—INTRODUCTION

1. *Introductory.* These Instructions summarize your principal rights and obligations arising out of the termination of your Contract. They are based upon the Contract Settlement Act of 1944, the Surplus Property Act of 1944 and Government regulations issued under these acts. Please read and follow them carefully. For more complete details on matters covered by these Instructions and for information on matters not covered by these Instructions, you should consult the Joint Termination Regulation, issued by the War and Navy Departments.

2. *Termination procedure policy.* It is the policy of the Government, wherever possible, to settle termination claims by negotiation. Negotiated settlements must, however, be supported by adequate data, and the prompt submission of properly supported settlement proposals will facilitate speedy and equitable final settlements.

3. *Effective date of termination and date fixed for termination.* The terms "effective date of termination" and "date fixed for termination" mean the date upon which your notice of termination first requires you (1) to reduce or stop deliveries under your Contract, or, (2) if no deliveries are being made or are called for under the Contract, to reduce or stop performance under the Contract. Payment of interest, if any, on your termination claim will be calculated by reference to this date.

4. *Incorporation of uniform termination article for fixed-price supply contracts.* [1] If your terminated Contract does not contain the Government's uniform termination article for fixed-price supply contracts, it is requested that if practicable you promptly notify the Contracting Officer named in your notice of termination in order to arrange at once for amending the Contract to include it. This article embodies Government policy on terminations for convenience, and unless the special circumstances of your case make its use unnecessary, amendment of your Contract to include it will greatly facilitate a fair and speedy settlement. Such amendment may be made now, even though your Contract has been terminated.

5. *Necessity for prompt action.* One of the primary objectives of the Contract Settlement Act of 1944 is "to assure to prime contractors and subcontractors, small and large, speedy and equitable final settlement of claims under terminated war contracts, and adequate interim financing until such final settlement." In large measure the speed with which the Government can settle your claim depends upon your vigorous cooperation in taking quickly all necessary steps to submit it in proper form.

6. *Confirmation of oral approval.* Whenever in these instructions, or in the termination article which forms a part of your Contract, the approval of the Government is required as to any action to be taken by you, you should, for your records, require written confirmation of any such approval which has been given orally.

7. *Application of these instructions.* In general, these Instructions apply to subcontractors as well as prime contractors, except that the subcontractor stands in the same relationship to the contractor to or for whom he is delivering materials or performing services as that in which the prime contractor stands to the Government. To assist in effecting termination settlements, the War and Navy Departments have prepared the Joint Termination Regulation referred to above, which may be obtained by war contractors free of charge from the Readjustment Distribution Center, 6th Floor, 80 Church Street, New York City.

[1] This paragraph will not apply in the case of construction contracts.

SECTION 2—ACTION TO BE TAKEN UPON RECEIPT OF NOTICE OF TERMINATION

8. *Cessation of work and notification to your immediate subcontractors in compliance with the Notice of Termination.* In order to comply with your Notice of Termination, and to stop performance in compliance with its terms, you should take the following steps:

(a) *Discontinuance of work.* You should stop all work, make no further shipments, and place no further orders in connection with the Contract, except (1) to the extent necessary to perform any portion thereof not terminated by the Notice, or (2) to the extent that you may wish to retain and continue any work in process or other materials for your own account, or (3) to the extent the Contracting Officer authorizes you to continue work-in-process for reasons of safety, or to clear (or avoid damage to) equipment or to avoid immediate complete spoilage of work-in-process having a definite commercial value, or otherwise to prevent undue loss to the Government. (If you believe the authorization referred to in subparagraph (3) above is necessary or advisable, you should immediately notify the Contracting Officer by telephone or personal conference and obtain instructions.) You should keep adequate records of your compliance with this paragraph 8 (a) showing (i) the date you received your Notice of Termination, (ii) the effective date of such termination and (iii) the extent of completion of performance on such effective date.

(b) *Notice to subcontractors.* You should give notice of termination to each of your immediate subcontractors (including suppliers) who will be affected by the termination of your Contract. In such notice (see the form referred to in (c) below) you should (1) give him the number of your Contract with the Government, (2) state that it has been terminated (or terminated in part, if that is the case) for the convenience of the Government, (3) give him the name and address of the Contracting Officer in charge of your claim, (4) instruct him to stop all work, to make no further shipments, to place no more orders, and to terminate all subcontracts under his contract with you (subject to the same exceptions stated in paragraph 8 (a)), (5) direct him to submit his settlement proposal promptly in order to speed up settlement of his termination claim and (6) request him to give similar notice and instructions to his immediate subcontractors. The notice and instructions referred to in (6) should include (i) the name of the Contracting Officer in charge of the claim and his address, (ii) the contract number of the terminated prime contract, and (iii) a request that a similar notice of termination (showing in each case the contract numbers of the terminated prime contract and intermediate subcontracts) be passed down the line promptly to subcontractors of lower tiers, in order that subcontractors of all tiers may receive due notice of termination and be in position to identify their claims and secure prompt settlement thereof.

In any case where to include the number of a terminated prime contract or subcontract would be impracticable or would delay the sending of a notice of termination, this information may be omitted, but should, if possible, be supplied thereafter.

(c) *Form of notice and instructions to subcontractors.* You are requested to send in triplicate to each of your immediate subcontractors (including suppliers), if any, holding fixed-price (lump sum) supply contracts, a form of Termination Notice substantially in the form inclosed herewith. There is also inclosed a recommended form of "Instructions to Subcontractors holding Terminated Fixed-Price (Lump Sum) Supply Subcontracts" to accompany the Notice sent to them.

(d) *Completed articles.*[2] You should notify the Contracting Officer of the number of articles completed under the Contract and still on hand, and arrange with him for their delivery or other disposal.

(e) *Pending legal proceedings.* You should notify the Contracting Officer of any pending legal proceedings which relate to any subcontracts or purchase orders under the terminated Contract or which have resulted in or which are intended to obtain, a lien or encumbrance on any termination inventory other than termination inventory you propose and are authorized to purchase, retain or dispose of. (The Contracting Officer should also be promptly notified of any such proceedings brought after receipt of the Notice.)

(f) *Other action.* You should take such other action as may be required by the Contracting Officer or under the termination article contained in your Contract.

9. *Initial conference with representatives of contracting officer.* If your claim is for a small amount and appears free from complications, it is preferable to settle any questions by correspondence or telephone rather than by a conference. Otherwise, as soon as possible after receipt of the Notice, you should arrange for a conference with the representatives of the Contracting Officer, at which you should be prepared to present a rough estimate of your inventory and of the principal items of your claim, and to indicate, as fully as possible, what property you desire to retain, what can be sold to others and what, in your opinion, should be scrapped. At this conference the basis of settlement should be at least tentatively determined, and a clear understanding should be reached as to what information is to be furnished by you, what methods are to be followed in disposing of property, what accounting or other investigation is to be undertaken, and what arrangements, if any, are to be made for interim financing.

10. *Notice to workers and cooperation with War Manpower Commission.* Contractors are urged by the Government, and requested to urge their subcontractors in all cases where the termination is likely to result in the release of a substantial number of workers, to notify the workers and their union representatives, if any, that the contract was terminated for the convenience of the Government, and to cooperate with the War Manpower Commission by making known their new net labor requirements and allowing the United States Employment Service representative to conduct job interviews at the plant.

SECTION 3—PREPARATION OF SETTLEMENT PROPOSAL

11. *Submission of proposal and supporting papers.* Work on your Settlement Proposal should be begun promptly after receipt of your Notice of Termination. Unless otherwise authorized by the Contracting Officer, you should submit your proposal on the appropriate Standard Forms of the Office of Contract Settlement (Forms 1, 1a, and 1b) which are uniform for all Government Departments and agencies and which are for use by all war contractors under fixed-price war supply contracts. (To the extent applicable these forms may also be used for construction contracts.) Copies of these forms may be obtained from the Contracting Officer, together with complete Instructions for their use, as prescribed by the Office of Contract Settlement.

(a) *Particular forms to be used*—(i) *Form 1a. Claims Under $1,000.* If your Settlement Proposal is submitted on the basis that you will retain or dispose of all the inventory allocable to the terminated portion of the contract at the best prices obtainable, and if the net amount of the proposed settlement after deducting all credits for retention or disposal is less than $1,000, you may submit your settlement proposal on Form 1a. This is a short form requiring no separate inventory schedules.

(ii) *Other forms.* For larger claims, other forms, supported by separate inventory schedules, are provided and their method of use is fully stated in the Instructions which accompany them.

(b) *Elements of your claim and methods of submission.* As a rule, your Settlement Proposal will consist of (1) your costs and profit allocable to the terminated portion of the Contract, (2) your post-termination or settlement expenses, and (3) the charges of your subcontractors. Normally your Proposal when submitted, should be complete and cover all elements of your claim. In order to expedite settlement, however, you may submit interim proposals covering either (1) *all* your own costs or (2) your post-termination or settlement expenses or (3) settlements with subcontractors.

SECTION 4—DISPOSAL OF TERMINATION INVENTORY

12. *Contract obligations of contractors with respect to disposal of inventory.* (a) "Termination inventory" means any materials (including a proper part of any common materials and including Government-owned materials) properly allocable to the terminated portion of a war contract, except any machinery or equipment held under a separate contract or contract provision specifically governing its use or disposition.

(b) By the terms of most termination articles for use in fixed-price contracts the contractor is obligated, if and as the Contracting Officer directs or authorizes, to sell at a price approved by the Contracting Officer or retain at a price mutually agreeable, all termination inventory.

(c) You are hereby authorized to dispose of Government-owned termination inventory on the same conditions applicable to inventory owned by you and to credit the proceeds of such disposition against your termination claim, unless the Contracting Officer directs otherwise. If your Contract does not now provide for such disposition and credit, it will be deemed to be amended accordingly, upon your exercise of this authority.

13. *Preparation of inventory schedules*—(a) *Supply contracts.* If your Settlement Proposal is for less than $1,000 and is submitted on Form 1a (see Section 3 above), you need not submit separate inventory schedules. Otherwise, your inventory should be listed on the Schedules and in accordance with the Instructions issued for this purpose by the Office of Contract Settlement. (These are Forms 2a, 2b, 2c and 2d and "Instructions for Use of Standard Contract Settlement Proposal Forms".) These schedules, which may be filed either with, or in advance of, your Settlement Proposal serve three principal purposes—(1) to support the amount of inventory costs included in your Settlement Proposal; (2) to facilitate the disposition of termination inventory; and (3) to provide the information necessary for storage or removal by the Government.

(b) *Common items.* Items which are reasonably usable on your other work because they are materials, parts, or components common in nature to both the terminated contract and your other work, should not be listed on the Schedules, nor should any costs with respect thereto be included in the Settlement Proposal, to the extent that the items are reasonably applicable to your other work. You may list any properly allocable items which cannot be used on your other work except at a loss, whether items are reasonably useable on your other work and without loss is to be determined as of the effective date of the termination of your contract.

(c) *Construction contracts.* To the extent applicable, the same inventory schedules may be used as in the case of supply contracts.

14. *Methods of disposing of termination inventory*—(a) *General policies.* (1) Except as to items which the Government has advised you that it wishes to take over, or as to which it has given you contrary instructions, it is the policy of the Government to encourage contractors either to retain termination inventories or to dispose of them at the best price obtainable. Such retention or disposition is subject to applicable War Production Board regulations and to regulations and orders (as set forth in Part 814 of the Joint Termination Regulation) of the Surplus Property Board, the Office of Price Administration and other Government agencies.

(2) If you propose to retain or sell termination inventory, the price should be the best price obtainable, as defined in paragraph 411.1 of the Joint Termination Regulation, and one that you would approve if you were dealing solely for your own account. In the case of a sale or retention for resale, the term "best price obtainable" means the highest price offered which is adequate in the light of a reasonable knowledge or test of the market, having due regard for current prices for any raw materials or products for which quotations are published and to the circumstances, nature, condition, quantity, and location of the particular property. In the case of a retention for use, the term "best price obtainable" means a price that is fair and reasonable and not less than the net proceeds that could reasonably be expected to be obtained if the item were offered for sale at such time.

(b) *Authority to dispose of termination inventory without Government approval.* In the following cases, no approval by the Government is required for a retention or sale and in the absence of fraud your action will be accepted as final and conclusive:

(1) *Retention or sale of items at inventory cost.* You may retain or sell without Government approval any item of inventory at its cost as stated in your inventory schedules: *Provided*, That such cost is computed upon a reasonably acceptable basis; in the case of items sold, you may include in your termination claim reasonable freight, packing and handling charges, if any.

(2) *Disposition of items under $100.* You may retain or sell, without Government approval, any item of inventory at the best price obtainable where the total cost of the item does not exceed $100, as stated in your inventory schedules: *Provided*, That the aggregate cost of all items so retained or sold does not exceed $5,000 or 20 per cent of your total inventory cost, whichever is less. The term "item" includes all substantially similar articles at any one location listed on any one inventory schedule.

(c) *All other dispositions.* Except as permitted by paragraphs 14 (b) (1) and 14 (b) (2) above, dispositions of your termination inventory required the approval of the Contracting Officer or the authorized Navy representative.

(d) *Proceeds.* The approved price of retention, sale or other disposition will constitute a credit in reduction of your termination claim unless paid to the Government.

15. *Transfer of termination inventory and subcontracts to continuing war contracts*—(a) *Transfers.* Whenever practicable, and where a saving to the Government may be accomplished, you should effect transfers of termination inventory to continuing war contracts even if such transfers necessitate the cancellation of subcontracts already placed under the continuing war contract. Similarly, you should effect transfers of subcontracts for materials, equipment, supplies, and services from terminated contracts to continuing war contracts, where the property or services covered by the subcontracts transferred may be utilized in performance of the continuing war contract.

[2] This subparagraph will not apply in the case of construction contracts.

(b) *Reimbursement of costs.* In the case of termination inventory so transferred, you will be reimbursed for its cost upon settlement of either the terminated contract or the continuing contract, if later terminated. In the case of subcontracts so transferred, you will be reimbursed for the reasonable costs of such transfer. Detailed information as to methods of reimbursement in both cases may be found in Part 844 of the Joint Termination Regulation or may be obtained from the Contracting Officer.

SECTION 5—PLANT CLEARANCE AND REMOVAL OF FACILITIES [3]

16. (a) *Plant clearance; the 60-day period.* In order to arrange for plant clearance, you may from time to time submit inventory schedules to the Government on the Standard Forms above mentioned. (Forms 2a, 2b, 2c and 2d.) These schedules will constitute your statement showing the materials claimed to be termination inventory which, if not otherwise disposed of prior to settlement, you desire to have removed by the Government from your plant. The obligation of the Government under the Contract Settlement Act of 1944 to remove or arrange for storage of any items of termination inventory will not arise until sixty days or such longer time as may be agreed, from the time when these schedules containing a listing of such items are filed with the Contracting Officer or your Navy material inspector, in accordance with applicable instructions, in satisfactory form, and with the required certificate.

(b) *Contractor's right to remove and store.* If for any reason the Government does not, within such sixty-day period (or longer as agreed on), either remove such materials or enter into an agreement with you for their storage, you may at any time thereafter (using reasonable care in transportation and preservation) remove and store them for the account and at the risk and expense of the Government. You may do so, however, only if you have first delivered to the Contracting Officer or your Navy material inspector (1) 20 days' notice in writing of the date fixed for removal and (2) a statement showing the quantities and condition of the materials so to be removed, certified on your behalf to represent a concurrent physical inventory. At any time after the effective date of termination, you are authorized to remove and store at your own expense and risk any items of termination inventory.

(c) *Removal of facilities.* It is the policy of the Government, in accordance with the provisions of section 12 (g) of the Contract Settlement Act of 1944 and Regulation 4 of the Office of Contract Settlement, to provide for the orderly and expeditious removal from private plants of Government-owned machinery, tools, or other equipment which is no longer required for war production or for the national defense. If you have any such equipment in your plant, you should notify the Contracting Officer.

SECTION 6—CONTRACTOR INVENTORY

17. *Contractor inventory.* In addition to the material allocable to your terminated contract, you may have in your plant material which is "contractor inventory." The term "contractor inventory" (as used in the Joint Termination Regulation and as defined in The Surplus Property Act) means (1) any property related to a terminated contract of any type with the owning agency or to a subcontract thereunder; (2) any property acquired under a contract pursuant to the terms of which title is vested in the Government, and in excess of the amounts needed to complete performance thereunder; and (3) any property which the Government is obligated to take over under any type of contract as a result of any change in the specifications or plans thereunder. Contractor inventory includes, but is broader than, termination inventory, as that term is defined in the Joint Termination Regulation § 841.121-21 and in the Contract Settlement Act, and also includes any Government-owned material in the war contractor's plant, either before or after expiration of a contract, which is no longer required for the purpose for which it was supplied. You should consult Part 844 of the Joint Termination Regulation as to the disposal and removal of this type of material.

SECTION 7—SUBCONTRACTORS AND SUPPLIERS

18. *Settlement proposals to be obtained from subcontractors.* Section 7 refers solely to fixed-price subcontractors and suppliers. (You should consult the Contracting Officer as to procedures relating specially to settlement of cost-plus-a-fixed-fee subcontracts.)

Fixed-price subcontractors are required to use the Standard Forms in submitting their proposals in accordance with the Instructions for their use.

19. *Review of settlement proposals of subcontractors*—(a) *Extent of review.* It is your responsibility in the first instance to review or examine all settlement proposals delivered to you by your immediate subcontractors. Your duty in this regard is similar to that of the Government in passing upon the settlement proposals submitted by you. You are required at least to cause an office review to be made of each such proposal (which should include an accounting review where the net amount of the claim is $1,000 or more); and you should make a written report of each such review, to be furnished to the Government if requested.

(b) *Extent of responsibility.* You should in every case make such examination as is 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; but you will be required to certify that, on the basis of a review or examination which you believe to be adequate, you are of the opinion that settlements of the charges of your immediate subcontractors are fair and reasonable, are allocable to the terminated portion of your Contract, were negotiated in good faith and are not more favorable to the subcontractors than you would make if reimbursement by the Government were not involved.

20. *Settlement of immediate subcontractors' claims*—(a) *Settlements under $1,000.* Where an immediate fixed-price subcontractor submits to you a settlement proposal properly made out on standard Form 1o, you are authorized, without further action by the Government, to make a final settlement with such subcontractor. If you make such a settlement (which must involve a net amount of less than $1,000 after deducting property disposal credits), you will also, in so doing, approve the subcontractor's credits for retention or disposal of inventory.

(b) *Other settlements.* Each settlement of $10,000 and over with a subcontractor of any tier must be submitted to the Contracting Officer or your Navy material inspector for approval. In computing the size of a settlement for purposes of this paragraph, you should deduct (from the gross settlement) amounts payable for completed articles or work at the contract price and subcontract claims, but not disposal credits. Any settlement under $10,000 may be required to be submitted to the Contracting Officer or your Navy material inspector for approval or ratification; unless such settlements are so required to be separately submitted, they will be approved as a part of your own settlement. Notwithstanding the foregoing, if you have received an authorization to make final settlements of your subcontracts, any settlements made pursuant to the authorization will be recognized by the Government as final and conclusive for the purpose of settling the prime contract to which such subcontracts are allocable.

(c) *Government review and inspection.* You should notify your immediate subcontractors that, even in cases where you have authority to make a final settlement, their statement of claim may be examined by Government accounting personnel and the materials may be inspected by Government inspectors.

21. *Retention, sale, or other disposal of inventories by subcontractors*—(a) *General policies.* The same general policies applicable to retention, sale, or other disposal of prime contractor termination inventory (as stated in paragraph 14 above) apply in the case of termination inventory in the hands of subcontractors. It is the policy of the Government that subcontractors be permitted to retain, as against their upper tier contractors, such termination inventories as they desire except in cases where contract rights of upper tier contractors prevent such retention. You should inform your immediate subcontractors of this policy, and should request them in turn to inform their subcontractors.

(b) *Claims under $10,000.* Subject to the provisions of subparagraph (c) below, where a subcontractor's claim (based on his own charges and estimated if necessary) is under $10,000, you are authorized, without further action by the Government, to give final approval to retention, sale or other disposition of such subcontractor's termination inventory. Such sale, retention, or other disposition may be made at the best price obtainable, as defined in paragraph 14 (a) (2) of these instructions. In computing the size of a claim for purposes of this paragraph, you should deduct (from the gross claim) amounts payable for completed articles or work at the contract price and subcontract claims, but not disposal credits. In the absence of fraud, any such retention, sale or other disposition will be accepted by the Government as final and conclusive, unless the sale is to you, or the subcontractor or buyer is affiliated with you. The authority outlined herein regarding approvals of property disposition may be revoked (but not retroactively) where the best interests of the Government require it.

(c) *Completed articles and Government-furnished material; abandonment of worthless property.* The authority granted in paragraph (b) above does not include (i) the authority to retain or sell, or to approve retentions or sales of, completed articles not delivered under the contract and material furnished by the Government for incorporation in end items, unless the cost of such articles and such material to be retained or sold, and the amount of the subcontractor's claim, computed according to § 841.122 of the Joint Termination Regulation, total less than $10,000; or (ii) the authority to destroy or abandon, or to approve destruction or abandonment of, worthless property without the approval of the contracting officer (in the case of the Navy, the local NIRADA officer) or disposal board, as required by § 844.447-2 of the Joint Termination Regulation.

SECTION 8—INTERIM FINANCING

22. *Partial payments.* Partial payments may be made to you, pending the settlement of your termination claim, by either (1) an immediate partial payment before you have had an opportunity to prepare an adequate inventory or statement of costs, or (2) a cost-supported partial payment as promptly as possible after submission of a partial or complete settlement proposal with the prescribed supporting data. Application for any such payment should be made to the Contracting Officer. This application should be on the prescribed form, which may be obtained from him.

[3] This section will normally not be applicable to construction contracts.

(a) Immediate partial payments are based on your estimate of your own costs, and application for any such payment must be accompanied by your certificate that the estimated amount of your own costs allocable to the contract and due as of the date of the certificate is not less than a specified figure, after deducting either your costs with respect to any inventory which you intend to retain, or the agreed price at which you are to retain it. The amount of any such payment, together with all previous unliquidated advance or partial payments applicable to your own costs will not exceed 90% of the figure specified in the certificate.

(b) Cost-supported partial payments are based on partial or complete settlement proposals, and application for any such payment must be accompanied by one or more such proposals, supported by the data required for the submission of a termination claim or by reference to a previously submitted claim.

23. *Advance payments.* Where funds are on deposit in any advance payment account at the time of termination, the Contracting Officer or the Finance Division, OP&M, for the Navy Department may continue to authorize withdrawal of such funds to make payments chargeable to the account in accordance with applicable regulations. Likewise, amounts previously authorized, but not paid prior to the termination, may be used on termination, subject to the same limitations. If your Contract is partially terminated, amounts on deposit in the advance payment account may be used to pay termination charges as well as expenses in connection with performance, and additional advance payments may be authorized, in accordance with procedures governing advance payments for production purposes.

24. *Penalty on overpayments and overstatements.* To the extent that any partial or advance payment is in excess of the amount finally determined to be due on the termination claim, it will be treated as a loan from the Government, payable on demand, together with a penalty computed at the rate of 6% per annum from the date when it was made to the date of repayment. In addition, the Contract Settlement Act imposes a penalty of 6% on any overstatement of the amount due on a termination claim in connection with interim financing.

25. *Loans.* A new type of loan, known as a T loan, guaranteed by the Government, is available for the financing of war inventories and receivables pending final settlement of termination claims. If you wish to obtain such a loan, you should first consult your local bank. Guaranteed V bank loans are also available to contractors still in war production.

SECTION 9—RECORDS AND PENALTIES

26. *Penal provisions.* Section 19 (a) of the Contract Settlement Act of 1944 makes it a crime, punishable by fine and imprisonment, for any person wilfully to secrete, mutilate, obliterate, or destroy * * *

"(i) Any records of a war contractor relating to the negotiation, award, performance, payment, interim financing, cancelation or other termination, or settlement of a war contract of $25,000 or more; or

"(ii) Any records of a war contractor and any purchaser relating to any disposition of termination inventory in which the consideration received by any war contractor or any Government agency is $5,000 or more,

"until (1) five years after such disposition of termination inventory by such war contractor or Government Agency, or (2) five years after the final settlement of such war contract, or (3) five years after the termination of hostilities in the present war as proclaimed by the President or by a concurrent resolution of the two Houses of Congress, whichever applicable period is longer."

The Act also imposes severe penalties for false or fraudulent statements made in connection with the settlement and payment of termination claims.

SECTION 10—MISCELLANEOUS

27. *Expenses subsequent to termination.* You should submit to the Contracting Officer for his approval all costs incurred by you after the effective date of the Notice (a) for the protection of Government property, or (b) for other expenditures in connection with the terminated contract. (See the termination article in your contract.) You must take adequate precautions to protect property in your possession in which the Government has or may have an interest.

28. *Contracting officer.* In most cases the Contracting Officer will act through, and be assisted by, members of his staff, who may include material inspectors, disposal officers, accountants, and other technical experts. The Contracting Officer will probably appoint one of them as the negotiator in charge of your settlement, who will conduct the negotiations with you, but will not be authorized to agree finally on the terms of settlement without the approval of the Contracting Officer. He will, however, have such authority as may be delegated to him by the Contracting Officer to approve dispositions of property, settlements with subcontractors, and other terms of final settlement.

In the Navy Department, Navy material inspectors[4] act as general representatives of Navy Contracting Officers in the field. You should consult your War Department Contracting Officer or Navy material inspector for advice and assistance in termination matters and should submit to him your settlement proposals, inventory schedules, applications for partial payments and subcontract settlements requiring Government approval.

29. *Delay in filing claim; improper filing.* Under the Contract Settlement Act of 1944 interest on a termination claim is not payable during the period of any unreasonable delay in settlement caused by the Contractor. Failure to file your claim in accordance with applicable instructions within 60 days after the date fixed for termination may result in suspending the accrual of interest thereafter until such claim is properly filed, unless the Contracting Officer extends such period for good cause. Failure to file your claim properly will also substantially delay its allowance. No charges will be allowed you to the extent that they are found to have resulted from your failure to take action, pursuant to your Notice of Termination or these Instructions, within a time which was reasonable under all the circumstances.

30. *Modifications of instructions.* The directions in your Notice of Termination and these Instructions may be modified from time to time.

[JTR 943.1]

§ 849.943–2 *Instructions to prime contractors under cost-plus-a-fixed-fee supply contracts.* Instructions to contractors in substantially the following form, with table of contents for convenient reference, will accompany each notice of termination of a cost-plus-a-fixed-fee supply contract for the convenience or at the option of the Government. With appropriate changes, this form may be used for construction contracts.

SECTION 1—INTRODUCTION

1. Introductory.
2. Termination procedure policy.
3. Effective date of termination and date fixed for termination.
4. Incorporation of uniform termination article for CPFF supply contracts.
5. Necessity for prompt action.
6. Confirmation of oral approval.
7. Application of these instructions.

SECTION 2—ACTION TO BE TAKEN UPON RECEIPT OF NOTICE OF TERMINATION

8. Cessation of work and notification to your immediate subcontractors in compliance with the Notice of Termination.
(a) Discontinuance of work.
(b) Notice to subcontractors.
(c) Form of notice and instructions to subcontractors.
(d) Completed articles.
(e) Pending legal proceedings.
(f) Other action.
9. Notice to workers and cooperation with War Manpower Commission.

SECTION 3—SETTLEMENT PROCEDURE

10. Complete termination.
(a) Negotiated settlement procedure in joint termination regulation.
(b) Discontinuance of vouchers.
(c) Proposal forms to be used.
(d) Partial settlements.
11. Partial termination.

SECTION 4—DISPOSAL OF TERMINATION INVENTORY

12. Contract obligations of contractors with respect to disposal of inventory.
13. Preparation of inventory schedules.
14. Methods of disposing of termination inventory.
(a) General policies.
(b) Authority to dispose of termination inventory without Government approval.
(1) Retention or sale of items at cost.
(2) Disposition of items under $100.
(c) All other dispositions.
(d) Proceeds.
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22. Partial payments.
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23. Advance payments.
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SECTION 9—RECORDS AND PENALTIES

26. Penal provisions.

[4] The term "Navy material inspector" includes an Inspector of Naval Material, a Naval Inspector of Ordnance, a Supervisor of Shipbuilding, a Naval Inspector of Machinery, a Bureau of Aeronautics Representative and an Officer in Charge of Construction.

SECTION 10—MISCELLANEOUS

27. Expenses subsequent to termination.
28. Contracting officer.
29. Delay in filing claim; improper filing.
30. Modifications of instructions.

SECTION 1—INTRODUCTION

1. *Introductory.* These Instructions summarize your principal rights and obligations arising out of the termination of your Contract. They are based upon the Contract Settlement Act of 1944, the Surplus Property Act of 1944, and Government regulations issued under these acts. Please read and follow them carefully. For more complete details on matters covered by these Instructions and for information on matters not covered by these Instructions, you should consult the Joint Termination Regulation, issued by the War and Navy Departments.

2. *Termination procedure policy.* It is the policy of the Government, wherever possible, to settle termination claims by negotiation. Negotiated settlements must, however, be supported by adequate data, and the prompt submission of properly supported settlement proposals will facilitate speedy and equitable final settlements.

3. *Effective date of termination and date fixed for termination.* The terms "effective date of termination" and "date fixed for termination" mean the date upon which your notice of termination first requires you (1) to reduce or stop deliveries under your Contract, or, (2) if no deliveries are being made or are called for under the Contract, to reduce or stop performance under the Contract. Payment of interest, if any, on your termination claim will be calculated by reference to this date.

4. *Incorporation of uniform termination article for CPFF supply contracts.* If your terminated Contract does not contain the uniform termination article for cost-plus-a-fixed-fee supply contracts, it is requested that if practicable you promptly notify the Contracting Officer named in your notice of termination in order to arrange at once for amending the Contract to include it. This article embodies Government policy on terminations for convenience, and unless the special circumstances of your case make its use unnecessary, amendment of your Contract to include it will greatly facilitate a fair and speedy settlement. Such amendment may be made now, even though your Contract has been terminated.

5. *Necessity for prompt action.* One of the primary objectives of the Contract Settlement Act of 1944 is "to assure to prime contractors and subcontractors, small and large, speedy and equitable final settlement of claims under terminated war contracts, and adequate interim financing until such final settlement." In large measure the speed with which the Government can settle your claim depends upon your vigorous cooperation in taking quickly all necessary steps to submit it in proper form.

6. *Confirmation of oral approval.* Whenever in these instructions, or in the termination article which forms a part of your Contract, the approval of the Government is required as to any action to be taken by you, you should for your records, require written confirmation of any such approval which has been given orally.

7. *Application of these instructions.* In general, these Instructions apply to subcontractors as well as prime contractors, except that the subcontractor stands in the same relationship to the contractor to or for whom he is delivering materials or performing services as that in which the prime contractor stands to the Government. To assist in effecting termination settlements, the War and Navy Departments have prepared the Joint Termination Regulation referred to above, which may be obtained by war contractors free of charge from the Readjustment Distribution Center, 6th Floor, 90 Church Street, New York City.

SECTION 2—ACTION TO BE TAKEN UPON RECEIPT OF NOTICE OF TERMINATION

8. *Cessation of work and notification to your immediate subcontractors in compliance with the Notice of Termination.* In order to comply with your Notice of Termination, and to stop performance in accordance with its terms you should take the following steps:

(a) *Discontinuance of work.* You should stop all work, make no further shipments, and place no further orders in connection with the Contract, except (1) to the extent necessary to perform any portion thereof not terminated by the Notice, or (2) to the extent that you may wish to retain and continue any work in process or other materials for your own account, or (3) to the extent the Contracting Officer authorizes you to continue work-in-process for reasons of safety, or to clear (or avoid damage to) equipment, or to avoid immediate complete spoilage of work-in-process having a definite commercial value, or otherwise to prevent undue loss to the Government. (If you believe the authorization referred to in subparagraph (3) above is necessary or advisable, you should immediately notify the Contracting Officer by telephone or personal conference and obtain instructions.)

You should keep adequate records of your compliance with this paragraph 8 (a) showing (i) the date you received your Notice of Termination (ii) the effective date of such termination and (iii) the extent of completion of performance on such effective date.

(b) *Notice to subcontractors.* You should give notice of termination to each of your immediate subcontractors (including suppliers) who will be affected by the termination of your Contract. In such notice (see the form referred to in (c) below) you should (1) give him the number of your Contract with the Government, (2) state that it has been terminated (or terminated in part, if that is the case) for the convenience of the Government, (3) give him the name and address of the Contracting Officer in charge of your claim, as set forth below, (4) instruct him to stop all work, to make no further shipments, to place no more orders, and to terminate all subcontracts under his contract with you (subject to the same exceptions stated in paragraph 8 (a)), (5) direct him to submit his settlement proposal promptly in order to speed up settlement of his termination claim and (6) request him to give similar notice and instructions to his immediate subcontractors. The notice and instructions referred to in (6) should include (i) the name of the Contracting Officer in charge of the claim and his address, (ii) the contract number of the terminated prime contract, and (iii) a request that a similar notice of termination (showing in each case the contract numbers of the terminated prime contract and intermediate subcontracts) be passed down the line promptly to subcontractors of lower tiers, in order that subcontractors of all tiers may receive due notice of termination and be in position to identify their claims and secure prompt settlement thereof.

In any case where to include the number of a terminated prime contract or subcontract would be impracticable or would delay the sending of a notice of termination, this information may be omitted, but should, if possible, be supplied thereafter.

(c) *Form of notice and instructions to subcontractors.* You are requested to send in triplicate to each of your immediate subcontractors (including suppliers), if any, holding fixed-price (lump sum) supply contracts, a form of Termination Notice substantially in the form enclosed herewith. There is also enclosed a recommended form of "Instructions to Subcontractors Holding Terminated Fixed-Price (Lump Sum) Supply Subcontracts" to accompany the Notice sent to them.

(d) *Completed articles.* You should notify the Contracting Officer of the number of articles completed under the Contract and still on hand, and arrange with him for their delivery or other disposal.

(e) *Pending legal proceedings.* You should notify the Contracting Officer of any pending legal proceedings which relate to any subcontracts or purchase orders under the terminated Contract or which have resulted in or which are intended to obtain, a lien or encumbrance on any termination inventory other than termination inventory you propose and are authorized to purchase, retain or dispose of. (The Contracting Officer should also be promptly notified of any such proceedings brought after receipt of the Notice.)

(f) *Other action.* You should take such other action as may be required by the Contracting Officer or under the termination article contained in your Contract.

9. *Notice to workers and cooperation with War Manpower Commission.* Contractors are urged by the Government, and requested to urge their subcontractors in all cases where the termination is likely to result in the release of a substantial number of workers, to notify the workers and their union representatives, if any, that the contract was terminated for the convenience of the Government, and to cooperate with the War Manpower Commission by making known their new net labor requirements and allowing the United States Employment Service representative to conduct job interviews at the plant.

SECTION 3—SETTLEMENT PROCEDURE

10. *Complete termination*—(a) *Negotiated settlement procedure in joint termination regulation.* For a complete statement of the procedure applicable to the settlement of your contract, it is suggested that you refer to the detailed provisions of the Joint Termination Regulation, especially Subpart F of Part 845.

(b) *Discontinuance of vouchers.* If any costs have been reimbursed under your contract, prompt discontinuance of Form 1034 vouchers will permit more rapid clearance with the General Accounting Office and will, therefore, materially expedite the settlement of your contract. If you elect to discontinue the use of Form 1034 vouchers, however, you may not thereafter resume the use of such vouchers.

(c) *Proposal forms to be used.* After discontinuance of Form 1034 vouchers, your costs which have not theretofore been reimbursed by the Government, and your claim for fixed-fee, will be presented on the form "Settlement Proposal For Use on Terminated Cost and Cost-Plus-A-Fixed-Fee Contracts". Copies of this form may be obtained from the contracting officer. Such settlement proposals will serve as the basis for interim financing and the negotiation of partial or complete settlements. Each partial settlement proposal will be numbered serially beginning with the number "1", and you should maintain a separate number series for each cost-plus-a-fixed-fee contract.

(d) *Partial settlements.* Partial settlements may be made with you from time to time after submission of one or more partial proposals. Under such partial settlements the Government will agree with you upon a minimum amount due on the entire claim without determining that this amount is due on particular elements of the claim, leaving the final amount due on the entire claim subject to final negotiation.

11. *Partial termination.* Unless the contracting officer determines that the terminated portion of your contract is to be settled separately, you should continue to present your costs in the same manner as prior to termination until performance of the contract is complete or performance of any con-

tinued portion is only on subsidiary items or spare parts, or is otherwise not substantial. At that time the procedure applicable in the case of a complete termination will be used.

SECTION 4—DISPOSAL OF TERMINATION INVENTORY

12. *Contract obligations of contractors with respect to disposal of inventory.* (a) "Termination inventory" means any materials (including a proper part of any common materials and including Government-owned materials) properly allocable to the terminated portion of a war contract, except any machinery or equipment held under a separate contract or contract provision specifically governing its use or disposition.

(b) By the terms of clause (b) (7) of the Uniform Termination Article for use in Cost-Plus-A-Fixed-Fee Supply Contracts, the contractor is obligated, after receipt of the notice to 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, 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 by the notice, except that the contractor is not required to extend credit to any purchaser, and may retain any such property at a price or prices approved by the Contracting Officer or authorized Navy representative.

(c) In disposing of Government-owned termination inventory, you are hereby authorized to credit the proceeds of such disposition against your termination claim, unless the Contracting Officer directs otherwise. If your Contract does not now provide for such disposition and credit, it will be deemed to be amended accordingly, upon your exercise of this authority.

13. *Preparation of inventory schedules.* Termination inventory schedules for use by war contractors under fixed-price war supply contracts are prescribed by the Office of Contract Settlement (Forms 2a, 2b, 2c and 2d). These same schedules shall be used by contractors under cost-plus-a-fixed-fee supply contracts for purposes of disposal, storage, or removal of termination inventory. You should consult the Contracting Officer as to the extent of information to be submitted.

14. *Methods of disposing of termination inventory*—(a) *General policies.* (1) Except as to items which the Government has advised you that it wishes to take over, or as to which it has given you contrary instructions, it is the policy of the Government to encourage contractors either to retain termination inventories or to dispose of them at the best price obtainable. Such retention or disposition is subject to applicable War Production Board regulations and to regulations and orders (as set forth in Part 844 of the Joint Termination Regulation) of the Surplus Property Board, the Office of Price Administration and other Government agencies.

(2) If you propose to retain or sell termination inventory, the price should be the best price obtainable, and one that you would approve if you were dealing solely for your own account. In the case of a sale or retention for resale, the term the "best price obtainable" means the highest price offered which is adequate in the light of a reasonable knowledge or test of the market, having due regard for current prices for any raw materials or products for which quotations are published and to the circumstances, nature, condition, quantity, and location of the particular property. In the case of a retention for use, the term "best price obtainable" means a price that is fair and reasonable and not less than the net proceeds that could reasonably be expected to be obtained if the item were offered for sale at such time.

(b) *Authority to dispose of termination inventory without Government approval.* In the following cases, no approval by the Government is required for a retention or sale and in the absence of fraud your action will be accepted as final and conclusive:

(1) *Retention or sale of items of inventory cost.* You may retain or sell without Government approval any item of inventory at its cost as stated in your inventory schedules provided that such cost is computed upon a reasonably acceptable basis; in the case of items sold, you may include in your termination claim reasonable freight, packing and handling charges, if any.

(2) *Disposition of items under $100.* You may retain or sell, without Government approval, any item of inventory at the best price obtainable where the total cost of the item does not exceed $100, as stated in your inventory schedules: *Provided*, That the aggregate cost of all items so retained or sold does not exceed $5,000 or 20 per cent of your total inventory cost, whichever is less. The term "item" includes all substantially similar articles at any one location listed on any one inventory schedule.

(c) *All other dispositions.* Except as permitted by paragraphs 14 (b) (1) and 14 (b) (2) above, dispositions of termination inventory require the approval of the Contracting Officer or the authorized Navy representative.

(d) *Proceeds.* The approved price of retention, sale or other disposition will constitute a credit in reduction of your termination claim, unless paid to the Government.

15. *Transfer of termination inventory and subcontracts to continuing war contracts*—(a) *Transfers.* Whenever practicable, and where a saving to the Government may be accomplished, you should effect transfers of termination inventory to continuing war contracts even if such transfers necessitate the cancellation of subcontracts already placed under the continuing war contract. Similarly, you should effect transfers of subcontracts for materials, equipment, supplies, and services from terminated contracts to continuing war contracts, where the property or services covered by the subcontracts transferred may be utilized in performance of the continuing war contract.

(b) *Costs of transfer.* In the case of termination inventory and subcontracts so transferred, you will be paid for your reasonable costs, if any, involved in such transfer. Detailed information as to methods of reimbursement may be found in Part 844 of the Joint Termination Regulation or may be obtained from the Contracting Officer.

SECTION 5—PLANT CLEARANCE AND REMOVAL OF FACILITIES

16. (a) *Plant clearance: The 60-day period.* In order to arrange for plant clearance, you may from time to time submit to the Government inventory schedules on the Standard Forms above mentioned (Forms 2a, 2b, 2c and 2d). These schedules will constitute your statement showing the materials claimed to be termination inventory which, if not otherwise disposed of prior to settlement, you desire to have removed by the Government from your plant. The obligation of the Government under the Contract Settlement Act of 1944 to remove or arrange for storage of any items of termination inventory will not arise until sixty days, or such longer time as may be agreed, from the time when these schedules containing a listing of such items, are filed with the Contracting Officer or your Navy material inspector in accordance with applicable instructions, in satisfactory form, and with the required certificate.

(b) *Contractor's right to remove and store.* If for any reason the Government does not within such sixty-day period (or longer as agreed on), either remove such materials or enter into an agreement with you for their storage, you may at any time thereafter (using reasonable care in transportation and preservation) remove and store them for the account and at the risk and expense of the Government. You may do so, however, only if you have first delivered to the Contracting Officer or your Navy material inspector (1) 20 days' notice in writing of the date fixed for removal and (2) a statement showing the quantities and condition of the materials so to be removed, certified on your behalf to represent a concurrent physical inventory. At any time after the effective date of termination, you are authorized to remove and store at your own expense and risk any items of termination inventory.

(c) *Removal of facilities.* It is the policy of the Government, in accordance with the provisions of section 12 (g) of the Contract Settlement Act of 1944 and Regulation 4 of the Office of Contract Settlement to provide for the orderly and expeditious removal from private plants of Government-owned machinery, tools or other equipment which is no longer required for war production or for the national defense. If you have any such equipment in your plant, you should notify the Contracting Officer.

SECTION 6—CONTRACTOR INVENTORY

17. *Contractor inventory.* In addition to the material allocable to your terminated Contract, you may have in your plant material which is "contractor inventory." The term "contractor inventory" (as used in the Joint Termination Regulation and as defined in the Surplus Property Act) means (1) any property related to a terminated contract of any type with the owning agency or to a subcontract thereunder; (2) any property acquired under a contract pursuant to the terms of which title is vested in the Government, and in excess of the amounts needed to complete performance thereunder; and (3) any property which the Government is obligated to take over under any type of contract as a result of any change in the specifications or plans thereunder. Contractor inventory includes, but is broader than, termination inventory, as that term is defined in the Joint Termination Regulation § 841.121-21 and in the Contract Settlement Act, and also includes any Government-owned material in the war contractor's plant, either before or after expiration of a contract, which is no longer required for the purpose for which it was supplied. You should consult Part 844 of the Joint Termination Regulation as to the disposal and removal of this type of material.

SECTION 7—SUBCONTRACTORS AND SUPPLIERS

18. *Settlement proposals to be obtained from subcontractors.* Fixed-price subcontractors are required to use the Standard Form in submitting their proposals in accordance with the Instructions for their use. In the case of cost-plus-a-fixed-fee subcontracts, the procedure for settlement set forth in section 3 for the settlement of your Contract will in general be applicable.

19. *Review of settlement proposals of subcontractors*—(a) *Extent of review.* It is your responsibility in the first instance to review or examine all settlement proposals delivered to you by your immediate subcontractors. Your duty in this regard is similar to that of the Government in passing upon the settlement proposals submitted by you. You are required at least to cause an office review to be made of each such proposal (which should include an accounting review where the net amount of the claim is $1,000 or more); and you should make a written report of each such review, to be furnished to the Government if requested.

(b) *Extent of responsibility.* You should in every case make such examination as is 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; but you will be required to

certify that, on the basis of a review or examination which you believe to be adequate, you are of the opinion that settlements of the charges of your immediate subcontractors are fair and reasonable, are allocable to the terminated portion of your Contract, were negotiated in good faith, and are not more favorable to the subcontractors than you would make if reimbursement by the Government were not involved.

20. *Settlement of immediate subcontractors' claims*—(a) *Settlements under $1,000.* Where an immediate fixed-price subcontractor submits to you a settlement propcsal properly made out on Standard Form 1a, you are authorized, without further action by the Government, to make a final settlement with such subcontractor. If you make such a settlement (which must involve a net amount of less than $1,000 after deducting property disposal credits), you will also, in so doing, approve the subcontractor's credits for retention or disposal of termination inventory.

(b) *Other settlements.* Each settlement of $10,000 and over with a subcontractor of any tier must be submitted to the Contracting Officer or your Navy material inspector for approval. In computing the size of a settlement for purposes of this paragraph, you should deduct (from the gross settlement) amounts payable for completed articles or work at the contract price and subcontract claims, but not disposal credits. Any settlement under $10,000 may be required to be submitted to the Contracting Officer or your Navy material inspector for approval or ratification; unless such settlements are so required to be separately submitted, they will be approved as a part of your own settlement. Notwithstanding the foregoing, if you have received an authorization to make final settlements of your subcontracts, any settlements made pursuant to the authorization will be recognized by the Government as final and conclusive for the purpose of settling the prime contract to which such subcontracts are allocable.

(c) *Government review and inspection.* You should notify your immediate subcontractors that, even in cases where you have authority to make a final settlement, their statement of claim, may be examined by Government accounting personnel and the materials may be inspected by Government inspectors.

21. *Retention, sale, or other disposal of inventories by subcontractors*—(a) *General policies.* The same general policies applicable to retention, sale, or other disposal of prime contractor termination inventory (as stated in paragraph 14 above) apply in the case of termination inventory in the hands of subcontractors. It is the policy of the Government that subcontractors be permitted to retain, as against their upper tier contractors such termination inventories as they desire except in cases where contract rights of upper tier contractors prevent such retention. You should inform your immediate subcontractors of this policy, and should request them in turn to inform their subcontractors.

(b) *Claims under $10,000.* Subject to the provisions of subparagraph (c) below, where a subcontractor's claim (based on his own charges and estimated if necessary) is under $10,000, you are authorized, without further action by the Government, to give final approval to retention, sale or other disposition of such subcontractor's termination inventory. Such sale, retention, or other disposition may be made at the best price obtainable, as defined in paragraph 14 (a) (2) of these instructions. In computing the size of a claim for purposes of this paragraph, you should deduct (from the gross claim) amounts payable for completed articles or work at the contract price and subcontract claims, but not disposal credits. In the absence of fraud, any such retention, sale or other disposition will be accepted by the Government as final and conclusive, unless the sale is to you, or the subcontractor or buyer is affiliated with you. The authority outlined herein regarding approvals of property disposition may be revoked (but not retroactively) where the best interests of the Government require it.

(c) *Completed articles and Government furnished material; abandonment of worthless property.* The authority granted in paragraph (b) above does not include (i) the authority to retain or sell, or to approve retentions or sales of, completed articles not delivered under the Contract, and material furnished by the Government for incorporation in end items unless the cost of such articles and such material to be retained or sold and the amount of the subcontractor's claim, computed according to § 641.122 of the Joint Termination Regulation, total less than $10,000; or (ii) the authority to destroy or abandon or to approve destruction or abandonment of, worthless property without the approval of the Contracting Officer (in the case of the Navy, the local NMR&DA officer) or disposal board as required by § 644.447.2 of the Joint Termination Regulation.

SECTION 8—INTERIM FINANCING

22. *Partial payments.* Partial payments may be made to you, pending the settlement of your termination claim, by either (1) an immediate partial payment before you have had an opportunity to prepare an adequate inventory or statement of costs, or (2) a cost-supported partial payment as promptly as possible after submission of a partial or complete settlement proposal with the prescribed supporting data. Application for any such payment should be made to the Contracting Officer. This application should be on the prescribed form, which may be obtained from him.

(a) Immediate partial payments are based on your estimate of your own costs, and application for any such payment must be accompanied by your certificate that the estimated amount of your own costs allocable to the contract and due as of the date of the certificate is not less than a specified figure, after deducting any required credits. Your estimate of your costs need not be limited to the partial proposals already filed, but may include other amounts due you for which partial proposals have not yet been filed. The amount of any partial payment, together with all previous unliquidated advance or partial payments applicable to your own costs, will not exceed 90% of the figure specified in the certificate.

(b) Cost-supported partial payments are based on partial or complete settlement proposals, and application for any such payment must be accompanied by one or more such proposals, supported by the data required for the submission of a termination claim or by reference to a previously submitted claim.

23. *Advance payments.* Where funds are on deposit in any advance payment account at the time of termination, the Contracting Officer or the Finance Division, OP&M, for the Navy Department, may continue to authorize withdrawal of such funds to make payments chargeable to the account, in accordance with applicable regulations. Likewise, amounts previously authorized, but not paid prior to the termination, may be used on termination subject to the same limitations. If your Contract is partially terminated, amounts on deposit in the advance payment account may be used to pay termination charges as well as expenses in connection with performance, and additional advance payments may be authorized, in accordance with procedures governing advance payments for production purposes.

24. *Penalty on overstatements and overpayments.* To the extent that any partial or advance payment is in excess of the amount finally determined to be due on the termination claim, it will be treated as a loan from the Government, payable on demand, together with a penalty computed at the rate of 6% per annum from the date when it was made to the date of repayment. In addition, the Contract Settlement Act imposes a penalty of 6% on any overstatement of the amount due on a termination claim in connection with interim financing.

25. *Loans.* A new type of loan, known as a T loan, guaranteed by the Government, is available for the financing of war inventories and receivables pending final settlement of termination claims. If you wish to obtain such a loan, you should consult your local bank. Guaranteed V bank loans are also available to contractors still in war production.

SECTION 9—RECORDS AND PENALTIES

26. *Penal provisions.* Section 19 (a) of the Contract Settlement Act of 1944 makes it a crime, punishable by fine and imprisonment, for any person wilfully to secrete, mutilate, obliterate, or destroy * * *

"(i) Any records of a war contractor relating to the negotiation, award, performance, payment, interim financing, cancelation or other termination, or settlement of a war contract of $25,000 or more;

or

"(ii) Any records of a war contractor and any purchaser relating to any disposition of termination inventory in which the consideration received by any war contractor or any Government agency is $5,000 or more.

"until (1) five years after such disposition of termination inventory by such war contractor or Government Agency, or (2) five years after the final settlement of such war contract, or (3) five years after the termination of hostilities in the present war as proclaimed by the President or by a concurrent resolution of the two Houses of Congress, whichever applicable period is longer."

The Act also imposes severe penalties for false or fraudulent statements made in connection with the settlement and payment of termination claims.

SECTION 10—MISCELLANEOUS

27. *Expenses subsequent to termination.* You should submit to the Contracting Officer for his approval all costs incurred by you after the effective date of the Notice (a) for the protection of Government property, or (b) for other expenditures in connection with the terminated contract. (See the termination article in your contract.) You must take adequate precautions to protect property in your possession in which the Government has or may have an interest.

28. *Contracting Officer.* In most cases, the Contracting Officer will act through, and be assisted by, members of his staff, who may include material inspectors, disposal officers, accountants, and other technical experts. The Contracting Officer will probably appoint one of them as the negotiator in charge of your settlement, who will conduct the negotiations with you, but will not be authorized to agree finally on the terms of settlement without the approval of the Contracting Officer. He will, however, have such authority as may be delegated to him by the Contracting Officer to approve dispositions of property, settlements with subcontractors, and other terms of final settlement.

In the Navy Department, Navy material inspectors[1] act as general representatives of Navy Contracting Officers in the field. You should consult your War Department Contracting Officer or Navy material inspector for advice and assistance in termination matters and should submit to him your settlement

[1] The term "Navy material inspector" includes an Inspector of Naval Material, a Naval Inspector of Ordnance, a Supervisor of Shipbuilding, a Naval Inspector of Machinery, a Bureau of Aeronautics Representative and an Officer in Charge of Construction.

proposals, inventory schedules, applications for partial payments and subcontract settlements requiring Government approval.

29. *Delay in filing claim; improper filing.* Under the Contract Settlement Act of 1944 interest on a termination claim is not payable during the period of any unreasonable delay in settlement caused by the Contractor. Failure to file your claim in accordance with applicable instructions within 60 days after the date fixed for termination may result in suspending the accrual of interest thereafter until such claim is properly filed, unless the Contracting Officer extends such period for good cause. Failure to file your claim properly will also substantially delay its allowance. No charges will be allowed you to the extent that they are found to have resulted from your failure to take action, pursuant to your Notice of Termination or these Instructions, within a time which was reasonable under all the circumstances.

30. *Modifications of instructions.* The directions in your Notice of Termination and these Instructions may be modified from time to time.

[JTR 943.2]

§ 849.944 *Forms of notice and instructions for subcontractors.* [JTR 944]

§ 849.944–1 *Telegraphic termination notice to subcontractors.* Substantially the following form of notice is recommended for use where it is desired to notify any fixed-price (lump sum) supply subcontractor of the termination of a subcontract and to send such notice by telegram or teletype:

XYZ CORPORATION,
New York, New York.

Your contract with us No. ____ is hereby terminated effective [Here insert "immediately" or "on _____ 194___" (inserting the date), or "as soon as you have delivered thereunder including previous deliveries the following items" (listing items), or "on _____ 194___, on which date you will reduce delivery rate as follows" (inserting instructions as to reduced rate of delivery).] Immediately stop all work Terminate all subcontracts and place no further orders except to extent [Here insert, if applicable, "necessary to perform any portion thereof not terminated hereby or"] that you or a subcontractor wish to retain and continue for own account any work in process or other materials. Telegraph similar instructions to all subcontractors and suppliers. [Insert where applicable "This termination is necessitated by Government's termination of prime contracts under which your contract is a subcontract."] If this termination will result in release of labor, facilities, or production tools, you are requested to notify your nearest WPB office immediately. Letter and instructions follow.

_____
Name of Contractor

[JTR 944.1]

§ 849.944–2 *Letter termination notice for use by prime contractors in terminating fixed-price (lump sum) supply subcontracts.* A notice in substantially the following form is recommended for use by prime contractors in terminating by letter fixed-price (lump sum) supply subcontracts. This form is intended for cases where termination of the subcontract is required by termination of the prime contract. Appropriate changes should be made by prime contractors in using this form where termination of a subcontract becomes necessary without termination of the prime contract.

LETTER TERMINATION NOTICE TO SUBCONTRACTORS HOLDING FIXED-PRICE (LUMP SUM) SUBCONTRACTS

[At the top of the notice set out all special details relating to the particular termination: e. g., name and address of company, contract number of terminated prime contract, contract number or other designation of terminated subcontract, service or bureau involved, name and address of contracting officer administering prime contract, etc.

If this written termination notice confirms a telegraphic notice previously sent to your subcontractor, use the first of the alternative paragraphs No. 1 below. If no previous telegraphic notice has been sent, use the second.]

1. *Effective date of termination.* This letter will confirm our telegram to you dated _____194__, terminating [in part] our contract (or order) with you No._____. This action was necessitated by the fact that our Government Contract No._____ was terminated by the Government for its convenience, and our contract (or order) with you is a subcontract to perform work or to make or furnish material required for the performance of said Government Contract. The effective date of such termination is stated in our telegram, reference to which is hereby made [or copy of which is attached]. (Or)

1. *Effective date of termination.* Our Government Contract No._____ has just been terminated by the Government for its convenience. Our contract (or order) with you, No._____ is a subcontract to perform work or to make or furnish material required for the performance of said Government Contract, and is therefore terminated hereby. Such termination will be effective:

[Here insert either "immediately upon your receipt of this Notice" or "on _____, 194__" (inserting the date), or "as soon as you have delivered under said contract (or order) the following number of each of the items listed below, including those heretofore delivered, to wit: _____ or "on _____, 194__, on which date you are hereby directed to reduce the rate of delivery under said contract (or order) as follows:" (here insert instructions as to reduced rate of delivery).] If this termination will result in the release of labor, facilities, or production tools, you are requested to notify your nearest War Production Board office immediately.

2. *Inclosed instructions.* Inclosed herewith is a short statement entitled "Instructions to Subcontractors Holding Terminated Fixed-Price (Lump Sum) Supply Subcontracts", which was furnished to us by the Government and which outlines briefly your principal rights and obligations not covered by this Notice. You should read and follow carefully these Instructions.

3. *Disposal of termination inventory.* (a) You are authorized and urged to retain or dispose of all termination inventory in accordance with Section 4 of the Instructions, except for the following property: [Here list all property which the signer wishes, or has been advised that the Government wishes, to take over and give full instructions relating thereto.]

(b) In connection with final settlement of your claim (other than a "no-cost" settlement, see paragraph 5 (c) below), it will be necessary to establish that all your termination inventory and that of your subcontractors has been properly accounted for, as provided in the Joint Termination Regulation of the War and Navy Departments, § 844.451–1. If your claim is properly submitted on Standard Form 1a of the Office of Contract Settlement, you need not furnish further evidence of this fact unless notified to the contrary. In all other cases you should be prepared to furnish us a certificate in substantially the form prescribed in the Joint Termination Regulation, § 849.973, and you should advise each of your immediate subcontractors who intends to make a claim (other than a claim properly submitted on Standard Form 1a) that he should be prepared to furnish you a similar certificate.

4. *Completed articles.* Completed articles which have been shipped but not received prior to the effective date of termination will be considered for all purposes as articles delivered prior to such effective date, and should, therefore, be invoiced in the usual way and not included in your termination claim.

5. *Submission of settlement proposal.* (a) We wish, and have been urged by the Government, to settle your termination claim by negotiation and on such terms as will speedily and fairly compensate you therefor. To assist you in prompt submission of your Settlement Proposal, there is inclosed herewith one set of the Standard Forms of the Office of Contract Settlement for use by all fixed-price war supply contractors. Additional copies for your own use and for your subcontractors, if any, may be obtained from us or from the Government office named below, which will be in charge of the settlement of the prime contract. [In the case of the Navy, substitute "from your cognizant Navy material inspector."]

(b) Your settlement proposal, supporting inventory schedules, if any, application for partial payment, and all related papers should be submitted to us, in the absence of contrary instructions. [In the case of the Navy, add a statement requiring the submission of any settlement proposal of $10,000 or more via the subcontractor's cognizant Navy material inspector.]

[Include the following subparagraph (c) unless it appears clearly inappropriate in view of the size of the subcontract terminated or for other obvious reasons known to the contractor sending the notice of termination. If this subparagraph is included, there should be inclosed two copies of the "No-Cost" Subcontract Settlement Agreement referred to therein.]

(c) If you do not wish to present a termination claim against us, please sign and return both copies of the inclosed form of "No-Cost" Subcontract Settlement Agreement (Joint Termination Regulation, § 849.987–2). One copy signed by us will be returned for your files.

6. *Government office in charge.* The following Government office is in charge of the settlement of the prime contract:

_____ _____
Name of Office Name of Contracting Officer

_____
Address

7. *Acknowledgment of notice.* Please acknowledge receipt of this Notice and indicate intent to file or not to file a claim as shown below.

Enclosures:

_____
Name of Contractor

By_____
Title

ACKNOWLEDGMENT OF NOTICE AND INTENT TO FILE OR NOT TO FILE A CLAIM

The undersigned acknowledges receipt of a signed copy of the foregoing Notice on _____, 194__ and [strike out whichever is inapplicable] { intends / does not intend } to file a termination claim. Two copies of this Notice, both signed, are herewith returned.

_____
Name of Subcontractor

By_____
Title

[JTR 944.2]

§ 849.944–3 *Instructions for use by prime contractors in terminating fixed-price (lump sum) supply subcontracts.*

Instructions in substantially the following form are recommended for use by prime contractors in terminating fixed-price (lump sum) supply subcontracts. This recommended form of instructions should be sent to prime contractors along with their own letter notice of termination.

INSTRUCTIONS TO SUBCONTRACTORS HOLDING TERMINATED FIXED-PRICE (LUMP SUM) SUPPLY SUBCONTRACTS

1. *Introductory.* These Instructions summarize your principal rights and obligations arising out of the termination of your subcontract. They are based upon the Contract Settlement Act of 1944, the Surplus Property Act of 1944, and Government regulations issued under those acts. For more complete details on matters covered by these Instructions and for information on matters not covered by these Instructions, you should consult the Joint Termination Regulation, issued by the War and Navy Departments, which may be obtained by war contractors free of charge from the Readjustment Distribution Center, 6th Floor, 90 Church Street, New York City.

2. *Cessation of work and notification to your immediate subcontractors in compliance with the Notice of Termination.* In order to comply with your Notice of Termination, and to stop performance in accordance with its terms, you should take the following steps:

(a) Stop all work, make no further shipments, and place no further orders in connection with your subcontract (or order) except (1) to the extent necessary to perform any portion thereof not terminated by the Notice, or (2) to the extent that you may wish to retain and continue any work in process or other materials for your own account, or (3) to the extent the Contracting Officer authorizes you to continue work-in-process for reasons of safety, or to clear (or avoid damage to) equipment or to avoid immediate complete spoilage of work-in-process having a definite commercial value, or otherwise to prevent undue loss to the Government. (If you believe the authorization referred to in subparagraph (3) above is necessary or advisable, you should immediately notify the responsible Contracting Officer of the Government by telephone or personal conference and obtain instructions.

You should keep adequate records of your compliance with this paragraph 2 (a) showing (i) the date you received your Notice of Termination, (ii) the effective date of such termination, and (iii) the extent of completion of performance on such effective date.

(b) Give notice of such termination to each of your immediate subcontractors (including suppliers) who will be affected thereby. In such notice you should (1) give him the number of the terminated prime contract, (2) state that it has been terminated [or partially terminated] for the convenience of the Government, (3) give him the name and address of the Contracting Officer, as set forth in your Notice of Termination, (4) instruct him to stop all work, to make no further shipments, to place no more orders, and to terminate all subcontracts, in connection with his subcontract with you (subject to the same exceptions stated in paragraph 2 (a)), (5) direct him to submit his settlement proposal promptly in order to speed up settlement of his termination claim, and (6) request him to give similar notice and instructions to his immediate subcontractors. (The form of any notice of termination sent by you and by any subcontractor of a lower tier should follow closely the form of your Notice of Termination, with only those changes required by the facts of a particular case.)

(c) Notify us of the number of articles completed under your subcontract and arrange with us for their delivery or other disposal. All completed articles, accepted and delivered after the effective date of termination, will be treated as articles delivered under your subcontract. They should, therefore, be invoiced in the usual way and not included in your termination claim.

3. *Settlement with your subcontractors.* You are requested to settle with all of your immediate subcontractors without delay. In general, the policies and procedures applicable to our settlement with you apply to your settlements with your subcontractors.

(a) *Settlements under $1,000.* Where an immediate subcontractor submits to you a settlement proposal properly made out on Standard Form 1a of the Office of Contract Settlement (i. e., a proposal which involves less than $1,000 after deducting property disposal credits) you are authorized, without further action by the Government or by us, to make a final settlement with such subcontractor.

(b) *Other settlements.* Each settlement of $10,000 and over with a subcontractor of any tier must be separately approved by the Government. In computing the size of a settlement for purposes of this paragraph, you should deduct (from the gross settlement) amounts payable for completed articles or work at the contract price and subcontract claims, but not disposal credits. Any settlement under $10,000 may be required to be submitted to the Government for approval or ratification; unless such settlements are so required to be separately submitted, they will be approved as a part of your own settlement. Notwithstanding the foregoing, if you have received an authorization to make final settlements of your subcontracts, any settlements made pursuant to the authorization will be recognized by the Government as final and conclusive for the purpose of settling the prime contract to which such subcontracts are allocable.

(c) Any settlement, even though final, may be examined by Government accounting personnel and termination inventory thereunder may be inspected by Government inspectors.

4. *Disposal of termination inventory*—(a) It is the policy of the Government that subcontractors be permitted to retain, as against their upper tier contractors, such termination inventories as they desire. You are urged to retain your inventory or to dispose of it. Such retention or sale must be subject to regulations and orders of the War Production Board, the Surplus Property Board, the Office of Price Administration and other Government agencies. You should inform your immediate subcontractors of this policy, and should request them in turn to inform their subcontractors.

(b) *Preparation of inventory schedules.* Where your settlement proposal is for less than $1,000 and properly submitted on Form 1a, you need not submit separate inventory schedules. Otherwise, your inventory should be listed on the Inventory Schedules prescribed for all fixed-price war supply contractors by the Office of Contract Settlement (Standard Forms 2a, 2b, 2c and 2d).

(c) *Authority to dispose of termination inventory without approval.* In the following cases, no approval is required for a retention or sale, and in the absence of fraud your action will be accepted as final and conclusive:

(1) *Retention or sale of items at inventory cost.* You may retain or sell, without approval, any item of inventory at its cost as stated in your inventory schedules: *Provided,* That such cost is computed upon a reasonably acceptable basis; in the case of items sold, you may include in your termination claim reasonable freight, packing and handling charges, if any.

(2) *Disposition of items under $100.* You may retain or sell, without approval, any item of inventory at the best price obtainable where the total cost of the item does not exceed $100, as stated in your inventory schedules: *Provided,* That the aggregate cost of all items so retained or sold does not exceed $5,000 or 20 percent of your total inventory cost, whichever is less. The term "item" includes all substantially similar articles at any one location listed on any one inventory schedule.

(d) *Claims under $10,000.* Subject to the provisions of subparagraph (e) below, where your claim (based on your own charges and estimated if necessary) is under $10,000, you may sell, retain, or otherwise finally dispose of any item of termination inventory, subject only to our approval unless the sale is to us or unless you are affiliated with us. In computing the size of your claim for purposes of this paragraph, you should deduct (from your gross claim) amounts payable for completed articles or work at the contract price and subcontract claims, but not disposal credits. In the absence of fraud, any such retention, sale or other disposition will be accepted by the Government as final and conclusive.

In the case of your immediate subcontractors, you may approve the sale, retention or other disposition of their termination inventory upon the same terms as those stated in this paragraph.

(e) *Completed articles and Government furnished material; Abandonment of worthless property.* The authority granted in paragraph (d) above does not include (i) the authority to retain or sell, or to approve retentions or sales of, completed articles not delivered under the contract and material furnished by the Government for incorporation in end items unless the cost of such articles and such material to be retained or sold, and the amount of the subcontractor's claim, computed according to paragraph 122 of the Joint Termination Regulation, total less than $10,000; or (ii) the authority to destroy or abandon or to approve destruction or abandonment of worthless property without the approval of the Contracting Officer (in the case of the Navy the local NMRDA officer) or disposal board as required by § 604.447-2 of the Joint Termination Regulation.

(f) *Other dispositions.* Other dispositions of termination inventory should be approved by the Contracting Officer or authorized Navy representative.

5. *Plant clearance*—(a) *The 60-day period.* In order to arrange for plant clearance, you may from time to time submit inventory schedules to the Contracting Officer or your Navy material inspector (with a copy to us) on the Standard Forms above mentioned (Forms 2a, 2b, 2c and 2d). These schedules will constitute your statement showing the materials claimed to be termination inventory which, if not otherwise disposed of prior to settlement, you desire to have removed by the Government from your plant. The obligation of the Government under the Contract Settlement Act of 1944 to remove or arrange for storage of any items of termination inventory will not arise until sixty days, or such longer time as may be agreed, from the time when these schedules containing a listing of such items are filed with the Contracting Officer or your Navy material inspector in accordance with applicable instructions, in satisfactory form, and with the required certificate.

(b) *Contractor's right to remove and store.* If for any reason the Government does not, within such sixty-day period (or longer as agreed on), either remove such materials or enter into an agreement with you for their storage, you may at any time thereafter (using reasonable care in transportation and preservation) remove and store them for the account and at the risk and expense of the Government. You may do so, however, only if you have first delivered to the Contracting Officer or your Navy material inspector, (1) 20 days' notice in writing of the date fixed for removal and (2) a statement showing the quantities and condition of the materials so to be removed, certified to represent a concurrent physical

inventory. At any time after the effective date of termination, you are authorized to remove and store at your own expense and risk any items of termination inventory.

6. *Removal of facilities.* It is the policy of the Government, in accordance with the provisions of section 12 (g) of the Contract Settlement Act of 1944, and Regulation No. 4 of the Office of Contract Settlement to provide for the orderly and expeditious removal from private plants of Government-owned machinery, tools or equipment which is no longer required for war production or for the national defense. If you have any such equipment in your plant, you should notify the Contracting Officer.

7. *Contractor inventory.* In addition to the material allocable to your subcontract, you may have in your plant material which is "contractor inventory." The term "contractor inventory" (as used in the Joint Termination Regulation and as defined in the Surplus Property Act) means (1) any property related to a terminated contract of any type with the owning agency or to a subcontract thereunder; (2) any property acquired under a contract pursuant to the terms of which title is vested in the Government, and in excess of the amounts needed to complete performance thereunder; and (3) any property which the Government is obligated to take over under any type of contract as a result of any change in the specifications or plans thereunder. Contractor inventory includes, but is broader than, termination inventory, as that term is defined in the Joint Termination Regulation § 841.121–21 and in the Contract Settlement Act, and also includes any Government-owned material in the war contractor's plant, either before or after the expiration of a contract, which is no longer required for the purpose for which it was supplied. You should consult Part 844 of the Joint Termination Regulation as to the disposal and removal of this type of material.

8. *Interim financing.* It is the policy of the Government, pending the settlement of your claim, to provide you with adequate interim financing, within 30 days after proper application. Such financing may be effected by one or more of the following methods:

(a) A new simplified type of guaranteed T Loan, solely for use on termination, is now available;

(b) For contractors still in war production guaranteed V Loans may be arranged;

(c) Contractors will be given liberal partial payments while their terminated contracts are in process of settlement, which may be either (1) immediate payments based on an estimate of the amount due, or (2) cost-supported payments based on a statement of costs;

(d) Advance payments authorized prior to termination may, where the agreement so provides, be used with the approval of the Contracting Officer, or the Finance Division, OP&M, for the Navy Department, to pay for items included in your termination claim.

Further information may be secured from the Contracting Officer and may be found in the Joint Termination Regulation, Part 843.

9. *Delay in filing claim; improper filing.* Under the Contract Settlement Act of 1944 interest on a termination claim is not payable during the period of any unreasonable delay in settlement caused by the Contractor. Failure to file your claim in the proper form within 60 days after the date fixed for termination may suspend the accrual of interest thereafter until the claim is properly filed. Failure to file your claim properly will also substantially delay its allowance. In preparing it, you should remember that its allowance will normally create a cost to be reimbursed to the prime contractor by the Government; that your statement of costs may be subject to Government examination; and that any items listed on your inventory schedules may be subject to Government inspection. No charges will be allowed you to the extent that they are found to have resulted from your failure to take action, pursuant to your Notice of Termination or these Instructions, within a time which was reasonable under all the circumstances.

10. *Effective date of termination and date fixed for termination.* The terms "effective date of termination" and "date fixed for termination" mean the date upon which your notice of termination first requires you (1) to reduce or stop deliveries under your contract, or, (2) if no deliveries are being made or are called for under the contract, to reduce or stop performance under the contract. Payment of interest, if any, on your termination claim will be calculated by reference to this date.

11. *Pending legal proceedings.* You should notify us of any pending legal proceedings which relate to any subcontracts or purchase orders under your terminated subcontract or which have resulted in or which are intended to obtain, a lien or encumbrance on any termination inventory other than termination inventory you propose and are authorized to retain or dispose of.

12. *Destruction of records.* The Contract Settlement Act of 1944, Section 19 (a), makes it a crime, punishable by fine and imprisonment, to destroy wilfully, within a period extending for at least five years after the end of the war, (a) any records of a war contractor which relate to a war contract of $25,000 or more, or (b) any records of a war contractor or purchaser which relate to termination inventory involving $5,000 or more. The Act also imposes severe penalties for false and fraudulent statements made in connection with the settlement and payment of termination claims.

13. *Incorporation of "Approved Termination Provision".* The Government has issued a standard form of contract article called "Approved Termination Provision for Use in Fixed-Price Orders or Subcontracts for the Manufacture of Supplies under Government War Contracts". (This form appears in the Joint Termination Regulation, § 849.936.) This provision embodies Government policy on termination of fixed-price subcontracts. If your subcontract does not contain the provision, you may raise with us the question of amending your subcontract to include it.

14. *Contracting officer.* The Contracting Officer means the Government officer in charge of the settlement of the prime contractor's claim. In most cases he will act through, and be assisted by, members of his staff, who may include material inspectors, disposal officers, accountants, and other technical experts. In the Navy Department, Navy material inspectors,[1] act as general representatives of Navy Contracting Officers in the field. You should consult us for advice and assistance in termination matters. Where necessary, however, the Contracting Officer or your Navy material inspector is also available to help you.

15. *Modification of instructions.* The directions in your Notice of Termination and these Instructions may be modified from time to time.

[JTR 944.3]

SUBPART E—FORMS RELATING TO INTERIM FINANCING

§ 849.950 *Scope.* This subpart contains forms, instructions and explanatory notes to forms, relating to guaranteed loans and partial payments in connection with termination. [JTR 950]

[1] The term "Navy material inspector" includes an Inspector of Naval Material, a Naval Inspector of Ordnance, a Supervisor of Shipbuilding, a Naval Inspector of Machinery, a Bureau of Aeronautics Representative, and an Officer in Charge of Construction.

§ 849.951 *Forms for 1944 V-Loan Guarantee Agreement and explanatory notes.* [JTR 951]

§ 849.951–1 *Form of agreement.* [JTR 951.1]

NOTE: Forms printed in the FEDERAL REGISTER are for information only and do not follow the exact format prescribed by the issuing agency.

Form of September 15, 1944

1944 V-LOAN GUARANTEE AGREEMENT

No. _____

The War Department of the United States, Navy Department of the United States, United States Maritime Commission (herein called "Guarantor"), acting through the Federal Reserve Bank of _____ as fiscal agent of the United States, and the Financing Institution, as hereinafter defined, hereby agree each with the other as follows:

SECTION 1. *Definitions.* As used in this agreement:

(A) The words "Financing Institution" shall mean _____

_____

(B) The word "Borrower" shall mean _____

_____

(*Name*)

of _____

(*Address*)

the said Borrower being engaged in a business or operation which is deemed by the Guarantor to be necessary, appropriate or convenient for the prosecution of the war.

(C) The words "the loan" shall mean a financing arrangement between the Financing Institution and the Borrower, the terms and conditions of which are briefly described as follows:

(The description of the loan shall include the following items in the following order: Type of loan (straight loan or revolving credit), principal amount (maximum amount of credit in the case of a credit), interest rate, and maturity (latest maturity in the case of a credit). Provisions as to collateral and other protective provisions prescribed by the Guarantor should also be described here, or, if preferred, by referring to an annexed loan agreement or other similar instrument; but the terms and the provisions of such agreement or instrument should not be made a part of or incorporated in the guarantee agreement.)

_____

_____

_____

_____

_____

(D) The word "obligation" shall mean the instrument or instruments evidencing the Borrower's indebtedness under the loan and any renewals or extensions thereof.

(E) The term "guaranteed percentage" shall mean (1) _____ per cent, or (2) the percentage specified above as increased by an adjustment thereof under section 8 or section 9 of this agreement.

(F) The term "unguaranteed percentage" shall mean the difference between 100 per cent and the guaranteed percentage.

(G) The words "collateral for the loan" shall mean all collateral or security specified in the description of the loan under paragraph (C) of this section or taken or accepted in substitution for such specified collateral or security, and any collateral or security hereafter taken or accepted for the specific protection of the loan.

(H) The words "interest in the obligation" shall mean the amount of the obligation owned by the Guarantor or by the Financing Institution, as the case may be.

(I) The word "Holder" shall mean the party to this agreement which has possession of the obligation and shall be determined in accordance with the provisions of sections 4 and 10 of this agreement.

(J) The words "Reserve Bank" shall mean the Federal Reserve Bank of _____ as fiscal agent of the United States acting on behalf of the Guarantor in accordance with the provisions of Executive Order No. 9112 of March 26, 1942, and as applicable provisions of law.

(K) A "war production contract" shall mean any contract (other than a contract solely for the construction or acquisition of facilities to be used by the Borrower) made or order accepted by the Borrower for the sale or furnishing by the Borrower of materials, equipment, supplies, facilities, or services or for the processing or treatment by the Borrower of materials, which (a) constitutes a prime contract with the War Department, Navy Department, or Maritime Commission or (b) constitutes a contract made or order accepted by the Borrower to aid directly or indirectly in the performance of any prime contract with any of said Government agencies.

SEC. 2. *Guarantee as to sharing of losses and expenses.* (A) All losses of principal and interest on the loan, and all expenses as defined in paragraph (D) of this section, shall be shared ratably by the Guarantor and the Financing Institution in accordance with the guaranteed percentage and the unguaranteed percentage, respectively, as such losses, expenses and percentages exist on the date of settlement between the Financing Institution and the Guarantor, regardless of whether or not any purchase has been made under this agreement.

(B) The date of settlement between the Financing Institution and the Guarantor shall be such date as may be agreed upon by the parties or, if no such date is agreed upon, the thirtieth day after the date on which either party to this agreement receives from the other party a written request for such settlement, but no such request will be made by the Guarantor prior to maturity nor prior to the time when the amount of the ultimate losses and expenses appears to be determinable with reasonable certainty.

(C) In determining losses under paragraph (A) of this section, all amounts which, on the date of settlement, have not been paid shall be regarded as losses even though they may appear to be recoverable thereafter. All net recoveries realized after the date of settlement, from whatever source realized, shall be shared ratably by the Guarantor and the Financing Institution on the basis prescribed in this section.

(D) For the purposes of this section, expenses shall mean all reasonable out-of-pocket expenses (including reasonable counsel fees incurred by the Financing Institution or the Reserve Bank prior to but not after any purchase under this agreement) which relate to the enforcement of the loan or the preservation of the collateral and which are incurred during the period of any default in the payment of principal or interest, and which have not been recovered from the Borrower.

SEC. 3. *Agreement to purchase.* (A) Upon written demand or demands made by the Financing Institution on the Reserve Bank at any time prior to the date of settlement between the Guarantor and the Financing Institution, the Guarantor will purchase from the Financing Institution, on the tenth (10th) day after the receipt by the Reserve Bank of such a demand, the guaranteed percentage of the unpaid principal amount of the loan, less any amounts which have been previously purchased by the Guarantor under any provision of this agreement and have not been repaid. Such purchases will be made by the Guarantor from time to time either as a whole or in such portions as may be demanded in writing as above specified.

(B) Any purchase by the Guarantor pursuant to any provision of this agreement shall be made at the Reserve Bank, and the amount that the Guarantor shall pay shall be the face amount of the portion of the unpaid principal amount of the obligation so purchased, as of the date of the demand, plus all unpaid accrued interest on such portion, with appropriate adjustment for guarantee fees, computed as of the date of purchase. Such purchase shall be made for cash, except that if the Guarantor owns an interest in any obligation which has been issued under a revolving credit arrangement and if, at or before the maturity of such obligation, the Reserve Bank receives written demand from the Financing Institution for the purchase of the same or a lesser amount of a new obligation to be issued in place of such maturing obligation, payment for the portion of the new obligation purchased pursuant to such demand will be made by the Guarantor by surrendering, at or before maturity, its interest in the maturing obligation, in the amount of the demand by the Financing Institution and without regard to the ten day period specified in paragraph (A) of this section.

SEC. 4. *Administration of loan and possession of obligation and collateral.* (A) Prior to any purchase under this agreement, the Financing Institution shall administer the loan and shall hold the obligation and the collateral for the loan. Whenever the Guarantor becomes the owner of any part of the loan under this agreement, the Financing Institution shall continue to administer the loan and to hold said obligation and collateral, and shall forthwith deliver to the Reserve Bank a certificate reciting that the Financing Institution holds said obligation and collateral for the account of the Guarantor to the extent of the Guarantor's interest therein. In any such case, however, upon written demand by the Reserve Bank, the Financing Institution shall forthwith endorse the obligation to the Reserve Bank without recourse or warranty and shall assign the collateral (or its interest therein if such collateral cannot be assigned because it is held for the account of more than one Financing Institution) to the Reserve Bank without recourse or warranty, except as to the genuineness of the signature of the Borrower to any instrument, and shall forthwith deliver to the Reserve Bank possession of the obligation and of the collateral (or an assignment of its interest therein as above provided). Thereupon the Reserve Bank shall issue to the Financing Institution a certificate reciting that the Reserve Bank holds said obligation and collateral for the account of the Financing Institution to the extent of the Financing Institution's interest therein. Thereafter the Guarantor, through the agency of the Reserve Bank, shall administer the loan and shall hold said obligation and collateral for the account of the Guarantor and the Financing Institution as their interests in the obligation may appear. The Guarantor and the Financing Institution shall at all times during the existence of this agreement have the right to examine and inspect said obligation and collateral.

(B) Whenever the Guarantor becomes the Holder of the obligation, the Financing Institution will at any time at the written request of the Guarantor furnish to the Guarantor such instruments as may be reasonably necessary or appropriate to enable the Guarantor to administer the loan and enforce the obligation and collateral for the loan in accordance with the terms of the loan.

(C) Nothing contained in this or any other section of this agreement shall be construed to prevent the Financing Institution from offering the obligation as collateral for advances by a Federal Reserve Bank, if such obligation is otherwise eligible and acceptable as collateral for such advances.

SEC. 5. *Ratable application of collections.* All amounts at any time paid or credited on the obligation, from whatever source realized, shall be applied ratably for the benefit of the Financing Institution and the Guarantor according to their respective interests in the obligation. All amounts so paid or credited upon the obligation after the date of a demand by the Financing Institution or the Guarantor, as the case may be, for a purchase under this agreement and prior to the date of such purchase shall be applied as above provided according to such respective interests of the Guarantor and the Financing Institution as such interests exist immediately after such purchase. The Holder of the obligation and collateral shall receive all payments from the Borrower in connection with the obligation and shall promptly remit to the other party to this agreement such other party's share thereof.

SEC. 6. *Application of proceeds of collateral and other assets.* (A) There shall first be applied to the full payment of the loan before they are applied to the payment of other indebtedness of the Borrower to the Financing Institution: (1) All proceeds of any collateral for the loan; and (2) all proceeds of accounts receivable and of inventories (including finished products and work in process) arising under the Borrower's war production contracts, to the extent that such accounts receivable or inventories are taken or appropriated by the Financing Institution, except war production contracts under which claims may heretofore have been, or may with the written consent of the Guarantor hereafter be, specifically assigned to the Financing Institution as security solely for other indebtedness of the Borrower to the Financing Institution. If any funds on deposit, or other amounts payable to the Borrower by the Financing Institution, or other assets of the Borrower (except those described in clause (2) above) which are not specifically pledged as security for any indebtedness shall be taken or appropriated by the Financing Institution, the Financing Institution shall apply such funds and the proceeds of such other assets pro rata against the then unpaid balance of the loan and the then unpaid balance of such other indebtedness of the Borrower to the Financing Institution. Funds on deposit, amounts payable, and other assets shall not be considered to be specifically pledged for any indebtedness, within the meaning of this section, if the right of the Financing Institution to apply the proceeds thereof to such indebtedness exists only by virtue of the right of banker's lien or setoff or only by virtue of a "spreader", "overlap" or "cross-lien" provision in any note or loan agreement.

(B) There shall first be applied by the Guarantor to the full payment of the loan, before they are applied to the payment of other indebtedness of the Borrower to the Guarantor, all proceeds obtained by the Guarantor from: (1) accounts receivable and inventories (including finished products and work in process) arising under the Borrower's war production contracts, and (2) any right of priority accruing to the Guarantor on account of any claim by the Guarantor against the Borrower, and (3) any right of setoff in respect of amounts due to the Borrower on any war production contract (except a right of setoff arising out of a claim under the same contract); except that the foregoing shall not apply to any pledge, lien, or other security taken by the Guarantor as collateral for an advance payment or loan by the Guarantor to the Borrower.

SEC. 7. *Actions as to obligation or collateral.* The Holder shall not, without the prior written consent of the other party to this agreement, (a) make or consent to any material alteration in the terms of the loan or collateral for the loan; (b) make or consent to any release, sale, transfer, further pledge, subordination or substitution of any of said collateral for the loan; or (c) give any consent or waiver under any provision of the loan restricting the use of funds of the Borrower. However, the consent of the other party shall not be necessary with respect to any release or substitution of such collateral required or authorized by the terms of the loan as such terms are described in paragraph (C) of section 1 of this agreement or

in any instrument referred to therein, and no notice of any such action need be given to the other party. The Holder, unless prior objection thereto shall have been made in writing by the other party, may extend the term of the loan, but, without the prior written consent of the other party, not more than once and for not more than sixty (60) days, but notice of any such extension shall be thereafter promptly transmitted to the other party. The taking of additional collateral or security shall not be considered a material alteration in the terms of the loan or collateral for the loan.

SEC. 8. *Refusal of guarantor to consent to accelerated maturity.* The Financing Institution, if it be the Holder, shall not exercise any option to accelerate the maturity of the obligation without the prior written consent of the Guarantor. If such an option exists (whether or not conditioned upon the giving of notice to the Borrower) on the part of the Holder to accelerate the maturity of the obligation and (a) the Guarantor fails to give its written consent, within ten (10) days after the Reserve Bank shall have received a written request from the Financing Institution to do so, to the acceleration of the maturity of the obligation or (b) if the Guarantor be the Holder and does not, within ten (10) days after the Reserve Bank shall have received a written request from the Financing Institution that the Guarantor do so, initiate appropriate action to accelerate the maturity of the obligation, the guaranteed percentage shall thereupon, in either event, effective ten (10) days after the receipt of such request, be 100 per cent. The Guarantor may, after giving notice to the Financing Institution, exercise any option to accelerate the maturity of the obligation without obtaining the consent of the Financing Institution, and the loan shall so provide.

SEC. 9. *Failure to sue or consent to suit.* The Financing Institution, if it be the Holder, shall not, without the prior written consent of the Guarantor, bring suit to enforce payment of the obligation or any installment thereof, or directly or indirectly institute bankruptcy, receivership or insolvency proceedings against the Borrower, or foreclose on or otherwise enforce realization of the collateral by exercise of a power of sale or by legal proceedings; but the Guarantor, if it be the Holder, after giving notice to the Financing Institution, may take any action specified in this sentence without obtaining the consent of the Financing Institution. If at any time all or any portion of the principal or interest of said obligation is due and unpaid and (a), while the Financing Institution is the Holder, the Guarantor fails to give its written consent within ten (10) days after the Reserve Bank shall have received a written request from the Financing Institution to do so, to the taking of any action specified in the preceding sentence or (b) if the Guarantor be the Holder and does not, within thirty (30) days after the Reserve Bank shall have received a written request from the Financing Institution that the Guarantor take action as aforesaid, take the action requested or one of the other steps specified in the preceding sentence, the guaranteed percentage shall thereupon in either event, effective ten (10) days or thirty (30) days, as the case may be, after the receipt of such request, be 100 per cent.

SEC. 10. *Voluntary purchase by Guarantor.* Whenever the Guarantor elects, it may purchase, and the Financing Institution shall sell to it, the guaranteed percentage of the unpaid principal amount of the obligation, less any amounts which have been previously purchased by the Guarantor under any provision of this agreement and have not been repaid; but no such purchase shall be made except ninety (90) days or more after the original advance on the loan or shall become effective until ten (10) days (or such lesser period as the Guarantor may specify) after the Guarantor shall have sent to the Financing Institution a demand for such purchase by telegram or registered mail. In the event of any purchase under this section, the Guarantor shall, at the request of the Financing Institution, or may, at its own option, immediately become the Holder in the manner provided in section 4 without the written demand therein specified.

SEC. 11. *Reports as to Borrower's condition.* The Holder shall promptly notify the other party of any default in the payment of principal, or of any default which shall continue for ten (10) days in the payment of interest, on the part of the Borrower. As long as the Financing Institution has any interest in the loan, each party shall notify the other party of any other default on the part of the Borrower in connection with the loan, or of any unfavorable change in the financial condition or in the business of the Borrower or in the collateral for the loan, of which such party has acquired actual knowledge in connection with the administration of said loan and which in its opinion at the time is material. The Financing Institution shall, upon the request of the Reserve Bank, furnish to the Reserve Bank any other information relating to the financial condition of the Borrower and the progress of the loan which it has acquired in connection with the administration of said loan.

SEC. 12. *Fees payable to guarantor.* The Financing Institution shall pay to the Reserve Bank at the end of each monthly or quarterly period, as fixed by the Reserve Bank, an amount equal to _____ per cent of any interest payable by the Borrower on the average daily amounts of that part of the unpaid principal of the obligation which the Guarantor was obligated during such period to purchase upon demand of the Financing Institution.

SEC. 13. *Effect of violation of agreement.* (A) If the Financing Institution shall violate, or fail to comply with, any of the terms of this agreement or any of the terms or conditions of the loan or shall through gross negligence make a material misrepresentation of fact in the application therefor, or in anything constituting a part of the application, it shall become liable to the Guarantor in an amount equal to the damages sustained by the latter by virtue of such violation, failure to comply, or misrepresentation; but the Guarantor shall not be relieved by such violation, failure to comply, or misrepresentation from any of its obligations to the Financing Institution under the terms of this agreement.

(B) In the absence of gross negligence on the part of the Financing Institution:

(1) No invalidity or ineffectiveness of any collateral or of any assignment thereof accepted by the Financing Institution; and

(2) No action or omission to act on the part of the Financing Institution in reliance on a statement or certificate signed by an appropriate officer or member of the Borrower with respect to the financial condition, business or operations of the Borrower or the purpose for which funds of the Borrower have been or are intended to be used;

shall constitute a violation of, or failure to comply with, any of the terms of this agreement or any of the terms or conditions of the loan on the part of the Financing Institution. No invalidity of any provision of the loan agreement (or other similar instrument), if any, referred to herein, arising from statute or decision of any court, shall in any way relieve the Guarantor hereunder.

SEC. 14. *Interpretation of agreement.* (A) This agreement constitutes the entire contract between the Guarantor and the Financing Institution, and no claim of waiver, modification, consent, or acquiescence with respect to any of the provisions of this agreement shall be made against either party except on the basis of a letter or other written instrument executed by or on behalf of such party.

(B) No provision of the loan agreement (or other similar instrument), if any, shall increase, limit or vary the rights or obligations of the Financing Institution, the Guarantor or the Borrower under this agreement.

SEC. 15. *Prohibition against assignment.* This agreement shall not be assignable by either party, but this shall not prevent the Financing Institution from granting to other financing institutions participations in the obligation, *Provided, however,* That the Guarantor shall recognize and deal only with the Financing Institution.

SEC. 16. *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.

In witness whereof, the parties have caused this agreement to be executed on their behalf by their duly authorized agents this _____ day of _____, 194__.

WAR DEPARTMENT OF THE UNITED STATES,
NAVY DEPARTMENT OF THE UNITED STATES,
UNITED STATES MARITIME COMMISSION

[SEAL]

By Federal Reserve Bank of _____
As fiscal agent of the United States

By _____
(*Name*) (*Title*)

_____
(*Financing Institution*)

By _____
(*Name*) (*Title*)

Attest:

_____
(*Name*) (*Title*)

[JTR 951.1]

§ 849.951–2 *Explanatory notes to 1944 V-Loan Guarantee Agreement.*

Form of September 15, 1944

EXPLANATORY NOTES WITH RESPECT TO THE 1944 V-LOAN GUARANTEE AGREEMENT

1. The Guarantee Agreement is issued pursuant to the authority contained in the First War Powers Act, 1941, Executive Order 9112, the Act of June 11, 1942 (56 Stat. 351), the Contract Settlement Act of 1944, and other pertinent provisions of law.

2. Generally the Guarantee Agreement is to be used only in cases where a Borrower is engaged in war production and has a present need for funds to finance such war production. The Borrower may obtain termination protection to the extent that the Financing Institution agrees to permit borrowings against cancelled war production contracts. If a Borrower shows the need of borrowings for production purposes as well as for releasing working capital on terminated contracts or on the terminated portions of contracts, the borrowings will ordinarily be limited only by the loan formula and the maximum amount of the credit. Where a Borrower shows no need for borrowing for production purposes other than to purchase tax notes, V-Loan financing will not generally be made available.

3. The form of 1944 V Guarantee Agreement is to be standard in all cases. In appropriate circumstances, however, the definition of "war production contract" contained in section 1 (K) may be varied after submission of the matter to Washington for approval. No other special provision or condition modifying the guarantee agreement will be permitted in any circumstances except after joint consultation between the guaranteeing agencies.

4. It is contemplated that there will usually be a Loan Agreement between the Borrower and the Financing Institution and that each Loan Agreement will contain a borrowing formula based upon war production con-

tracts. The loan formula shall relate to unterminated war production contracts, or to both unterminated and terminated war production contracts. In any case where the loan formula permits borrowings with respect to terminated war production contracts, the loan may contain provisions substantially similar to the report and "paydown" provisions of Paragraphs 7 (c) and 8 of the standard Termination Loan Agreement. The term "terminated war production contracts," unless otherwise defined in the loan agreement, will include a war production contract *in its entirety* which has been terminated in whole or in part.

5. In general, whenever it is agreed to extend a guaranteed loan originally under the 1942 or 1943 form of guarantee agreement, the consent of the Guarantor to such extension will be given only if the Borrower and the Financing Institution agree to accept the 1944 V-Loan Guarantee Agreement. However, if upon maturity of such a loan the Borrower needs only a relatively short extension to complete his war production contracts or, if such a loan matures prior to January 1, 1945 and time is needed to arrange for refinancing, the Guarantor will generally agree to an extension without the adoption of the new form of guarantee agreement, provided that (1) the maturity of the loan is extended for a total period of not more than six months; (2) no substantial modifications are made in the terms of the loan (except modifications requested by the Guarantor); and (3) the Borrower agrees to forego the benefits of section 6 of the 1942 or 1943 form of guarantee agreement. In addition, in any case in which it deems it necessary, the Guarantor may permit an extension without the adoption of the new form of guarantee agreement for such period of time as may appear to be required in order to effect an orderly liquidation of the loan.

6. The fact that the 1944 V-Loan Guarantee Agreement form does not contain a provision analogous to Section 5 of previous V-Loan guarantee forms will be taken into consideration by the Services in negotiating the guaranteed percentage under the new form.

7. There is no provision in the 1944 V-Loan Guarantee Agreement form for suspension of maturity upon cancellation of war contracts. However, as appears from Note 2 above, the Borrower may obtain certain termination protection. Moreover, if, at the maturity of a loan, settlement of terminated contracts has not been completed, the Services still have a responsibility under the Act to provide interim financing for the remainder of the settlement period.

[JTR 951.2]

§ 849.952 *T-Loan Forms.* [JTR 952]

§ 849.952–1 *T-Loan Guarantee Agreement.*

NOTE: Forms printed in the FEDERAL REGISTER are for information only, and do not follow the exact format prescribed by the issuing agency.

Form of September 1, 1944

T-LOAN GUARANTEE AGREEMENT

No. ____

The _____ (herein called "Guarantor"), acting through the Federal Reserve Bank of _____ as fiscal agent of the United States (herein called "Reserve Bank"), and the Financing Institution hereby agree as follows:

SECTION 1. *Definitions.* (A) "Financing Institution" shall mean _____

(B) "Borrower" shall mean _____
(Name)

of _____
(Address)

(C) "The loan" shall mean the financing arrangement between the Financing Institution and the Borrower which is described in Appendix I annexed hereto. In case of any conflict or inconsistency between the provisions of this agreement and the provisions of Appendix I or any other similar instrument, the provisions of this agreement shall control.

(D) "Obligation" shall mean the instrument or instruments evidencing the Borrower's indebtedness under the loan.

(E) "Guaranteed percentage" shall mean ___%

SEC. 2. *Guarantee as to sharing of losses and expenses.* (A) All losses on the loan (i. e., all amounts of principal and interest which are due and unpaid), and all unreimbursed expenses as defined in Paragraph (B) of this section, shall be shared ratably, on the date of settlement, by the Guarantor and the Financing Institution in accordance with the guaranteed and unguaranteed percentages, respectively. All net recoveries after the date of settlement shall be shared on the same basis. The date of settlement shall be the thirtieth (30th) day after the date on which either party, after the maturity of the loan, receives from the other party a written request for such settlement, or any other date agreed on by the parties.

(B) Expenses shall mean all reasonable out-of-pocket expenses (including reasonable counsel fees incurred by the Financing Institution or the Reserve Bank prior to but not after any purchase under this agreement) which relate to the enforcement of the loan or the preservation of the collateral and which are incurred during the period of any default in the payment of principal or interest.

SEC. 3. *Agreement to purchase.* The Guarantor will at any time and from time to time prior to the date of settlement purchase such portion of the obligation as may be demanded in writing by the Financing Institution, by paying to the Financing Institution, on the tenth (10th) day after the receipt by the Reserve Bank of such a demand, the unpaid principal amount of the portion of the obligation to be purchased, as of the date of the demand, plus all unpaid accrued interest on such amount, with appropriate adjustment for guarantee fees, computed as of the date of purchase: *Provided,* That in no event shall the total amount of the portion of the obligation owned by the Guarantor exceed the guaranteed percentage.

SEC. 4. *Voluntary purchase by guarantor.* The Guarantor may, at any time upon its demand, purchase the guaranteed percentage of the obligation, less any amounts previously purchased under this agreement and not repaid, and shall pay therefor on the basis stated in section 3. In such event, at the option of the Financing Institution or the Guarantor, the Financing Institution shall forthwith transfer possession of the obligation and collateral in the manner provided in section 5.

SEC. 5. *Administration of loan and possession of obligation and collateral.* (A) The Financing Institution shall administer the loan until it transfers possession of the obligation and collateral to the Reserve Bank as provided below, and thereafter the Guarantor shall administer the loan. Whenever the Guarantor purchases any part of the obligation, the Financing Institution shall forthwith deliver to the Reserve Bank a certificate evidencing the Guarantor's ownership interest in the obligation and collateral. In any such case, however, upon written demand by the Reserve Bank, the Financing Institution shall forthwith transfer to the Reserve Bank, without recourse or warranty except as to the genuineness of the Borrower's signature to any instrument, such possession of, title to, and rights to enforce the obligation and all collateral therefor as it may have. Thereupon the Reserve Bank shall issue to the Financing Institution a certificate evidencing the Financing Institution's ownership interest in the obligation and collateral. Either party administering the loan may (1) release and dispose of collateral and proceeds thereof, and permit substitution therefor, all in accordance with the terms of the loan, and (2) after five days' written notice to the other party, bring any action to enforce the loan.

(B) Nothing in this agreement shall prevent the Financing Institution from transferring the obligation as collateral for advances by a Federal Reserve Bank.

SEC. 6. *Ratable application of collections.* All amounts at any time paid or credited on the obligation, from whatever sources realized, shall be applied ratably for the benefit of the Financing Institution and the Guarantor according to their respective ownership interests in the obligation. Except as may be provided in the loan, the Financing Institution shall not be required to credit on the obligation the proceeds of any banker's lien or right of set-off with respect to funds of the Borrower (exclusive of proceeds of contracts on Exhibit C to Appendix I) or of other assets, to the extent that the Financing Institution has provided that such lien, right of set-off or other assets shall be security for other indebtedness of the Borrower to it.

SEC. 7. *Fees payable to guarantor.* The Financing Institution shall pay to the Reserve Bank at the end of each monthly or quarterly period, as fixed by the Reserve Bank, an amount equal to_____per cent of any interest payable by the Borrower on the average daily amounts of that part of the unpaid principal of the obligation which the Guarantor was obligated during such period to purchase upon demand of the Financing Institution.

SEC. 8. *Effect of violation of agreement.* (A) If the Financing Institution shall violate, or fail to comply with, any of the terms of this agreement or any of the terms or conditions of the loan or shall through gross negligence make a material misrepresentation of fact in the application therefor, or in anything constituting a part of the application, it shall become liable to the Guarantor in an amount equal to the damages sustained by the latter by virtue of such violation, failure to comply, or misrepresentation; but the Guarantor shall not be relieved by such violation, failure to comply, or misrepresentation from any of its obligations to the Financing Institution under this agreement.

(B) In the absence of gross negligence on the part of the Financing Institution, (1) no invalidity or ineffectiveness of any collateral or of any assignment thereof accepted by the Financing Institution, and (2) no action or omission to act on the part of the Financing Institution in reliance on a statement or certificate signed by an appropriate officer or member of the Borrower with respect to the financial condition, business or operations of the Borrower, shall constitute a violation of, or failure to comply with, any of the terms of this agreement or any of the terms or conditions of the loan on the part of the Financing Institution. No invalidity of any provision of the loan arising from statute or decision of any court shall in any way relieve the Guarantor hereunder.

SEC. 9. *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.

In witness whereof, the parties have caused this agreement to be executed on their be-

half by their duly authorized agents this ____ day of _____, 194__.

_____
(Guarantor)

[SEAL] By FEDERAL RESERVE BANK OF _____
as Fiscal Agent of the United States.

By _____
(Name) (Title)

_____
(Financing Institution)

_____
(Name) (Title)

Attest:

_____
(Name) (Title)

[JTR 952.1]

§ 849.952–2 *Termination Loan Agreement.*

NOTE: Forms printed in the FEDERAL REGISTER are for information only, and do not follow the exact format prescribed by the issuing agency.

Form of September 1, 1944

APPENDIX I—TERMINATION LOAN AGREEMENT

Under Guarantee Agreement No._____

_____ _____
_____
(herein called "Financing Institution") will grant credit to _____
_____ _____
of _____
(herein called "Borrower"), up to a maximum principal amount of $_____ at any one time outstanding, by lending to the Borrower at any time and from time to time on promissory notes in the form annexed hereto as Exhibit A and in accordance with the terms and conditions of this agreement.

1. *Definitions.* All terms defined in the Contract Settlement Act of 1944 and in the Guarantee Agreement shall have the same meaning when used in this agreement. "Terminated war contract" shall mean a war contract, in its entirety, which has been terminated in whole or in part. "The Contracts" shall mean such terminated war contracts, if any, as may now be listed on Exhibit C annexed, and as the Borrower may from time to time add thereto by supplement approved by the Financing Institution.

2. *Maturity.* The loan shall mature thirty (30) days after final payment of the amounts due, upon final and conclusive settlement, on the war contracts of the Borrower or upon _____, 194__, whichever is earlier, and all notes issued hereunder shall thereupon become due and payable. If any note of shorter maturity is issued, the Borrower may from time to time until the maturity of the loan again borrow hereunder the unpaid amount of such note, subject to the provisions of Paragraph 6 hereof. The Borrower may at any time by written notice reduce the maximum principal amount of the loan in multiples of $_____.

3. *Interest.* The Borrower shall pay interest as prescribed in Exhibit A.

4. *Commitment fee and expenses.* The Borrower shall pay quarterly a commitment fee at the rate of _____% per annum on the average daily unused balance of the maximum principal amount of the loan. The Borrower shall reimburse the Financing Institution for reasonable out-of-pocket expenses incurred in connection with the loan and the application therefor.

5. *Collateral.* Prior to or contemporaneously with any borrowing hereunder, the Borrower, except and to the extent that the Financing Institution otherwise agrees in writing, will assign to the Financing Institution as security for the loan all moneys due and to become due on the Contracts. At any time upon request of the Financing Institution or the Guarantor, the Borrower will furnish additional security by assigning to the Financing Institution the moneys due and to become due on any or all of its terminated war contracts which by using its best efforts the Borrower can assign and which have not been previously assigned hereunder. All proceeds of assignments made hereunder and of any other collateral taken by the Financing Institution for the loan shall be applied to the indebtedness under the loan. Except to secure borrowing hereunder, except as provided in Exhibit D, and except to secure partial payments made to the Borrower by any contracting agency, the Borrower will not (a) assign, or suffer to remain assigned, moneys due or to become due on any of the Contracts, or (b) mortgage, pledge, or otherwise encumber, or suffer to remain encumbered for more than _____ days, any inventory allocable to the Contracts.

6. *Conditions of borrowing.* The Financing Institution shall not be required to make any advance hereunder (a) unless the Borrower furnishes to the Financing Institution a loan formula certificate in the form annexed hereto as Exhibit B, dated not more than _____ days before the date of the proposed borrowing, which shows a borrowing base, calculated in accordance with the percentages therein specified, of not less than the amount that will be outstanding after the proposed borrowing, or (b) if any event exists which constitues or which, except for notice or lapse of time or both, would constitute a default specified in this agreement, or (c) to the extent that the Financing Institution has reason to believe that the borrowing base stated in the loan formula certificate is substantially overstated in value and has so notified the Borrower in writing, provided that the Financing Institution may rely upon the borrowing base shown in the loan formula certificate.

7. *Reports.* The Borrower shall maintain proper records and accounts, permit such inspection thereof, and furnish such statements and reports, including audit reports, as the Financing Institution or the Guarantor may from time to time reasonably request. In any event, within three (3) months after the initial borrowing and not less than quarterly thereafter the Borrower shall furnish to the Financing Institution periodic reports in triplicate made up as follows:

(a) A balance sheet, certified by an appropriate officer or member of the Borrower, as of a date not more than _____ days prior to the date of furnishing the report.

(b) A loan formula certificate in the form of Exhibit B, dated not more than _____ days before the date of furnishing the report, unless such a certificate has been furnished within thirty (30) days before such date.

(c) A statement of the nature, amounts, and dates of all payments on any assigned terminated war contracts and on the Contracts, whether or not assigned, in cash or by offset or otherwise (except any offset theretofore deducted in any loan formula certificate) between the date of the initial borrowing or the last date covered by the last report, whichever is later, and a date not more than fifteen (15) days prior to the date of such a statement. Payments shall be deemed to include the proceeds of collateral taken for the loan, or proceeds of, or specific credit with respect to, any sale, retention or other disposition of inventory allocable to such contracts, approved or authorized by the proper authority, and the cost or proceeds, whichever is greater, of any such inventory which the Borrower has definitively elected to retain without specific credit therefor.

8. *Reduction of notes.* The Borrower shall pay down the unpaid principal amount of the notes by an amount equal to: (a) All payments, as described in Paragraph 7 (c), within three (3) days from the date of any such payment or within such further time as the Financing Institution may prescribe; and (b) any excess of outstanding borrowings over the borrowing base shown in the most recent loan formula certificate, upon the date of furnishing such certificate, provided that, while the Financing Institution may rely upon the borrowing base shown in such certificate, such borrowing base shall be decreased to the extent that the Financing Institution or the Guarantor has reason to believe that it is substantially overstated in value and has so notified the Borrower in writing, in which event the Borrower shall pay, in addition, an amount equal to any excess resulting from such decrease, within ten (10) days after the mailing of such notice.

9. *Maintenance of working capital.* The Borrower shall maintain net current assets, as determined in accordance with generally accepted principles of accounting and including in current liabilities all borrowings outstanding hereunder, of not less than $_____.

10. *Insurance.* The Borrower shall maintain insurance on its property in such amounts and against such risks as is customarily maintained by similar businesses operating in the same vicinity.

11. *Other provisions.* The parties hereto agree to any additional provisions appearing in Exhibit D annexed.

12. *Events of default.* The occurrence of any one of the following events shall constitute a default hereunder:

(a) Any statement, representation, warranty, certificate, schedule or report furnished by the Borrower in connection with the loan shall prove to have been materially false at the date thereof.

(b) Nonpayment of the principal of any of the notes outstanding hereunder when due; or nonpayment of interest or any commitment fee within ten (10) days after the date thereof.

(c) Breach by the Borrower of any other provision of this agreement.

(d) The Borrower shall be adjudicated a bankrupt or a trustee or a receiver shall be appointed for the Borrower or of a substantial part of its property in any involuntary proceeding, or any court shall have taken jurisdiction of the property of the Borrower or of a substantial part thereof in any involuntary proceeding for the reorganization, dissolution, liquidation or winding up of the Borrower, and such trustee or receiver shall not be discharged or such jurisdiction relinquished or vacated or stayed on appeal or otherwise stayed within thirty (30) days, or the Borrower shall file a petition or answer, not denying jurisdiction, in voluntary bankruptcy or under Chapter X or Chapter XI of the Federal Bankruptcy Act or any similar law, State or Federal, whether now or hereafter existing, or such a petition filed against the Borrower shall be approved and not vacated or stayed within thirty (30) days, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or trustee or liquidator of all of its property or a substantial part thereof, or shall have failed within thirty (30) days to bond or otherwise discharge any attachment or to pay any judgment which is unstayed on appeal.

If there shall occur any default as defined in item (a) above or if there shall occur and be continuing any default as defined in items (b) or (c) above, then upon the election of the Financing Institution or the Guarantor, evidenced by written notice to the Borrower, or if there shall occur any default as defined in item (d) above, then forthwith and without any election, the obligation, if any, of the Financing Institution to extend further credit shall terminate and all notes outstanding hereunder shall become due and payable without presentment, demand, protest or

notice of any kind, all of which are hereby expressly waived.

In witness whereof, the parties have caused this agreement to be executed on their behalf by their duly authorized agents, this _____ day of _____, 194__.

_____
(Financing Institution)

By _____
(Name) (Title)

_____
(Borrower)

By _____
(Name) (Title)

[JTR 952.2]

§ 849.952–3 *Exhibits to Termination Loan Agreement.*

NOTE: Forms printed in the FEDERAL REGISTER are for information only, and do not follow the exact format prescribed by the issuing agency.

Form of September 1, 1944

Exhibits to termination loan agreement dated _____, 194__.

(If additional provisions are to be included in the Loan Agreement in accordance with Paragraph 11 thereof, they should appear in an Exhibit D which should be attached hereto.)

EXHIBIT A

FORM OF NOTE

Place _____
Date _____, 194__.

On or before _____, 194__, for value received, _____ hereby promises to pay to the order of

_____
(Financing Institution)

at _____
(Address)

the principal sum of _____ DOLLARS ($_____) in lawful money of the United States, and to pay interest thereon from the date hereof at the rate of _____ per cent per annum, prior to maturity, payable on the _____ day of each _____ and after maturity by acceleration or otherwise at the rate of _____ per cent per annum.

This note evidences a borrowing made under and is subject to the terms of a Loan Agreement dated _____, 194__, between the undersigned and the payee hereof.

_____
By _____
(Name) (Title)

EXHIBIT B

LOAN FORMULA CERTIFICATE

Pursuant to the Loan Agreement between the undersigned and _____, dated _____, 194__, the undersigned hereby certifies to the best of its knowledge and belief as follows:

1. (a) Principal amount of borrowings now outstanding_____ $_____
(b) Principal amount of proposed borrowing, less outstanding borrowings to be refunded____ $_____
Total _____ $_____

2. The following amounts have been calculated as of _____, 194__ (not more than 30 days prior to the date of this certificate) with respect to terminated war contracts listed on or added to Exhibit C, in accordance with accepted principles of accounting and without duplications:

(a) _____% of accounts receivable from Governmental contracting agencies aggregating not less than $_____ _____ $_____
(b) _____% of accounts receivable from others aggregating not less than $_____ _____ 0_____
(c) _____% of reimbursable expenditures for inventory, including only direct labor, cost of raw materials, purchased parts and supplies, and manufacturing and administrative overhead aggregating not less than $_____ _____ 0_____
(d) _____% of reimbursable amounts for subcontract settlements paid or to be paid concurrently from any new borrowing for which this certificate is furnished aggregating not less than $_____ _____ 0_____
Total_____ 0_____
Less—
(aa) Unliquidated advance payments, progress and partial payments, and any other offsets, and any amounts included in (a), (b), (c), or (d) above which have been disallowed by the contracting agency_____ 0_____
Borrowing base_____ 0_____

3. No amount is included in (a), (b), (c), or (d) above with respect to any item on which a termination claim can be based which exceeds the amount of such item in the Borrower's most recent termination claim, if any has been filed. There has been no change in the amount stated in Paragraph 2 since the date therein specified which would materially decrease the borrowing base.

4. No event exists which constitutes, or which except for notice or lapse of time or both would constitute, a default specified in the Loan Agreement.

_____
(Borrower)

By _____
(Name) (Title)

Dated _____, 194__

EXHIBIT C

TERMINATED WAR CONTRACTS

The Borrower certifies that, to the best of its knowledge and belief, the following are terminated war contracts as defined in the Loan Agreement between _____ and _____ dated _____, 194____:

Contract or order number	Date of contract or order	Name of other contracting party	Date of notice of termination	Estimated amount of termination claim	End use of product

_____
(Borrower)

By _____
(Name) (Title)

Dated _____, 194__.

[JTR 952.3]

§ 849.952–4 *Explanatory notes regarding T-Loan guarantee and loan agreements.*

Form of September 1, 1944

EXPLANATORY NOTES

Approved by the Director of Contract Settlement with Respect to Standard Forms of T-Loan Guarantee Agreement and Termination Loan Agreement

GUARANTEE AGREEMENT

Opening paragraph. (1) The guarantee agreement is issued pursuant to the authority contained in the Contract Settlement Act of 1944, the First War Powers Act, 1941, Executive Order, 9112, the Act of June 11, 1942 (56 Stat. 351), and other pertinent provisions of law. No changes in the guarantee agreement will be permitted except in the most unusual cases and then only with the concurrence of the Board of Governors of the Federal Reserve System.

(2) Pursuant to section 10 (a) (1) of the Contract Settlement Act of 1944, the Guarantor in its authorization or through its local representative will notify the Federal Reserve Bank in writing that the Borrower is or has been engaged in performing an operation deemed by the Guarantor to be connected with or related to war production.

Section 1 (A). (3) If one Financing Institution is authorized, as agent for a number of participants, to execute a guarantee agreement in their behalf, the participants should be referred to as "each bank, trust company or other financing institution which is or shall be a party to the loan described in Appendix I annexed hereto" or by some other appropriate reference showing the several nature of the agreement.

Sec. 1 (C). (4) Since the guarantee agreement covers only the loan described in Appendix I, any material alteration in the terms of the loan should be made only with the written consent of the Guarantor in order that the loan, as altered, will be covered by the guarantee.

Sec. 1 (E). (5) The requested percentage of guarantee will not ordinarily be questioned by the Federal Reserve Bank or the Guarantor if it does not exceed 90 per cent.

Sec. 2 (B). (6) Counsel fees incurred by the Financing Institution after a purchase cannot be shared by the Guarantor because of the provisions of 5 U.S.C. 314.

Sec. 3. (7) It is contemplated that a purchase made by the Guarantor under this section shall be for cash. However, if the Guarantor owns an interest in any obligation which has been issued under a revolving credit arrangement, and if, at or before the maturity of such obligation, the Reserve Bank receives written demand from the Financing Institution for the purchase of the same or a lesser amount of a new obligation to be issued in place of such maturing obligation, the payment for the portion of the new obligation purchased pursuant to such demand will be made by the Guarantor by surrendering, at or before maturity, its interest in the maturing obligation, in the amount of the demand by the Financing Institution and without regard to the ten-day period specified in this section.

Sec. 5 (A). (8) Under the first sentence the Guarantor may, after a purchase and transfer, administer the loan either directly or through the agency of the Reserve Bank. It is contemplated that such administration will usually be conducted by the Reserve Bank.

Sec. 6. (9) All amounts paid or credited on the obligation after the date of the demand by the Financing Institution or the Guarantor, as the case may be, for a purchase under this agreement and prior to the date of such purchase will be applied, as provided in this section, according to the respective interests of the Guarantor and the Financing Institution as such interests exist immediately after the purchase.

(10) Subject to any special provision which may be contained in Exhibit D, the Financing Institution may make other loans to the Bor-

rower for the purpose of financing war production or reconversion to civilian business or for other purposes, provided the proceeds of the Contracts (as the term "the Contracts" is defined in Paragraph 1 of Appendix I) or inventory allocable to the Contracts are not pledged as security for such loan. The Financing Institution as security for the side loan may take other collateral and provide that the side loan shall not be required to share with the guaranteed loan any banker's lien or right of setoff with respect to funds of the Borrower, exclusive of proceeds of the Contracts, on general deposit with the Financing Institution or specifically pledged as security for such side loan.

SEC. 7. (11) A schedule of guarantee fees will be prescribed by the Board of Governors of the Federal Reserve System with the concurrence of the Director of Contract Settlement.

SEC. 8. (12) The word "certificate" in Paragraph (B) (2) includes any certificate furnished by the Borrower in connection with the loan formula.

General. (13) Whenever a number of days is specified in the Guarantee Agreement or in the Loan Agreement the word "days" shall be deemed to mean calendar days.

LOAN AGREEMENT

Opening paragraph. (14) If the Borrower and the Financing Institution have agreed upon a non-firm commitment, the words "in its sole discretion" may be inserted before the word "grant". The second sentence of Paragraph 2 applies even in the case of a non-firm commitment and in such a case no figure should be inserted in Paragraph 4.

(15) In the case of a straight loan, the words "at any one time outstanding", should be stricken out.

(16) The note to be used should contain the provisions which appear in the form annexed as Exhibit A to the standard loan agreement, with the blanks appropriately filled in, and may contain such additional provisions, not inconsistent therewith or with the terms of the loan agreement, as the Financing Institution and the Borrower may agree. The note may, for example, contain provisions for sale of collateral in the event of default, allowance for attorneys' fees, etc.

PARAGRAPH 1. (17) The following terms are defined in Section 3 of the Contract Settlement Act of 1944:

"(a) The term 'prime contract' means any contract, agreement, or purchase order heretofore or hereafter entered into by a contracting agency and connected with or related to the prosecution of the war; and the term 'prime contractor' means any holder of one or more prime contracts.

"(b) The term 'subcontract' means any contract, agreement, or purchase order heretofore or hereafter entered into to perform all or any part of the work, or to make or furnish any material to the extent that such material is required for the performance of any one or more prime contracts or of any one or more other subcontracts; and the term 'subcontractor' means any holder of one or more subcontracts.

"(c) The term 'war contract' means a prime contract or a subcontract; and the term 'war contractor' means any holder of one or more war contracts.

"(d) The terms 'termination', 'terminate', and 'terminated' refer to the termination or cancellation, in whole or in part, of work under a prime contract for the convenience or at the option of the Government (except for default of the prime contractor) or of work under a subcontract for any reason except the default of the subcontractor.

* * * * *

"(g) The term 'contracting agency' means any Government agency which has been or hereafter may be authorized to make contracts pursuant to section 201 of the First War Powers Act, 1941, and includes the Reconstruction Finance Corporation and any corporation organized pursuant to the Reconstruction Finance Corporation Act (47 Stat. 5), as amended, the Smaller War Plants Corporation, and the War Production Board.

"(h) The term 'termination claim' means any claim or demand by a war contractor for fair compensation for the termination of any war contract and any other claim under a terminated war contract, which regulations prescribed under this Act authorize to be asserted and settled in connection with any termination settlement.

"(m) The term 'final and conclusive,' as applied to any settlement, finding, or decision, means that such settlement, finding, or decision shall not be reopened, annulled, modified, set aside, or disregarded by any officer, employee, or agent of the United States or in any suit, action, or proceeding except as provided in this Act."

With respect to the definition contained in paragraph (g) above, the Director of Contract Settlement will from time to time issue a list of "contracting agencies" indicating those which are currently guaranteeing loans under this Act through the agency of the Federal Reserve Banks.

(18) It will be noted that the definition of "terminated war contract" contained in Paragraph 1 of the loan agreement is broad enough to permit borrowings against receivables and inventory under that part of a partially cancelled contract still remaining to be performed; that under Paragraph 5 assignment of all moneys due and to become due under the entire contract may be required; and that the provisions of Paragraphs 7 (c) and 8 apply to all payments under the contract.

(19) *Current commitments on uncancelled contracts.* If the Financing Institution and the Borrower desire to enter into a firm commitment for the financing of nonterminated contracts existing on the date of execution of the loan agreement even and if such contracts become terminated, a provision may be added to Exhibit D listing such nonterminated war contracts with an agreement by the Financing Institution that such contracts may, upon termination, be added to Exhibit C without further approval. The addition of terminated war contracts to Exhibit C shall be made by serially numbered supplements filed in five copies with the Financing Institution. The supplements shall be in the same form as Exhibit C with the following added at the lower left hand corner thereof.

Approved: _____, 194__

_____
(Financing Institution)

By _____
(Name) (Title)

If the Financing Institution approves of a supplement, it shall sign all copies, retain one for its files, return one to the Borrower, and send the other three copies to the Reserve Bank.

(20) Since the termination loan agreement is designed to finance termination claims rather than production, the Financing Institution may find it advisable to decline to permit inclusion in Exhibit C of contracts which have been terminated only to a minor extent when the effect of their inclusion would probably be to make the proposed borrowing in substantial part a loan for production purposes. The Financing Institution may refuse to permit addition to the list of terminated war contracts contained in Exhibit C of such contracts as are by their terms not assignable, or may require as a condition of the addition of such contracts to the list that the Borrower obtain an appropriate amendment permitting such assignment. It should be noted that prime contracts providing for payments aggregating less than $1,000 are not assignable under the Assignment of Claims Act of 1940.

PAR. 2. (21) The notes may be made payable on demand, or may be 90-day notes, or may have such other maturity, not more than three years after the date of the agreement, as the Financing Institution and the Borrower may agree.

(22) Irrespective of whether or not the Financing Institution is under an obligation under the terms of the agreement to extend further credit, the second sentence of Paragraph 2 is intended to give the Borrower the right to borrow again, from time to time, up to the amount of the notes which have been given in consideration of the loan until the final maturity date inserted in Paragraph 3 or until the notes are finally paid pursuant to Paragraph 8 or otherwise, whichever first occurs.

PAR. 3. (23) The maximum interest rate, as prescribed by the Board of Governors of the Federal Reserve System with the concurrence of the Director, is 4½ per cent per annum simple interest, and interest may not be charged at a greater rate either before or after maturity.

PAR. 4. (24) The maximum commitment fee, as prescribed by the Board of Governors of the Federal Reserve System with the concurrence of the Director, is ¼ of 1 per cent per annum based on the average daily unused balance of the maximum principal amount of the loan, or a flat fee of not to exceed $50 without regard to the amount or maturity of the commitment. Accordingly, the commitment fee, if any is charged, may not exceed this maximum. If a flat fee is charged, the first sentence of the Paragraph should be changed to read: "The Borrower shall pay on _____ a commitment fee of $_____."

(25) No termination fee, service fee, or other fee of a similar character, except charges covering out-of-pocket expenses of a financing institution, may be charged.

(26) Out-of-pocket expenses do not include any overhead expenses.

PAR. 5. (27) The obligation imposed upon the Borrower to make assignments includes the obligation to execute such documents and take such action in connection therewith as the Financing Institution may reasonably require, including, in the case of subcontracts, the giving of such notice to the purchasers as may be necessary to perfect the assignments.

(28) The extent to which assignments should be required prior to or contemporaneously with any borrowing under the first sentence of this Paragraph will depend upon the credit standing of the Borrower and upon the practical problems of assignment which may exist in a particular case. The Financing Institution may, by an appropriate writing, agree to except specific contracts from the requirement of assignment, in which case notice of the contracts so excepted should be given to the Reserve Bank. The Financing Institution may also provide in Exhibit D for a general exception. For example, Exhibit D may provide that contracts on Exhibit C as to which the "Estimated Amount of Termination Claim" is less than $_____ need not be assigned unless subsequently requested by the Financing Institution or the Guarantor. If such a provision is included in Exhibit D, the dollar amount of contracts so excluded may, if the Borrower's credit is strong enough to warrant, be made sufficiently high so that Paragraph 5 will in effect merely constitute a covenant to assign upon request of the Financing Institution or the Guarantor.

(29) In the case of a weak credit, the Financing Institution should include, in Exhibit D, a covenant reading substantially as follows:

"At any time upon request of the Financing Institution or the Guarantor, the Borrower will pledge or mortgage as further security for the loan all or any inventory applicable to the Contracts."

Any pledge pursuant to such a covenant should contain a provision for release of inventory so pledged to the extent of payment to the Financing Institution of the cost or proceeds thereof, as the case may be, in

accordance with the terms of Paragraph 8 of the loan agreement.

(30) Under the last sentence of this Paragraph, the Financing Institution and the Borrower in suitable cases may agree to a provision in Exhibit D permitting the existence of liens to secure advance payments.

(31) The number of days during which an encumbrance may be permitted to remain on inventory of the Borrower without creating a default, which is to be inserted in the last sentence of this Paragraph, will depend primarily upon the credit standing of the Borrower.

PAR. 6. (32) The Financing Institution shall promptly submit to the Reserve Bank two copies of the loan formula certificate furnished by the Borrower at the time of the initial borrowing. In the event of a serious dispute between the Financing Institution and the Borrower as to whether the borrowing base is substantially overstated in value, for the purposes of this Paragraph or of Paragraph 8, the parties may, if they mutually desire, request the Guarantor to consider the matter. If at the time of any borrowing, or at any other time, additional security not referred to in the application or loan agreement and not previously reported is furnished, a report thereof should be promptly made by the Financing Institution to the Reserve Bank.

PAR. 7. (33) The Financing Institution may, for example, deem it desirable to require under the first sentence of this Paragraph the furnishing of profit and loss statements, an analysis of surplus, data as to claims under the Borrower's terminated war contracts, and statements as to the insurance required to be maintained by the Borrower under Paragraph 10.

(34) One copy of each of the statements to be furnished under subparagraphs (a), (b) and (c) may be retained by the Financing Institution, and two copies should be forwarded to the Reserve Bank, which will retain one copy and forward the other to the Guarantor or such person as the Guarantor may designate.

(35) Under the definition of payments, a number of different situations are contemplated:

(a) There may be a sale of inventory specifically approved or authorized by the proper authority. In such case, the payment will be the amount of the proceeds; the date of payment will be the date of receipt of the proceeds by the Borrower.

(b) There may be a retention of inventory approved or authorized by the proper authority with a specific credit allowed on any claim filed. In such case, the payment will be the amount of the credit allowed; the date of payment will be the date of the allowance of the credit.

(c) There may be a sale of inventory approved or authorized by the proper authority under a blanket authority to dispose of inventory at not less than cost or at not less than a stated percentage of cost. In such case, the amount of the payment will be the amount of the proceeds; the date of payment will be the date the proceeds of the sale are received by the Borrower.

(d) There may be a definitive election to retain inventory not approved or authorized by the proper authority with a specific credit against the Borrower's claim where claim has been filed or against his potential claim where none has been filed. Such a definitive election to retain occurs when the Borrower relinquishes the right to include the cost of such inventory in his claim and may be evidenced by written notice to the proper authority, by sale of the inventory without specific credit, by incorporation of inventory in civilian products, or by other means. In such case, the amount of the payment will be the cost of the inventory or, if the act of election is a sale, the proceeds of the sale if that is greater than cost; the date of payment will be the date when the definitive act of election was made.

In the case of a prime contract the "proper authority" to approve or authorize dispositions or retentions of property is the contracting agency. In the case of subcontracts the "proper authority" may be the purchaser or the contracting agency or both depending on the circumstances and the applicable regulations. The word "cost" refers to the Borrower's cost or expenditures used in computing the borrowing base.

PAR. 8. (36) The Government does not undertake responsibility for assisting in the financing of civilian inventory under the provisions of the Contract Settlement Act of 1944. Therefore, the Financing Institution, if it prescribes a period in excess of three days, should prescribe a reasonably short period within which the payments required by Paragraph 8 are to be made. The Financing Institution may prescribe different periods for payments arising out of the several classes of events upon the happening of which payments are required to be made, and may prescribe a period of grace for small payments. If the credit of the Borrower is not strong, prompt payment should be required, particularly in the event of inventory retention.

(37) If either the Financing Institution or the Guarantor notifies the Borrower of an overstatement pursuant to clause (b) of Paragraph 8, it should forthwith notify the other party to the Guarantee Agreement.

PAR. 9. (38) If the Borrower has subsidiaries and if it is desired to use *consolidated* net current assets as a basis, this should be specified in Exhibit D. In this event, consideration should be given to whether or not any restrictions imposed upon the parent should also be applied to the subsidiaries.

PAR. 11. (39) The standard form of loan agreement is designed for use in connection with a straight loan or a revolving credit, a firm commitment or a loan under which the Financing Institution is not obligated to extend further credit, a single bank credit arrangement or a multi-bank credit arrangement, and for a strong credit or a weak credit. It is recognized that the Financing Institution and the Borrower may wish to add in Exhibit D further provisions appropriate for the particular financing arrangement between them.

(40) Conditions other than those required under Appendix I will be prescribed by the Guarantor or the Federal Reserve Bank only in exceptional circumstances and when they are clearly necessary to protect the Government's interest; but it is expected that the Financing Institution, in the case of a weak credit, will ordinarily insist upon the inclusion of the provision quoted in Explanatory Note (29). Additional conditions for inclusion in Exhibit D may be agreed upon by the Borrower and the Financing Institution and, if not unreasonable or inconsistent with the standard termination loan agreement, such conditions will not be objected to by the Guarantor or the Reserve Bank.

(41) The Guarantor will have no objection to the insertion of a provision requiring the Borrower to apply first to the Financing Institution before obtaining any other loans. The Financing Institution may also insert an additional provision prohibiting other borrowings, without the consent of the Financing Institution, or placing a ceiling thereon.

(42) In order that additional terms may be clearly distinguished from the provisions of the standard form, all such additional terms should be set forth in Exhibit D or in a rider attached thereto.

(43) In any case where either the Financing Institution or the Guarantor exercises its option under the Loan Agreement to terminate the credit and accelerate the notes, it should forthwith notify the other party to the Guarantee Agreement.

Exhibit B—Paragraph 2

(44) In general, the percentages in the loan formula certificate agreed upon by the Financing Institution and the Borrower will not be questioned by the Federal Reserve Bank or the Guarantor.

(45) If a breakdown between manufacturing and administrative overhead is available, it should be furnished by the Borrower, and in this case the words "and administrative" may be omitted from item (c) and an additional item relating solely to administrative overhead may be added. Similarly, where circumstances warrant, there may also be added a separate item relating to other reimbursable expenditures, provided that a breakdown of such item is furnished and approved. In any of the above cases, the additional items will be lettered (e), (f), etc. If a further breakdown of expenditures is desired, as between fixed-price and cost-plus-a-fixed-fee contracts or as between prime contracts and subcontracts or as between approved and unapproved subcontract settlements, this may be accomplished by similar procedure.

(46) With reference to (aa), amounts "disallowed by the contracting agency" include any part of a termination claim disallowed pursuant to Section 3 of the Act regardless of whether the Borrower has taken an appeal, except to the extent that such appeal is sustained.

Exhibit B—Paragraph 3

(47) It is expected that in all cases the Borrower will exercise due diligence in filing termination claims as promptly as possible. Due to the widely varying factors involved, such as the number of Borrower's cancelled contracts and the relative simplicity or complexity of preparing his claims, it is not deemed feasible to prescribe any uniform time within which claims must be filed. However, where the Financing Institution and the Borrower can agree in advance upon a reasonable time for filing claims, they can of course provide for such a limitation in Exhibit D.

[JTR 952.4]

§ 849.952–5 *Application by financing institution for T–Loan guarantee.*

Form of September 1, 1944

NOTE: Forms printed in the FEDERAL REGISTER are for information only, and do not follow the exact format prescribed by the issuing agency.

APPLICATION BY FINANCING INSTITUTION FOR T (TERMINATION) LOAN GUARANTEE

To Federal Reserve Bank of _____
Fiscal Agent of the United States

_____
(Date)

1. Name and location of financing institution _____

_____

2. Name and location of prospective borrower _____

_____

3. Maximum principal amount of loan _____

_____

4. Specify or describe war contracts excepted from initial assignment of collateral pursuant to Paragraph 5 of Loan Agreement: (See Explanatory Note No. 23.) _____

_____

_____

5. Present indebtedness of borrower to financing institution, if any, and statement as to whether it is proposed to refund such indebtedness _____

_____

_____

6. If a substantial portion of the stock of borrower or of financing institution is controlled by the other, or a substantial portion of the stock of both is controlled by the same interests, or if there are any officers or directors common to both, describe such rela-

tionship briefly _____

7. Each copy of application should be accompanied by:

(a) copy of the proposed guarantee agreement and loan agreement, including exhibits,

(b) copy of balance sheet and operating statement for latest fiscal period certified by borrower (audited statements to be furnished if available),

(c) copy of latest available balance sheet and operating statement since close of fiscal period.

8. (a) If borrower is a Prime Government war contractor, give the following information with respect to each prime contract:

Govt. agency with which prime contract is held	Date of contract	Contract number	Is contract a fixed price contract? Cost plus fixed fee contract?	Uncompleted amount of unterminated contracts	Estimated claims on terminated contracts	Nature of product

8. (b) If borrower is a Subcontractor, give the following information with respect to each subcontract:

Name and address of concern issuing subcontract	Subcontract or purchase order number	Govt. agency for which products are being provided and prime contract number if known	Uncompleted amount of unterminated subcontracts or purchase orders	Estimated claims on terminated subcontracts or purchase orders	Nature of product

9. Statement of financing institution's opinion or belief with respect to each of the following:

(a) whether borrower's general war production record has been satisfactory with special reference to rejection experience,

(b) borrower's general character and reputation,

(c) adequacy of accounting records and inventory control,

(d) unusual aspects of financial statements, and

(e) other information which financing institution would ordinarily take into account in considering a loan to borrower, including respects, if any, in which borrower's financial background has been unsatisfactory

(Attach rider if space inadequate)

_____

_____

_____

_____

_____

10. Borrower has been advised that financing institution is applying for this guarantee in the amount and subject to the terms indicated in the proposed loan agreement.

_____
(Full name of financing institution)

By _____
(Signature) (Title)

[JTR 952.5]

§ 849.953 *Specimen forms of applications for partial payment.* [JTR 953]

§ 849.953–1 *Specimen application for immediate partial payment (front).*

NOTE: Forms printed in the FEDERAL REGISTER are for information only and do not follow the exact format prescribed by the issuing agency.

Form Approved.
Bureau of the Budget No. 17–R009.

Form 4
Office of Contract Settlement

(See Certificates and Instructions on Reverse Side)

APPLICATION FOR PARTIAL PAYMENT

[For use by prime contractor or subcontractor under terminated war supply contract]

SECTION I. This application applies to (check one):
☒ A prime contract with the Government, or
☐ Subcontract or purchase order No(s). _____

with _____
(Name of contractor who sent Notice of Termination)

_____
(Address)

If contractor has V, VT, or T loans or has assigned moneys due under the contract, give name and address of:

Financing Institution. None.

Guarantor _____

_____

Assignee _____

_____

John Doe Manufacturing Co.

1231 Blank Street,

Dayton 12, Ohio.

Govt. Agency: Army Signal Corps.

Govt. Prime Contract No. W-001-SC-678.

Contractor's Reference No. AB 640.

Effective date of termination: October 10, 1944.

Amount requested, $60,000.

This is application No. 1, under this termination.

SECTION II. Status of Contract or Order at Effective Date of Termination

Products covered by terminated contract or purchase order		Finished			Unfinished or not commenced		Total covered by contract or order
		Previously shipped and invoiced	On hand				
			Payment to be received through invoicing	Included in this application	To be completed	Not to be completed	
Generators	Quan	700	20	10		270	1,000
	$	700,000	20,000	10,000		270,000	1,000,000
	Quan						
	$						
	Quan						
	$						

SECTION III. Applicant's Own Termination Charges (Exclusive of his Subcontractors' Charges)

Item	Date settlement proposal submitted	Date of this application
	Charges as listed in settlement proposal (A)	Best estimate of costs incurred to date of this application (not included under (A)) (B)
1. Acceptable finished product (at contract price)	$	$10,000
2. Work in process		20,000
3. Raw materials, purchased parts, and supplies		32,000
4. General and administrative expense		3,000
5. Total (sum of lines 1, 2, 3, and 4)	$	$65,000
6. Tools, dies, jigs, fixtures, etc.		20,000
7. Other costs		10,000
8. Settlement expenses		5,000
9. Total of lines 5, 6, 7, and 8	$	$100,000

AMOUNTS RECEIVED

a.	Unliquidated partial, progress, and advance payments received prior to termination	$10,000
b.	Unliquidated partial, progress, and advance payments received after termination for own use	0
c.	Credits from disposal or retention of inventory included in above charges	10,000
d.	Total (sum of lines *a*, *b*, and *c*)	$20,000
e.	Amount of partial payment requested	0,000
f.	Total (sum of lines *d* and *e*)	$30,000

SECTION IV. Agreement of Applicant

Under Section 9 (b) of the Contract Settlement Act of 1944, the amount of any partial payment made to the applicant in excess of the amount finally determined to be due on its termination claim shall be treated as a loan from the Government, payable upon demand with a penalty payable by the applicant at the rate of 6 percent per annum from the date of the excess payment to the date of repayment. Accordingly, in requesting a partial payment, the applicant recognizes its obligation to establish promptly the amount due and to protect the interest of the Government pending final settlement, and in consideration of any partial payment which may be made, agrees as follows:

(1) *Prompt Preparation of Claim.*—The applicant will, with all reasonable dispatch, prepare and file its statement of costs and inventory lists on the prescribed forms, and will make every reasonable effort to expedite final settlement of the termination claim and the claims of its subcontractors.

(2) *Disposal and Retention of Inventory.*—Whenever the amount of any proceeds hereafter received by the applicant on the disposal of termination inventory, plus the cost or agreed value, as the case may be, of any termination inventory which the applicant hereafter elects to retain, exceeds 10 percent of the amount stated by the applicant in this application as the amount of his charges (Section II, line 9), and the amount of such credits has not been included as a receipt (Section III, line *c*), the applicant within 10 days will notify the contracting agency of the amount of credits on account of such inventory disposal or retention.

(3) *Repayment.*—The applicant will repay to the Government upon demand together with interest from the date of such demand at the rate of 6 percent per annum, the whole or any part of the partial payment to be made hereunder, if:

(*a*) A statement of costs and inventory lists on the prescribed forms, as provided in subparagraph 1 above, have not been filed within 3 months after the receipt of the partial payment for which request is herein made, or within such extended period as may be allowed by the Government;

(*b*) The contracting agency shall find that the applicant's estimate under Section III above (own costs) is overstated by reason of the disposal or retention of termination inventory subsequent to the date of this application or for any other reason;

(*c*) The applicant withdraws the whole or any part of its claim.

Demand for repayment may be made under subparagraphs (*b*) and (*c*) only as to that portion of the partial payment that, in the opinion of the contracting agency, has become excessive.

When the space provided for any information is insufficient, attach separate supporting schedules.

[JTR 953.1]

§ 849.953–2 *Specimen application for immediate partial payment (reverse).*

SECTION V. Certificate of Applicant

The undersigned certifies that the amount of his own charges (exclusive of subcontractors' charges) due as of the date of this application and allocable to the terminated portion of its contract No. W–001–SC–678, dated Jan. 2, 1944, with Army Signal Corps, is not less than $100,000; that, to the best of applicant's knowledge, the amounts received are as set forth above; and that the applicant has not assigned any moneys payable under this contract, except as set forth above.

Name of contractor: John Doe Manufacturing Co. Date: October 11, 1944.

Signer: G. K. MacDougall. Title: President.

SECTION VI. Recommendation of First Reviewing Contractor

The undersigned states that it has examined this application and has considered the applicant's general reputation. It has no reason to doubt the accuracy of the information contained in this application or that the amount certified by the applicant as due will constitute a proper charge to be included in the undersigned's termination claim against _____. It recommends that the requested partial payment be made.

The undersigned agrees that it will promptly pay over to the applicant or credit against amounts owing from the applicant any amount received for the benefit of the applicant under this application, and that it will repay to the Government on demand any amount not so paid or credited.

Name of contractor_____

Date_____

Signer_____

Title_____

SECTION VII. Recommendations of Other Reviewing Contractors

Each of the undersigned states that it has no reason to doubt that the amount of the partial payment requested, and recommended above is due the applicant and will constitute a proper charge in the termination claim of the undersigned.

Each of the undersigned agrees that it will promptly pay over to its immediate subcontractor or credit against amounts owing from such subcontractor any amount received for the benefit of the applicant under this application, and that it will repay to the Government on demand any amount not so paid or credited.

Contractor	*Signature of officer, partner, or owner*	*Date*	*Identification of your contract*
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

INSTRUCTIONS

1. *Use of form.* This application form is for use by all war contractors, either prime contractors or subcontractors, under either fixed-price or cost-plus-a-fixed-fee contracts in obtaining partial payments on their termination claims. If applicant is a cost-plus-a-fixed-fee contractor, the form may be so modified as to conform to his accounting system but must furnish the required cost information.

2. *Immediate partial payments based on estimates.* (*a*) Where a contractor has not had adequate time to prepare his settlement proposal, an "immediate partial payment" may be requested based on the contractor's estimate of his own charges. In applying for a payment of this type, the contractor should fill in the information required in column B of section III. If his accounting system is not adaptable to the cost information required by Section III, he should append to the application a comparable schedule of his estimated costs on such basis as his accounting system permits. Supporting data, including financial statements, may be submitted but are not required unless specifically requested by the contracting agency.

(*b*) The estimates need be no greater than the contractor believes adequate to support his request for partial payment. Low estimates furnished for the purpose of an immediate partial payment will in no way prejudice the contractor in the final settlement of his claim or in subsequent requests for additional partial payments. Successive applications for partial payments may be filed.

3. *Cost-supported partial payments.* Upon the submission of a settlement proposal, or at any time thereafter, a "cost-supported partial payment" may be requested based on the settlement proposal and accounting data supporting it. In applying for a payment of this type, the contractor should fill in the information required by column A of Section III. In addition, he should attach a copy of the settlement proposal.

4. *Certificate of applicant.* The amount certified in section V as the amount of the contractor's charges should be the total that appears in section III, line 9. If some of the charges are cost-supported and others are estimated, appropriate entries may be made in both columns A and B, and the amount certified should then be the sum of the two figures in line 9.

5. *Property disposal credits.* In stating costs or estimated costs, the applicant should not include charges with respect to property which he intends to retain at no cost to the Government. Any credits that have resulted from the sale or retention of property as to which costs or estimated costs have been included in any application for a partial payment on this termination claim will be entered in Section III, line *c*.

6. *Obligations to subcontractors.* Attention is called to the fact that the cost of delivered completed articles may not be included in the termination claim of the producer of those articles. War contractors are obligated to pay at the contract price for completed articles shipped to them by their subcontractors and suppliers prior to the termination of and in accordance with the provisions of the subcontracts or purchase orders calling for delivery of those articles. When necessary, prime contractors and subcontractors should apply for partial payments on their termination claims for the purpose of enabling them to meet such obligations promptly.

7. *Applications of subcontractors.* Subcontractors applying for a partial payment will submit this application to the contractor immediately above them. Unless that contractor has been authorized by the contracting agency to make a partial payment without obtaining specific approval in each case, he will attach his recommendation on the form provided in section VI and forward the application through the contractors above him to the contracting agency. Contractors above the immediate reviewing contractor will fill in the form of recommendation set forth in section VII and forward the application. If any contractor disapproves of the amount of the requested partial payment, or believes that he cannot properly sign the form of recommendation, he should attach a statement setting forth the reasons for his refusal to sign the form and his recommendation. In the case of an application for a cost-supported partial payment, the settlement proposal need not be forwarded beyond the first reviewing contractor unless expressly requested.

8. *Signatures.* A person other than an officer, partner, or owner may sign the application or recommendation where properly authorized, but in such a case, a copy of his authority should be attached.

9. The Contract Settlement Act of 1944 provides penalties for overstatements of amounts owing to the contractor in connection with interim financing and for excessive payments (sections 8 (d) and 9 (b)). Penalties for fraud are provided for in section 19 of the act.

When the space provided for any information is insufficient, attach separate supporting schedules.

[JTR 953.2]

§ 849.953–3 *Specimen application for cost-supported partial payment (front).*

NOTE: Forms printed in the FEDERAL REGISTER are for information only and do not follow the exact format prescribed by the issuing agency.

Form Approved. Bureau of the Budget No. 17–R009. *(See Certificates and Instructions on Reverse Side)* Form 4 Office of Contract Settlement.

APPLICATION FOR PARTIAL PAYMENT

(For Use by Prime Contractor or Subcontractor Under Terminated War Supply Contract)

SECTION I. This application applies to (check one):
☒ A prime contract with the Government, or
☐ Subcontract or purchase order No(s). _____

with _____
(Name of contractor who sent Notice of Termination)

_____
(Address)

If contractor has V, VT, or T loans or has assigned moneys due under the contract, give name and address of:

Financing Institution. None

Guarantor _____

Assignee _____

Young Manufacturing Company

1234 South East Street

Dayton 12, Ohio

Govt. Agency Army Signal Corps

Govt. Prime Contract No. W-001-SC-100

Contractor's Reference No. YB 411

Effective date of termination, October 4, 1944

Amount requested, $12,000

This is application No. 3 under this termination.

SECTION II. Status of Contract or Order at Effective Date of Termination

Products covered by terminated contract or purchase order		Finished: Previously shipped and invoiced	Finished: On hand: Payment to be received through invoicing	Finished: On hand: Included in this application	Unfinished or not commenced: To be completed	Unfinished or not commenced: Not to be completed	Total covered by contract or order
SC 322 M Instruments	Quan.	1,240	200			960	2,400
	$	1,304,000	220,000			1,056,000	2,640,000
	Quan.						
	$						
	Quan.						
	$						

SECTION III. Applicant's Own Termination Charges (Exclusive of his Subcontractors' Charges)

Item	Date settlement proposal submitted: Charges as listed in settlement proposal (A)	Date of this application: Best estimate of costs incurred to date of this application (Not included under (A)) (B)
1. Acceptable finished product (at contract price)	$	$
2. Work in process	179,115	
3. Raw materials, purchased parts, and supplies	94,736	
4. General and administrative expense	8,774	
5. Total (sum of lines 1, 2, 3, and 4)	$282,625	$
6. Tools, dies, jigs, fixtures, etc.	17,630	
7. Other costs	1,050	
8. Settlement expenses	2,703	
9. Total of lines 5, 6, 7, and 8	$303,993	$

AMOUNTS RECEIVED

a.	Unliquidated partial, progress, and advance payments received prior to termination	
b.	Unliquidated partial, progress, and advance payments received after termination for own use	$200,000
c.	Credits from disposal or retention of inventory included in above charges	615,567
d.	Total (sum of lines a, b, and c)	$261,567
e.	Amount of partial payment requested	12,000
f.	Total (sum of lines d and e)	$273,567

SECTION IV. Agreement of Applicant

Under Section 9 (b) of the Contract Settlement Act of 1944, the amount of any partial payment made to the applicant in excess of the amount finally determined to be due on its termination claim shall be treated as a loan from the Government, payable upon demand with a penalty payable by the applicant at the rate of 6 percent per annum from the date of the excess payment to the date of repayment. Accordingly, in requesting a partial payment, the applicant recognizes its obligation to establish promptly the amount due and to protect the interest of the Government pending final settlement, and in consideration of any partial payment which may be made, agrees as follows:

(1) *Prompt Preparation of Claim.*—The applicant will, with all reasonable dispatch, prepare and file its statement of costs and inventory lists on the prescribed forms, and will make every reasonable effort, to expedite final settlement of the termination claim and the claims of its subcontractors.

(2) *Disposal and Retention of Inventory.*—Whenever the amount of any proceeds hereafter received by the applicant on the disposal of termination inventory, plus the cost of agreed value, as the case may be, of any termination inventory which the applicant hereafter elects to retain, exceeds 10 percent of the amount stated by the applicant in this application as the amount of his charges (Section III, line 9) and the amount of such credits has not been included as a receipt (Section III, line c), the applicant within 10 days will notify the contracting agency of the amount of credits on account of such inventory disposal or retention.

(3) *Repayment.*—The applicant will repay to the Government upon demand, together with interest from the date of such demand at the rate of 6 percent per annum, the whole or any part of the partial payment to be made hereunder, if:

(a) A statement of costs and inventory lists on the prescribed forms, as provided in subparagraph 1 above, have not been filed within 3 months after the receipt of the partial payment for which request is herein made, or within such extended period as may be allowed by the Government;

(b) The contracting agency shall find that the applicant's estimate under Section III above (own costs) is overstated by reason of the disposal or retention of termination inventory subsequent to the date of this application or for any other reason;

(c) The applicant withdraws the whole or any part of its claim.

Demand for repayment may be made under subparagraphs (b) and (c) only as to that portion of the partial payment that, in the opinion of the contracting agency, has become excessive.

When the space provided for any information is insufficient, attach separate supporting schedules.

[JTR 953.3]

§ 849.953–4 *Specimen application for cost-supported partial payment (reverse).*

SECTION V. Certificate of Applicant

The undersigned certifies that the amount of his own charges (exclusive of subcontractors' charges) due as of the date of this application and allocable to the terminated portion of its contract No. W–001–SC–100 dated July 29, 1943, with Army Signal Corps, is not less than $303,993; that, to the best of applicant's knowledge, the amounts received are as set forth above; and that the applicant has not assigned any moneys payable under this contract, except as set forth above.

Name of contractor, Young Manufacturing Company; Date, November 20, 1944.

Signer, HENRY MYERS; Title, President.

SECTION VI. Recommendation of First Reviewing Contractor

The undersigned states that it has examined this application and has considered the applicant's general reputation. It has no reason to doubt the accuracy of the information contained in this application or that the amount certified by the applicant as due will constitute a proper charge to be included in the undersigned's termination claim against _____. It recommends that the requested partial payment be made.

The undersigned agrees that it will promptly pay over to the applicant or credit against amounts owing from the applicant any amount received for the benefit of the applicant under this application, and that it will repay to the Government on demand any amount not so paid or credited.

Name of contractor _____ Date _____
Signer _____ Title _____

SECTION VII. Recommendations of Other Reviewing Contractors

Each of the undersigned states that it has no reason to doubt that the amount of the partial payment requested, and recommended above is due the applicant and will constitute a proper charge in the termination claim of the undersigned.

Each of the undersigned agrees that it will promptly pay over to its immediate subcontractor or credit against amounts owing from such subcontractor any amount received for the benefit of the applicant under this application, and that it will repay to the Government on demand any amount not so paid or credited.

Contractor	Signature of officer, partner, or owner	Date	Identification of your contract
1. ----------	----------	-----	-------
2. ----------	----------	-----	-------
3. ----------	----------	-----	-------
4. ----------	----------	-----	-------
5. ----------	----------	-----	-------
6. ----------	----------	-----	-------

INSTRUCTIONS

1. *Use of form.* This application form is for use by all war contractors, either prime contractors or subcontractors, under either fixed-price or cost-plus-a-fixed-fee contracts in obtaining partial payments on their termination claims. If applicant is a cost-plus-a-fixed-fee contractor, the form may be so modified as to conform to his accounting system but must furnish the required cost information.

2. *Immediate partial payments based on estimates.* (*a*) Where a contractor has not had adequate time to prepare his settlement proposal, an "immediate partial payment" may be requested based on the contractor's estimate of his own charges. In applying for a payment of this type, the contractor should fill in the information required in column B of Section III. If his accounting system is not adaptable to the cost information required by Section III, he should append to the application a comparable schedule of his estimated costs on such basis as his accounting system permits. Supporting data, including financial statements, may be submitted but are not required unless specifically requested by the contracting agency.

(*b*) The estimates need be no greater than the contractor believes adequate to support his request for partial payment. Low estimates furnished for the purpose of an immediate partial payment will in no way prejudice the contractor in the final settlement of his claim or in subsequent requests for additional partial payments. Successive applications for partial payments may be filed.

3. *Cost-supported partial payments.* Upon the submission of a settlement proposal, or at any time thereafter, a "cost-supported partial payment" may be requested based on the settlement proposal and accounting data supporting it. In applying for a payment of this type, the contractor should fill in the information required by column A of Section III. In addition, he should attach a copy of the settlement proposal.

4. *Certificate of applicant.* The amount certified in Section V as the amount of the contractor's charges should be the total that appears in Section III, line 9. If some of the charges are cost-supported and others are estimated; appropriate entries may be made in both columns A and B, and the amount certified should then be the sum of the two figures in line 9.

5. *Property disposal credits.* In stating costs or estimated costs, the applicant should not include charges with respect to property which he intends to retain at no cost to the Government. Any credits that have resulted from the sale or retention of property as to which costs or estimated costs have been included in any application for a partial payment on this termination claim will be entered in Section III, line *c*.

6. *Obligations to subcontractors.* Attention is called to the fact that the cost of delivered completed articles may not be included in the termination claim of the producer of those articles. War contractors are obligated to pay at the contract price for completed articles shipped to them by their subcontractors and suppliers prior to the termination of and in accordance with the provisions of the subcontracts or purchase orders calling for delivery of those articles. When necessary, prime contractors and subcontractors should apply for partial payments on their termination claims for the purpose of enabling them to meet such obligations promptly.

7. *Applications of subcontractors.* Subcontractors applying for a partial payment will submit this application to the contractor immediately above them. Unless that contractor has been authorized by the contracting agency to make a partial payment without obtaining specific approval in each case, he will attach his recommendation on the form provided in Section VI and forward the application through the contractors above him to the contracting agency. Contractors above the immediate reviewing contractor will fill in the form of recommendation set forth in Section VII and forward the application. If any contractor disapproves of the amount of the requested partial payment, or believes that he cannot properly sign the form of recommendation, he should attach a statement setting forth the reasons for his refusal to sign the form and his recommendation. In the case of an application for a cost-supported partial payment, the settlement proposal need not be forwarded beyond the first reviewing contractor unless expressly requested.

8. *Signatures.* A person other than an officer, partner, or owner may sign the application or recommendation where properly authorized, but in such a case, a copy of his authority should be attached.

9. The Contract Settlement Act of 1944 provides penalties for overstatements of amounts owing to the contractor in connection with interim financing and for excessive payments (Sections 8 (d) and 9 (b). Penalties for fraud are provided for in Section 19 of the Act.

When the space provided for any information is insufficient, attach separate supporting schedules

[JTR 953.3]

§ 849.954 *Form of supplemental agreement for controlled partial payments.*

This supplemental agreement, entered into pursuant to the Contract Settlement Act of 1944 (hereinafter called "the Act"), this ---------- day of ----------, 194--, between the United States of America (hereinafter called "the Government") acting through ---------- Department and represented by ---------- executing this agreement, and ----------
---------- (hereinafter called "the Contractor").

Witnesseth that:

Whereas, the Government has terminated for its convenience an agreement with the Contractor designated as Contract No. -------, dated ----------, 194--, hereinafter referred to as "the Contract"; and

Whereas, pursuant to the provisions of the Act, and the General Regulation No. 2 issued thereunder, the Contractor has filed an application dated ---------- (hereinafter referred to as "the Application") for a partial payment on account of its claim arising from the termination of the Contract; and

Whereas, the Contractor in the Application has represented to the Government, and does hereby represent, that according to his best estimate, at least the sum of $---------- is due the Contractor by reason of the termination of the 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, pursuant to the provisions of the Act and the regulations issued thereunder, the following holders of subcontracts under the Contract have applied for partial payments on account of their respective claims arising from the termination of such subcontracts, such subcontractors (sometimes hereinafter referred to as "the Applicant Subcontractors") being listed below together with a description of the subcontracts, and the amounts of the respective applications for partial payments:

1	2	3	4	5
Name of applicant subcontractor	Name of contractor of next higher tier (purchaser)	Date of subcontract, & contract number, if any	Date of application	Amount applied for

and]

[Whereas, the Applicant Subcontractors in their applications have represented to the Government that according to their best estimates at least the respective amounts of partial payments applied for are due them by reason of the termination of the Contract and the above-described subcontracts thereunder.]

[Whereas, pursuant to the provisions of the Act and the regulations issued thereunder, the Government proposes to make partial payments to the Applicant Subcontractors, in the manner hereinafter provided, pending final determination of the respective amounts due them, by making a partial payment or partial payments to the Contractor on account of the claims of the Applicant Subcontractors and requiring that the Contractor shall promptly pay over such amounts to the Applicant Subcontractors; and]

Now therefore, the parties hereto do mutually agree as follows:

ARTICLE 1. A true copy of the Application is attached hereto and made a part hereof; and the representations, agreements and covenants of the Contractor set forth therein shall be deemed to be inducements to, and consideration for, the agreement of the Government as set forth herein.

ART. 2. Upon the submission by the Contractor of a proper invoice or voucher therefor, the Government will pay to the Contractor, subject to the provisions of Article 3, the sum of $----------. Upon applications filed by the Contractor and the submission of proper invoices or vouchers therefor, the Government may hereafter pay additional sums to the Contractor as partial payments on the Contractor's termination claim under the Contract, which additional payments shall, at the option of the Government, be subject to the terms of this agreement, and shall [, except as provided in Article 5 hereof,] be applied against the amount finally determined to be payable by the Government to the Contractor on such termination claim.

ART. 3. All partial payments made hereunder shall be made by check payable to the Contractor for deposit in a special bank account or accounts (hereinafter referred to as "the Account") at a Member Bank of the Federal Reserve System or "an 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 USC 264). No part of such payments shall be mingled with other funds of the Contractor prior to the withdrawal thereof from the account as hereinafter provided. Prior to the making of any partial payment in accordance with the terms of this agreement, the Contractor shall secure from the bank or banks in which the payment is to be deposited an agreement substantially as follows:

"(Letterhead of Depository Bank)"

"(Contracting Office,
Bureau or Service)"
_____ Department
Washington, D. C.
Gentlemen:

"In consideration of the depositing in an account with the undersigned to be designated '_____ Controlled Termination Account', hereinafter referred to as 'the Account', the amount of $_____, constituting a partial payment to _____ on its termination claim under Government Contract No. _____ pursuant to the provisions of Supplemental Agreement No. _____ dated _____ 194__, receipt of a copy of which supplemental agreement is hereby acknowledged, and of such further amounts as may from time to time be deposited in said account, the undersigned agrees to grant to _____ as Contracting Officer for the Government, or his duly authorized representative, or to such other person as the Secretary of the _____ Department may designate (any of the persons mentioned above being hereinafter included within the term 'Contracting Officer') access to the books and records maintained by the undersigned with respect to such account at all reasonable times and for all reasonable purposes, including (but without limiting the generality thereof) the inspection or copying of such books and records and any and all memoranda, checks, correspondence or documents appertaining thereto, and agrees to preserve said books and records for a period of five (5) years after the closing of said account or five (5) years after termination of hostilities in the present war, whichever period is longer. The undersigned further agrees to be bound by the provisions of said supplemental agreement relating to the deposit and withdrawal of funds in the Account, but shall not be responsible for the application of funds withdrawn from said Account upon the signature and countersignature filed with the Bank unless notified prior to such withdrawal by the Contracting Officer to suspend withdrawals therefrom. The undersigned shall act upon any written instructions from the Contracting Officer, and shall be under no liability to any person for any action taken in accordance with such instructions.

"The undersigned further agrees that the Government shall have a lien upon the credit balance in the Account, which lien shall be superior to any lien or claim of the undersigned with respect to the Account. In the event of appointment of a receiver, liquidator, or custodian for the property, or any substantial portion thereof, of the Contractor or any depository bank, or in the event of institution with respect to the Contractor or such bank of any insolvency proceedings or the service of any writ of attachment, levy of execution or the commencement of other legal proceedings against the Account, the undersigned will, if it has knowledge of such event, promptly notify the Chief of the _____ (Bureau or Service), of _____ Department, thereof.

_____ Bank
By_____"

ART. 4. Each withdrawal from the Account shall be made only by check of the Contractor countersigned by _____ as Contracting Officer for the Government or his duly authorized representative, or such other person as the Secretary of the _____ Department may designate (any of the persons mentioned above being included within the term "Contracting Officer"). Such countersignature may be of blanket checks to cover a number of approved expenditures. The Contracting Officer will authorize withdrawals from the Account from time to time as particular items of cost or payments to subcontractors, which are included in the Contractor's termination claim, are established, but, in the absence of express agreement in writing, authorization of a withdrawal for purposes of payment to a subcontractor, [other than to an Applicant Subcontractor,] shall not constitute authorization or approval of the payment to the subcontractor for purposes of Section 9 (b) of the Act. The amount of any funds paid into the Account for the benefit of a subcontractor by the Contractor will be promptly paid to such subcontractor, unless, and to the extent that, the Contracting Officer should authorize the Contractor to withhold and credit all or a part of such amount, in which case the amount so withheld shall promptly be credited to such subcontractor.

ART. 5. (a) Each partial payment to the Contractor made as provided herein shall be considered as payment of an amount due on the Contractor's termination claim under the terminated contract, and the interest payable by the Government under Section 6 (d) of the Act upon such amount shall cease to accrue upon the making of such payments. [, except that if the amount paid to the Contractor for the acc unt of any Applicant Subcontractor, and duly paid or credited to such subcontractor, should prove to be excessive, the amount due the Contractor shall not be reduced on account of such excess, and the interest payable to the Contractor shall not cease to accrue upon such excess.]

(b) If such payments exceed the amount finally determined to be due on the termination claim, the Contractor agrees to repay the excess [after deducting any excess payments to Applicant Subcontractors arising out of payments to the Contractor for their account] to the Government on demand, together with a penalty computed at the rate of 6% per annum from the date such excess arises to the date such excess is repaid or is otherwise extinguished. In the event that an excess payment results:

(1) From a credit arising in favor of the Government by reason of the disposal or retention of property by the Contractor or any subcontractor [, except an Applicant Subcontractor], such excess shall be deemed to have arisen at the time of such disposal or retention;

(2) From payment by the Government directly to a subcontractor of the termination claim of such subcontractor, such excess shall be deemed to have arisen 30 days after notification to the Contractor of his liability with respect to the claim of such subcontractor;

(3) From the withdrawal of a claim or a part thereof, such excess shall be deemed to have arisen when the payment, or the portion thereof attributable to the part of the claim which was withdrawn, was made, but if, in the opinion of the Contracting Officer, the filing of the claim or the inclusion of the withdrawn portion was reasonable, he may designate the date of withdrawal as the date on which such excess arose.

ART. 6. The Government shall have a first lien upon the balance at any time in the Account, superior to any lien or right of the bank or other person, to secure any repayment due to the Government or the proper application of any amount thereof for the benefit of a subcontractor or subcontractors of the Contractor, as the case may be. In the event of appointment of a receiver, liquidator, or custodian for the property or any substantial portion thereof, of the Contractor or any depository bank, or in the event of the institution with respect to the Contractor or such bank of any insolvency proceedings, or the service of any writ of attachment, levy of execution, or the commencement of other legal proceedings against the Account, the Contractor shall promptly notify the Chief of the _____ (Bureau or Service) of such event.

ART. 7. The Contractor hereby authorizes and instructs the depository bank or banks, upon the written request of the Contracting Officer, to transfer to the Government the credit balance in the Account, without liability to any person for such transfer.

ART. 8. Upon final settlement of the termination claim of the Contractor, any funds remaining in the Account which the Contractor is not obligated, under this Agreement or the final settlement agreement, to repay to the Government or to pay to a subcontractor, shall be free and clear of any claim of the Government whatsoever and may be withdrawn by the Contractor without countersignature or other restriction. Upon final settlement, the Government shall give prompt notice to the bank to such effect.

In witness whereof, the parties hereto have executed this agreement as of the day and year first above written.

The United States of America, acting through _____ Department.

_____
(Contractor)
By _____
(Title)
By _____
(Title)

[JTR 954]

§ 849.955 *Form of agreement for subcontractors' payment fund.* The following form will be used in accordance with § 843.364–4:

This agreement entered into pursuant to the Contract Settlement Act of 1944 (hereinafter called the Act) as of this _____ day of _____, 1945, by and between the United States of America (hereinafter called the Government) represented by _____ (hereinafter called the Financial Contracting Officer, which term as used herein shall include his successor or duly authorized representative, and _____ a _____ corporation (hereinafter called the Contractor.

Witnesseth that:

Whereas the Contractor is a war contractor; and

Whereas it is deemed desirable by the parties to provide a fund to enable the Contractor to make prompt partial and final payments to its subcontractors on account of certain termination claims;

Now, therefore, the parties hereto mutually agree as follows:

(1) *Definitions.* All terms defined in the Act shall have the same meaning when used in this agreement. The term "Administrative Officer" shall mean _____ or his successor or duly authorized representative.

(2) *Establishment of fund.* The Government shall, upon receipt of a properly certified voucher or vouchers, make payment or payments to the Contractor in the aggregate amount of $_____. Such additional sums may be paid to the Contractor hereunder as the Financial Contracting Officer may approve as necessary or appropriate for the purposes hereof.

(3) *Special account.* All payments so made shall be deposited in a special account with such bank or banks as may be selected by the Contractor and approved by the Administrative Officer. No part of the funds in the special account shall be mingled with other funds of the Contractor prior to withdrawal therefrom as hereinafter provided. The Government shall have a lien upon the credit balance in the special account superior to any lien or right of the bank or any other person, which lien shall secure repayment of amounts paid to the Contractor under paragraph (2) hereof. Before receiving any payment under paragraph (2), the Contractor shall transmit to the Administrative Officer an agreement from each bank in which a special account is to be established, sub-

stantially in the form annexed hereto. If required by the Administrative Officer, withdrawals from the special account shall, upon notice to the depositary bank, be made subject to prior written approval of the person designated in such notice.

(4) *Use of funds.* The Contractor shall, subject to the provisions of paragraph (5) and (6) hereof, use the funds in the special account to make prompt partial and final payments on account of the termination claims of subcontractors under such of the Contractor's war contracts as are prime contracts with the War Department and the Navy Department or with any other Government agency which has delegated authority to settle the Contractor's war contracts to the War and Navy Department, or are subcontracts under prime contracts with such contracting agencies; provided that the Contractor shall not be required to use the funds in the special account to make partial or final payments on account of the termination claim of a subcontractor, with respect to which the Contractor will not have a termination claim. The Contractor shall make partial payments from the special account only (i) upon specific approval of subcontractors' applications therefor by a properly authorized Government representative or (ii) pursuant to authority delegated by the Government to the Contractor to make such partial payments without such approval and shall make final payments from the special account only upon settlements which have been (i) approved by a properly authorized Government representative or (ii) made pursuant to authority delegated by the Government to the Contractor. The Contractor shall not use the funds in the special account for any other purpose unless specifically authorized by the Financial Contracting Officer.

(5) *Limitation on withdrawals.* The Contractor shall not, without the specific approval of the Administrative Officer, make any partial or final payment from the special account to any subcontractor for the benefit of a lower-tier subcontractor if, to the knowledge of any director, officer or employee of the Contractor having direct control or supervision over withdrawals from the special account, such subcontractor or any intervening subcontractor is unable or unwilling to pay or credit to such lower-tier subcontractor any payments received for his benefit.

(6) *Reimbursement of fund.* On or before the tenth day of each quarter the Contractor shall, unless otherwise authorized by the Administrative Officer, submit partial payment applications, pursuant to the procedures set forth in the Joint Termination Regulation of the War and Navy Departments, covering all payments made by the Contractor from the special account during the preceding quarter and not included in any settlement proposal theretofore submitted. An amount equal to all payments received pursuant to such applications, together with any amounts received by or credited to the Contractor upon partial or final settlements representing payments from the special account on account of subcontractors' claims, shall promptly upon such receipt or credit be deposited by the Contractor in the special account. If the Contractor uses the funds in the special account to make a partial or final payment on the termination claim of a subcontractor on account of which the Contractor will not have a termination claim, the Contractor shall reimburse the special account for such payment on or before the tenth day of the quarter following the quarter in which it is determined that the Contractor will not have a termination claim.

(7) *Repayment of fund.* The Contractor may at any time repay to the Government all or any part of the amounts paid to the Contractor by the Government under paragraph (2) hereof. The Government may at any time, immediately after notice to the Contractor, withdraw all or any part of the balance in the special account by check payable to the Treasurer of the United States and signed solely by the Administrative Officer, the amounts so withdrawn to be applied against the Contractor's obligation to repay to the Government the amounts paid to the Contractor under paragraph (2) hereof. Upon final and conclusive settlement of all of the Contractor's prime contracts and subcontracts with respect to which the Contractor has made payments from the special account, or within three years after the date of this agreement, whichever is earlier, the Contractor shall repay to the Government all amounts paid to the Contractor by the Government under paragraph (2) hereof and not theretofore repaid. The Contractor shall have the right to set off against its obligations to make such repayment any and all amounts due to the Contractor from the Government on account of any payment made from the special account.

(8) *Interest.* Except as provided in paragraph (11) hereof, the Contractor shall not be required to pay interest to the Government on account of the sums paid by the Government to the Contractor pursuant to paragraph (2) hereof. The Contractor agrees that no interest will be charged for its own account on the amount of any termination claim paid from the special account for any period of time after such payment.

(9) *Records.* The Contractor shall obtain and preserve appropriate evidence of receipt of, and adequate records with respect to, each partial or final payment made or reimbursed from the special account or deposited therein. The Contractor shall, upon request, furnish to the Government the original of any subcontractor's application for a partial payment, the original evidence of receipt for any partial or final payment made or reimbursed from the special account, and a report in reasonable detail as to the information contained in such records.

(10) *Reports.* On or before the tenth day of each month the Contractor shall furnish to the Administrative Officer, a report setting forth in such reasonable detail as the Administrative Officer may require the amount in the special account at the end of the preceding month and the amounts deposited in and withdrawn from the account during such month. The Contractor shall also report with respect to any partial payment previously made by the Contractor from the special account which has, during the preceding month, proved to be in excess of the amount finally determined to be due on the termination claim of the subcontractor to whom or for whose benefit such partial payment was made. The Contractor shall from time to time furnish such financial statements as the Administrative Officer may request.

(11) *Default.* Upon default by the Contractor in (a) making repayment as provided in paragraph (7) hereof, (b) observance of the covenants or conditions of paragraphs (4) or (6) hereof, and continuance of such default for a period of five days after written notice to the Contractor from the Government, or (c) observance of any of the other covenants or conditions of this agreement, and continuance of such default for a period of fifteen days after written notice to the Contractor from the Government, or (d) upon appointment of a trustee, receiver or liquidator for all or a substantial part of the Contractor's property, or institution of any insolvency, bankruptcy, reorganization, arrangement or liquidation proceedings by or against the Contractor, then and in any such event the total amount paid to the Contractor by the Government under paragraph (2) hereof and not theretofore repaid shall become immediately due and payable to the Government without further notice or demand, and shall thereafter bear interest at the rate of six percent per annum until paid.

(12) *Officials not to benefit.* No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this agreement or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

In witness whereof, etc.

FORM OF BANK AGREEMENT REQUIRED BY PARAGRAPH (3) OF AGREEMENT FOR SUBCONTRACTORS' PAYMENT FUND

(Letterhead of Depositary Bank)

(Date) _____

In consideration of the making of payments by the Government to _____ pursuant to the provisions of contract No. _____, dated _____, receipt of a copy of which is hereby acknowledged, and the depositing of such payments, in whole or in part, in an account with the undersigned to be designated "_____ Special Subcontractors' Payment Account", the undersigned hereby agrees to grant to the Administrative Officer (as defined in such contract) access to the books and records maintained by the undersigned with respect to such account at all reasonable times and for all reasonable purposes, including (but without limiting the generality thereof) the inspection or copying of such books and records and any and all memoranda, correspondence or documents appertaining thereto, and agrees to preserve said books and records as required by Section 19 of the Contract Settlement Act of 1944. The undersigned agrees to be bound by the provisions of said contract relating to the deposit and withdrawal of funds in the Special Account, but shall not be responsible for the application of funds withdrawn from said account.

The undersigned agrees that the Government shall have a lien upon the credit balance in said account to secure repayment of amounts paid to the Contractor by the Government under paragraph (2) of said contract, which lien shall be superior to any lien or claim of the undersigned with respect to such account. In the event of the service of any writ of attachment, levy of execution or commencement of garnishment proceedings with respect to the Special Account, the undersigned will promptly notify the Administrative Officer thereof.

_____Bank

By _____

[JTR 955]

SUBPART F—FORMS FOR SETTLEMENT PROPOSALS

§ 849.960 *Scope.* (a) This subpart contains the standard contract settlement proposal forms with instructions for their use and other settlement proposal forms.

(b) The standard forms have been filled out with hypothetical data. However, it must be clearly understood that the figures and names are provided only to illustrate the use of the forms, and the amounts and relationships shown are not significant. Furthermore, the methods shown of arriving at some of the charges were selected from several acceptable methods. Other acceptable methods are equally available and may be more suitable under given circumstances. In regard to the description column of the inventory schedules the amount of information required will vary considerably to meet the disposal officer's needs. [JTR 960]

§ 849.961 *Specimen proposal on Short Form (Form 1a).* [JTR 961]

§ 849.961–1 *Form 1a (front).*

NOTE: Forms printed in the FEDERAL REGISTER are for information only, and do not follow the exact format prescribed by the issuing agency.

Form Approved.
BUDGET BUREAU NO. 17–R002.

Form 1a
OFFICE OF CONTRACT SETTLEMENT

SHORT FORM SETTLEMENT PROPOSAL

For Use by Prime Contractor or Subcontractor Under Terminated Fixed-Price War Supply Contract

To be used only where you propose to retain or dispose of all inventory (items 1 and 2) and amount of your net proposal (item 6) is less than $1,000

This proposal applies to (check one):
☐ A prime contract with the Government, or
☒ Subcontract or purchase order No. (x) RM 20022B, with Reliable Manufacturing Co. 777 Fisher Road, Chicago 28, Illinois.
If moneys payable under the contract have been assigned, give name and address of assignee First Bank and Trust Co., Dearborn 12, Michigan.

Small Manufacturing Company,
717 West Avenue,
Dearborn 11, Michigan.
Govt. Agency Army-Ordnance.
Govt. Prime Contract No. W-210-Ord-280.
Contractor's Reference No. O-28.
Effective date of termination October 4, 1944.

Status of Contract or Order at Effective Date of Termination

Products covered by terminated contract or purchase order		Finished: On hand: Previously shipped and invoiced	Finished: On hand: Payment to be received through invoicing	Finished: On hand: Included in this proposal	Unfinished or not commenced: To be completed (Partial termination only)	Unfinished or not commenced: Not to be completed	Total covered by contract or order
X 210 gears M2	Quan.	3,000		150		1,850	5,000
	$	6,000		300		3,700	10,000
	Quan.						
	$						
	Quan.						
	$						

PROPOSED SETTLEMENT

(Include only items allocable to terminated portion of contract)

1. Charge for acceptable finished product not covered by invoicing		$300
2. Charge for work in process, raw materials, etc., on hand		637
3. Other charges, including settlement expenses, settlements with subcontractors, etc.		142
4. Total charges		$1,079
5. Deduct—Your offer for entire inventory included in items 1 and 2 (including proceeds of any sales)		203
6. Net settlement		$876

Give below a brief explanation of how you arrived at the amounts shown in items 2, 3, and 5. State the amount of profit and the allowance for interest included in this proposal. State briefly the nature of the inventory, how much of it was sold and how much retained, and the manner in which sale prices and the value of inventory retained were determined.
You should retain all papers and records relating to the proposal for possible examination by your customer or the contracting officer.

Item 2

Raw material on hand—gear castings at purchase cost		$497
Work in process—gears:		
Material	$68	
Labor	33	
Manufacturing overhead	39	140
Total—Line 2 above		$637

Item 3

Settlement with subcontractor, S. K. B. Co., Peckville, Ohio		$140
Interest		2
Profit		0
Total—Line 3 above		$142

(See reverse side also.)

CERTIFICATE

The undersigned certifies that the above Proposed Settlement includes only charges allocable to the terminated portion of the contract or purchase order, that the total charges (Item 4) and the deduction for the inventory retained or disposed of (Item 5) are fair and reasonable, and that this proposal has been prepared with knowledge that it will, or may, be used directly or indirectly as the basis for settlement of a claim or claims against the United States or an agency thereof. Other charges (Item 3) include an allowance for interest on this claim to 60 days from the date hereof, and no additional interest will be claimed unless a revised settlement proposal is submitted.

SMALL MANUFACTURING COMPANY,
By ALAN D. MARK,
President.

October 13, 1944.

When the space provided for any information is insufficient, use reverse of this sheet or attach a separate schedule

(SEE INSTRUCTIONS ON REVERSE SIDE)

[JTR 961.1]

§ 849.961–2 *Form 1a (reverse).*

INSTRUCTIONS

1. This settlement proposal should be submitted to the contracting officer, if you are a prime contractor, or to your customer, if you are a subcontractor.

2. You should review any provisions of your contract relating to termination. The Contract Settlement Act of 1944 provides for the payment of fair compensation for termination of war contracts, and regulations of Government contracting agencies contain detailed information relating to termination claims. Your claim for fair compensation may be prepared on a cost basis, or on the basis of a percentage of the contract price representing the estimated percentage of completion of work under the terminated contract, or may be calculated by any other method that will provide fair compensation for the preparations made and work done for the terminated portion of the contract, including a reasonable profit on such preparations and work.

3. Generally, if your settlement proposal is prepared on a cost basis, it may include, under items 2 and 3, the following:

(a) *Costs.* Costs incurred which are reasonably necessary and are properly allocable to the terminated portion of your contract under recognized commercial accounting practices, including direct and indirect manufacturing, selling and distribution, administrative, and other costs and expenses incurred.

(b) *Settlements with subcontractors.* Reasonable settlements of claims of subcontractors allocable to the terminated portion of your contract.

(c) *Settlement expenses.* Reasonable costs of preserving and protecting termination inventory in your possession and of settling your claim.

(d) *Profit.* A reasonable profit with respect to the preparations you have made and work you have actually done for the terminated portion of your contract. No profit should be included with respect to work which has not been done.

4. If you use this form, your net proposal must be less than $1,000, and you must retain or dispose of all the termination inventory at the best price obtainable. The Government may examine your books and records relative to this proposal, and if you are a subcontractor, your customer must be satisfied with respect to it. Acceptance of this proposal will constitute approval of the price which you offer for the entire inventory, including the proceeds of any sales which you have made.

5. Reference is made to Section 19 of the Contract Settlement Act of 1944 relating to the retention of records and working papers, and to any similar provisions of your contract, and to the provisions of Section 19 of the Act imposing penalties for the filing of fraudulent claims.

Item 5

Inventory retained:	
Gear castings—cost $497, adaptable to purchase order 6236 of Huff Manufacturing Co. with 5 extra machining operations at an estimated additional cost of $295	$200
Inventory sold to Standard Junk Co.:	
Work in process, and acceptable finished product not covered by invoicing, at current scrap price	3
	$203

[JTR 961.2]

§ 849.962 *Specimen proposal on Form 1 with supporting schedules (Forms 2 and 3).* [JTR 962]

§ 849.962–1 *Proposal Form 1 (front).*

NOTE: Forms printed in the FEDERAL REGISTER are for information only, and do not follow the exact format prescribed by the issuing agency.

Form Approved. (Read Instructions for Use of Standard Contract Settlement Proposal Forms) Form 1
Budget Bureau No. 17–R001. Office of Contract Settlement

SETTLEMENT PROPOSAL

[For use by prime contractor or subcontractor under terminated fixed price war supply contract]

This proposal applies to (check one):
☑ A prime contract with the Government, or
☐ Subcontract or purchase order No(s). .....
with .....
(Name of contractor who sent Notice of Termination)
.....
(Address)

Young Manufacturing Company.
1234 South East Street.
Dayton 12, Ohio

Govt. Agency: Army Signal Corps.

Govt. Prime Contract No. W-001-ac-100.

Contractor's Reference No. YB111.

Effective date of termination: October 4, 1944.

If moneys payable under the contract have been assigned, give name and address of assignee: None.

Is Form 3 (Schedule of Accounting Information) attached? If not, explain..... Yes ☐ No ☐

This is proposal No. 1 under this termination and is deemed to be ☐ interim, or ☐ final. (Check one.)

Status of Contract or Order at Effective Date of Termination

Products covered by terminated contract or purchase order		Finished: On hand: Previously shipped and invoiced	Finished: On hand: Payment to be received through invoicing	Finished: On hand: Included in this proposal	Unfinished or not commenced: To be completed (partial termination only)	Unfinished or not commenced: Not to be completed	Total covered by contract or order
SC 322 M instruments	Quan.	1,240	200	.....	.....	960	2,400
	$	1,364,000	220,000	.....	.....	1,056,000	2,640,000
.....	Quan.	.....	.....	.....	.....	.....	.....
	$	.....	.....	.....	.....	.....	.....
.....	Quan.	.....	.....	.....	.....	.....	.....
	$	.....	.....	.....	.....	.....	.....

PROPOSED SETTLEMENT

No.	Item	Use Columns 2 and 3 only where previous proposal has been filed (See Instructions): Total previously proposed	Use Columns 2 and 3 only where previous proposal has been filed (See Instructions): Increase or (decrease) by this proposal	Total proposed to date	Leave blank
	(1)	(2)	(3)	(4)	(5)
1	Metals (from Form 2a)	.....	.....	23,425	.....
2	Raw materials (other than metals) (from Form 2b)	.....	.....	21,643	.....
3	Purchased parts (from Form 2b)	.....	.....	23,000	.....
4	Finished components (from Form 2b) (See Sch. A)	.....	.....	12,000	.....
5	Miscellaneous (from Form 2b)	.....	.....	.....	.....
6	Work in process (from Form 2c) (See Sch. A)	.....	.....	179,115	.....
7	Dies, jigs, fixtures and special tools (Form 2d)	.....	.....	17,000	.....
8	Other costs (from Schedule B)	.....	.....	1,000	.....
9	General and administrative expenses (from Sch. C)	.....	.....	8,774	.....
10	Total (Items 1 to 9, inclusive)	.....	.....	291,235	.....
11	Profit (explain in Schedule D)	.....	.....	15,092	.....
12	Settlement expenses (from Schedule E)	.....	.....	2,703	.....
13	Total (Items 10 to 12 inclusive)	.....	.....	312,030	.....
14	Settlements with subcontractors (from Schedule F)	.....	.....	7,297	.....
15	Acceptable finished product (from Form 2b)	.....	.....	.....	.....
16	Allowance for interest to be determined at time of final settlement	.....	.....	.....	.....
17	Total (Items 13 to 16, inclusive)	.....	.....	320,327	.....
18	Disposal credits (from Schedule G)	.....	.....	61,597	.....
19	Partial, advance, or progress payments (from Sch. H)	.....	.....	200,000	.....
20	Total credits (Items 18 and 19)	.....	.....	261,597	.....
21	Net settlement (Item 17 less Item 20)	.....	.....	61,730	.....

CERTIFICATE

The undersigned, individually and as an authorized representative of the contractor, certifies that he has examined this Settlement Proposal and that, to the best of his knowledge and belief: (1) AS TO CONTRACTOR'S OWN CHARGES—The Proposed Settlement (exclusive of charges set forth in Item 14) and supporting schedules and explanations have been prepared from the books of account and records of the contractor in accordance with recognized commercial accounting practices; they include only those charges allocable to the terminated portion of this contract; they have been prepared with knowledge that they will, or may, be used directly or indirectly as the basis of settlement of a claim or claims against the United States or an agency thereof; and that charges as stated are fair and reasonable. (2) AS TO SUBCONTRACTORS' CHARGES—(a) The contractor has examined, or caused to be examined, to an extent it considers adequate in the circumstances, the claims of its immediate subcontractors (exclusive of claims filed against such immediate subcontractors by their subcontractors); (b) the settlements on account of immediate subcontractors' 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 subcontractors than those which the contractor would make if reimbursement by the Government were not involved; (c) the contractor has received from all its immediate subcontractors appropriate certificates with respect

to their claims, which certificates, if the claims are for more than $1,000, are substantially in the form of this certificate; and (d) the contractor has no knowledge leading it to doubt (i) the reasonableness of the settlements with more remote subcontractors or (ii) that the charges for them are allocable to this contract. Upon receipt by the contractor of amounts covering settlements with its immediate subcontractors, the contractor will pay or credit them promptly with the amounts so received, to the extent that it has not previously done so. The term subcontractor as used above includes suppliers.

YOUNG MANUFACTURING COMPANY.
(Name of contractor).
By Henry Myers
....., President,
(Authorized official).

November 20, 1944.

The undersigned certifies that to the best of his knowledge and belief the statements with respect to accounting matters made in the above Certificate are true.

GILLAM,
(Supervisory accounting official).

Controller.
(Title)

When the space provided for any information is insufficient, attach separate supporting schedules.

[JTR 962.1]

§ 849.962-2 *Proposal Form 1 (reverse).*

SCHEDULE A—ANALYSIS OF INVENTORY COST (Items 4 and 6)

Furnish the following information (unless not reasonably available) in respect of inventories of finished components and work in process included in this proposal:

	Total direct labor	Total direct materials	Total indirect expense	Total
Finished Components	8,024	3,387	7,988	19,399
Work in Process	67,805	43,810	67,500	179,115

SCHEDULE B—OTHER COSTS (Item 8)

Item Loss on Facilities	Explanation	Amount	Leave Blank
1 Cincinnati 12" x 36" cylindrical grinder, Type KK—Total cost $2,700. Cost applicable to terminated portion of contract:	$\frac{900}{2,400} \times \$2,700$ This machine was purchased specifically for and is usable only on this contract. It was sold for $250 as approved by the contracting officer. The disposal credit is reported on Schedule C, below.	$1,080	

SCHEDULE C—GENERAL AND ADMINISTRATIVE EXPENSES (Item 9)

Details of expenses 6 mo. to Sept. 30, 1944		Method of allocation		Amount	Leave Blank
Officer's salaries	78,375	Total manufacturing cost incurred six months ended Sept. 30, 1944	10,357,218		
Office salaries	182,077	Per cent of general and administrative expense to mfg. cost incurred	3.44%		
Social security taxes	9,107	Total items No. 1 through No. 8 of summary	292,461		
Traveling expenses	18,054	3% of 292,461—item No. 9 of summary		8,774	
Telephone & telegraph	7,835	Operations under contract were begun Aug. 3, 1943. Inventory included in this proposal was produced within the last 5 months.			
Professional services	24,303				
Dues and subscriptions	4,412				
Stationery and postage	7,118				
Taxes	10,432				
Miscellaneous	13,675				
Total	356,288				

SCHEDULE D—PROFIT (Item 11)

Explanation	Amount	Leave Blank
Total—item 10 of summary 301,235		
5% thereof—item no. 11 of summary 5%	15,062	
Profit rate contemplated in bid proposal 5%		
Ed. Note: If profit is otherwise computed under the authority of General Regulation No. 7 of the Office of Contract Settlement, an appropriate explanation will be given.		

SCHEDULE E—SETTLEMENT EXPENSES (Item 12)

Item	Explanation	Amount	Leave Blank
Crating lumber		432	
Packing materials		67	
Cost of taking inventory		1,742	
Charges for clerical help from termination unit.		532	
Total item no. 12 of summary		2,763	

SCHEDULE F—SETTLEMENTS WITH IMMEDIATE SUBCONTRACTORS AND SUPPLIERS (ITEM 14)

Name and address of Subcontractor	Brief description of product canceled	Amount of Settlement	Leave Blank
Electronic Research Co., 1939 Factory St., Buffalo, N. Y.	Dynamotors 6V; ip Type D400 (paid Nov. 10, 1944).	5,222	
National Wire Inc,, 1443 W. St., Pittsburgh, Pa.	Wire, bare phosphor bronze #12 YB (paid Oct. 25, 1944).	50	
Sump Pump Co., 2000 Hill St., Jackson, Mich.	Circuit bi cakers 2 Volt Type, 104D (unpaid)	2,025	
Total item no. 14 of summary		7,297	

SCHEDULE G—DISPOSAL OR OTHER CREDITS (Item 18)

Description	Amount	Leave Blank
Total from column 8—Form 2a	19,370	
Total from column 8—Form 2b (Raw Materials)	17,360	
Total from column 8—Form 2b (Purchased Parts)	13,675	
Total from column 8—Form 2b (Finished Components)	1,027	
Total from column 8—Form 2c	8,875	
Total from column 8—Form 2d	1,020	
Sale of facility—See Schedule B, above	250	
Total item No. 18 of summary	61,567	
(If practicable, show separately amount of disposal credits applicable to acceptable finished product included in Item 15)		

SCHEDULE H—PARTIAL, ADVANCE OR PROGRESS PAYMENTS (Item 19)

Date	Explanation	Amount	Leave Blank
October 30, 1944	Partial payment	100,000	
November 15, 1944	Partial payment	100,000	
Total—item No. 19 of summary		200,000	

When the space provided for any information is insufficient, attach separate supporting schedules.

[JTR 962.2]

§ 849.962-3 *Certificate for termination inventory schedules.*

YOUNG MANUFACTURING COMPANY, SETTLEMENT PROPOSAL—CONTRACT W-001-SC-100, TERMINATION INVENTORY SCHEDULE CERTIFICATE

The contractor hereby certifies that the attached Termination Inventory Schedules, pages 1 to 43, inclusive, have been prepared in accordance with applicable instructions; that the inventory described therein is allocable to the designated contract and is located at the places specified; that the quantities are not in excess of the reasonable quantitative requirements of the termination portion of the contract; and that the prices shown in column 8 (contractor's offer, or proceeds of authorized sale) are fair and reasonable and comply with Government price regulations.

The attached Schedules constitute the contractor's statement showing the materials

claimed to be termination inventory which, if not otherwise disposed of, the contractor desires to have removed by the Government within 60 days from the receipt hereof by the Government, or such shorter period as may be prescribed under the Contract Settlement Act of 1944, or such other period as may be agreed upon. Subject to such prior disposition, title to such materials is hereby tendered to the Government and is warranted to be free and clear of all liens and encumbrances.

Upon request of the Government, the contractor will negotiate to store at the Government's expense all or part of the inventory listed in the attached Schedules.

YOUNG MANUFACTURING COMPANY,
By HENRY MYERS, *President.*

The supervisory accounting official is:
J. Gilon, *Controller.*

NOVEMBER 20, 1944.

[JTR 962.3]

§ 849.962–4 *Termination Inventory Schedule Form 2a (Metals).*

NOTE: Forms printed in the FEDERAL REGISTER are for information only, and do not follow the exact format prescribed by the issuing agency.

Form Approved.
Budget Bureau No. 17–R004.

TERMINATION INVENTORY SCHEDULE—METALS (In Mill Product Form)
(Use Form 2b for castings and forgings)

Form 2a
Office of Contract Settlement

This schedule applies to (check one):
☒ A prime contract with the govt., or ☐ Subcontract(s) or purchase order(s)
with_____
(Name of contractor who sent Notice of Termination)
_____
(Address)
for_____
(Product covered by terminated contract or order)
Govt. Prime Contract No. W-001-sc-100. Contractor's Ref. No. YB411.

Property Classification (see Instructions) Red Brass

Young Manufacturing Company.
1234 South East Street
Dayton 12, Ohio.
Location of material: Same.

Leave Blank	Item No.	Form, Shape, Rolling treatment. Where applicable type of edge	Heat treatment, Temper, Hardness, Finish, etc.	Specifications, and Alloy or other Variable Designation in the Specification	Dimensions: Thickness	Dimensions: Width	Dimensions: Length Ft.	Dimensions: Length In.	Condition (Use Code. See Instructions)	Quantity	Unit of measure	Cost: Unit	Cost: Total	S= Scrap recommended	Contractor's offer (C), or Proceeds of authorized sale (A)[1]	Leave Blank
		(Example: HR coiled strip. CR flat sheets hex rod tubing in straight lengths, etc.; slit edge, rounded edge, etc.)	(Example: Annealed and pickled, ½ hard, polished, etc.)	(Example: 60-T-251-D B16-42, Alloy 7, Grade B)	Wall for tubing, class for pipe, type for copper water tube	O. D. for tube, diameter of rod, size for pipe, mfgr. die No. for extruded shapes										
	(1)	(2a)	(2b)	(2c)	(2d)	(2e)	(2f)		(3)	(4)	(4a)	(5)	(6)	(7)	(8)	
	1	HR coiled strip, slit edge.	¼ hard, plain pickled.	U. S. Army 57 109 R. L. Br.	.0125"	6"	42 coil-	lb.	N1	1,402	lb.	.165	235		235 A	
	2	CR flat sheet, sawed edges.	Hard, polished one side.	do	.125"	24"	5	0	N1	5,000	lb.	.415	2,324		1,850 C	
	3	Hard drawn round wire in coils.	HD	ASTM. B-134-42T alloy 3.		032"	(000 (20 lbs.) coils	0	N1	2,000	lb.	.220	440			
	4	Seamless tube (coils).	Soft	Navy 44T15b Gr. 1	.022"	312"	20 coils	0	N3	10,000 (775 lb.)	ft.	.033	297		150 C 500 lbs.	
	5	S. P. S. pipe	Semiannealed	Fed. WW-P351 extra GrA, ex strong heavy.		1½	12	0	N1	7,200	ft.	.421	3,247			
				Total—Page 1									6,023		2,295	
				Total—Pages 2 through 6									21,802		17,075	
				Total item No. 1 of Form 1.									23,425			
				Carried forward to Schedule G–Form 1.											19,370	

ED. NOTE: In respect to all inventory schedules—Instead of the form of summary shown here, where necessary there will be a separate summary sheet listing the page totals of columns 6 and 8 tieing in with the amounts shown on Form 1.

[1] Use col. 8 for contractor's offer and for proceeds of an authorized sale. Indicate former by "C" and latter by "A" after dollar amount. Show quantity (on a second line) if less than col. 4.

NOTE: See Instructions, par 25, concerning certificate.
See Instructions, par. 26, concerning Govt. owned property.

[JTR 962.4]

§ 849.962–5 *Termination Inventory Schedule Form 2b (Raw materials).*

NOTE: Forms printed in the FEDERAL REGISTER are for information only, and do not follow the exact format prescribed by the issuing agency.

Form Approved, Budget Bureau No. 17–R005. TERMINATION INVENTORY SCHEDULE Form 2b Office of Contract Settlement

☐ Raw materials ☐ Purchased parts ☐ Finished components ☐ Finished product ☐ Miscellaneous (Other Than Metals)

This schedule applies to (check one):
☒ A prime contract with the govt., or ☐ Subcontract(s) or purchase order(s) with
(Name of contractor who sent Notice of Termination)
(Address)
for
(Product covered by terminated contract or order)
Govt. Prime Contract No. W-001-sc-100 Contractor's Ref. No. YB411

Property Classification (See Instructions): Plastics (Primary Forms)
Young Manufacturing Company
1234 South East Street
Dayton 12, Ohio
Location of material: Same

Leave blank	Item No.	DESCRIPTION: If property has commercial value, furnish full commercial description (see Instructions). Otherwise, furnish description sufficient to enable contracting officer to determine appropriate disposition thereof. Where practicable, show manufacturer's name, address, and catalog No. Where cols. 2a and 2b are not applicable, write across dotted lines.	Govt. part or Drawing No. and Rev. No.	How packed (Bulk, bbls., crates, (etc.,)	Condition (Use code. See instructions)	Quantity	Unit of measure	COST (For finished product, show contract price instead of cost) Unit	COST Total	S = Scrap recommended	Contractor's offer (C), or Proceeds of authorized sale (A)[1]	Leave blank
	(1)	(2)	(2a)	(2b)	(3)	(4)	(4a)	(5)	(6)	(7)	(8)	
	1	Polystyrene Rod-Exphenolite #872D, ¼" diameter 2'6" lengths—Exphenolite Co. Boston, Mass			N1	420	ft.	.40	168			
	2	Polystyrene Sheets-Exphenolite #872E, 3/16" x 12" x 16", Exphenolite Co			N1	75	pcs.	11.20	840		840A	
	3	Polystyrene Sheets-Exphenolite #872D, 3/32" x 4" x 4" Exphenolite Co			N1	352	pcs.	.93	327		327A	
	4	Polystyrene Tube-Exphenolite #93X, 1½" O. D. ⅛" Wall x 18" Exphenolite Co			N1	75	ft.	2.33	174			
	5	Polystyrene Strip-Exphenolite #52R, 1/16" x ½" x 12" Exphenolite Co			N1	251	ft.	.38	95			
		Total—page 7							1,604		1,167	
		Total—pages 8 and 9							19,559		16,183	
		Total item No. 2 of Form 1							21,503			
		Carried forward to Schedule G–Form 1									17,350	

[1] Use col. 8 for contractor's offer and for proceeds of an authorized sale. Indicate former by "C" and latter by "A" after dollar amount. Show quantity (on a second line) if less than col. 4.

Page 7 of 43 pages.

NOTE: See Instructions, par. 23, concerning certificate. See Instructions, par. 26, concerning Govt. owned property.

[JTR 962.5]

§ 849.962–6 *Termination Inventory Schedule Form 2b (Purchased parts).*

NOTE: Forms printed in the FEDERAL REGISTER are for information only, and do not follow the exact format prescribed by the issuing agency.

Form Approved, Budget Bureau No. 17–R005. TERMINATION INVENTORY SCHEDULE Form 2b Office of contract settlement

☐ Raw materials (other than metals) ☒ Purchased parts ☐ Finished components ☐ Finished product ☐ Miscellaneous

This schedule applies to (check one):
☒ A prime contract with the govt., or ☐ Subcontract(s) or purchase order(s) with
(Name of contractor who sent Notice of Termination)
(Address)
for
(Product covered by terminated contract or order)
Govt. Prime Contract No. W-001-sc-100 Contractor's Ref. No. YB411.

Property classification (See instructions): Capacitors.
Young Manufacturing Company
1234 South East Street
Dayton 12, Ohio.
Location of material, Same.

Leave blank	Item No.	DESCRIPTION: If property has commercial value, furnish full commercial description (see Instructions). Otherwise, furnish description sufficient to enable contracting officer to determine appropriate disposition thereof. Where practicable, show manufacturer's name, address, and catalog No. Where cols. 2a and 2b are not applicable, write across dotted lines.	Govt. part or Drawing No. and Rev. No.	How packed (bulk, bbls., crates, etc.)	Condition (use code, see Instructions)	Quantity	Unit of measure	Cost (For finished product, show contract price instead of cost) Unit	Cost Total	S= Scrap recommended	Contractor's offer (O), or proceeds of authorized sale (A)[1]	Leave blank
	(1)	(2)	(2a)	(2b)	(3)	(4)	(4a)	(5)	(6)	(7)	(8)	
	1	Capacitor; fixed; 6 mmfd; ±5% mica; 500 VDCW; molded case; 11/16" lg x 7/16" wide x 11/64" thick, two 1½" lg #20 axial tinned brass leads. S. & C. Electric Co., Chicago, type #C–151.		B o x 50.	N1	250	pcs	.60	150		135 C	
	2	Capacitor; fixed; 8 mmfd ±10% Mica; 1000 VDCW; molded case; 43/64" lg x 29/64" wide x 3/16" thick. two 2¼" lg .031" dia. Wire leads. S. & C. Electric Co., type C280.		B o x 100.		200	"	.90	180		1 0 A	
	3	Capacitor; Variable; Air, 6.5 to 140 mmfd (antenna tuning) J. S. Doe Co., Dayton, Ohio, dwg–18A3504.		B o x 10.	N1	53	"	10.00	530			
	4	Capacitor; fixed paper; single section 50,000 mmfd; ±10%; 200 VDCW; two 1½" lg wire leads; J. S. Doe Co., dwg #C18420.		B o x 100.	N1	500	"	.40	200		40 C 100 pcs.	
	5	Capacitor; fixed paper; 10,000 mmfd, 250 VDCW; ±10%, Hermetically sealed; mineral oil impregnated metal case, 1 13/16" lg x 15/16" wide x 13/16" thick; two 1½" long solder lug terminals spaced 2" apart. S. & C. Electric Co., type #C811.		B o x doz.	N1	800	"	1.03	824			
		Total, Page 10							1,884		355	
		Total, Pages 11 through 14							23,425		13,320	
		Total item No. 3 of Form 1							25,309			
		Carried forward to Schedule G–Form 1									13,675	

[1] Use col. 8 for contractor's offer and for proceeds of an authorized sale. Indicate former by "C" and latter by "A" after dollar amount. Show quantity (on second line) if less than col. 4.

Page 10 of 43 pages.

NOTE: See Instructions, par. 25, concerning certificate. See Instructions, par. 26, concerning Govt. owned property.

[JTR 962.6]

§ 849.962–7 *Termination Inventory Schedule Form 2b (Finished components).*

NOTE: Forms printed in the FEDERAL REGISTER are for information only, and do not follow the exact format prescribed by the issuing agency.

Form Approved.
Budget Bureau No. 17-R005.

TERMINATION INVENTORY SCHEDULE

Form 2b
Office of Contract Settlement

☐ Raw Materials (other than metals) ☐ Purchased parts ☒ Finished components ☐ Finished product ☐ Miscellaneous

Property classification (See Instructions) No commercial value.

This schedule applies to (check one):
☒ A prime contract with the govt., or ☐ Subcontracts (s) or purchase order(s) with

Young Manufacturing Company
1234 South East Street
Dayton 12, Ohio
Location of material: Same.

(Name of contractor who sent Notice of Termination)

(Address)

for

(Product covered by terminated contract or order)

Govt. Prime Contract No. W-001-sc-100. Contractor's Ref. No. YB411.

Leave blank	Item No. (1)	Description: If property has commercial value, furnish full commercial description (see Instructions). Otherwise, furnish description sufficient to enable contracting officer to determine appropriate disposition thereof. Where practicable, show manufacturer's name, address, and catalog No. Where cols. 2a and 2b are not applicable, write across dotted lines. (2)	Govt. part or drawing No. and Rev. No. (2a)	How packed (Bulk, bbls., crates, etc.) (2b)	Condition (Use code. See instructions) (3)	Quantity (4)	Unit of measure (4a)	Cost (For finished product show contract price instead of cost.) Unit (5)	Cost Total (6)	Scrap recommended (7)	Contractor's offer (C) or proceeds of authorized sale (A) [1] (8)	Leave blank
	1	D-2493 Bracket, Brass	A 42363-1			900	pcs.	.60	540	S		
	2	D-2349 Collar, Steel	A 632B-2		X	280	pcs.	1.10	572			
	3	D-8392 Frame, Alum	B 6292-4			200	pcs.	1.47	293	S		
	4	D-9247 Connector, Copper	A 42921-B			2,200	pcs.	.20	440	S		
	5	D-756 Insulator, Mica	A 4252-3			911	pcs.	.03	240	S		
	6	D-748 Front Panel, Plastic	A 529-2			75	pcs.	2.20	165	S		
	7	D-9361 Unit Support, Mixed Metal	A 423-X		X	320	pcs.	3.05	1,163			
	8	Assorted Clamps				89	lbs.		53	S		
		Total page 15							3,062			
		Total pages 16 through 20							16,747		1,027	
		Total item no. 7 of Form 1							19,809			
		Carried forward to schedule G-Form 1									1,027	

ED. NOTE: This schedule illustrates the type of limited description which may be appropriate for items in the "No Commercial Value" classification. Contrast the full description and classification required for items which do have "Commercial Value," illustrated on preceding schedule. See pars. 15 and 18 of the Instructions, and pars. 3 and 9 of Appendix A thereto.

[1] Use col. 8 for contractor's offer and for proceeds of an authorized sale. Indicate former by "C" and latter by "A" after dollar amount. Show quantity (on a second line) if less than col. 4.

Page 15 of 43 pages.

NOTE: See Instructions, par. 25, concerning certificate.
See Instructions, par. 26, concerning Govt. owned property.

[JTR 962.7]

§ 849.962–8 *Termination Inventory Schedule Form 2c (Work-in-process).*

NOTE: Forms printed in the FEDERAL REGISTER are for information only, and do not follow the exact format prescribed by the issuing agency.

Form Approved.
Budget Bureau No. 17-R008.

TERMINATION INVENTORY SCHEDULE—WORK IN PROCESS

Form 2c
Office of Contract Settlement

This schedule applies to (check one):
☒ A prime contract with the govt., or ☐ Subcontract(s) or purchase order(s) with

Young Manufacturing Company.
1234 South East Street,
Dayton 12, Ohio.
Location of material: Same.

(Name of Contractor who sent Notice of Termination)

(Address)

for

(Product covered by terminated contract or order)

Govt. Prime Contract No. W-001-sc-100. Contractor's Ref. No. YB411.

Leave Blank	Item No. (1)	DESCRIPTION: If property has commercial value, furnish full commercial description. Otherwise furnish description sufficient to enable contracting officer to determine appropriate disposition thereof. (2)	Estimated Weight (2a)	Quantity (4)	Unit of Measure (4a)	COST (Information in Col. 5 need not be given if not reasonably available) Unit (5)	Total (6)	Scrap recommended (7)	Contractor's offer (C), or Proceeds of authorized sale (A) [1] (8)	Leave Blank
	1	D49565-2 Rod 19/32" yellow brass threaded drilled; random lengths 21" to 39".	347 lbs.	610	pcs.	0.18	111		44 C	
	2	D47923 Capacitor bracket, 2" x 2½" OR steel, 60% complete	410 lbs.	507	pcs.	.03	427	S	2 A	
	3	F 19524-3 Door assembly mixed steel, copper and plastic, 60% complete	210 lbs.	41	pcs.	11.60	483	S		
	4	D4633 Steel yokes—80% complete	618 lbs.	6,000	pcs.	.03	180	S	3 A	
	5	D9275 Armature assembly—60% complete	300 lbs.	180	pcs.	8.20	1,476		735 C	
	6	F 1695-3 Star wheel assembly, mixed steel and brass, 70% complete	600 lbs.	60	pcs.	125.40	3,762	S		
		Total page 21					6,514		787	
		Total pages 22 through 28					172,601		8,088	
		Total item no. 6 of Form 1					179,115			
		Carried forward to Schedule G—Form 1							8,875	

[1] Use col. 8 for contractor's offer and for proceeds of an authorized sale. Indicate former by "C" and latter by "A" after dollar amount. Show quantity (on a second line) if less than col. 4.

Page 21 of 43 pages.

NOTE: See Instructions, par 25, concerning certificate.
See Instructions, par. 26, concerning Govt. owned property.

[JTR 962.8]

§ 849.962–9 *Termination Inventory Schedule 2d (Dies, Jigs, Fixtures, etc.).*

NOTE: Forms printed in the FEDERAL REGISTER are for information only, and do not follow the exact format prescribed by the issuing agency.

Form Approved.
Budget Bureau No. 17-R607.

TERMINATION INVENTORY SCHEDULE
[Dies, Jigs, Fixtures, etc., and Special Tools]

Form 2d
Office of Contract Settlement

This schedule applies to check one):
☒ A prime contract with the govt., or ☐ Subcontract(s) or purchase order(s) with
(Name of contractor who sent Notice of Termination)
(Address)
for
(Product covered by terminated contract or order)
Govt. Prime Contract No. W-C01-sc-100. Contractor's Ref. No. YB411.

Property Classification (See Instructions) } No Commercial Value (2).

Young Manufacturing Company,
1234 South East Street,
Dayton 12, Ohio.
Location of material: Same.

Leave blank	Item No.	Description If property has commercial value, furnish full commercial description. Otherwise furnish description sufficient to enable contracting officer to determine appropriate disposition thereof. Where practicable, show manufacturer's name, address, and catalog No.	Condition (Use Code. See Instructions)	Quantity	Cost		Cost applicable to this contract		S = Scrap recommended	Contractor's offer (C), or proceeds of authorized sale (A)[1]	Leave blank
					Unit	Total	To entire contract	To portion not to be completed			
	(1)	(2)	(3)	(4)	(5)	(6)	(6a)	(6b)	(7)	(8)	
	1	#3 Compound die for armature stop dwg 7654	C3	2	415	830	830	332	S		
	2	#75 Piercing die for yoke, dwg 8765	C3	2	210	420	420	168	S	3 A	
	3	#2 Perforate, Bl. & form die for Bkt. dwg 944	03	2	550	1,100	600	240	S		
	4	Drill jig for bracket, dwg 9423	04	1	130	130	130	52	S		
	5	Tapping fixture for yoke #8842	E2	3	40	120	120	48	S		
	6	Reforming fixture for bracket #962	R4	2	55	110	110	44	S	2 A	
		Total—page 39				2,710	2,210	884		5	(1)
		Total—pages 40 through 43				50,282	41,865	16,746		1,015	(1)
		Total costs				52,992	44,075	17,630		1,020	(1)
		Carried forward to Schedule G—Form 1									

Ed. Note 1: The disposal credit in this case resulted from the sale or retention of items 100% applicable to this contract.
Ed. Note 2: This schedule illustrates the limited description which may be appropriate for items in the "No Commercial Value" classification. See pars. 15 and 18 of the Instructions and 3 and 11 of Appendix A.

[1] Use col. 8 for contractor's offer and for proceeds of an authorized sale. Indicate former by "C" and latter by "A" after dollar amount. Show quantity (on a second line) if less than col. 4.

Page 39 of 43 pages.

NOTE: See Instructions, par. 25, concerning certificate. See Instructions, par. 26, concerning Govt. owned property.

[JTR 962.9]

§ 849.962–10 *Schedule of Accounting Information (Form 3).*

NOTE: Forms printed in the FEDERAL REGISTER are for information only and do not follow the exact format prescribed by the issuing agency.

Form approved.
Budget Bureau No. 17-R008.

SCHEDULE OF ACCOUNTING INFORMATION

Form 3
Office of Contract Settlement

This proposal applies to (check one): ☒ A prime contract with the Government, or ☐ Subcontract or purchase order No.(s) with (Name and address of contractor who sent Notice of Termination)	(Company) Young Manufacturing Company. (Street address) 1234 South East Street. (City) (State) Dayton 12, Ohio. Government Agency: Army-Signal Corps. Govt. Prime Contract No. W-C01-sc-100. Contractor's Reference No. YB411. Effective date of termination: October 4, 1944.

1. Furnish name, title, address, and telephone number of an individual in your organization from whom additional information may be requested on questions relating to (1) accounting matters; (2) property disposal:
(1) Mr. Howard J. Gillan, Controller, above address, Fulton 6000, Ext. 284.
(2) Mr. G. K. Nelson, Vice President, above address, Fulton 6000, Ext. 760.
2. Are the accounts of the contractor subject to regular periodic examination by independent public accountants? Yes☒ No☐. Dawson & Dawson, Dayton, Ohio.
3. Furnish the name and address of any accountants who have reviewed or assisted in the preparation of the attached proposal. None.
4. Furnish the name and address of any governmental agency which has reviewed your accounts in connection with a prior settlement proposal. Army Signal Corps—Dayton Procurement District, 225 S. Main Street, Dayton, Ohio.
5. Have there been any significant deviations from your regular accounting procedures and policies in arriving at the costs set forth in the attached proposal? Yes ☐ No ☒ If YES, explain briefly.
6. Were the detailed cost records used in preparing this proposal controlled by and in agreement with your general books of account? Yes ☒ No ☐.
7. Were inventory quantities based on a physical count as of the date of termination? Yes ☒ No ☐ If NO explain exceptions.
8. If this settlement proposal is based on standard costs and such costs are in excess of actual, has proper adjustment thereof for any significant variations been made? Yes ☐ No ☐. If NO, explain.
9. Does this proposal include charges for major inventory items and claims of subcontractors common to this terminated contract and other work of the contractor? Yes ☐ No ☒. If YES, furnish information as to the method used in allocating amounts to the terminated portion of this contract.
10. Explain briefly your method of pricing inventories, indicating whether material handling cost has been included in charges for materials. Cost less cash discount, first-in-first-out, no handling charges.
11. Are any parts, materials, or finished product, known to be defective, included in the inventories? Yes ☐ No ☒. If YES, explain.
12. Have any charges been included in this proposal in respect of severance, dismissal, or separation pay? Yes ☐ No ☒. If YES, furnish brief explanation and estimates of amounts included.
13. Does this proposal include any element of profit to the contractor or a related organization, other than profit set forth separately in the proposal or included in the contract price at which acceptable finished product, if any, is included in the proposal? Yes ☐ No ☒. If YES, explain briefly.
14. Describe briefly the nature of indirect expense items included in inventory costs (see Schedule A, Form 1); and explain your method of allocation used in preparing this proposal, including if practicable, the rates used and the period of time upon which they are based. See attached schedule.
15. Do the costsset forth in the attached proposal include provisions for any reserves other than normal depreciation reserves? Yes ☐ No ☒. If YES, list such reserves.

CERTIFICATE

I hereby certify that, to the best of my knowledge and belief, the above statements are true and correct.

YOUNG MANUFACTURING COMPANY, *Contractor.*

CONTROLLER, *Title.* (Supervisory accounting official)

Date, November 20, 1944.

Use reverse side or attach schedule for required information.

[JTR 962.10]

§ 849.962–11 *Schedule attached to Form 3.*

YOUNG MANUFACTURING COMPANY

Settlement Proposal—Contract W–001–ac–100. Form 3—Question 14—Indirect Factory Expense

Indirect factory expenses applicable to department C in which contract was performed for six months ended September 30, 1944 are as follows: Operations under contract were begun August 3, 1943. Inventory included in this proposal was produced within the last five months.

Factory supervision and administration	$287,018
Indirect labor	861,310
Social security taxes	135,829
Supplies	227,564
Maintenance and repairs	247,783
Depreciation	205,012
Small tools	132,700
Taxes	63,526
Light, heat, power	$57,461
Insurance	17,472
Freight and express	24,057
General	48,537
Total	$2,298,269
Direct labor in department C for six months ended Sept. 30, 1944	$2,308,658
Per cent of indirect factory expense to direct labor	99.55%
Direct labor included in work in process	$67,805
Indirect factory expenses applicable to work in process. 99.55% of $67,805	$67,500
Direct labor included in finished components	$8,024
Indirect factory expenses applicable to finished components. 99.55% of $8,024	$7,988

[JTR 962.11]

§ 849.963 *Specimen proposal on Form 1b (Total cost basis).* [JTR 963]

§ 849.963–1 *Form 1b (Front).*

NOTE: Forms printed in the FEDERAL REGISTER are for information only, and do not follow the exact format prescribed by the issuing agency.

(Read Instructions for Use of Standard Contract Settlement Proposal Forms)

Form Approved
Budget Bureau No. 17–R063.

Form 1b
Office of Contract Settlement

SETTLEMENT PROPOSAL (TOTAL COST BASIS)

(For use by prime contractor or subcontractor under terminated fixed-price war supply contract)

This proposal applies to (check one):
☐ A prime contract with the Government, or
☐ Subcontract or purchase order No.(s) .....
with .....
(Name of contractor who sent Notice of Termination)
.....
(Address)

If moneys payable under the contract have been assigned, give name and address of assignee. None

T. L. Manufacturing Company.
(Company)

123 White Street.
(Street address)

(City) (State): Toledo 7, Ohio.

Govt. Agency: Army Air Forces.

Govt. Prime Contract No. W–689–ac–112.

Contractor's Reference No. UM 40.

Effective date of termination: October 4, 1944.

Is Form 3 (Schedule of Accounting Information) attached? If not, explain: Filed in connection with previous terminations. Yes ☐ No ☐ No change.

This is proposal No. 2 under this termination and is deemed to be ☒ interim, or ☐ final. (Check one.)

Status of Contract or Order at Effective Date of Termination

Products covered by terminated contract or purchase order		Finished: Previously shipped and invoiced (a)	Finished: On hand: Payment to be received through invoicing (b)	Finished: On hand: Payment not to be received through invoicing (c)	Unfinished or not commenced: Subsequently completed and invoiced (See note below) (d)	Unfinished or not commenced: Not to be completed (e)	Total covered by contract or order (f)
X. 131 Instruments	Quan.	250	200			11,550	12,000
	$	37,500	30,000			1,732,500	1,800,000
	Quan.						
	$						
	Quan.						
	$						

NOTE: Column (d) above should only be used in the event of a partial termination, in which case the total cost reported below should be accumulated to date of completion of the continued portion of the contract and the deduction for finished product (Item 10 below) should be the contract price of finished product in columns (a), (b), and (d) above.

PROPOSED SETTLEMENT

No.	Item	Use Columns 2 and 3 only where previous proposal has been filed (See Instructions): Total previously proposed (2)	Use Columns 2 and 3 only where previous proposal has been filed (See Instructions): Increase or (Decrease) by this proposal (3)	Total proposed to date (4)	Leave blank (5)
1	Direct material		252,807	252,807	
2	Direct labor		63,223	63,223	
3	Indirect factory expense (from Schedule A)		49,049	49,049	
4	Dies, jigs, fixtures and special tools (Form 2d)		32,545	32,545	
5	Other costs (from Schedule B)				
6	General and administrative expenses (from Schedule C)		16,949	16,949	
7	Total (Items 1 to 6, inclusive)		414,623	414,623	
8	Profit (explain in Schedule D)		33,162	33,162	
9	Total (Items 7 and 8)		447,699	447,699	
10	Deduct—Finished product invoiced or to be invoiced (See note above)		67,599	67,599	
11	Total (Item 9 less Item 10)		380,100	380,100	
12	Settlement expenses (from Schedule E). To be claimed on a subsequent proposal				
13	Total (Items 11 and 12)		380,100	380,100	
14	Settlements with subcontractors (from Schedule F)	78,570	3,425	82,091	
15	Allowance for interest. To be determined at time of final settlement				
16	Total (Items 13 to 15, inclusive)	78,570	383,615	462,191	
17	Disposal credits (from Schedule G)		45,138	45,138	
18	Partial, advance, or progress payments (from Schedule H)		78,570	78,570	
19	Total credits (Items 17 and 18)		123,714	123,714	
20	Net settlement (Item 16 less Item 19)	78,570	259,901	338,477	

NOTE: Inventory schedules (Forms 2a, 2b, 2c, and 2 I) applicable to inventories allocable to this contract and on hand at date of termination *must be filed.* See Instructions.

CERTIFICATE

The undersigned, individually and as an authorized representative of the contractor, certifies that he has examined this Settlement Proposal and that, to the best of his knowledge and belief: (1) AS TO CONTRACTOR'S OWN CHARGES—The Proposed Settlement (exclusive of charges set forth in Item 14) and supporting schedules and explanations have been prepared from the books of account and records of the contractor in accordance with recognized commercial accounting practices; they include only those charges allocable to the terminated contract; they have been prepared with knowledge that they will, or may, be used directly or indirectly as the basis of settlement of a claim or claims against the United States or an agency thereof; and the charges as stated are fair and reasonable. (2) AS TO SUBCONTRACTORS' CHARGES— (a) The contractor has examined, or caused to be examined, to an extent it considers adequate in the circumstances, the claims of its immediate subcontractors (exclusive of claims filed against such immediate subcontractors by their subcontractors); (b) the settlements on account of immediate subcontractors' 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 subcontractors than those which the contractor would make if reimbursement by the Government were not involved; (c) the contractor has received from all its immediate subcontractors appropriate certificates with respect to their claims, which certificates, if the claims are for more than $1,000, are substantially in the form of this certificate; and (d) the contractor has no knowledge leading it to doubt (*i*) the reasonableness of the settlements with more remote subcontractors or (*ii*) that the charges for them are allocable to this contract. Upon receipt by the contractor of amounts covering settlements with its immediate subcontractors, the contractor will pay or credit them promptly with the amounts so received, to the extent that it has not previously done so. The term subcontractor as used above includes suppliers.

T. L. MANUFACTURING COMPANY,
(Name of Contractor.)
By PATRICK ROESCH, *President*
(Authorized Official.)

The undersigned certifies that to the best of his knowledge and belief the statements with respect to accounting matters made in the above Certificate are true.

C. E. ELDRIDGE, Jr.,
(Supervisory accounting official.) Title: *Comptroller*

Date, November 20, 1944.

When the space provided for any information is insufficient, attach separate supporting schedules.

[JTR 963.1]

§ 849.963–2 *Form 1b (reverse).*

SCHEDULE A INDIRECT FACTORY EXPENSE (ITEM 3)

Detail of expenses	Method of Allocation	Amount	Leave Blank
See attached schedule.			

SCHEDULE B OTHER COSTS (ITEM 5)

Item	Explanation	Amount	Leave Blank
None			

SCHEDULE C (ITEM 6)
GENERAL AND ADMINISTRATIVE EXPENSES

Detail of expenses	Method of Allocation	Amount	Leave Blank
See attached schedule.			

SCHEDULE D PROFIT (ITEM 8)

Explanation	Amount	Leave Blank
Total contractor's own costs—line 7 of summary 414,528		
8 percent thereof	33,162	

Profit rate contemplated in bid proposal.
Id. Note: If profit is otherwise computed under the authority of General Regulation No. 7 of the Office of Contract Settlement, an appropriate explanation will be given.

SCHEDULE E SETTLEMENT EXPENSES (ITEM 12)

Item	Explanation	Amount	Leave Blank

SCHEDULE F (ITEM 14)

SETTLEMENTS WITH IMMEDIATE SUBCONTRACTORS AND SUPPLIERS

Name and address of Subcontractor	Brief description of product canceled	Amount of settlement	Leave blank
Victory Tool and Die Co., 1492 River Road, Royal Oak, Michigan.	24 extrusion dies for part TL 73481 (Paid November 12, 1944).	3,425	

SCHEDULE G (ITEM 17)

DISPOSAL OR OTHER CREDITS

Description	Amount	Leave Blank
Total from Column 8—Form 2a	22,350	
Total from Column 8—2b (Raw Materials)	10,287	
Total from Column 8—Form 2b (Purchased Parts)	2,150	
Total from Column 8—Form 2c	10,351	
Total item No. 18 of summary	45,138	
(If practicable, show separately amount of disposal credits applicable to acceptable finished product reported on Form 2b)		

SCHEDULE H (ITEM 18)

PARTIAL ADVANCE OR PROGRESS PAYMENTS

Date	Explanation	Amount	Leave Blank
October 24, 1944	Partial payment.	78,576	

When the space provided for any information is insufficient, attach separate supporting schedules.

[JTR 963.2]

§ 849.963–3 *Attached Schedule A to Form 1b.*

T. L. MANUFACTURING COMPANY

Settlement Proposal—Contract W-889-ac-112 Schedule A Form 1b—Indirect Factory Expense

Indirect factory expenses applicable to Plant 2 in which this contract was performed for period Jan. 1, 1944 to Sept. 30, 1944, inclusive are as follows: Operations under contract were begun Jan. 16, 1944.

Factory supervision	$20,748
Indirect labor	44,970
Overtime premiums	13,124
Social security taxes	9,804
Other taxes	8,489
Insurance	4,105
Power, light and heat	5,841
Maintenance and repairs	10,402
Supplies	13,847
Defective work	5,810
Depreciation	24,943
General	4,200
Total	$166,297
Direct labor Jan. 1, 1944 to Sept. 30, 1944	$210,503
Percent of indirect factory expense to direct labor	79.00%
Amount of direct labor applicable to contract cancelled (Jan. 21, 1944 to Oct. 4, 1944 inclusive)	$63,225
Indirect factory expenses applicable to cancelled contract—79% of $63,225	$49,948

[JTR 963.3]

§ 849.963–4 *Attached Schedule C to Form 1b.*

T. L. MANUFACTURING COMPANY

Settlement Proposal—Contract W-889-ac-112—Schedule C Form 1b—General and Administrative Expenses

General and administrative expenses for period from Jan. 1, 1944 to Sept. 30, 1944 inclusive are as follows: Operations under contract were begun Jan. 16, 1944.

Officers' salaries	$45,410
Office salaries	112,940
Social security taxes	4,741
Other taxes	8,500
Traveling expenses	14,895
Telephone and telegraph	5,983
Legal and other professional	15,492
Dues and subscriptions	4,634
Depreciation—office	13,449
Stationery and postage	16,466
Miscellaneous	5,637
Total	$248,147
Basis of allocation—total manufacturing costs incurred Jan. 1, 1944 to Sept. 30, 1944	$4,322,700
Per cent of general and administrative expense to total manufacturing costs incurred	5.74%
Total items 1 through 5 of settlement proposal	$398,585
4% of $398,584	$15,943

[JTR 963.4]

§ 849.963–5 *Other supporting schedules.* Proposals on Form 1b must be accompanied by Inventory Schedules on Forms 2a to 2d and Schedule of Accounting Information on Form 3. These are illustrated in §§ 849.962–4 to 849.962–9, inclusive, and are omitted here to conserve space. [JTR 963.5]

§ 849.964 *Instructions for use of standard proposal forms.*

Office of Contract Settlement
October 1, 1944

INSTRUCTIONS FOR USE OF STANDARD CONTRACT SETTLEMENT PROPOSAL FORMS

GENERAL

1. *Standard forms provided.* The Standard Forms are prescribed by the Director of Contract Settlement under the Contract Settlement Act of 1944. They are required to be used by all prime contractors and subcontractors in submitting proposals for settlement of claims under terminated fixed-price war supply contracts. This includes fixed-price supply subcontracts underlying cost-plus-fixed-fee prime contracts or subcontracts. The forms should be used by prime contractors for filing with the Government, and by subcontractors for filing with the company from which the notice of termination was received. They have been made uniform for all Departments and agencies of the United States Government in order to expedite preparation and review of settlement proposals. Previously authorized forms of the War Department or Navy Department may continue to be used until the Standard Forms are generally available.

2. *Departures from standard forms.* Although minor deviations from the requirements of the forms are permissible, prior approval of the contracting officer or the customer (contractor in next higher tier) should be obtained for any substantial departures from the requirements. However, a contractor receiving such approval may not require his subcontractors to submit their proposals on other than the prescribed standard forms. Submission of additional information which the contractor considers relevant is encouraged and may expedite review and approval of the proposal. As used in these instructions, the term "contracting officer" includes the contracting officer's representatives.

3. *Where to obtain forms.* The forms may be obtained from any Government contracting agency and the larger war contractors.

4. *Reproduction of forms.* Reproduction of the forms in any size is authorized, without approval of any Government agency, provided no change is made in the general arrangement. Reproduction of the inventory schedules on larger forms is encouraged where desired.

SHORT FORM SETTLEMENT PROPOSAL

(Form 1a)

5. This form may be used only where

(a) The contractor proposes to dispose of or retain all the inventory allocable to the terminated portion of the contract, and

(b) The net amount of the proposed settlement, after deducting his offer for the entire inventory (including proceeds of sales of any inventory disposed of) is less than $1,000.

6. Neither the inventory schedules (Forms 2a, 2b, 2c, and 2d) nor the Schedule of Accounting Information (Form 3) are to be submitted with this form. The back of the form contains instructions for its use. Also see Miscellaneous Instructions on page 3 hereof.

OTHER FORMS

7. The other forms are as follows:

(a) *Settlement proposal:*

Form 1—General form, which may be used for any proposal, other than one on the total cost basis, regardless of amount.

Form 1b—Total cost basis form, for use only where it is necessary to present the proposal on the total cost basis. This form is not generally distributed but will be provided by any Government contracting office on request.

(b) *Termination inventory schedules:*

Form 2a—Metals (in mill product form).

Form 2b—Raw Materials (other than metals), Purchased Parts, Finished Components, Finished Product, and Miscellaneous.

Form 2c—Work in Process.

Form 2d—Dies, Jigs, Fixtures, etc. and Special Tools.

(c) *Schedule of accounting information:*

Form 3—This form is provided to facilitate accounting reviews of settlement proposals, and, wherever possible, to enable the review to be made without field examination.

SETTLEMENT PROPOSAL

8. *Basis of presenting proposal.* Form 1 may be used for any settlement proposal, other than one on the total cost basis, regardless of amount. It is designed for presenting proposals on the inventory basis, which should be used wherever practicable. Under this basis the settlement proposal will consist essentially of an inventory of individual items or groups of similar items stated at cost. In those cases where the inventory method is not practicable, contractors may present their proposals on the *total cost basis.* Under this method, the accumulated costs applicable to all work done on the contract are summarized; profit, if any, is added, and any amounts previously invoiced or to be invoiced for finished product are then deducted. Form 1b, designed for presenting proposals on the total cost basis, may be obtained from any Government contracting agency on request. When using this form, a contractor must, however, for purposes of property accountability and disposition, submit Termination Inventory Schedules listing all the inventory items for which amounts are included in the total costs presented in the Settlement Proposal. The Contract Settlement Act of 1944 authorizes the use of any other equitable basis deemed appropriate by the contracting agency for determining fair compensation for the termination of war contracts. When using any such other method, the contractor should consult his customer or the contracting officer concerning the manner and form of presenting it.

9. *Separate proposals for separate contracts.* A separate proposal should ordinarily be submitted for each terminated war contract or purchase order unless some other procedure is approved by the contracting officer or customer. Claims based on a series of orders from the same purchaser for items applicable to the same contract may, however, be combined in a single proposal.

10. *Interim proposals.* Normally, a proposal when submitted should cover all elements of the claim, including the contractor's own charges and settlements with subcontractors. However, proposals may be filed in successive steps covering separate portions of a claim arising from the termination. Except with the approval of the customer or contracting officer, this system of progressive reporting should not be used to present claims covering portions of the contractor's own costs as they may be determined. Rather, it is intended to enable the contractor to file proposals covering either all his own costs, or his settlements with subcontractors, or his settlement expenses. In submitting an interim proposal, the contractor should complete only those portions of the form applicable to his proposal; for example, in submitting a proposal to cover settlements or proposed settlements with subcontractors, he should fill out, in addition to the boxes at the top of the form, only Schedule F and Item 14, and execute the certificate at the bottom of the form. Interim proposals may also be filed in connection with requests for partial payments. In submitting an initial proposal, amounts should be inserted only in column 4, and the required supporting schedules be completed. In filing subsequent proposals, the schedules should be completed in support of the items in column 3, or if this is not feasible, a revised schedule should be prepared in support of the accumulated totals in column 4.

11. *Individual items of Form 1:*

Settlement expenses—Item 12. These are sometimes referred to as post-termination expenses. They include reasonable accounting, legal, clerical, and other costs and expenses incident to termination and settlement of the contract or order, and reasonable costs and expenses of preserving and protecting termination inventory.

Settlements with subcontractors—Item 14. The war contractor submitting a settlement proposal need attach settlement proposals of his subcontractors only in cases where such settlement proposals are required by Government regulations to be reviewed or examined by the contracting officer or a Government review board, or where the contracting officer or customer so directs.

Acceptable finished product—Item 15. Normally prime contractors will be authorized to obtain payment for acceptable finished product on hand at date of termination by invoicing at the contract price, and such product will not be reported on the inventory forms or be included in the proposed settlement. Subcontractors should similarly seek to obtain payment for acceptable finished product on hand at the date of termination through regular billing procedure. Where, however, such payment is not obtained (solely because of the termination), the items should be listed on the appropriate inventory schedule (Form 2b), the contract price should be entered instead of cost in the cost column, and the items included at contract price in the settlement proposal. If the contract price is a delivered price, freight and other charges which would have been payable by the contractor had delivery been completed should be deducted.

Allowance for interest—Item 16. The Contract Settlement Act of 1944 provides for allowing interest on the amount due and unpaid from time to time on the termination claim at the rate of 2½ percent per annum for the period beginning 30 days after the date fixed for termination and ending with the date of final payment, with certain exceptions stated in section 6 (f) of the Act. For guidance in computing the interest to be allowed, reference is made to regulations of the various contracting agencies.

Disposal credits—Item 18. This item represents amounts by which the contractor's proposal should be reduced on account of (1) the contractor's offers to retain or sell inventory items, and (2) the proceeds of authorized sales (including credits for authorized retentions). The amount entered on Schedule G in the first proposal filed should agree with the total of the contractor's offers and the proceeds of authorized sales shown in column 8 on all the inventory schedules. If a subsequent settlement proposal is filed, increases or decreases in the amount of the disposal credits need not be supported by revised inventory Schedules, but adjustments should be explained in Schedule G. If practicable, the part of the disposal credit applicable to acceptable finished product included in the proposal should be shown separately in Schedule G.

12. *Supporting inventory schedules.* Items 1 through 7, and Item 15, must be supported by the inventory schedules described below.

TERMINATION INVENTORY SCHEDULES

(Forms 2a, 2b, 2c, and 2d)

13. *When used.* These schedules, which are filed either with or in advance of the Settlement Proposal (other than the Short Form) serve two principal purposes: (1) To support the amount of inventory costs included in the Settlement Proposal; and (2) to aid in arranging for the removal, storage, sale, or other disposition of the termination inventory.

14. *Partial inventories.* Where inventory schedules covering a substantial portion of the inventory can be prepared in advance of other portions, partial filings are encouraged in the interest of expediting property removal and disposal.

15. *Description—Column 2.* On Form 2a (Metals) full commercial description is required for all items. On all other inventory schedules full commercial description is required only for items believed to have commercial value. For other items, the contractor need furnish only such description as is sufficient to enable the contracting officer or customer, as the case may be, to determine the appropriate disposition. This may involve ascertaining whether the items can be used elsewhere in the procurement program, or passing upon scrap recommendations or offers to purchase. The more limited description required for these purposes will ordinarily suffice in the case of most special parts, most special tools, dies, jigs and fixtures, and most work in process. Where the contractor is in doubt as to the extent of the description required, he should consult with the contracting officer or the customer who may accept such description as he thinks satisfactory under all the circumstances. The "Handbook of Standards for Describing Surplus Property" compiled for the disposal agencies of the Government, will be made available by contracting agencies to war contractors. It will be helpful as a guide to the type of information needed for a full commercial description.

16. *Sundry listing of small amounts.* Items having a cost of less than $100 need not be listed separately but may be lumped together under a "sundry" caption with only a general description of the type of items, provided the aggregate amount included does not exceed $5,000, or 20 percent of the total inventory cost, whichever is less. For this purpose, the term "item" means all the substantially similar articles in the termination inventory at any one location. Contractors are urged to retain or dispose of all such items at the best price obtainable. In the case of items retained by the contractor this means a price which in his judgment is fair and reasonable and not less than the price he would obtain if the item were offered for sale. His insertion in column 8 of the Inventory Schedules, or in Schedule G of the Settlement Proposal, of amounts in respect of such items will constitute his representation that such amounts are in his judgment the best prices obtainable, as that phrase is used above. No approval of such prices by the customer or the contracting officer will be required.

17. *Common items.* Items which are reasonably usable on other work of the contractor because they are materials, parts, or components, common in nature to both the terminated contract and other work of the contractor, should not be listed, nor should any costs with respect thereto be included in the proposal, to the extent that the items are reasonably applicable to the contractor's other work in accordance with regulations of the contracting agency.

18. *Classification of items.* To aid in selling or storing property which is to be removed from the contractor's plant by the Government, a classified arrangement of the items on the inventory schedules is essential. Except in the case of work in process and of items having no commercial value, like items are required to be listed with like items and, with certain exceptions, a separate sheet must be used for each classification of property at any one location. Instructions for arranging the items on the Inventory Schedules are given in Appendix A hereto and must be closely followed.

19. *Submission of termination inventory schedules and obligation of government to remove property.* These schedules will serve as the contractor's statement showing the material claimed to be termination inventory which, if not otherwise disposed of or covered by agreement, he desires to have removed by the Government. The obligation of the Government under the Contract Settlement Act of 1944 to remove or arrange for storage of any such items will not arise until 60 days, or such other time as may be agreed on, after the Termination Inventory Schedules on which they are listed are received in satisfactory form by the appropriate Government officer in such manner as may be prescribed. In the case of a prime contract, the appropriate Government officer is the contracting officer, or his representative,[1] administering the contract, or such other representative as the contracting agency may designate. In the case of a subcontract, it is the contracting officer, or his representative,[1] administering the prime contract under which the subcontract is terminated, or such other representative as the contracting agency may designate. Both the description and classification required by these instructions are necessary for satisfactory form. Schedules will not be deemed unsatisfactory in form with respect to items under $100 cost merely because they are lumped under a "sundry" caption in accordance with paragraph 16 above: *Provided,* The contractor files a supplementary Termination Inventory Schedule or Schedules with respect thereto which are in satisfactory form and meet the following conditions: (1) that they be received by the appropriate Government officer at least 20 days (or such other time as the contracting agency may prescribe) before the obligation of the Government would arise to remove or arrange for storage of the items in the "sundry" caption, (2) that there be listed any such items which have not by that time been disposed of and are to be tendered to the Government, and (3) that such items be described and classified in accordance with paragraphs 15 and 18 above.

20. *Option to submit unclassified schedules.* Subject to the conditions stated below, contractors who desire to do so may prepare and submit the Termination Inventory Schedules without classification of the items. This may make possible an earlier submission of the Settlement Proposal and may enable the contractor to avoid classification of items which will in fact be scrapped, retained, or otherwise disposed of without transfer to the Government. Schedules so submitted to the contracting officer or his representatives will not, however, be deemed to be satisfactory in form, as that term is used in paragraph 19 above, and the 60-day period there referred to will not commence to run with respect to any of the items included on them until supplementary schedules containing the required classified listing of such items are received by the appropriate Government officer.

21. *Condition—Column 3.* For purposes of indicating condition of material, other than work in process, the following code should be used. It requires the combination of a letter and a number in each instance (as E4 or N2)

N—New	1—Excellent
E—Used—reconditioned	2—Good
O—Used—usable without repairs	3—Fair
R—Used—repairs required	4—Poor

Use the letter "X," without a number, for material considered to have no further value for use as originally intended, but of possible salvage value other than as scrap.

22. *Costs—Columns 5 and 6.* Any generally recognized basis for costing inventory may be used, providing the system has been regularly in use by the contractor and reasonably reflects his costs. In some cases, particularly where a settlement proposal is filed on the total cost basis, complete costing of inventory schedules may not be possible; in such cases, however, the contractor should give as much cost information as practicable, particularly with respect to items of inventory other than work in process. Where the contractor's system of accounting makes it impracticable to determine unit costs for each item of inventory, it is permissible to enter total costs for all of the items or for groups of similar items. Estimated costs should be given where actual costs are not available.

23. *Scrap recommendation—Column 7.* A contractor should make scrap recommendations by inserting an "S" in column 7.

24. *Contractor's offer, or proceeds of authorized sale.* The letter "C" inserted after the dollar amount in column 8 will indicate the contractors' offer to retain or sell, and the letter "A" so inserted will indicate a sale (or credit for retention) previously authorized or approved by or on behalf of the contracting officer or customer. In either case quantity should also be shown (on a second line) if less than the full quantity shown in column 4.

25. *Inventory certificate required.* The Inventory Schedules, whether or not filed with the Settlement Proposal, must be accompanied by a certificate in the form set forth in Appendix B hereto. When the procedure authorized in paragraph 20 is followed, the second paragraph of the form of certificate should be omitted.

26. *Government-owned property.* Whenever Government-owned property is listed on the Termination Inventory Schedules, separate sheets should be used, marked to show that the items are Government-owned, and the schedules should be filed with the authorized Government representative as that term is used in paragraph 19 above.

(a) Termination inventory to which the Government has title under fixed-price contracts should be listed on the Termination Inventory Schedules as follows:

(1) The Government-owned materials furnished under the terminated contract without cost to the contractor (sometimes called "Government-furnished materials" or "Government-furnished equipment") should, for purposes of property accountability and disposition and not as a part of the settlement proposal, be listed unless the contracting officer directs otherwise.

(2) Where under a fixed-price supply contract, title to materials purchased by the contractor is vested in the Government, such materials should be listed, and cost data supplied to the extent required under paragraph 22 above.

(b) Government-owned facilities should not be listed on the Termination Inventory Schedules unless the contracting agency or the contracting officer so directs.

(c) Although these Instructions relate to fixed-price supply contracts, termination inventory under cost-plus-fixed-fee contracts may also be listed on the Termination Inventory Schedules if the contractor desires, and shall be so listed if required by the contracting agency.

SCHEDULE OF ACCOUNTING INFORMATION

(Form 3)

27. Form 3 is intended to facilitate accounting reviews and particularly to obviate the necessity of many field examinations which might otherwise be required. It should be filed only once in connection with each termination. It is not required if (1)

[1] In the case of the Navy Department, Navy Material Inspectors and other designated representatives for property disposition purposes with regard to the particular prime contract or subcontract will act as the representative of the contracting officer for this purpose.

the proposal is submitted on the Short Form (Form 1a), or (2) filing of Form 3 has been waived by the contracting officer or customer, or (3) the contractor has already filed a Form 3 with the contracting office or customer in connection with a previous termination. In the latter case a statement showing any changes in accounting information from that set forth in the previously filed Form 3 will be sufficient.

MISCELLANEOUS INSTRUCTIONS

28. *Cents may be omitted.* In any of the forms, cents may be omitted, either by dropping them entirely or by stating the amount at the nearest dollar, except in the case of the unit cost column (col. 5) of the Inventory Schedules.

29. *Separate schedules.* If the space provided for any information called for by any of the forms is insufficient, attach separate supporting schedules.

30. *Number of copies.* The number of copies required of any of the forms will be indicated by the Government contracting agency or the contractor from whom notice of termination is received.

31. *Retention of records.* Attention is called to Section 19 of the Contract Settlement Act of 1944, which with certain exceptions requires contractors to retain their records and working papers for five years after (1) disposition of termination inventory, or (2) final settlement of the war contract, or (3) termination of hostilities in the present war, whichever is latest. Attention is also called to the provisions of Section 19 of the Act imposing penalties for filing fraudulent claims.

32. *Deliveries to Government may be required.* Contractors will be advised, usually in the Notice of Termination, of any portions of the termination inventory which the Government requires to be delivered to it.

33. *Approval of proposals filed on Form 1a (Short form).* Where a war contractor in good faith approves any settlement proposal properly submitted to him on Form 1a by his immediate subcontractor, the settlement, including credits for retention or disposal of inventory, will be recognized by the Government as final and conclusive for the purpose of settling the terminated prime contract, to the extent the subcontract is allocable to it, unless the contracting agency has previously caused notice to be given to the settling war contractor that such settlements made by him are subject to approval by the Government.

34. *References.* For guidance in preparing Settlement Proposals reference is made to the termination article of the contract, the Contract Settlement Act of 1944, and the regulations and instructions of various Government contracting agencies, and of the Director of Contract Settlement.

35. *Changes in instructions.* These instructions are subject to change by notice published in the FEDERAL REGISTER.

APPENDIX A—CLASSIFYING ITEMS ON THE INVENTORY SCHEDULES

GENERAL

1. *Why classification required.* Inventory Schedules will not be considered to be in satisfactory form for the purposes of the 60-day period referred to in paragraph 19 of Instructions above unless the items are arranged in general groupings on separate sheets in accordance with the following instructions. This procedure is prescribed in order to facilitate removal from the contractor's plant and disposal of property listed on the Inventory Schedules and to meet the requirements of the disposal agencies. Contractors are urged to follow the instructions carefully in order to avoid delays in clearing their plants.

2. *Classification distinguished from description.* These instructions concerning classification apply solely to the arrangement of items on separate inventory sheets and in no way affect the requirements for *description* of the items, set forth in paragraph 15.

3. *When classification required.*

On Form 2a—Metals.	Classification required for all items.
On Form 2c—Work in Process.	No classification required.
On Form 2b—Raw Materials (other than metals); Purchased Parts; Finished Components; Finished Product; Miscellaneous.	Classification required for items believed to have commercial value; items having no commercial value may be placed in a single classification designated "No Commercial Value."
On Form 2d—Dies, Jigs, Fixtures, etc., and Special Tools.	

Description is, however, required in all instances in accordance with paragraph 15 of the Instructions.

4. *Instructions for classifying.* For metals (in mill product form) and raw materials, list items of one material with items of the same material. For all other products, list like items with like items. Each group will then comprise a separate classification of property See examples below.

5. Write in the top right-hand corner of each inventory sheet opposite "Property Classification" the name of the classification for which the sheet is used. For example, in the case of Metals the name of the metal; in the case of Raw Materials (other than metals), or of Parts, Finished Components, Finished Product, or Miscellaneous, the name by which the material or article is commonly known in the trade.

6. Use a new sheet for each such separate general classification. In the case of small inventories or classifications having only a few items, however, several different classifications may be put on the same page, provided they are separated by at least three spaces, and the name of each classification is written in the top right-hand corner of the form.

7. *Option to submit unclassified schedules.* See paragraph 20 of the Instructions concerning filing inventory schedules without classification of the items, and the effect thereof on any obligation of the Government under the Contract Settlement Act of 1944 to remove or arrange for storage of the items listed.

INDIVIDUAL FORMS

8. *On Form 2a—Metals* (in mill product form, excluding castings and forgings).

List metals in raw or primary form as furnished by the mill and on which there has been no subsequent fabricating operation. Do not include castings and forgings. They are to be listed on Form 2b. Except where there are only a few items, use a new sheet or series of sheets for each type of metal, and write the name of the metal or alloy in the space provided in the upper right-hand corner of the form. Examples are:

Alloy Steel	Manganese Bronze
Carbon Steel	Aluminum
Stainless Steel	Silver
Copper	Tin
Free Cutting Brass	

In addition, on the sheets for any such metal, list like forms of the metal or alloy together in sequence. For example, on the sheets or sheets used to list Carbon Steel, group together all the strip, then follow with the sheets, then the bar stock, etc.

9. *On Form 2b—Raw Materials (other than Metals); Purchased Parts; Finished Components; Finished Product; and Miscellaneous.* The term "Raw Materials" is here used to include materials in primary form. Examples of the many different general classifications of raw or primary materials (other than metals) include:

Chemicals	Shoe cut stock
Pulp and paper	Cement
Paper board	Cork
Plastics (primary forms)	Textiles
	Cotton
Oils, fats, waxes	Kapok
Rubber	Wool
Lumber	Hair
Hides and skins	Glass
Leather	

Examples of some of the large number of general classifications of parts, components, finished product, or miscellaneous include:

Engines and turbines	Fans and blowers
Compressors and pumps	Bearings
	Valves
Insulated wire and cable	Surgical instruments
	Electric motors
Nuts and bolts	Drugs
Conveyors	Ignition equipment

Note that on this form items having no commercial value may be placed in a single classification designated "No Commercial Value," and no further classification of such items is required. For items deemed to have commercial value, use a new sheet for each classification (except as permitted under paragraph 6 above). Insert the name of the classification in the top right-hand corner of the inventory form and arrange the items falling under that classification in sequence under separate subheadings. For example, on the sheet or sheets used to list Chemicals, group separately all Acids, all Alkalis, all Resins, etc. Under the general classification of Insulated Wire and Cable, group separately all Asbestos-Insulated Copper Wire, all Rubber-Insulated Copper Wire, all Magnet Wire, etc. On the sheets used for Drugs, group separately all Antitoxins, all Vaccines, all Strychnine Derivatives, all Morphine Derivatives, etc.

10. *On Form 2c—Work in Process.* No classification of items is required on this schedule. However, a description must be given sufficient to enable the Government representative to identify the property and determine the appropriate method of disposal. Finished components should not be listed on this form but on Form 2b. Other materials which have not lost their identity through whole or partial assembly and which are deemed to have a further commercial use should similarly be listed on Form 2b.

11. *On Form 2d—Dies, Jigs, Fixtures, etc., and Special Tools.* Note that on this form items having no commercial value may be placed in a single classification designated "No Commercial Value." Such items require no further classification. For items deemed to have commercial value, general classifications may be limited to the following:

Dies Jigs Gauges
Fixtures Special tools

Use a new sheet for each such general classification (except as permitted under paragraph 6 above). Insert the name of the classification in the top right-hand corner, and list the items falling under that classifi-

cation in sequence. For example, on the sheet used to list Dies, group separately all Extruding Dies, all Forging Dies, all Forming Dies, etc. On the sheet used for Gauges, group separately all Thread Gauges, all Radius Gauges, all Depth Gauges, etc.

12. If perishable tools are charged to indirect factory expense, they may not also be included in termination inventory. Where, however, indirect factory expense is adjusted to exclude such a charge, or where the perishable tools are charged directly to the contract, they should be included in the inventory, but should be listed on Form 2b and not 2d.

13. *List separately when in doubt.* Extreme care should be used to list only very similar items together as a single classification. If doubt exists as to the proper classification of any item, list that item separately and insert the commonly accepted trade name at the top right-hand corner of the page. Where forms overlap, the contractor may use the form best suited, except that finished components should be put on Form 2b and not on Form 2c.

APPENDIX B (SEE INSTRUCTIONS, PAR. 25)—FORM OF TERMINATION INVENTORY SCHEDULE CERTIFICATE

The contractor hereby certifies that the attached Termination Inventory Schedules, pages ____ to ____, inclusive, have been prepared in accordance with applicable instructions; that the inventory described therein is allocable to the designated contract and is located at the places specified; that the quantities are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; and that the prices shown in column 8 (contractor's offer, or proceeds of authorized sale) are fair and reasonable and comply with Government price regulations.

The attached Schedules constitute the contractor's statement showing the materials claimed to be termination inventory which, if not otherwise disposed of, the contractor desires to have removed by the Government within 60 days from receipt hereof by the Government, or such shorter period as may be prescribed under the Contract Settlement Act of 1944, or such other period as may be agreed upon. Subject to such prior disposition, title to such materials is hereby tendered to the Government and is warranted to be free and clear of all liens and encumbrances.

Upon request of the Government, the contractor (will) (will not) negotiate to store at
(Strike out one)
the Government's expense all or part of the inventory listed in the attached Schedules.

_____
(Name of contractor or subcontractor)
By _____
(Name of authorized officer)
_____
(Title)
_____
(Date)

The supervisory accounting official is:

_____
(Signature)
_____
(Title)

These Instructions have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942

[JTR 964]

§ 849.965 *Settlement proposal for use on terminated cost and cost-plus-a-fixed-fee contracts.*

NOTE: Forms printed in the FEDERAL REGISTER are for information only, and do not follow the exact format prescribed by the issuing agency.

War Dept.—Form 70
Navy Dept.—Navexos—2779
Budget Bureau No. 49-R239
Approval Expires June 30, 1945

SETTLEMENT PROPOSAL

For use on terminated cost and cost-plus-a-fixed-fee contracts

Company	This is proposal No. _____
Street address	Check one ☐ Partial ☐ Final
City and State	

Govt. prime contract number	Subcontract number	Effective date of termination

Item (1)	Total previously submitted (2)	Increase or decrease by this proposal (3)	Total submitted to date (4)
1. Direct material	$	$	$
2. Direct labor			
3. Indirect factory expense			
4. Dies, jigs, fixtures and special tools			
5. General and administrative expense			
6.			
7. Total (items 1 to 6 inclusive)			
8. Fee			
9. Settlement expenses			
10. Settlements with subcontractors			
11.			
12.			
13. Total (items 7 to 12 inclusive)			
14. Disposal credits			
15. Previous payments to contractor			
16.			
17.			
18. Total credits (items 14 to 17 inclusive)			
19. Net proposed settlement			

NOTE: Schedules in support of items 1 to 17 are to be submitted in accordance with the requirements of the individual services.

CERTIFICATE

The undersigned, individually and as an authorized representative of the contractor, certifies that he has examined this Settlement Proposal and that, to the best of his knowledge and belief:

(1) AS TO CONTRACTOR'S OWN CHARGES—The Proposed Settlement (exclusive of charges set forth in Item 10) and supporting schedules and explanations have been prepared from the books of account and records of the contractor in accordance with the terms of the contract, they include only those charges allocable to the terminated contract; they have been prepared with knowledge that they will, or may, be used directly or indirectly as the basis of settlement of a claim or claims against the United States or an agency thereof; and the charges as stated are fair and reasonable.

(2) AS TO SUBCONTRACTORS' CHARGES—(a) The contractor has examined, or caused to be examined, to an extent it considers adequate in the circumstances, the claims of its immediate subcontractors (exclusive of claims filed against such immediate subcontractors by their subcontractors); (b) the settlements on account of immediate subcontractors' 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 subcontractors than those which the contractor would make if reimbursement by the Government were not involved; (c) the contractor has received from all its immediate subcontractors appropriate certificates with respect to their claims, which certificates, if the claims are for more than $1,000, are substantially in the form of this certificate; and (d) the contractor has no knowledge leading it to doubt (i) the reasonableness of the settlements with more remote subcontractors or (ii) that the charges for them are allocable to this contract. Upon receipt by the contractor of amounts covering settlements with its immediate subcontractors, the contractor will pay or credit them promptly with the amount so received, to the extent that it has not previously done so. The term subcontractor as used above includes suppliers.

The undersigned certifies that to the best of his knowledge and belief the statements with respect to accounting matters made in the above Certificate are true.

_____
(Name of contractor)
By _____
(Contractor's supervisory accounting official) (Signature of authorized executive official)
_____ _____
(Title) (Title) (Date)

[JTR 965]

§ 849.966 *Proposal for settlement of interest claims where interest on a V or VT-loan has been waived.* [JTR 966]

§ 849.966–1 *Form for claiming interest on terminated contracts where interest on loans guaranteed by the government has been waived.* The following form will be used in accordance with § 845.572–4 (b):

NOTE: Forms printed in the FEDERAL REGISTER are for information only, and do not follow the exact format prescribed by the issuing agency.

CLAIM FOR INTEREST ON TERMINATED CONTRACTS WHEN INTEREST ON A V OR VT-LOAN HAS BEEN WAIVED

Form Approved
Budget Bureau No.
45-4141

Number of prime contract, subcontract or purchase order used as basis for waiver of interest on a V or VT-loan.	Applicable prime contract number, in case of subcontracts or purchase orders shown in column 1.	Interest claimed

Total interest on termination claim	(1)	
Amount of interest on loan waived under Section 6 adjustment subsequent to July 21, 1944 (computation shown in supporting schedule attached).	(2)	
Interest payable (1 minus 2)	(3)	

I certify that the above claim is correct and just and that payment therefor has not been received.

_____
(Contractor)

Approved as to contract numbers and amount of interest waived _____ By _____
Claim approved _____

[JTR 966.1]

§ 849.966–2 *Instructions for claiming interest under terminated contracts where interest on loans guaranteed by the government has been waived.*

INSTRUCTIONS

(1) War contractors who have obtained a waiver of interest on a V or VT-loan for a period ending after 21 July 1944, should use the form appearing on the reverse side hereof [§ 849.966–1] in submitting a claim for interest on account of all terminated contracts which served as a basis for such waiver, as provided in § 845.572–4 (b) of the Joint Termination Regulation of the War and Navy Departments.

(2) When a war contractor is no longer entitled to a waiver of interest obtained pursuant to an adjustment under Section 6 of a V or VT-loan guarantee agreement, he may file with the guarantor a consolidated claim

for interest in connection with the terminated contracts which served as a basis for the adjustment. This consolidated claim should be submitted separately from all other termination claims, and should be supported by schedules showing the computation of interest claimed on each terminated contract and the amount of interest waived under the Section 6 adjustment subsequent to 21 July 1944. The interest claimed should be computed in accordance with § 845.572 of the Joint Termination Regulation. The amount of interest waived under the Section 6 adjustment should be checked with the financing institution which made the loan.

(3) If the loan in connection with which the adjustment was obtained was guaranteed by the War Department, the claim should be submitted to the War Department Liaison Officer assigned to the Federal Reserve Bank through which the guaranteed loan was processed. If the loan was guaranteed by the Navy Department, the claim should be submitted to the Federal Reserve Bank through which the guaranteed loan was processed.

(4) The Liaison Officer or the Federal Reserve Bank will verify the numbers of the contracts upon which the Section 6 adjustment was based and the amount of interest waived, and will thereupon forward the claim and supporting schedules (via the Finance Division, OP&M, in the case of loans guaranteed by the Navy Department) to the service or bureau having a preponderant interest in the terminated war contracts upon which the claim is based.

(5) The service or bureau to which a claim has been submitted will verify the claim to the extent deemed necessary, and, upon approval, will thereupon submit it, with an appropriate voucher, to the disbursing officer for payment.

[JTR 966.2]

SUBPART G—FORMS RELATING TO PROPERTY DISPOSITION

§ 849.970 *Scope.* This subpart contains forms of receipts for termination inventory removed from contractors' plants, storage agreements, certificates relating to property disposition, and the application for disposition of plant equipment. [JTR 970]

§ 849.971 *Form of receipt for the removal of contractor inventory from contractors' plants.* [JTR 971]

The following form of receipt will be used in accordance with § 844.466.

I certify that the articles indicated as shipped or to be shipped have been inspected by me or under my supervision and receipt thereof is acknowledged in accordance with JTR 466.

_____ _____
(Date) (Name and title of officer)

[JTR 971]

§ 849.972 *Form for standard storage agreements.* [JTR 972]

§ 849.972–1 *Agreement with war contractor for storage space.* The following form will be used in accordance with § 844.465–2.

(At the top insert all special details relating to number of contract, service or bureau involved, appropriation or allotment, etc.)

This agreement, entered into pursuant to the Contract Settlement Act of 1944 as of this _____ day of _____, 194__ by The United States of America (hereinafter called "the Government"), represented by the Contracting Officer executing this contract and _____ (hereinafter called "the Contractor");

Witnesseth that:

Whereas, the Government has terminated for its convenience or at its option war contract(s) numbered _____ (hereinafter referred to as "the Contract(s)"); and

Whereas, the Contractor has submitted to the Government an inventory of property in Schedule "A" attached hereto (the property described in Schedule "A" as it may from time to time be amended is hereinafter referred to as "the Property"), which the Contractor certifies is in its possession and is allocable to said terminated Contract(s); and

Whereas, the Contractor has requested that the Government take and remove the Property; and

Whereas, the Contractor is willing to provide certain space for the storage of the Property in accordance with the terms hereof until the Government removes it;

Now, therefore, the parties hereto do mutually agree as follows:

ARTICLE 1. *Transfer of title.* The Contractor, (without prejudice to any right the Contractor may have to compensation for the Property in connection with the termination settlement of the Contract(s)) does hereby transfer and convey to the Government, subject to plus or minus tolerances of quantities, weights and conditions within reasonable limits in accordance with good commercial inventory practice, title to the Property, free and clear of all liens and encumbrances, except that as to any of the Property title to which is already in the Government, the Contractor hereby confirms and acknowledges that to the best of his knowledge the Government now has title thereto, free and clear of all liens and encumbrances; 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 except as specified otherwise in Article 2 hereof, the Government reserves the right to contest the allocability of any or all of the Property to the terminated portion(s) of the Contract(s).[1]

[Delete this Article 2 if prior to the date of execution of this Agreement, a final written determination of allocability of the Property to the Contract(s) has been made.]

ART. 2. *Allocability.* (a) If it is determined prior to final settlement of the Contract(s) that any of the Property [other than that specified in paragraph (b) hereof] is not allocable to the terminated portion of the Contract(s) then the Government in arriving at the amount of the final settlement thereof will at its election 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 or property in kind to the Contractor at the Contractor's risk and expense; and after final settlement the Contractor will have no claim against the Government by reason of the Property.

[Delete this subparagraph (b) if inapplicable.]

(b) The parties hereto agree that the Property identified and described in Schedule "B" attached hereto is allocable to the Contract(s):

ART. 3. *Storage space.* The Contractor agrees to provide the storage space for the Property for the consideration of $_____ per month.[2] The Property shall be stored at the following premises: 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 made pursuant to Article 9 hereof or the Contractor packs or otherwise prepares the Property for shipment at the direction of the Contracting Officer, the compensation to be paid to the Contractor shall be equitably adjusted by mutual agreement.

[Delete this Article 4 if prior to the date of execution of this Agreement, a final written determination of the allocability of the Property to the Contract(s) and the fact that it is Government owned has been made.]

ART. 4. *Reduction in 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 the Contract(s), the amount of payment(s) set forth in Article 3 hereof shall by mutual agreement be reduced retroactively to and including the month in which the Property was first stored hereunder.

ART. 5. *Contract period.* (a) This Contract shall continue until: (i) it shall be terminated by either party hereto giving to the other thirty days' previous notice in writing; or (ii) delivery of the entire quantity of the Property to the Government.[3]

(b) Upon termination the Contractor shall be paid pro rata for storage charges to and including the day on which the thirty days' notice expires or the delivery to the Government of the entire quantity of the Property is completed.

ART. 6. *Inspection.* The Government shall have access at any reasonable time to the premises where the Property is stored hereunder.

ART. 7. *Segregation of property.* All the Property shall be kept separate from all other property whether or not the Property may, by law or by custom, be considered fungible, and shall be identified as Government-owned property. 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.[4]

ART. 8. *Submission of invoices.* The Contractor shall submit monthly to the Contracting Officer properly certified invoices or vouchers for all accrued charges under this agreement for the preceding storage month.

ART. 9. *Deliveries.* Deliveries of all, or from time to time, of part, of the Property from storage 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.

ART. 10. *Liability for the property.* (a) The Contractor shall not be liable for loss or destruction of or damage to the Property unless such loss, destruction or damage results from (1) wilful misconduct or failure to ex-

[1] Delete clause following last semicolon if, prior to the date of execution of this agreement, a final, written determination of allocability of the Property to the Contract(s) has been made.

[2] Where practicable storage rates may be computed on a square or cubic foot basis.

[3] In case of Navy Department contracts add to the end of this sentence the following phrase: "or (iii) the 30th of June next succeeding the date of execution of this agreement and thereafter for such further period as may be agreed upon by the parties as evidenced by an amendment hereto, whichever one of the foregoing is earliest."

[4] When in the opinion of the Contracting Officer the circumstances so require, special articles may be added to this agreement 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 stock so as to protect or insure maximum use of storage space; or in accordance with necessary safety requirements.

ercise good faith on the part of the Contractor's corporate officers or of the Contractor's employees having supervision or direction of inventorying, segregating, packing, storing or otherwise caring for the Property, or (2) from failure of the Contractor to comply with the terms of this agreement;

(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 the 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.

ART. 11. *Renegotiation.* (War Department Procurement Regulations, § 803.342–1; Navy Department Procurement Directives, par. 14,402)—[Insert this clause only when contract is for an amount in excess of $100,000.]

ART. 12. *Eight-hour law.* (War Department Procurement Regulations, § 803.346; Navy Procurement Directives, par. 13,151.)

ART. 13. *Anti-discrimination.* (War Department Procurement Regulations, § 803.325; Navy Procurement Directives, par. 17,731.)

ART. 14. *Officials not to benefit.* (War Department Procurement Regulations, § 803.322; Navy Procurement Directives, par. 17,601.)

ART. 15. *Covenant against contingent fees.* (War Department Procurement Regulations, § 803.323; Navy Procurement Directives, par. 10,631.)

ART. 16. *Disputes.* (War Department Procurement Regulations, § 803.326; Navy Procurement Directives, par. 11,604.)

ART. 17. *Assignment of rights hereunder.* (War Department Procurement Regulations, § 803.335; Navy Procurement Directives, par. 12,305.)

ART. 18. *Definitions.* (a) The term "Secretary of War (the Navy)" as used herein shall include the Secretary, Under Secretary, or any Assistant Secretary of War (the Navy), and the term "his duly authorized representative" shall mean any person or board authorized by him to act for him other than the Contracting Officer.

(b) The term "Contracting Officer" means (1) the officer or employee who signs this agreement in behalf of the Government or who is designated as such in this agreement, or (2) any duly appointed successor or authorized representative of such a Contracting Officer or any Government agency (or person designated thereby) to which this agreement is transferred.

ART. 19. *Alterations.* The following changes were made in this agreement before it was signed by the parties hereto:

[Optional for War Department—ARTICLE 20. *Records of Government-Owned Property* ____

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is designated as the officer to maintain the necessary property records in connection with this agreement.]

In witness whereof,

[JTR 972.1]

§ 849.972–2 *Agreement with war contractor for storage and service.* The following form will be used in accordance with § 844.465–2.

(At the top insert all special details relating to number of contract, service or bureau involved, appropriation or allotment, etc.)

This agreement, entered into pursuant to the Contract Settlement Act of 1944 as of this _____ day of _____, 194__, by The United States of America (hereinafter called "the Government"), represented by the Contracting Officer executing this contract and _____ (hereinafter called "the Contractor");

Witnesseth that:

Whereas, the Government has terminated for its convenience or at its option war contract(s) numbered _____ (hereinafter referred to as "the Contract(s)"); and

Whereas, the Contractor has submitted to the Government an inventory of property in Schedule "A" attached hereto (the property described in Schedule "A" as it may from time to time be amended is hereinafter referred to as "the Property") which the Contractor certifies is in its possession in the quantities, weights and conditions set forth therein subject to plus or minus tolerances within reasonable limits in accordance with good commercial inventory practice, and is allocable to said terminated Contract(s) or has been furnished to the Contractor by the Government in connection therewith; and

Whereas, the Contractor has requested that the Government take and remove the Property; and

Whereas, the Contractor is willing to store the Property and perform the services in accordance with the terms hereof:

Now, therefore, the parties hereto do mutually agree as follows:

ARTICLE 1. *Transfer of title.* The Contractor, (without prejudice to any right the Contractor may have to compensation for the Property in connection with the termination settlement of the Contract(s)) does hereby transfer and convey to the Government, subject to plus or minus tolerances of quantities, weights and conditions within reasonable limits in accordance with good commercial inventory practice, title to the Property, free and clear of all liens and encumbrances, except that as to any of the Property title to which is already in the Government, the Contractor hereby confirms and acknowledges that to the best of his knowledge the Government now has title thereto free and clear of all liens and encumbrances; 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 except as specified otherwise in Article 2 hereof, the Government reserves the right to contest the allocability of any or all of the Property to the terminated portion(s) of the Contract(s).[1]

[Delete this Article 2 if prior to the date of execution of this Agreement, a final written determination of allocability of the Property to the Contract(s) has been made.]

ART. 2. *Allocability.* (a) If it is determined prior to final settlement of the Contract(s) that any of the Property (other than that specified in paragraph (b) hereof) is not allocable to the terminated portion of the Contract(s) then the Government in arriving at the amount of the final settlement thereof will at its election 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 or property in kind to the Contractor at the Contractor's risk and expense; and after final settlement the Contractor will have no claim against the Government by reason of the Property.

[Delete this subparagraph (b) if inapplicable.]

(b) The parties hereto agree that the Property identified and described in Schedule "B" attached hereto is allocable to the Contract(s):

ART. 3. *Services.* The Contractor agrees to perform all the services necessary in the handling, storage, and preservation of the Property for the consideration of $_____ per month to be paid it by the Government.[2] The Property shall be stored at the following premises:

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 made pursuant to Article 9 hereof or the Contractor packs or otherwise prepares the Property for shipment at the direction of the Contracting Officer, the compensation to be paid to the Contractor shall be equitably adjusted by mutual agreement.

(Or)

[Alternative] ART. 3. *Services.* The Contractor agrees to perform all the services necessary in the handling, storage, preservation, packing and delivery of the Property.

For his services under this article the Government shall pay the Contractor the following:

(a) For the necessary handling, packing and preparing for storage in connection with the initial storage of the Property the sum of $_____. It is agreed by the parties hereto that in the determination of such sum due allowance has been made for any sum previously paid or payable to the Contractor.

(b) For the services of storing and preserving the Property the sum of $_____ per month.[2]

(c) For any additional services, such as packing for shipment, delivery or drayage to a designated carrier or transfer agent in accordance with Article 9 hereof, the Government shall pay the Contractor a reasonable amount to be determined by mutual agreement.

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 when deliveries are made pursuant to Article 9 hereof or the Contractor packs or otherwise prepares the Property for shipment at the direction of the Contracting Officer, the compensation to be paid to the Contractor shall be equitably adjusted by mutual agreement. Any claim for payment in addition to that specified in paragraphs (a) and (b) hereof or for payment under paragraph (c) hereof must be asserted within thirty days from the date the services are rendered, or within such further period as the Contracting Officer may allow.

The Property shall be stored at the following premises:

[Delete this Article 4 if prior to the date of execution of this Agreement, a final written determination of the allocability of the Property to the Contract(s) and the fact that it is Government-owned has been made.]

ART. 4. *Reduction in 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 the Contract(s), or is not Government-owned property, the amount of payment(s) set forth in Article 3 hereof and any additional payments made pursuant to Article 12 (b) and (c) hereof shall by mutual agreement be reduced retroactively to and including the month in which the Property was first stored hereunder.

ART. 5. *Contract period.* (a) The Contractor agrees to perform the services described in Article 3 hereof beginning on _____ and continuing until: (i) this contract shall be terminated by either party hereto giving to the other thirty days' previous notice in writing; or (ii) delivery of the entire quantity of the Property to the Government.[3]

(b) Upon termination the Contractor shall be paid pro rata for storage charges to and including the day on which the thirty days' notice expires or the delivery to the Govern-

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[1] Delete clause following last semicolon if, prior to the date of execution of this agreement, a final, written determination of allocability of the Property to the Contract(s) has been made.

[2] Where practicable storage rates may be computed on a square or cubic foot basis.

[3] In case of Navy Department contracts add to the end of this sentence the following phrase: "or (iii) the 30th of June next succeeding the date of execution of this agreement and thereafter for such further period as may be agreed upon by the parties as evidenced by an amendment hereto, whichever one of the foregoing is earliest."

ment of the entire quantity of the Property is completed.

ART. 6. *Inspection.* The Government reserves the right to inspect at any reasonable time the Contractor's storage space and Property stored hereunder.

ART. 7. *Segregation of property.* All the Property shall be kept separate from all other property whether or not the Property may, by law or by custom, be considered fungible, and shall be identified as Government-owned property. 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.[4]

ART. 8. *Submission of invoices.* The Contractor shall submit monthly to the Contracting Officer properly certified invoices or vouchers for all accrued charges under this agreement for the preceding storage month.

ART. 9. *Deliveries.* Deliveries of all, or from time to time of part of the Property from storage to the Government at the storing site or to its designated carrier or transfer agent will be accomplished by the Contractor on receipt of a written order from the Government.

ART. 10. *Waiver of lien.* The Contractor hereby agrees to waive any warehouseman's lien on the Property to which it may otherwise be entitled and agrees that it will not assert any warehouseman's lien thereon.

ART. 11. *Liability for the property.* (a) The Contractor shall be liable for loss or destruction of or damage to the Property caused by his failure to comply with the provisions of this agreement or failure to exercise such care in regard to the Property as a reasonably careful owner of similar goods would exercise, but he shall not be liable for any loss or destruction of or damage to the Property which could not have been avoided by the exercise of such care, except that discrepancies exceeding plus or minus tolerances of quantities, weights and conditions in accordance with good commercial inventory practice may give rise to a claim by either party hereto against the other.

(b) In the event that all or any part of the Property is covered by insurance, the policy or policies of insurance shall expressly provide for the payment of benefits directly to the Government to the extent of its interest.

ART. 12. *Federal, State and local taxes.* (a) The compensation provided herein includes all applicable Federal, State and local taxes (the word "taxes" being used in this Article to include fees and charges) in effect at the date of this agreement and incurred in the performance of this agreement except that it does not include any taxes on the Property stored under this agreement.

(b) If after the date of this agreement 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 agreement) any tax upon the storage or privilege of storing the Property, which tax 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 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 compensation 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, transportation taxes or any State or local property taxes, except as provided in paragraph (c) hereof.

(c) If after the date of this agreement the Contractor incurs any State or local property tax with respect to the Property allocable to the Contract(s) the compensation will be increased in the manner set out in paragraph (b) hereof.

(d) In the case of any State or local tax which the Contractor contends is chargeable to the Government because of the provisions of this Article, or any other provision of this agreement, the Contractor agrees to give the Contracting Officer prompt notice of any levy or assessment thereof or claim therefor, and to refrain from paying such tax 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 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; if so requested, to permit the Government to prosecute any claim, litigation or proceeding for the abatement or 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 abatement or recovery of such tax.

ART. 13. *Convict labor.* The Contractor shall not in the performance of this Contract employ any person undergoing sentence of imprisonment at hard labor.

ART. 14. *Renegotiation.* (War Department Procurement Regulations § 803.242-1; Navy Department Procurement Directives, par. 14,402)—[Insert this clause only when contract is for an amount in excess of $100,000].

ART. 15. *Eight-hour law.* (War Department Procurement Regulations, § 803.209; Navy Procurement Directives, par. 13,151).

ART. 16. *Anti-discrimination.* (War Department Procurement Regulations, § 803.325; Navy Procurement Directives, par. 17,731).

ART. 17. *Officials not to benefit.* (War Department Procurement Regulations, § 803.322; Navy Procurement Directives, par. 17,091).

ART. 18. *Covenant against contingent fees.* (War Department Procurement Regulations, § 803.323; Navy Procurement Directives, par. 10,531).

ART. 19. *Disputes.* (War Department Procurement Regulations, § 803.320; Navy Procurement Directives, par. 11,004).

ART. 20. *Assignment of rights hereunder.* (War Department Procurement Regulations, § 803.355; Navy Procurement Directives, par. 12,305).

ART. 21. *Definitions.* (a) The term "Secretary of War (the Navy)" as used herein shall include the Secretary, Under Secretary, or any Assistant Secretary of War (the Navy), and the term "his duly authorized representative" shall mean any person or board authorized by him to act for him other than the Contracting Officer.

(b) The term "Contracting Officer" means (1) the officer or employee who signs this agreement in behalf of the Government or who is designated as such in this agreement, and (2) or any duly appointed successor or authorized representative of such a Contracting Officer or any Government agency (or person designated thereby) to which this agreement is transferred.

ART. 22. *Alterations.* The following changes were made in this agreement before it was signed by the parties hereto:

[Optional for War Department—ARTICLE 23. *Records of Government-owned Property* _____ _____ is designated as the officer to maintain the necessary property records in connection with this agreement.]

In witness whereof,

[JTR 372.2]

§ 849.973 *Certificate to be furnished by subcontractor regarding disposition of allocable termination inventory.* The form of certificate which follows may be incorporated as part of the subcontractor's settlement agreement with his customer, or it may be a separate instrument.

CERTIFICATE

(At the top insert all special details relating to the particular subcontract, e. g., name and address of the subcontractor and of its customer, the number or other designation of the terminated subcontract, the service or bureau involved, if known, etc.)

This certificate, executed this _____ day of _____ 19__ by _____ (hereinafter called "the Subcontractor").

Witnesseth that:

Whereas, the Subcontractor and _____ _____ (hereinafter called "the Customer") entered into contract No. _____ under date of _____ 19__ which, together with any and all amendments, changes, and supplements thereto, is hereinafter referred to as "the Subcontract"; and

Whereas, the Customer terminated the Subcontract; and

Whereas, the Customer and the Subcontractor have settled the termination claim therefor; and

Whereas, the term "Subcontract termination inventory" as used herein, shall mean all materials (including a proper part of any common materials), determined by the parties, in connection with the settlement of the Subcontract, to be properly allocable to the terminated portion of the Subcontract, except any machinery or equipment subject to a separate contract or contract provision specifically governing the use or disposition thereof;

Now, therefore, the Subcontractor does hereby certify that:

(1) All Subcontract termination inventory (including scrap) has been retained, sold, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention price thereof, if any, have been taken into account in arriving at the settlement of the Subcontract;

(2) Each of the Subcontractor's immediate subcontractors, whose termination claims are included in the Subcontractor's termination claim against the customer on account of the termination of the Subcontract, has furnished to the Subcontractor a certificate substantially similar to this certificate or has

[4] When in the opinion of the Contracting Officer the circumstances so require, special articles may be added to this agreement 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 stack so as to protect or insure maximum use of storage space; or in accordance with necessary safety requirements.

properly submitted a claim of less than $1,000 on Standard Form 1a of the Office of Contract Settlement.

In witness whereof, etc.

[JTR 973]

§ 849.974 *Forms relating to removal of plant equipment held under facilities contracts.* [JTR 974]

§ 849.974–1 *Application for disposition of plant equipment.* The following form of application for disposition of plant equipment (together with supporting schedules) will be used in accordance with § 848.863. This form is prescribed for use by the Office of Contract Settlement under Regulation No. 18.

NOTE: Forms printed in the FEDERAL REGISTER are for information only and do not follow the exact format prescribed by the issuing agency.

[Front]

Form approved Budget Bureau No. 17-R022 Form 5—Office of Contract Settlement

(Read instructions below)

APPLICATION FOR DISPOSITION OF PLANT EQUIPMENT[1]

For Use by Facilities Contractor or Subcontractor in Possession Seeking Purchase or Removal of Government-Owned Plant Equipment

_____ (Owning Government Agency)	_____ (Applicant)
This application applies to (check one): ☐ A prime facilities contract with Government, or ☐ Subcontract identified as _____ with	_____ (Street Address)
_____ (Contractor)	_____ (City) (Zone) (State)
_____ (Street Address)	Govt. Prime Facility Contract No. _____ (For Defense Plant Corporation indicate Plancor, Rentra or Swapco and proper number)
_____ (City) (Zone) (State)	This is application No. ____ and is for ☐ partial or ☐ complete disposition. (Check one.)
	_____ (Date of Application) (Date Rec'd by Govt.)

1. Application is hereby made for the disposition of Government-owned plant equipment provided under the captioned facilities contract (or subcontract) on the basis proposed by the following supporting schedules:

(a) Purchase schedule, sheets ____ thru ____ attached, describing items which we desire to purchase.

(b) Removal schedule, sheets ____ thru ____ attached, describing items of plant equipment which we request be removed, pursuant to section 12 (g) of the Contract Settlement Act of 1944 and regulations issued thereunder. Any option rights which we may have to purchase any of the items described on the removal schedule and any other rights in and to said items, except rights of removal, are hereby waived. Exhibit A, attached, sets forth: (1) the extent to which these items can be dismantled and prepared by us for shipment or storage, (2) the amount of space required to store the items, (3) the amount of adequate storage space available at our plant therefor, and (4) the use for which we require the space now occupied by the items to be removed.

2. It is hereby certified that each item listed on the removal schedule which is marked O1 or O2 in column 5 has been inspected by one of our authorized representatives and, except as stated on attached Exhibit B, in our judgment, is operating or is capable of operating, within established tolerances, on the operation for which it was originally procured, or on operations for which it was designed. This certification to the owning agency is not a representation or warranty to prospective purchasers or others.

_____ (Applicant) By _____ (Authorized Representative and Title)

[1] Specimen form. The form may be obtained from any Government contracting agency and the larger war contractors, or from the Readjustment Distribution Center, 90 Church Street, New York 7, N. Y.

_____ (To be completed by Facilities Contractor if Applicant is a Subcontractor) _____ (Date)

The undersigned hereby waives all of its rights under the captioned facilities contract to acquire or use the items set forth on the attached purchase schedule or removal schedule except items set forth in Exhibit I attached which it desires to purchase under its option rights in the captioned facilities contract.

_____ (Facilities Contractor) By _____ (Authorized Representative and Title)

GENERAL INSTRUCTIONS

1. This Form is prescribed by the Director of Contract Settlement under the Contract Settlement Act of 1944 for use by facilities contractors and subcontractors in making application for the disposition of Government-owned machinery, tools and equipment (referred to herein as "plant equipment") no longer required for the performance of war contracts. The form and the supporting schedules may be used for other purposes in connection with the disposition of plant equipment or for any purpose in connection with the disposition of facilities other than plant equipment to the extent authorized by the owning agency. The Form has been made uniform for all Departments and Agencies of the United States Government in order to facilitate preparation and review of applications and to expedite plant clearance. Prompt action upon contractors' applications is dependent upon preparation of the supporting schedules accurately and completely in accordance with these instructions.

2. This Application may be submitted with respect to all or any part of the plant equipment in a contractor's plant, and will be accompanied by a purchase schedule and/or a removal schedule. However, in the interests of sound administration, contractors should not make repeated submissions covering minor amounts of plant equipment.

3. Forms may be obtained from any owning agency. Reproduction of the Form is authorized, but no change in arrangement or size (other than omission of the instructions) may be made without the approval of the owning agency. With the approval of the owning agency, the format of the supporting schedules may be varied, or existing listings of plant equipment may be used in lieu of the supporting schedules, provided no essential information is omitted. However, a contractor receiving such approval may not require his subcontractors to submit their supporting schedules on other than the prescribed standard forms. In order to avoid unnecessary labor you should consult the authorized representative of the owning agency before preparing the supporting schedule or exhibits.

4. This application should be submitted to the authorized representatives of the owning agency if you hold the plant equipment under a facilities contract, lease or similar arrangement made directly with the owning agency; or, if you are a subcontractor, to the facilities contractor with whom your arrangements for the use of the equipment were made. The owning agency will advise as to the number of copies of the Form required.

[Reverse]

INSTRUCTIONS FOR SUPPORTING SCHEDULES

1. Supporting schedules (purchase schedule and removal schedule) may be obtained from any owning agency or may be prepared in the following form on 8½" x 11" pages, with headings running across the 11" side:

Form Approved Budget Bureau No. 17-R023 Form 5a—Office of Contract Settlement

SUPPORTING SCHEDULES: APPLICATION FOR DISPOSITION OF PLANT EQUIPMENT

(See Instructions on Office of Contract Settlement Form 5)

PAGE _____

_____ (Applicant) Application Number _____

_____ (Equipment Location) This schedule is a (check one): ☐ Purchase schedule ☐ Removal schedule

_____ (Govt. Prime Facility Contract No.) _____ (Subcontract Identification)

Item No.	Description	Quantity	Government Inventory Tag No.	Condition	Period of Use	Cost		(See Inst.)
						F. O. B. Mfr.	Total in Place	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)

2. If any government-owned accessories or spare parts were acquired under a contract other than the contract to which the supporting schedule applies, list such accessories and spare parts on a separate schedule showing appropriate contract number and a cross reference to the item for which such accessories and spare parts were purchased. If the contracts are with different owning agencies separate applications are required in addition to the separate schedule.

3. Use a separate page for plant equipment located at geographically separated plants.

4. Number each page of supporting schedules in space provided, using only one series of numbers beginning with "1".

5. Show total cost in Columns 7 and 8 at the foot of each sheet and at the end of each supporting schedule.

6. *Column instructions:*

Column 1—Item number. Enter consecutive numbers for each item listed starting with "1" on each page.

Column 2—Description. Description shall be furnished in accordance with the "Handbook of Standards for Describing Surplus Property", unless otherwise instructed by the owning agency. If records or schedules, copies of which can be made available to the owning agency, adequately describe the items to the satisfaction of the owning agency, they may be used in lieu of furnishing the description required on the above form: *Provided, however,* That Column 2 includes a clear reference to the respective listings on such records or schedules. In any event, descriptive data shall be kept to a minimum consistent with the needs of the owning agency for the information in ascertaining losses and discharging accountability, effecting sales, and reporting to disposal agencies.

Column 3—Quantity. Enter number of units.

Column 4—Government inventory tag numbers. Where items are grouped, indicate all tag numbers involved.

Column 5—Present condition. Use following code to report present condition of each item:

O1. Excellent—no repairs required.	X—Items of no further value for use as originally intended but of possible value other than as scrap.
O2. Good—no repairs required.	
R3. Fair—repairs required.	S—Scrap.
R4. Poor—repairs required.	

Column 6—Period of use. Indicate whether item was new (N) or used (U) when acquired and the period of actual use by the applicant, e. g.:

N 8/40	) Item new when acquired.	U 8/41	) Item used when acquired.
10/45	In use from August 1940 to October 1945.	2/46	In use from August 1941 to February 1946.

Column 7—Cost f. o. b. manufacturer. Show cost f. o. b. manufacturer to the nearest dollar for all items, including standard accessories and electrical equipment.

Column 8—Cost in place. Entries in this column shall be made to the extent and on the basis required by the owning agency.

Column 9—This column may be used on purchase schedules to indicate specific price offers. If the contractor desires to indicate generally his basis for negotiations or to submit any additional data, he may do so by means of an exhibit attached to the schedule.

[JTR 974.1]

§ 849.974–2 *Form of receipt and release with respect to removal of government-owned plant equipment.* The following form of receipt and release will be used for Government-owned plant equipment in accordance with § 848.865–8.

The United States of America (Government) hereby acknowledges receipt from _____ (Contractor) of the following items of Government-owned plant equipment listed on the attached schedule consisting of _____ pages each initialed by the undersigned [which were furnished or acquired under Contract No. _____] [title to which was acquired by the Government pursuant to Supplemental Agreement No. _____ to Contract No _____]. Such plant equipment is removed from the Contractor's plant pursuant to Section 12 (g) of the Contract Settlement Act of 1944. Pursuant to said Section the Government acknowledges (a) that, except as expressly noted on the attached schedule,[1] each of said items has been received in the condition required by said contract and (b) that, except insofar as the Contractor has suffered or permitted any pledge, mortgage, lien or other encumbrance to be placed upon any of said items in contravention of said contract and except as to items not received in the condition required by said contract, all obligations of the contractor to the Government under said contract with respect to the items listed on the attached schedule either have been discharged in full or are hereby waived and released by the Government.

UNITED STATES OF AMERICA,
By _____
Name and title of officer

Dated _____

[1] Indicate which items are not in the condition required by the facilities contract.

[JTR 974.2]

§ 849.974–3 *Agreement with war contractor for storage and service with regard to plant equipment.* The following form will be used in accordance with § 848.865–5.

(At the top insert all special details relating to number of contract, service involved, appropriation, allotment, etc.)

This agreement, entered into pursuant to the Contract Settlement Act of 1944, as of this _____ day of _____ 194__, by the United States of America (hereinafter called "the Government"), represented by the contracting officer executing this contract and _____ (hereinafter called "the Contractor");

Witnesseth that:

Whereas, the Contractor has in his possession certain Government-owned plant equipment listed on Schedule A attached hereto, furnished under Contract No. _____, which the Contractor no longer requires for the performance of his war contracts and of which the Contractor has demanded removal by the Government pursuant to Section 12 (g) of the Contract Settlement Act of 1944 (hereinafter called "the Act"); and

Whereas, the Contractor represents that the items of said plant equipment are now in the condition described in Schedule A; and

Whereas, the Contractor is willing to store such plant equipment and perform certain services in connection therewith;

Now, therefore, the parties hereto do mutually agree as follows:

ARTICLE 1. *Release of obligations under facilities contract.* Pursuant to Section 12 (g) of the Act the Government acknowledges that the items of Government-owned plant equipment listed on Schedule A, in the quantities and condition there described, are now in the condition required by Contract No. _____, except as expressly noted on Schedule A, and that, except insofar as the Contractor has suffered or permitted any pledge, mortgage, lien or other encumbrance to be placed upon any of said items in contravention of said contract and except as to items which are not now in the condition required by said Contract No. _____, all obligations of the Contractor to the Government under said Contract No. _____ with respect to the items listed on Schedule A at the date of this agreement either have been discharged in full or are hereby waived and released by the Government.

ART. 2. The Contractor agrees that it will hold and store the plant equipment listed on Schedule A in accordance with the terms of this agreement. The plant equipment listed on Schedule A, as it may from time to time be amended, is hereinafter referred to as "the Property".

ART. 3. Alternative Article 3 JTR § 849.-972-2.[1]

ART. 4–9. Articles 5–10 JTR § 849.972–2.

ART. 10. *Liability for the property.* (a) The Contractor shall be liable for loss or destruction of or damage to the Property caused by his failure to comply with the provisions of this agreement or failure to exercise such care in regard to the Property as a reasonably careful owner of similar goods would exercise, but he shall not be liable for any loss or destruction of or damage to the Property which could not have been avoided by the exercise of such care.

(b) In the event that all or any part of the property is covered by insurance, the policy or policies of insurance shall expressly provide for the payment of benefits directly to the Government to the extent of its interest.

ART. 11–21. Articles 12–22 § 849.972–2.

In witness whereof

[JTR 974.3]

SUBPART H—FORMS RELATING TO SETTLEMENT

§ 849.930 *Scope.* This subpart contains forms of settlement agreements for various types of terminated prime contracts and related forms for settlements with subcontractors and with War Supplies Limited (Canada). [JTR 930]

§ 849.931 *Settlement agreement for fixed-price prime contracts.* [JTR 931]

§ 849.931–1 *Settlement agreement for use in settling fixed-price prime contracts after complete termination.* The following form will be used in accordance with Subpart D of Part 847:

(At the top insert all special details relating to the particular contract terminated; e.g., number of contract, service or bureau involved, appropriation or allotment, etc.)

[1] Where appropriate the following sentence should be added at the end of subparagraph (b) of Alternative Article 3 JTR 972.2 (§ 849.972–2): It is agreed by the parties hereto that in the determination of such sum due allowance has been made for any storage to which the Government is entitled by reason of said Contract No. _____

This supplemental settlement agreement, entered into pursuant to the Contract Settlement Act of 1944 (hereinafter called "the Act"), as of this_____ day of _____ _____194____, by the United States of America (hereinafter called "the Government") represented by the Contracting Officer executing this contract and_____ _____ (hereinafter called "the Contractor"),

Witnesseth that:

Whereas, the Contractor and the Government have entered into Contract No._____ ____under date of _____ 194___, which, together with any and all amendments, changes, and supplements thereto, is hereinafter referred to as "the Contract"; and

Whereas, the Act declares that upon the termination of any war contract (as therein defined) in whole or in part for the convenience or at the option of the Government, it shall be the responsibility of the contracting agency (as therein defined) to provide the war contractor with speedy and fair compensation for the termination of the war contract and provides that any contracting agency may settle all or any part of any termination claim under any war contract by agreement with the war contractor; and

[Insert the following "Whereas" clause if the Contract contains a termination article with provisions similar to those set out in this clause.]

Whereas, the Contract provides that the performance of work thereunder may at the convenience or option of the Government be terminated by the Government in whole, or from time to time in part, whenever any such termination is determined to be for the best interests of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of such termination; and

Whereas, by notice of termination dated _____ the Government advised the Contractor of the complete termination of the Contract for the convenience or at the option of the Government; and

Whereas, the term "Contract termination inventory", as used herein, shall mean all materials (including a proper part of any common materials), determined by the parties hereto, in connection with this settlement, to be properly allocable to the terminated portion of the Contract, except any machinery or equipment subject to a separate contract or contract provision specifically governing the use or disposition thereof; and

Whereas, the term "subcontract termination inventory," as used herein, shall mean all materials (including a proper part of any common materials) determined by the parties to any subcontract under the Contract, in connection with the settlement thereof, to be properly allocable to the terminated portion of such subcontract, except any machinery or equipment subject to a separate contract, or contract provision, specifically governing the use or disposition thereof;

Now, therefore, the parties hereto do mutually agree as follows: [Insert whichever form of Article 1 is applicable. Use of the third alternative form is not favored. It should be resorted to as a temporary measure only where a storage agreement is not feasible and where no other practicable method of property disposal is available which will permit the signing of a settlement agreement (see § 844.465–3).]

ARTICLE 1. The Contractor certifies that all Contract termination inventory (including scrap), has been retained, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, have been taken into account in arriving at this Agreement. (Or)

ARTICLE 1. (a) The Contractor certifies that a portion of the Contract termination inventory (including scrap), has been retained, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, have been taken into account in arriving at this Agreement.

(b) With respect to all Contract termination inventory not so disposed of prior to the date of execution of this Agreement, and described in the inventory schedules submitted by the Contractor in advance of or in connection with its Settlement Proposal, the parties shall promptly execute a storage agreement substantially in the form set forth in the Joint Termination Regulation, § 849.972–1 [or § 849.972–2]. (Or)

ARTICLE 1. (a) The Contractor certifies that a portion of the Contract termination inventory (including scrap) has been retained, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, have been taken into account in arriving at this Agreement;

(b) Subject to the qualification stated below in subparagraph (c) of this Article 1, the Contractor hereby transfers and conveys to the Government, free and clear of all liens and encumbrances, and with the right to immediate possession, title to the Contract termination inventory not so disposed of prior to the date of execution of this Agreement and described in the inventory schedules (hereafter sometimes referred to as "the Schedules") submitted by the Contractor in advance of or in connection with, its Settlement Proposal. It is the intent and purpose of this Article to convey to the Government—to the extent not previously conveyed—all residual Contract termination inventory; and to this end, it is understood (1) that such Schedules do not include, and it is intended that they shall not include, any Contract termination inventory properly disposed of by the Contractor prior to the date of execution of this Agreement, but (2) that such Schedules do include all Contract termination inventory not so disposed of as of the date of this Agreement. Such Schedules are identified as follows: [Here insert exact reference to the inventory schedules submitted in advance of, or in connection with, the Contractor's Settlement Proposal, with explanation if necessary, that such schedules have been revised to eliminate any items disposed of after original submission of the schedules but prior to execution of the settlement agreement. In lieu of such reference the parties may refer to, or attach, a separate list adequately describing the Contract termination inventory so transferred and conveyed.]

If and to the extent that, as of the date of this Agreement, any such Contract termination inventory so described on the Schedules [or by separate list, as above provided] is not segregated from the Contractor's other property and clearly identified as belonging to the Government, the Contractor agrees to effect such segregation and identification with reasonable dispatch.

(c) If later, upon the execution of a storage agreement covering such Contract termination inventory or upon its removal from the Contractor's premises by and for the Government, or at any time prior to either of such events, discrepancies are discovered between the quantities, weights, or conditions of such inventory shown on the aforesaid Schedules or lists and the quantities, weights or conditions actually found by the Government, the Contractor shall reimburse the Government to the extent of any shortage, loss, destruction, or damage with respect to such inventory (measured by the loss of fair value) at the time such discrepancies are discovered; provided (1) that plus or minus tolerances of quantities, weights and conditions within reasonable limits in accordance with good commercial inventory practice will be accepted and discrepancies within such tolerances shall create no claim by either party against the other; and (2) that even if minus tolerances are exceeded, the Contractor shall not be liable therefor unless they are caused by any shortage, loss, destruction, or damage resulting from the Contractor's failure to exercise such care in regard to such inventory as a reasonably careful owner of similar goods would exercise. The Contracting Officer shall determine (i) whether such tolerances are exceeded, (ii) whether, if so, such excess resulted from failure to exercise such care, and (iii) the extent of any shortage, loss, destruction, or damage with respect to such inventory. Such determination will be subject, however, to any provisions of the Contract relating to settlement of disputes, and any claims arising thereunder may be settled by negotiation between the parties.

(d) Pending ultimate disposition of such Contract termination inventory, the Government may at all reasonable times have access to the Contractor's premises for the purpose of (1) furnishing extra plant protection, (2) making inspections of such inventory, (3) preparing additional inventory schedules, (4) crating, baling, or otherwise packaging such inventory, (5) arranging for selling or scrapping such inventory, and (6) accomplishing any other lawful purpose. The Contractor expressly waives any claim under this Agreement or under the Act to storage charges for the period during which such inventory, or any part thereof, remains on its premises under the terms of this Agreement. Such period may, at the option of the Government, extend for _____ days after execution of this Agreement, but not longer except with the consent of the Contractor.

ART. 2. (a) The Contractor certifies that, prior to the execution of this Agreement, each of the Contractor's immediate subcontractors whose claim is included in the claim settled by this Agreement has either (1) properly submitted his claim on Standard Form 1a of the Office of Contract Settlement or (2) furnished to the Contractor a certificate stating (i) that all his subcontract termination inventory (including scrap), has been retained, sold, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, were taken into account in arriving at the settlement of the subcontract or subcontracts and (ii) that the subcontractor has received from each of his immediate subcontractors whose claim was included in his claim either a claim properly submitted on said Standard Form 1a or a certificate substantially similar to clause (i) and this clause (ii) of this Article 2 (a).

(b) The Contractor hereby transfers and conveys to the Government all the right, title and interest, if any, which the Contractor has received, or is entitled to receive, in and to subcontract termination inventory, if any, not otherwise properly accounted for, and hereby assigns to the Government any and all of its rights relating thereto whether arising under negotiated settlements, formula determinations, or otherwise.

ART. 3. In all cases where the Contractor has not previously made such payments, the Contractor shall, within ten (10) days after receipt of the payment provided for hereunder, pay to each of its immediate subcontractors and suppliers (or to their respective assignees) the respective amounts to which they are entitled, after deducting, if the Contractor so elects, any amounts then due and payable to the Contractor by such subcontractors and suppliers. If the Contractor fails to make any such payment within ten (10) days, the Contractor will, upon request, return to the Government the amount so pay-

able to such immediate subcontractors and suppliers, less any amount then due and payable to the Contractor by them.

ART. 4. (a) The Contractor has received the sum of $---------- (a) ---------- on account of work and services performed, or articles delivered, under the Contract.[1] The Government as part of this negotiated settlement, hereby confirms and acknowledges the right of the Contractor to retain such sum heretofore paid and agrees that such sum constitutes a portion of the total amount to which the Contractor is entitled in complete and final settlement of the Contract.

(b) In addition, upon execution of this Agreement (and of the storage agreement(s) referred to in Article 1) [2] the Government agrees to pay to the Contractor or its assignee, upon presentation of properly certified invoices or vouchers, the sum of $--------- (b) ---------- representing the sum of $--------- (x) ---------- less (1) the amount of $------ (y) --------- representing all unliquidated partial or progress payments previously made on account to the Contractor or its assignee and all unliquidated advance payments (with interest, if any, thereon) and (2) the amount of $---------- (z) ---------- representing all applicable property disposal credits. All interest to which the Contractor is entitled under the Act to the date of payment is included in said sum of $--------- (b) ---------, or, to the extent not so included, is expressly waived by this agreement.[3] Said sum, together with all other sums heretofore paid, constitutes payment in full and complete settlement of the amount due the Contractor by reason of the complete termination of work under the Contract and of all other claims of the Contractor under the Contract, and under the Act, in so far as it pertains to the Contract, except as hereinafter provided in this Article.

(c) Upon payment of said sum of $------- (b) ---------, as aforesaid, all rights and liabilities of the parties under the Contract and under the Act, in so far as it pertains to the Contract, shall cease forthwith and be forever released except:

[The following list of excepted rights and liabilities is intended to cover those which should most frequently be excepted, and which should in any event be scrutinized at the time a settlement agreement is signed. The suggested language of the enumerated excepted items on the list may be varied in the discretion of the contracting officer to cover more accurately the exceptions needed in a particular case. Where greater accuracy or completeness may be achieved by a reference to the number of the Contract article or provision covering the excepted matter in question, this method of enumerating excepted rights and liabilities may be followed. Omit any of the following which are not applicable and add any additional exceptions required.]

(1) All rights and liabilities, if any, of the parties under the Renegotiation Act.

(2) All rights and liabilities of the parties arising under the Contract articles, if any, or otherwise which relate to reproduction rights, patent infringements, inventions, applications for patent and patents, including rights to assignments, invention reports and licenses, covenants of indemnity against patent risks and bonds for patent indemnity obligations, together with all rights and liabilities under any such bond.

(3) All rights of the Government to take the benefit of any adjustments of royalties under the Royalty Adjustment Act of October 31, 1942 (Public No. 768, 77th Cong.; 35 U.S.C. 89-96) and to take the benefit of agreements reducing or otherwise affecting royalties paid or payable in connection with the performance of the Contract.

(4) All rights and liabilities of the parties 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 compete, covenants of indemnity, and agreements with respect to the future care and disposition by the Contractor of Government-owned facilities remaining in his custody.

(5) All rights and liabilities of the parties arising under the Contract articles, if any, or otherwise, concerning defects in, and guarantees or warranties relating to, any completed articles or component parts furnished to the Government by the Contractor pursuant to the Contract or this Agreement.

[The following paragraph (6) to be inserted only when the third alternative form of Article 1 is used]

(6) All rights and liabilities of the parties under the articles, if any, of the Contract concerning settlement of disputes growing out of any determination made by the Contracting Officer under Article 1 of this Agreement.

(7) All rights and liabilities, if any, of the parties under the Act relating to removal and storage of Contract termination inventory.

(8) All rights and liabilities, if any, of the parties under those clauses inserted in the Contract because of the requirements of Acts of Congress and Executive Orders, including, without limitation, any applicable clauses relating to the following topics: labor law, contingent fees, domestic articles, employment of aliens, "officials not to benefit."

[The following subparagraph (9) to be inserted only where the parties have not agreed on the total amount to be included as interest to the date of payment.]

(9) The right of the Contractor to receive, and the obligation of the Government to pay, interest under the Act at $---------- (u) ---------- per day from the date of execution hereof to the date of payment.

In witness whereof, etc.,

[JTR 981.1]

§ 849.981–2 *Settlement agreement for use in settling fixed-price prime contracts after partial termination.* The following form will be used in accordance with Subpart D of Part 847:

(Here insert unchanged all the material of § 849.981–1, "Settlement agreement for use in settling fixed-price prime contracts after complete termination," after the heading and up to Article 1, with the exception of the fourth "Whereas" clause. In lieu of such clause, substitute the following:

Whereas, the Government by Notice of Termination dated ---------- advised the Contractor of the partial termination of the Contract as of the date and to the extent provided in such Notice, to which reference is hereby made as to the part terminated, and said part is hereinafter referred to as "the terminated portion of the Contract;" and)

ARTICLE 1. (Here insert the appropriate form of Article 1 of § 849.981–1)

ART. 2. (Here insert Article 2 of § 849.981–1)

ART. 3. (Here insert Article 3 of § 849.981–1)

ART. 4. Upon execution of this Agreement (and of the storage agreement(s) referred to in Article 1)[1] the Government agrees to pay to the Contractor or its assignee, upon presentation of properly certified invoices or vouchers, the sum of $------ (a) ----------, representing the sum of $---------- (x) ---------- less (1) the amount of $---------- (y) ---------- representing all unliquidated partial or progress payments previously made on account to the Contractor or its assignee and all unliquidated advance payments (with interest, if any, thereon) applicable to the terminated portion of the Contract, and (2) the amount of $---------- (z) ---------- representing all applicable property disposal credits. All interest to which the Contractor is entitled under the Act to the date of payment is included in said sum of $---------- (a) ----------, or, to the extent not so included, is expressly waived by this agreement.[2] Said sum, together with all other sums heretofore paid, constitutes payment in full and complete settlement of the amount due the Contractor with respect to the terminated portion of the Contract.

Upon payment of said sum of $---------- (a) ----------, as aforesaid, all obligations of the contractor to perform further work or services or to make further deliveries under the terminated portion of the Contract and all obligations of the Government to make further payments or to carry out other undertakings in connection therewith shall cease: *Provided, however,* That nothing herein contained shall impair or affect in any way (1) any other covenants, terms or conditions of the Contract; or (2) any rights or liabilities of the parties arising from any provisions of law, including, without limitation, the Contract Settlement Act of 1944, the Renegotiation Act, and the Royalty Adjustment Act of October 31, 1942 or [insert only where parties have not agreed on total amount to be paid as interest to date of payment] (3) the right of the Contractor to receive, and the obligation of the Government to pay, interest at $---------- (u) ---------- per day from the date of execution hereof to the date of payment.

In witness whereof, etc.,

[JTR 981.2]

§ 849.981–3 *No-cost settlement agreement for use in settling fixed-price prime contracts after complete termination where contractor presents no claim.*

(At the top insert all special details relating to the particular contract termination: e. g., number of contract, service or bureau involved, appropriation or allotment, etc.)

This supplemental settlement agreement, entered into pursuant to the Contract Settlement Act of 1944 (hereinafter called "the Act"), this ------ day of ---------- 194--, by the United States of America (hereinafter called "the Government") represented by the Contracting Officer executing this con-

[1] If the Contractor has performed work or services or delivered articles under the Contract, for which it has not been paid at the time of the Agreement, provision should be made in the agreement for such payment under Article 4 (b) as part of the sum of $---------- (b) ----------.

[2] This phrase to be inserted only when the second form of Article 1 is used.

[3] Where interest is not waived and the parties have not included in the Agreement a lump sum for interest to the date of payment, the following should be substituted for this sentence: "Said sum of $------- (b) ------- includes all interest to which the Contractor is entitled under the Act to the date of execution of this Agreement; for each day thereafter until final payment hereunder, the Contractor shall be entitled to interest at the rate of $------- (u) ------- per day." Also, in the next sentence change the words "sum" to "sums" and "constitutes" to "constitute".

[1] This phrase to be inserted only when the second form of Article 1 is used.

[2] Where interest is not waived and the parties have not included in the Agreement a lump sum for interest to the date of payment, the following should be substituted for this sentence: "Said sum of $---------- (a) ---------- includes all interest to which the Contractor is entitled under the Act to the date of execution of this Agreement; for each day thereafter until final payment hereunder, the Contractor shall be entitled to interest at the rate of $---------- (u) ---------- per day." Also, in the next sentence change the words "sum" to "sums" and "constitutes" to "constitute".

tract and _____ (hereinafter called "the Contractor"),

Witnesseth that:

Whereas, the Contractor and the Government have entered into Contract No. _____ under date of _____ 194__, which, together with any and all amendments, changes, and supplements thereto, is hereinafter referred to as "the Contract"; and

Whereas, the Act declares that, upon the termination of war contracts (as therein defined) in whole or in part for the convenience or at the option of the Government, it shall be the responsibility of the contracting agency (as therein defined) to provide the war contractor with speedy and fair compensation for the termination of the war contract and provides that any contracting agency may settle all or any part of any termination claim under any war contract by agreement with the war contractor; and

[Insert the following "Whereas" clause if the Contract contains a termination article with provisions similar to those set out in this clause.]

Whereas, the Contract provides that the performance of work thereunder may at the convenience or option of the Government be terminated by the Government in whole, or from time to time in part, whenever any such termination is determined to be for the best interest of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of such termination; and

Whereas, by notice of Termination dated _____ 194__, the Government advised the Contractor of the complete termination of the Contract for the convenience or at the option of the Government; and

Whereas, the Contractor is willing to waive unconditionally any claim against the Government by reason of such termination; and

Whereas, such unconditional waiver by the Contractor will expedite settlement of the Contract and will otherwise promote the objectives of the Contract Settlement Act of 1944,

Now, therefore, the parties hereto agree as follows:

ARTICLE 1. The Contractor hereby unconditionally waives any claim against the Government by reason of the termination of the Contract.

ART. 2. The parties agree to, and do hereby, release each other from any and all obligations arising under the Contract or by reason of its termination or under the Act, in so far as it pertains to the Contract, and all rights and liabilities of the parties so arising shall cease forthwith and be forever released except as follows:

[The following list of excepted rights and liabilities is intended to cover those which should most frequently be excepted, and which should in any event be scrutinized at the time a "no-cost" settlement agreement is signed. The suggested language of the enumerated excepted items on the list may be varied in the discretion of the contracting officer to cover more accurately the exceptions needed in a particular case. Where greater accuracy or completeness may be achieved by a reference to the number of the Contract article or provision covering the excepted matter in question, this method of enumerating excepted rights and liabilities may be followed. Omit any of the following which are not applicable and add any additional exceptions required.]

(1) All rights and liabilities, if any, of the parties under the Renegotiation Act.

(2) All rights and liabilities of the parties arising under the Contract articles, if any, or otherwise, which relate to reproduction rights, patent infringements, inventions, applications for patent and patents, including rights to assignments, invention reports and licenses, covenants of indemnity against patent risks and bonds for patent indemnity obligations, together with all rights and liabilities under any such bond.

(3) All rights of the Government to take the benefit of any adjustments of royalties under the Royalty Adjustment Act of October 31, 1942 (Public No. 768, 77th Cong.; 35 U.S.C. 89–96) and to take the benefit of agreements reducing or otherwise affecting royalties paid or payable in connection with the performance of the Contract.

(4) All rights and liabilities of the parties 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 compete, covenants of indemnity, and agreements with respect to the future care and disposition by the Contractor of Government-owned facilities remaining in his custody.

(5) All rights and liabilities of the parties arising under the Contract articles, if any, or otherwise, concerning defects in, and guarantees or warranties relating to, any completed articles or component parts furnished to the Government by the Contractor or work done by the Contractor pursuant to the Contract.

(6) All rights and liabilities, if any, of the parties under those clauses inserted in the Contract because of the requirements of Acts of Congress and Executive Orders, including, without limitation, any applicable clauses relating to the following topics: labor law, contingent fees, domestic articles, employment of aliens, "officials not to benefit."

In witness whereof, etc.,

[JTR 981.3]

§ 849.981–4 *No-cost settlement agreement for use in settling fixed-price prime contracts after partial termination where contractor presents no claim.*

(At the top insert all special details relating to the particular contract termination: e. g., number of contract, technical service or bureau involved, appropriation or allotment, etc.)

This supplemental settlement agreement, entered into pursuant to the Contract Settlement Act of 1944 (hereinafter called "the Act"), this _____ day of _____ 194__, by the United States of America (hereinafter called "the Government" represented by the Contracting Officer executing this contract and _____ (hereinafter called "the Contractor"),

Witnesseth that:

Whereas, the Contractor and the Government have entered into Contract No. _____ under date of _____ 194__, which, together with any and all amendments, changes, and supplements thereto, is hereinafter referred to as "the Contract"; and

Whereas, the Act declares that, upon termination of war contracts (as therein defined) in whole or in part for the convenience or at the option of the Government, it shall be the responsibility of the contracting agencies (as therein defined) to provide war contractors with speedy and fair compensation for the termination of any war contract and provides that any contracting agency may settle all or any part of any termination claim under any war contract by agreement with the war contractor; and

[Insert the following "Whereas" clause if the Contract contains a termination article with provisions similar to those set out in this clause.]

Whereas, the Contract provides that the performance of work thereunder may at the convenience or option of the Government, be terminated by the Government in whole, or from time to time in part, whenever any such termination is determined to be for the best interest of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of such termination; and

Whereas, by Notice of Termination dated _____ 194__, the Government advised the Contractor of the partial termination of the Contract for the convenience or at the option of the Government, as of the date and to the extent provided in such notice, to which reference is hereby made as to the part terminated, and said part is hereinafter referred to as the "terminated portion of the Contract"; and

Whereas, the Contractor is willing to waive unconditionally any claim against the Government by reason of such termination; and

Whereas, such unconditional waiver by the Contractor will expedite settlement of the Contract and will otherwise promote the objectives of the Contract Settlement Act of 1944,

Now, therefore, the parties hereto agree as follows:

ARTICLE 1. The Contractor hereby unconditionally waives any claim against the Government arising under the terminated portion of the Contract or by reason of its termination including, without limitation, all obligations of the Government to make further payments or to carry out other undertakings in connection with said terminated portion, and the Government hereby unconditionally releases the Contractor from any obligation to perform further work or services or to make further deliveries of articles or materials under the terminated portion of the Contract: *Provided, however,* That nothing herein contained shall impair or affect in any way any other covenants, terms, or conditions of the Contract.

In witness whereof

[JTR 981.4]

§ 849.983 *Settlement agreements for cost-plus-a-fixed-fee contracts.* [JTR 983]

§ 849.983–1 *Settlement agreement for use in settling cost-plus-a-fixed-fee prime contracts after complete termination.* The following form is designed for a negotiated settlement, under § 845.560 and following, after complete termination. In using it for partial final settlements, appropriate changes should be made.

(Here insert unchanged all the material of § 849.981–1, "Settlement Agreement for use in settling fixed-price prime contracts after complete termination", after the heading up to Article 1.)

ARTICLE 1. The Contractor certifies that all Contract termination inventory (including scrap), has been retained, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, have been taken into account in arriving at this Agreement. (Or)

ARTICLE 1 (a) The Contractor certifies that a portion of the Contract termination inventory (including scrap), has been retained, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, have been taken into account in arriving at this Agreement.

(b) With respect to all Contract termination inventory not so disposed of prior to the date of execution of this Agreement, and described in the inventory schedules submitted by the Contractor in advance of or in connection with its Settlement Proposal, the parties shall promptly execute a storage agreement substantially in the form set forth in § 849.972–1 [or § 849.972–2]. (Or)

ARTICLE 1. (a) The Contractor certifies that a portion of the Contract termination inventory (including scrap) has been retained, sold to third parties, returned to suppliers, stored for the Government, delivered to the Govern-

ment, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, have been taken into account in arriving at this Agreement.

(b) Subject to the qualification stated below in subparagraph (c) of this Article 1, the Contractor confirms and acknowledges that, with respect to all the Contract termination inventory not so disposed of prior to the date of execution of this Agreement and described on the schedules attached hereto as "Exhibit A", the Government either now possesses, or hereby receives a transfer and conveyance of, title, free and clear of all liens and encumbrances, and the right to immediate possession. [Schedules or lists may, if clearly identified, be incorporated by reference and not physically attached.] It is the intent and purpose of this Agreement to confirm in the Government, or convey to the Government, as the case may be, title to all residual Contract termination inventory; and to this end it is understood (1) that such schedules do not include, and it is intended that they shall not include, any Contract termination inventory properly disposed of by the Contractor prior to date of execution of this Agreement, but (2) that such schedules do include all Contract termination inventory not so disposed of as of the date of execution of this Agreement.

If and to the extent that, as of the date of this Agreement, any Contract termination inventory so described on such schedules is not segregated from the Contractor's other property and clearly identified as belonging to the Government, the Contractor agrees to effect such segregation and identification with reasonable dispatch.

(c) If later, upon the execution of a storage agreement covering such Contract termination inventory or upon its removal from the Contractor's premises by or for the Government, or at any time prior to either of such events, discrepancies are discovered between the quantities, weights or conditions of such inventory shown on the aforesaid inventory schedules or lists and the quantities, weights or conditions actually found by the Government, the Contractor shall reimburse the Government to the extent of any shortage, loss, destruction, or damage with respect to such inventory (measured by the loss of fair value) at the time such discrepancies are discovered; provided (1) that plus or minus tolerances of quantities, weights and conditions within reasonable limits in accordance with good commercial inventory practice will be accepted and discrepancies within such tolerances shall create no claim by either party against the other; and (2) that even if minus tolerances are exceeded, the Contractor shall not be liable therefor unless they are caused by any shortage, loss, destruction, or damage resulting from the Contractor's failure to exercise such care in regard to such inventory as a reasonably careful owner of similar goods would exercise. The Contracting Officer shall determine (i) whether such tolerances are exceeded, (ii) whether, if so, such excess resulted from failure to exercise such care, and (iii) the extent of any shortage, loss, destruction, or damage with respect to such inventory. Such determination will be subject, however, to any provisions of the Contract relating to settlement of disputes.

(d) Pending ultimate disposition of such Contract termination inventory, the Government may at all reasonable times have access to the Contractor's premises for the purpose of (1) furnishing extra plant protection, (2) making inspections of such inventory, (3) preparing additional inventory schedules, (4) crating, baling or otherwise packaging such inventory, (5) arranging for selling or scrapping such inventory, and (6) accomplishing any other lawful purpose. The Contractor expressly waives any claim under this Agreement or under the Act to storage charges for the period during which such inventory, or any part thereof, remains on its premises under the terms of this Agreement. Such period may, at the option of the Government extend for _____ days after execution of this Agreement, but not longer except with the consent of the Contractor.

ART. 2. (Here insert Article 2 of § 819.981–1.)

ART. 3. (Here insert Article 3 of § 819.981–1.)

ART. 4. (a) The Contractor has received prior to the effective date of termination certain sums with respect to work and services performed, or articles delivered, under the Contract. The Contractor has also received after the effective date of termination certain additional sums for work and services performed, or articles delivered, under the Contract as final payments on partial settlements and in partial payment on account of the Contractor's termination claim. The Government, as part of this negotiated settlement, hereby confirms and acknowledges the right of the Contractor to retain all such sums heretofore paid and agrees that such sums constitute a portion of the total amount to which the Contractor is entitled in complete and final settlement of the Contract.[1]

(b) In addition, upon execution of this Agreement (and the storage agreements referred to in Article 1)[2] the Government agrees to pay to the Contractor the sum of $_____ (a)_____, representing the sum of $_____ (x)_____ less (1) the sum of $_____(y) _____ representing all unliquidated partial or progress payments previously made on account to the Contractor or its assignee and all unliquidated advance payments (with interest, if any, thereon) and (2) the amount of $_____(z)_____ representing all applicable property disposal credits. All interest to which the Contractor is entitled under the Act to the date of payment is included in said sum of $_____(a)_____, or, to the extent not so included, is expressly waived by this agreement.[3] Said sum, together with all other sums heretofore paid, constitutes payment in full and complete settlement of the amount due the Contractor by reason of the termination of work, or otherwise, under the Contract and of all other claims of the Contractor under the Contract and under the Act, in so far as it pertains to the Contract, except as hereinafter provided in this Article and in Article 5.

(c) Upon payment of said sum of $_____ (a) _____ as aforesaid all rights and liabilities of the parties under the Contract and under the Act, in so far as it pertains to the Contract, shall cease forthwith and be forever released except: [The following list of excepted rights and liabilities is intended to cover those which should most frequently be excepted, and which should in any event be scrutinized at the time a settlement agreement is signed. The suggested language of the enumerated excepted items on the list may be varied in the discretion of the Contracting Officer to cover more accurately the exceptions needed in a particular case. Where greater accuracy or completeness may be achieved by a reference to the number of the Contract article or provision covering the excepted matter in question, this method of enumerating excepted rights and liabilities may be followed. Omit any of the following which are not applicable and add any additional exceptions required.]

(1) Claims by the Contractor against the Government, which involve costs reimbursable under the Contract and which arise under the Contract or by virtue of the termination, in stated or estimated amounts, as follows: [Here insert such amounts and describe the claims.]

(2) Claims by the Contractor against the Government, as to which his right of reimbursement is disputed, which are excluded without prejudice to the rights of either party as follows: [Here insert the amounts and describe the claims.]

(3) Claims by the Contractor against the Government which are based upon responsibility of the Contractor to third parties and which involve costs reimbursable under the Contract, but which are not now known to the Contractor.

(4) All rights and liabilities, if any, of the parties under the Renegotiation Act.

(5) All rights and liabilities of the parties arising under the Contract articles, if any, or otherwise which relate to reproduction rights, patent infringements, inventions, applications for patent and patents, including rights to assignments, invention reports and licenses, covenants of indemnity against patent risks and bonds for patent indemnity obligations, together with all rights and liabilities under any such bond.

(6) All rights of the Government to take the benefit of any adjustments of royalties under the Royalty Adjustment Act of October 31, 1942 (Public No. 763, 77th Cong.; 35 U.S.C. 89–96) and to take the benefit of agreements reducing or otherwise affecting royalties paid or payable in connection with the performance of the Contract.

(7) All rights and liabilities of the parties 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 compete, covenants of indemnity, and agreements with respect to the future care and disposition by the Contractor of Government-owned facilities remaining in his custody.

(8) All rights and liabilities of the parties arising under the Contract articles, if any, or otherwise, concerning defects in, and guarantees or warranties relating to, any completed articles or component parts furnished to the Government by the Contractor pursuant to the Contract or this Agreement.

[The following subparagraph (9) to be inserted only when the third alternative form of Article 1 is used.]

(9) All rights and liabilities of the parties under the articles, if any, of the Contract concerning settlement of disputes growing out of any determination made by the Contracting Officer under Article 1 of this Agreement.

(10) All rights and liabilities, if any, of the parties under the Act relating to removal and storage of Contract termination inventory

(11) All rights and liabilities, if any, of the parties under those clauses inserted in the Contract because of the requirements of Acts of Congress and Executive Orders, including, without limitation, any applicable clauses relating to the following topics: labor law, contingent fees, domestic articles,

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[1] Where any of such sums are intended to be excluded from the settlement agreement, appropriate modification should be made in the language of this section in order to make it clear that they are excluded from the agreement without prejudice to the rights of either party with respect thereto. This modification may be effected by adding to the last sentence of Article 4 (a), after the word "Contract", the following: ", except as provided in subparagraph (c) (2) of this Article."

[2] This phrase to be inserted only when the second form of Article 1 is used.

[3] Where interest is not waived and the parties have not included in the Agreement a lump sum for interest to the date of payment, the following should be substituted for this sentence: "Said sum of $_____ (a) _____ includes all interest to which the Contractor is entitled under the Act to the date of execution of this Agreement; for each day thereafter until final payment hereunder, the Contractor shall be entitled to interest at the rate of $_____ (u) _____ per day." Also, in the next sentence change the words "sum" to "sums" and "constitutes" to "constitute."

employment of aliens, and "officials not to benefit."

[The following subparagraph (12) is to be inserted only where the parties have not agreed on the total amount to be included as interest to the date of payment.]

(12) The right of the Contractor to receive, and the obligation of the Government to pay, interest under the Act, at $_____ (u) ____ per day from the date of execution hereof to the date of payment.

(13) All rights and liabilities of the parties under any agreement heretofore or hereafter made for the purpose of providing for the adjustment, as between the Government and the insurance carrier, of premiums under the War Projects Insurance Rating Plan as applied to the Contract.

ART. 5.[1] (1) In addition to the payment of the sum provided for in Article 4, the Government will reimburse the Contractor for payments made in discharging claims described in subparagraphs (1) and (3) of said article.

(2) Even though neither the existence nor the amount of any claim referred to in subparagraph (3) of Article 4 may now be known to the Contractor, reimbursement for payments made by the Contractor in discharge of any such claim shall include, along with wages and salaries otherwise reimbursable, all additional amounts determined (either by approval of the Contracting Officer or by litigation as hereinafter provided) to be due and payable for overtime compensation and allowances under local, state or Federal laws in connection with such wages and salaries.

(3) The Contractor shall promptly notify the Contracting Officer of any claims of the type described in subparagraph (3) of Article 4 which are asserted subsequent to the execution of this Agreement. In the event of the assertion of any such claim against the Contractor, he shall, if requested by the Contracting Officer, promptly and diligently proceed in good faith to assemble all data and information relative to such claim. The expenses incurred by the Contractor in the performance of this duty shall be reimbursable under the Contract.

(4) If 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 under the Contract or by virtue of its termination, 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 other items, and reasonable attorneys' fees for private counsel when the Government does not furnish Government counsel, shall be reimbursable under the Contract. The term "litigation" shall include suits at law or in equity and proceedings before any Governmental agency having jurisdiction over the claim.

In witness whereof, etc.

[JTR 983.1]

§ 849.983–2 *Partial settlement agreement for use in making partial settlements of cost-plus-a-fixed-fee prime contracts.* The following form will be used in accordance with § 845.564–2. [JTR 983.2]

(At the top insert all special details relating to the particular contract termination; e. g., number of contract, technical service or bureau involved, appropriation or allotment, etc.)

This partial settlement agreement, entered into pursuant to the Contract Settlement Act of 1944 (hereinafter called "the Act"), this _____ day of _____ 194__, by the United States of America (hereinafter called "the Government") represented by the Contracting Officer executing this contract and _____ (hereinafter called "the Contractor"),

Witnesseth that:

Whereas, the Contractor and the Government have entered into Contract No. _____ under date of _____ 194__ which, together with any and all amendments, changes and supplements thereto, is hereinafter referred to as "the Contract"; and

Whereas, the Act declares, among other things that * * * "Each contracting agency shall make final payments from time to time on partial settlements or on settlements fixing a minimum amount due before complete settlement * * *"; and

[Insert the following "Whereas" clause if the contract contains a termination article with provisions similar to those set out in this clause.]

Whereas, the Contract provides that the performance of work thereunder may at the convenience or option of the Government be terminated by the Government in whole, or from time to time in part, whenever any such termination is determined to be for the best interests of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of such termination; and

Whereas, by notice of termination dated _____, the Government advised the Contractor of the termination of the Contract for the convenience or at the option of the Government;

Now, therefore, the parties hereto do mutually agree as follows:

ARTICLE 1. Upon execution of this Agreement the Government agrees to pay to the Contractor the sum of $_____. This payment is in partial settlement of the Contractor's termination claim under this Contract and is made pursuant to the Act. The Government and the Contractor agree that the amount to be paid hereunder constitutes a minimum amount due on said entire claim, (a) without determining that such amount is due on particular elements thereof or that additional amounts may not be due on said claim and (b) without affecting any claim or offset which the Government may have against the Contractor under this Contract.

In witness whereof, etc.

[JTR 983.2]

§ 849.984 *Pretermination settlement agreement*—(1)[1] [JTR 984]

§ 849.984–1 *Suggested form of pretermination settlement agreement for fixed-price prime contracts containing the uniform article.* The following form is the example of a pretermination settlement agreement mentioned in § 842.-224–4 (d):

(At the top insert all special details relating to the particular contract; e. g., number of contract, service or bureau involved, appropriation or allotment, etc.)

This supplemental agreement, entered into pursuant to the Contract Settlement Act of 1944, as of this _____ day of _____ 194__, by the United States of America (hereinafter called "the Government") represented by the Contracting Officer executing this Contract and _____ (hereinafter called "the Contractor").

Witnesseth that:

Whereas, the Contractor and the Government have entered into Contract No. _____ under date of _____ 194__, which, together with any and all amendments, changes, and supplements thereto, is hereinafter referred to as "the Contract"; and

Whereas, the Contract provides that the performance of work thereunder may at the convenience or option of the Government be terminated by the Government in whole, or from time to time in part, whenever any such termination is determined to be for the best interest of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of such termination; and

Whereas, it is deemed equitable and appropriate and mutually advantageous to the parties to determine by negotiation and agree in advance of termination upon certain methods and standards for determining fair compensation in the event of termination of the contract, in whole or in part, [2] at the convenience or option of the Government;

Now, therefore, the parties hereto do mutually agree as follows:

ARTICLE 1. [3] *Inventory.* (a) The Contractor shall within _____ days after the effective date of termination, in whole or in part, [2] or within such extension thereof as the Contracting Officer may grant, file with the Contracting Officer its inventory of 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 the plans, drawings, information and other property which, if the Contract had been completed, would be required to be furnished to the Government, hereinafter referred to as the "inventory".

(b) The Government may take a physical count, in whole or in part, of the inventory within _____ days after receipt of the Contractor's statement of inventory or within _____ days after termination, whichever is longer. Failure on the part of the Government to take such count within the prescribed time limit will operate as approval and acceptance of the Contractor's statement of inventory as filed except as to the quantities not reasonably necessary for the performance of the contract or not properly allocable to the terminated portion thereof under recognized commercial accounting practices.

(c) Failure of the Contractor to file its inventory as provided in (a) hereof shall operate as acceptance and approval of such physical count as the Government may take as provided in (b) hereof.

(d) The Government shall, within _____ days after taking its own count of the inventory or within _____ days after the filing of its inventory by the Contractor, file with the Contractor any exceptions to quantities resulting from differences in physical count or from determinations that items of the inventory are not reasonably necessary for the performance of the Contract or not properly allocable to the terminated portion thereof under recognized commercial accounting practices. Any disputes arising from the filing of exceptions by the Government shall be resolved by negotiation and in the event that such disputes are not disposed of by mutual agreement within 15 days from the filing of exceptions, or such extension thereof as the Contracting Officer shall grant, such disputes shall be resolved under the provisions of the Disputes Article of the Contract.

(e) Within _____ days after receipt thereof, the Contractor may file supplementary inventories for all materials and purchased parts in transit on the effective date of the Notice of Termination, as evidenced

[1] This Article should be omitted where the Contract does not provide for reimbursement to the Contractor of costs incurred in discharging claims described in subparagraphs (1) and (3) of Article 4.

[1] Figures in parentheses refer to the explanatory notes in § 849.984–2 that follow the text of the agreement form.

by bills of lading, invoices and other evidences of shipments, and not received prior to taking of inventories as herein provided.

ART. 2. *Classification of inventory* [4]. The inventory as adjusted in accordance with Article 1 shall be classified as set forth in Schedule(s) _____. All items of work-in-process [5] shall be classified in the production stage in which they were last subject to physical processing.

ART. 3. *Computation of contractor's claim.* Upon the classification of the inventory in accordance with Article 2, the amounts payable to the Contractor by reason of termination shall be determined in accordance with the following provisions [6]:

(1) *Completed articles.* For completed articles delivered to and accepted by the Government (or sold or retained as provided in paragraph (b) (7) of Article _____) [7] and not theretofore paid for, the Government shall pay a sum equivalent to the aggregate price for such articles computed in accordance with the price or prices specified in the Contract;

(2) *Raw materials, purchased parts, work-in-process, component parts, etc.* [8]. With respect to each unit of inventory classified in Schedule(s) _____, the Government shall pay the amount stated opposite such classification in the Schedule(s) under the heading "Unit Cost";

(3) *Tools, dies, jigs and fixtures.* With respect to tools, dies, jigs and fixtures classified in Schedule _____ the Government shall pay an amount which bears the same proportion to the cost allocable to the Contract shown in that Schedule 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 been completed;

(4) *Other costs* [9]. Any other costs not specifically mentioned herein, which are allocable to the Contract, and would arise upon the termination by the Government at its option, are specifically enumerated in Schedule _____, attached. The basis for determining what amounts, if any, of these other costs are to be paid upon termination is likewise set forth in said Schedule.

(5) *Special facilities* [9]: Any amount to be paid for loss on special facilities, and any arrangements for transfer of title or other disposal of special facilities will be determined in accordance with a special facilities agreement, hereby made a part of this supplemental agreement and annexed hereto, and in the absence of any such agreement, the above determinations will be made under the provisions of Article _____ [7] of the Contract.

(6) *General and administrative expenses* [8]. General and Administrative expenses will be paid by the Government to the Contractor at the rate of _____% on all costs determined under (2), (3) and (4) of this Article.

(7) *Profit* [8]. Profit will be paid to the Contractor by the Government at the following rates:

(a) On the Contractor's costs of raw materials and purchased parts contained in the inventory, at the rate of _____%.

(b) On all other Contractor's costs enumerated above in this Article, except for the cost, if any, of special facilities, at a rate of _____%.

(8) *Post-termination expenses.* For post-termination expenses the Government shall pay the Contractor the sum of _____ dollars, and in the absence of any sum specified the amount payable therefor under paragraph (d) (3) of Article _____ [7] of the Contract.

ART. 4. *Where no agreement is reached.* Where the words "No agreement" appear in any of the schedules referred to in Article 3, payment, if any, of termination charges on account of the items enumerated in that Schedule will be made in accordance with Article _____ [7] of the contract.

ART. 5. *Retention of inventory by contractor* [10]. The parties agree that the Contractor shall retain all inventory for which retention values are shown in the Schedule (s) _____, at such retention values. With respect to any class of items as to which the term "No agreement" appears under said column the Contractor is under no obligation to retain, and the Government is under no obligation to allow the Contractor to retain, any of said items. In accordance with Article _____, [7] paragraph (c) (1) (iii) of the Contract, the total amount determined to be due the Government under this article will be deducted from the total amount determined to be due to the Contractor under Article 3 hereof.

ART. 6. *Contract price limitation.* The total sum to be paid pursuant to Article 3, plus sums payable by reason of the termination of subcontracts, but exclusive of post-termination expenses, shall not exceed the total Contract price, reduced by the amounts of payments otherwise made or to be made under the Contract.

ART. 7. *Subcontractor's claims* [11]. The sum payable pursuant to Article 3 hereof does not include sums payable by reason of the termination of subcontracts unless otherwise specifically stated herein. The Contractor agrees to expedite the processing of claims of subcontractors arising out of termination of the Contract so that subcontractors may be paid their termination charges, and clear their plants for other production, as quickly as possible.

ART. 8. *Revision of costs or retention values* [12]. Either the Contractor or the Government may at any time prior to the receipt of a Notice of Termination by the Contractor, serve demand for revision of the costs or retention values set forth in this supplemental agreement, or for the addition of costs or retention values omitted. Upon service of such demand, the parties will negotiate any changes requested. Should the Contract be terminated before a formal agreement has been executed on changes pursuant to demand for revision, the supplemental agreement or revisions thereof agreed to prior to service of the Notice of Termination shall apply to such termination.

ART. 9. *Contract in force:* Except to the extent modified herein, all the terms and conditions of the Contract, including without limitation, Article _____ [7] thereof, shall remain unmodified and in full force and effect.

ART. 10. *Total amount payable:* Except to the extent indicated by the words "No agreement" in the Schedules to this Contract, and except for the sums payable under Article 7, all amounts payable by the Government by reason of termination of the Contract are determined in this supplemental agreement.

In witness whereof, etc.

[JTR 984.1]

§ 849.984-2 *Explanatory notes to suggested form of pretermination settlement agreement.*

1. This form of "count and multiply" agreement has been prepared as a supplemental agreement to a contract containing the uniform termination article for fixed price supply contracts (§ 849.931). Explanatory material and suggested variations appear in the notes which follow.

2. The provision making the agreement applicable to any total or partial termination can be used only on the assumption that the same unit costs and retention values would fairly apply in all situations. Negotiations with the Contractor may lead to an agreement that applies only in the event of complete termination or only in the event of the termination of at least a stated portion of the contract. It is possible also to make an agreement effective only if termination comes within a specified period of time or in the course of a program of mass terminations following the cessation of hostilities in one theater of war. Any such conditions should be clearly stated.

3. This Article relating to the taking of inventory is designed for situations in which the withholding of inventory from production, and segregation of it for a reasonable period of time, will not impose undue hardship on the Contractor. Where continuity of production is important, and it is desired to continue processing the inventory with a minimum of dislocation, the following alternative Article 1 may be used, if it is considered feasible in the particular circumstances:

ALTERNATIVE ARTICLE 1

ARTICLE 1. (a) The Contractor shall within _____ (days) (hours) after the effective date of termination, notify the Contracting Officer of the time and place at which an inventory will be taken of the fabricated or unfabricated parts, work-in-process, completed work, supplies and other materials produced as part of, or acquired in respect of the performance of, the work terminated in the Notice of Termination, and the plans, drawings, information and other property which if the Contract had been completed would be required to be furnished to the Government, hereinafter referred to as the "inventory". At least _____ (days) (hours) must elapse between the time the Government receives said notice, and the time specified in the notice for the taking of inventory.

(b) At the time and place specified in the Contractor's notice to the Government, a representative of the Government may appear for the purpose of checking, in whole or in part, the inventory to be taken in the presence of the representative of the Government and the representative of the Contractor. Any disputes arising out of differences in physical count will be decided immediately by the representatives of the Government and the Contractor at the time the inventory is taken. In the event no representative of the Government appears for the purpose of checking the physical count as directed in the notice, the physical count taken by the Contractor will be assumed to be correct except as to quantities not reasonably necessary for the performance of the Contract or not properly allocable to the terminated portion thereof under recognized commercial accounting practices, unless the inventory is not taken in accordance with the conditions, if any, enumerated in (c) below.

(c) The conditions under which the physical count will be taken are enumerated below:

(Here insert any conditions with respect to the methods to be employed at the time of taking the inventory, and the extent to which the inventory will be counted or spot checked, and records to be preserved to indicate that the conditions of taking the inventory were observed).

(d) At the conclusion of the count of inventory, it will be the Contractor's responsibility to file this inventory with the Government. Failure of the Contractor to file said inventory within _____ (days) (hours) after the inventory is taken shall operate as acceptance and approval of such physical count as the Government may have taken as provided in (b) above. At any time prior to or after the filing of the inventory, the Government shall have the right to inspect such records of the taking of inventory as were required to be kept under the conditions enumerated in (c) above, if any.

(e) The Government shall, within _____ (days) (hours) after taking its own count of the inventory or within _____ (days) (hours) after the filing of its inventory by the Contractor, file with the Contractor any exceptions to quantities resulting from failure to take the inventory under the conditions enumerated in (c) above, or from de-

terminations that items of the inventory are not reasonably necessary for the performance of the contract or not properly allocable to the terminated portion thereof under recognized commercial accounting practices. Any disputes arising from the filing of exceptions by the Government shall be resolved by negotiation and in the event that such disputes are not disposed of by mutual agreement within 15 days from the filing of exceptions, or such extension thereof as the Contracting Officer shall grant, such disputes shall be resolved under the provisions of the Disputes Article of the Contract.

4. Classification of inventory should conform as far as possible to that embodied in the Standard Settlement Proposal Forms. In some cases those forms may be adapted for use both in the submission by contractors of proposals for pretermination settlement agreements and in the schedules to be attached to the agreements.

5. Classification of work-in-process must proceed on the basis of an agreement as to the points at which processing will be stopped, which agreement must conform to the requirements of § 842.241–3.

6. This form is designed for the situation in which the entire amount to be paid to the contractor, exclusive of subcontractors' claims, is to be determined pursuant to the agreement. In many cases it will be possible to reach an agreement on some of the elements of fair compensation and not on others. It is important that the agreement make entirely clear in each case what items are not covered. Where items are excluded, the basis for determining them should generally be the termination article in the basic contract; this should be made explicit wherever necessary.

7. Insert at this point the number of the termination article in the basic contract.

8. As this particular agreement has been prepared, the costs of the items of inventory to be shown on the schedules referred to in article 3 (2) should consist only of the invoiced cost of materials, direct labor and factory burden. The other elements for which the contractor is entitled to reimbursement are specifically enumerated in the later clauses of the article. In some cases this detailed breakdown of the items to be reimbursed may not be necessary. It is permissible to negotiate an agreed price of all items of termination inventory, which price may include General and Administrative expenses and profit. The accounting data required to support such a negotiated figure may be submitted separately and not shown in the schedules annexed to the contract.

9. Where it is possible to have the contractor agree that there will be no charge for other costs or special facilities, a clause or clauses to that effect should be substituted for article 3 (4) and 3 (5).

10. This form applies to the situation in which the contractor agrees to retain all termination inventory at agreed figures. It is, of course, possible that an agreement on this subject may take many different forms. If the contractor agrees to retain part but not all of the termination inventory, the agreement should so state and should specify the part that is to be retained.

If the Contracting Officer considers that there may be a military requirement for any articles of the termination inventory, the Government should reserve the right to take all or part of such articles. For this purpose it is appropriate to insert in the beginning of article 5 the condition: "Unless the Contracting Officer shall issue directions, not later than the effective date of termination, to transfer title and deliver to the Government the inventory or any part thereof (or specified articles of inventory) as provided in paragraph (b) (6) of Article _____ [termination article] of the contract _____." Should the contractor be unwilling to agree to retain inventory subject to the option, it is appropriate to add a clause providing that if the Contracting Officer elects to demand delivery of a part of the inventory, the Contractor is relieved of his obligation to retain the rest. Any such clause, however, should make it clear that the Contractor's obligation to retain inventory may not be avoided unless the Government exercises its option to demand delivery of a part of it.

11. This form of agreement requires the Contractor to settle termination claims of his subcontractors and secure reimbursement therefor in the normal manner. If an agreement is negotiated in which the sum payable includes all amounts due on account of claims of subcontractors, an express provision should be added by which the Contractor undertakes promptly to pay fair compensation to his subcontractors for the termination of their subcontracts, determined in accordance with the standards prescribed by this regulation.

12. This Article 8 may take a variety of forms. It is permissible to provide for periodic reviews and revisions of the figures at definite intervals, or to make the contract inoperative after a stated period of time unless the schedules agreed upon are confirmed.

[JTR 984.2]

§ 849.985 *Form of notice to General Accounting Office of audit status date.* The following form will be used in accordance with § 845.563–4. Instructions for the use of this form are prescribed in § 849.985–1.

Zone Senior Chief Cost Auditor,
General Accounting Office _____ Zone.

Subject: Terminated CPFF Contract No. _____.

Pursuant to JTR 563.4, the following information pertaining to the contemplated negotiated settlement of the above cost-plus-a-fixed-fee contract, which has been terminated and is in process of settlement, is herewith submitted and notice establishing an audit status date is hereby given.

a. *Name and address of contractor:*

b. *Name and address of contracting officer in charge of the settlement:*

c. *List of vouchers:* Enclosed herewith is a list of all the Form 1034 cost vouchers, paid under the contract, showing: (1) D. O. voucher number, (2) amount of voucher, (3) date of payment, (4) disbursing officer's name and symbol, (5) total amount of vouchers paid, [and (6) the amount of reimbursed costs as defined in JTR 560.3 (3), subdivided as to (a) costs subject to documentary requirements and (b) costs on which documents are not required].

The audit status date is hereby fixed as (a) the day 60 days from receipt of this notice or (b) the date of receipt of the final audit status letter, whichever is earlier.

It is requested that the above named contracting officer be furnished promptly with a letter designated as an "interim audit status letter" showing the current status of the audit, all exceptions or inquiries presently outstanding and any other information which the General Accounting Office considers pertinent to the settlement of the contract.

It is further requested that (a) the above named contracting officer be furnished with a final statement of outstanding exceptions and any other information pertinent to the settlement by a letter designated as the "final audit status letter" sent by registered mail on or prior to the day 60 days from receipt of this notice and (b) there be transmitted with this final audit status letter a copy of the Notice of Exception (Standard Form 1100) covering each exception shown in that letter to be outstanding on the audit status date.

It is requested that copies of the interim audit status letter and the final audit status letter be sent to the Readjustment Division, ASF, and to the Office of the Fiscal Director, ASF [the Chief of the Bureau of Supplies and Accounts (Attention: Cost Inspection Service), Navy Department, Washington 25, D. C., and this office].

Very truly yours,

Contracting Officer [Disbursing Officer]
Enclosure—List of Vouchers.

[JTR 985]

§ 849.985–1 *Instructions for use of notice to General Accounting Office of audit status date.* (a) Material included in brackets is for use in the Navy.

(b) In every case the notice shall be transmitted by registered mail (return receipt requested) addressed to the Zone Senior Chief Cost Auditor of the General Accounting Office Zone in which the work was performed on the terminated contract (or subcontract, where a separate audit status date is being established for a subcontract). The addresses of the Zone Senior Chief Cost Auditors and the geographical limits of the General Accounting Office Zones are as follows:

Northeast Zone, 23rd floor, 80 Broadway, New York 5, N. Y. Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Maryland, Connecticut, New York, New Jersey, Delaware, Pennsylvania.

Southeast Zone, 405 Bona Allen Bldg., Atlanta 5, Ga. West Virginia, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, Kentucky, Indiana, Ohio—with Northern Boundary 40°45".

Great Lakes Zone, 613 National Bank Bldg., Detroit 26, Mich. Michigan, Ohio, with Southern Boundary 40°45".

North Central Zone, 166 W. Van Buren St., Chicago 4, Ill. North Dakota, South Dakota, Nebraska, Illinois, Iowa, Minnesota, Wisconsin, Indiana, with Southern Boundary 40°45".

South Central Zone, 822 Santa Fe Bldg., 114 Commerce St., Dallas 2, Tex. Kansas, Missouri, Oklahoma, Texas, Arkansas, Louisiana.

Western Zone, 824 S. Western Ave., Los Angeles 5, Calif. Washington, Oregon, Idaho, Nevada, Utah, Arizona, California, Colorado, Montana, Wyoming, New Mexico, Canada, Territory of Hawaii.

If the contracting officer is in doubt as to which Zone Senior Chief Cost Auditor should receive the notice he should consult with the General Accounting Office project auditor for the terminated contract or, if there is no project auditor, with the nearest Zone Senior Chief Cost Auditor before transmitting the notice.

(c) Copies of the notice will be sent by regular mail as follows:

(1) In every case a copy of the notice will be sent to Mr. William A. Willingham, Box 216, Washington 4, D. C.

(2) In the War Department, where there is a General Accounting Office Project Audit covering the terminated contract a copy of the notice will be sent to the project auditor. In the Navy, 2 copies of the notice will be sent to the cognizant Cost Inspector who will deliver one copy to the General Accounting Office project auditor, if any.

(3) In the War Department, a copy of the notice will be sent directly to the Readjustment Division, ASF and the Office of the Fiscal Director, ASF. In the Navy, copies of the notice will be sent to the contracting officer and to the Cost Inspection Service.

(d) In the Navy, the disbursing officer will promptly notify each of the offices to which a copy of the notice is sent pur-

suant to subparagraphs (2) and (3) above of the date on which the notice was received by the Zone Senior Chief Cost Auditor as shown by the registered mail return receipt. Transmittal of the notices required by subparagraphs (2) and (3) above may be postponed until after return of the registered mail receipt. [JTR 985.1]

§ 849.986 *Forms relating to direct settlement on a company-wide basis.* [JTR 986]

§ 849.986–1 *Master agreement for company-wide settlement.* The following form of agreement will be used in accordance with § 848.854:

This Master Agreement for Company-wide Settlement, entered into pursuant to authority contained in the Contract Settlement Act of 1944, this _____ day of _____, 1945, 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 _____ and having its principal offices at _____ (hereinafter called "the Contractor");

Witnesseth that:

Whereas, the Contractor has entered, and may enter, into prime contracts with various contracting agencies of the Government and subcontracts with other prime contractors and subcontractors (including purchase orders, letter contracts, and letters of intent, all of which are hereinafter called "war contracts"). and

Whereas, all of such war contracts are directly or indirectly subject to termination at the option of the Government; and

Whereas, pursuant to Regulation No. 16 of the Office of Contract Settlement, the Contractor has applied to have its claims resulting from the termination of its war contracts settled directly by the Government on a company-wide basis and such application has been granted by the Office of Contract Settlement; and

Whereas, the chief of [insert service, bureau, or office] hereinafter called the "designated officer" (which term also includes any duly authorized representative of such chief) has been authorized pursuant to Subpart E of Part 848 of the Joint Termination Regulation to settle directly termination claims of the Contractor on behalf of the War Department and the Navy Department [and—insert any other contracting agencies].

Now, therefore, the parties do mutually agree as follows:

ARTICLE 1. *Applicable statute.* This Agreement shall be construed and administered in the light of, consistently with, and for the purpose of carrying out the provisions and policies of the Contract Settlement Act of 1944 (hereinafter called the "act"). All terms herein which are defined in the act shall be construed in accordance with such definitions unless the context clearly requires otherwise.

ART. 2. *Scope of company-wide settlement.* This Agreement shall govern the settlement of all termination claims of the Contractor arising under prime contracts of the War Department or the Navy Department [or other contracting agencies] or subcontracts of any tier under prime contracts of the War Department or the Navy Department [or other contracting agencies] which subcontracts have been terminated as a result of the modification or termination of a prime contract for the convenience or at the option of the Government, or under other circumstances which require the Government to bear the cost of settling them, as to which notices of termination shall be received by the Contractor after the date of this Agreement, except such claims as may be excluded from its scope pursuant to Article 3 hereof. It shall also govern the settlement of all termination claims of the Contractor under any such war contracts as to which notices of termination have been received prior to the date of this Agreement which the parties may mutually agree to have governed hereby. The Contractor agrees that it will not submit any termination claim governed by this Agreement to a contracting officer of the Government other than the designated officer, and that it will not seek payment of any such claim from another war contractor, unless that claim has been excluded from the scope of this Agreement. The Contractor agrees that it will not include in any termination claim to be settled hereunder any request for payment on account of completed articles delivered to the purchaser under a war contract prior to the termination thereof or which are to be delivered to the purchaser in accordance with the notice of termination.

ART. 3. *Exclusion of claims.* The Contractor, within fifteen days after receipt of a notice of termination of any prime contract, or of any subcontract on account of which it intends to file a termination claim, will furnish a copy or abstract of such notice of termination to the designated officer. Any termination claim of the Contractor may be excluded from the scope of this Agreement at the option of the Government, but such option may not be exercised later than 30 days (or such longer period as the parties may agree) after submission to the designated officer of notice that the contract has been terminated. The Government will exercise its option to exclude claims from the scope of this Agreement only where it determines that (a) such exclusion is required in the interest of continued war production, or (b) the contract is of such complexity or special character that expeditious and fair settlement of the claim will not be advanced by settlement under this Agreement, or (c) that some other substantial reason makes such exclusion advisable.

ART. 4. *Basis of settlement.* (a) The Contractor agrees that it will promptly and diligently prepare and file its settlement proposals on the prescribed forms, or enter into no-cost termination settlement agreements, in accordance with applicable regulations. Each war contract of the Contractor that is to be settled under the terms of this Agreement shall be treated, for the purposes of such settlement and of payment thereunder, as though it were a prime contract of the [insert service, bureau, or office, of the designated officer].

(b) The rights and obligations of the parties under fixed price war contracts to be settled under this agreement will be those set forth in the Uniform Termination Article for fixed price supply prime contracts contained in JTR 931. That Article shall be deemed to be included in each fixed price war contract held by the Contractor for the purpose of settling, under the terms of this Agreement, termination claims under that war contract. For this purpose, paragraph (d) (2) of that Article, which is to be applied in case the parties fail to reach a settlement by negotiation, shall be deemed to provide for payment of profit to the Contractor in the amount of 2% of the cost of articles and materials not processed by the Contractor, plus 8% of the remaining costs of work terminated upon which a profit may be based, but not to exceed the limitation of 6% on the total, imposed by that Article.

(c) The rights and obligations of the parties under cost-plus-a-fixed-fee contracts to be settled pursuant to this Agreement will be those set forth in the Uniform Termination Article for cost-plus-a-fixed-fee prime contracts contained in § 849.932, applying the appropriate Navy Department form to Navy contracts and the War Department form to Army contracts. That Article will be deemed to be included in each cost-plus-a-fixed-fee war contract held by the Contractor for the purpose of settling, under the terms of this Agreement, the termination claims under that war contract.

(d) The Government hereby accepts responsibility for settling and paying directly to the Contractor all termination claims governed by this Agreement, except such claims as may be excluded from its scope pursuant to Article 3 hereof. Upon the payment of any claim hereunder, the Contractor will either release the Government and the war contractor liable to the Contractor from liability on account of such claim, or, at the option of the Government, assign such claim to the Government. The Contractor hereby acknowledges written notice of the acceptance of responsibility by the Government for settling all claims hereunder, and of the conditions applicable thereto. The Contractor waives all the other and future notices that it otherwise might be entitled to receive under section 7 (d) of the act and consents to such acceptance of responsibility by the Government.

(e) The Contractor will notify the designated officer of any and all assignments by the Contractor of monies payable on account of termination claims due or to become due under its contracts.

(f) Payments on account of termination claims to be settled under this Agreement shall be made by the Government only on the basis of vouchers or invoices supported by final settlement agreements, determinations of amounts due where the parties fail to agree, or arrangements for interim financing.

ART. 5. *Settlements with and payments to subcontractors.* The Contractor agrees that it will make all reasonable efforts to bring about the prompt settlement and payment of the claims of its subcontractors (including suppliers) arising out of the termination of subcontracts (including purchase orders) under the terminated war contracts of the contractor. In furtherance of this undertaking, and without limiting the generality thereof, the Contractor agrees that it will:

(a) Promptly make such reviews of the termination claims of its subcontractors as are required or are considered desirable, undertake to negotiate the settlement of such claims, and process them in accordance with applicable regulations and directives;

(b) Accept and exercise diligently and in good faith any authority, existing under any statute, regulation or special authorization from a contracting agency, (i) to settle finally the termination claims of its subcontractors, (ii) to take action with respect to termination inventories of such subcontractors, or (iii) to make partial payments to such subcontractors;

(c) Make partial payments to such subcontractors within 30 days after receipt of proper application therefor in all cases in which the contractor is entitled, under section 9 (b) of the act, to receive payment or credit from the Government in the full amount of such payment; and in all other cases take appropriate action under applicable regulations on each such application for a partial payment within 5 days after receipt thereof;

(d) When directed by the Contracting Officer, make application for a loan or partial payment to set up a fund from which partial and final payments may be made to its subcontractors; and

(e) Pay or credit to each such subcontractor the amount determined to be due on account of each termination claim that is finally settled, within 10 days after receipt of payment on account thereof.

ART. 6. *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 con-

tract if made with a corporation for its general benefit.

ART. 7. *Covenant against contingent fees.* The Contractor warrants that it 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 any sum which may become payable hereunder the amount of such commission, percentage, brokerage, or contingent fee. This warranty shall not apply to commissions payable by the Contractor 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.

ART. 8. *Anti-discrimination.* 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.

ART. 9. *Termination.* This Agreement may be terminated by either party by delivery of written notice of such termination to the other, specifying the effective date of such termination, which shall not be earlier than 30 days after the date of delivery of such notice; provided that, unless otherwise mutually agreeable, no such termination shall affect the administration of any termination with respect to which a settlement proposal has been submitted by the Contractor to the designated officer, all of which terminations shall be concluded in the same manner and to the same effect as if this Agreement had not been so terminated. In the event, however, that the Contractor shall file a petition in bankruptcy, or be adjudged a bankrupt, or commit an act of bankruptcy, or make a general assignment for the benefit of its creditors, or a receiver shall be appointed for all or substantially all the assets of the Contractor, then, in any such case, the Government may, at its option, forthwith terminate this Agreement and any or all settlement negotiations or proceedings then pending hereunder.

In Witness Whereof ----------, etc.

[JTR 986.1]

§ 849.986–2 *Form of notice to contracting officer under applicable prime contract.* The following form will be used in accordance with § 848.855–4:

To: Contracting Officer
Bureau or Procurement District
Subject: Direct settlement of contract termination charges of----------.

1. Pursuant to Subpart E of Part 848 of the Joint Termination Regulation, the undersigned contracting officer is engaged in the direct settlement on a company-wide basis of the termination claims of ---------- (hereinafter called the "assigned contractor"), arising under its terminated prime contracts with the War Department or the Navy Department, and under its terminated subcontracts under any terminated or modified prime contracts with the War Department or the Navy Department. Among these claims may be a charge against ---------- ----------, based on a termination (dated ----------) of Contract (Purchase Order) No. --------, of which the assigned contractor received notice on ---------- which termination is claimed to have resulted from the termination or modification of Contract No. -------- issued by your office to -------- ---------.

2. Any claim of the assigned contractor resulting from the above mentioned termination will be settled directly by the undersigned unless it is determined by the undersigned that it should be excluded from company-wide settlement (a) in the interest of continued war production, or (b) by reason of the complexity or special character of the contract, or (c) for some other substantial reason. In the event you consider that this claim should be excluded from company-wide settlement, you should notify the undersigned within 15 days from the receipt of this letter, stating your reasons therefor.

3. In the event you consider that this claim should not be excluded, you are requested to furnish the following information within 15 days from receipt of this letter.

a. A copy of the notice of termination or modification of the prime contract. (Omit where the termination claim is for the termination of a prime contract.)

b. Whether or not, to your knowledge, there is any assignment of the amounts due under the terminated contract (purchase order) of the assigned contractor, and, if so, the name and address of the assignee.

c. Any information you have as to any rights of set-off which the Government may have against the assigned contractor, including rights arising out of advance payments, progress or partial payments or guaranteed loans.

d. Such other relevant information as may assist the undersigned in negotiating a settlement of the claim.

4. The undersigned will deliver at your request any items of termination inventory which the assigned contractor may have: *Provided,* That you furnish adequate shipping instructions: *And provided,* That such items have not previously been disposed of.

5. The accounting and property disposal representatives of the undersigned will immediately begin work in connection with the above mentioned termination claim.

Contracting Officer

[JTR 986.2]

§ 849.986–3 *Form of notice to customer.* The following form will be used in accordance with § 848.855–6:

(Appropriate changes should be made in this form if it is sent by the contractor with the indorsement of the designated officer.)

ABC CORPORATION

GENTLEMEN: Pursuant to section 7 (c) of the Contract Settlement Act of 1944 and Subpart E of Part 848 of the Joint Termination Regulation, the United States of America, acting through the undersigned contracting officer is undertaking to settle directly the termination claim of ---------- resulting from the termination by you of that contractor's subcontract (purchase order) under Government Contract No. -------. That contractor has consented to have its claim settled directly by the Government and the Government recognizes its liability for the settlement of that claim: *Provided,* That the terminated subcontract (purchase order) is allocable to the terminated or modified portion of a Government prime contract or that other circumstances require the Government to bear the cost of settling that claim. Unless you are notified to the contrary by the undersigned, you are relieved of your obligation to negotiate a settlement of that contractor's termination claim and you should make no payment to that contractor on account of that contractor's termination claim or make any provision for payment thereof in any application for compensation for the termination of your contract (subcontract or purchase order).

The termination claim of the above named contractor will not include any charge for completed items delivered to you, or shipped to you but not received, prior to the termination of the above subcontract (purchase order), or thereafter in accordance with the notice of termination. You remain liable to pay for any such completed items. It will also remain your responsibility to furnish the Government and the above named contractor with any information and assistance necessary for the verification of the termination charges of that contractor and in determining their allocability to the prime contract.

Very truly yours,

Contracting Officer

[JTR 986.3]

§ 849.986–4 *Certificate of allocability.* The following form will be used in accordance with § 848.855–8:

Certificate of Allocability

The undersigned hereby certifies:

(a) That it received the following war contract from ----------(1)---------- which has been terminated or modified as follows:

Buyer's contract No.	Date of order	Date of termination or modification	Quantity involved	Number of [2] applicable prime contracts	Government office in charge of applicable prime contract

(b) That for the purpose of performing the foregoing war contract, the undersigned placed a subcontract with --------(2)---------- which it has terminated by reason of the above described termination or modification as follows:

Contract Number of undersigned	Date of order	Date of termination	Quantity terminated

(c) That the stated quantity terminated under the subcontract placed with ----------(3) ---------- by the undersigned is properly allocable to the terminated portion of the war contract described in (a) above.

Dated at ---------- this -------- day of ----------, 1945.

----------(4)----------
By----------

Title

[1] Name of buyer from contractor executing certificate.
[2] Omit where contract listed is a prime contract.
[3] Name of seller to contractor executing certificate.
[4] Name of contractor executing certificate.

[JTR 986.4]

§ 849.987 *Forms for settlements of subcontracts by war contractors.* [JTR 987]

§ 849.987–1 *Form of authorization to war contractor to settle subcontractors' claims and make partial payments.* The following form will be used in accordance with § 846.642.

Name of contractor _____
Address _____

1. Pursuant to § 846.642 of the Joint Termination Regulation of the War and Navy Departments, you are authorized, subject to the limitations stated in paragraph 2 hereof below, to settle without further approval by the Government all fixed-price subcontracts and purchase orders terminated by you as a result of the termination or modification of a prime contract with the [insert service or bureau], or under any other circumstances which require the [insert service or bureau] to bear the cost of settling the terminated subcontract or purchase order.

2. This authorization is subject to the following limitations:

a. It shall apply only to settlements of not more than $10,000 after deducting (from the gross claim) amounts payable for completed articles or work at the contract price and settlements with lower tier subcontractors previously authorized under §§ 846.642 or 846.643 of the Joint Termination Regulation or approved by the contracting officer, but without deducting other subcontract claims or disposal credits.

b. It shall apply only to settlements in which 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 of the subcontractor or supplier, is retained by the subcontractor or supplier at values deemed reasonable by you, or is sold by you or the subcontractor or supplier at the best obtainable prices in your judgment and the value or proceeds credited on the settlement, or is transferred to the Government with the consent of the Contracting Officer or his representative.

c. It does not include (i) the authority to retain or sell, or to approve retentions or sales of, completed articles not delivered under the contract or material treated as termination inventory in accordance with § 844.400–2 of the Joint Termination Regulation, unless the cost of such articles and such material to be retained or sold and the amount of the subcontractor's termination claim, computed according to § 841.122 of such Regulation, total less than $10,000; or (ii) the authority to abandon or discard, or to approve abandonment or discarding of, worthless property without the approval of the contracting officer (in the case of the Navy, the local NMR&DA officer) or disposal board, required by § 844.453–3 of the Joint Termination Regulation.

d. Each settlement made under the authorization granted herein will bear the following certification:

"The undersigned individually and as authorized representative of the contractor, certifies that he has examined, or caused to be examined, to an extent he considers adequate in the circumstances, the claim of the within named subcontractor (exclusive of claims filed against such subcontractor by its subcontractors); and that the within settlement on account of such subcontractors own charges is allocable to *prime contract with the Government No.* _____ [Order No. _____, From _____, related to prime contract with the Government No. _____, should be used in place of italicized words when the certificate is executed by a subcontractor], is fair and reasonable, was negotiated in good faith, and is not more favorable to said subcontractor than one which the undersigned would make if reimbursement by the Government were not invived; and that it has no knowledge to doubt the reasonableness of the settlements with more remote subcontractors or to doubt that the charges for them are allocable to said Contract. On the basis of the foregoing, the within settlement is approved pursuant to authorization dated _____, 194__ from _____ [Insert service or bureau] signed by _____ _____ 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 or at the best price obtainable, or has been transferred to the Government with the consent of the Contracting Officer or his representative.

_____
(Name of Contractor)
By _____
(Authorized Representative)
_____
(Title)
_____
(Date)

e. The Contracting Officer or next higher tier war contractor may incorporate specific instructions in each Notice of Termination as to the disposition of specific items of termination inventory, or the Contracting Officer or next higher tier war contractor may, at any time prior to final settlement, issue such specific instructions. No such instructions, however, will affect any disposal action taken by you or your subcontractors prior to receipt thereof.

3. In making settlements hereunder, you should make every effort to arrange for the sale or retention of termination inventory in order to avoid the necessity of transferring it to the Government. The Contracting Officer will consent to such transfer to the Government only if no other disposition is reasonably feasible.

4. A settlement with a subcontractor made or approved by you in accordance with this authorization, including sales or retentions of property involved therein, will be recognized by the Government as final and conclusive for the purpose of settling the terminated prime contract or adjusting the continuing prime contract (whether modified or not), to which the subcontract is allocable.

5. Any number of separate settlements of not more than $10,000 may be made with a single subcontractor under different subcontracts. Claims which would normally be included in a single settlement proposal, such as a series of separate orders for the same item under one contract, should, wherever possible, be consolidated and must not be divided for the purpose of bringing them within this authorization.

6. Pursuant to the Joint Termination Regulation § 843.369, you are authorized to make partial payments on account of termination claims under all fixed-price subcontracts and purchase orders terminated by you as a result of the termination or modification of a prime contract with the [insert service or bureau] or under any other circumstances which require the [insert service of bureau] to bear the cost of settling the terminated subcontract or purchase order. This authorization is subject to the following conditions:

a. Such partial payments shall be made only on the basis of applications filed by subcontractors on the form prescribed by, and executed in accordance with, Regulation No. 2 of the Office of Contract Settlement (see § 849.953 of the Joint Termination Regulation).

b. The amounts of any partial payments made by you shall not exceed $10,000 (including all previous unliquidated partial payments and advances) to any applicant therefor under any one termination claim, and shall not exceed any limitation contained in the Joint Termination Regulation on the amount of partial payments that may be made.

c. Each partial payment made under the authorization granted herein will bear the following certification:

The undersigned states that it has examined this application and has considered the applicant's general reputation. He has no reason to doubt the accuracy of the information contained in this application or that the amount certified by the applicant as due will constitute a proper charge to be included in the undersigned's claim against _____ Partial payment of $_____ is made hereunder pursuant to authorization dated _____ from _____ _____[insert service or bureau] signed by _____.

_____
(Name of Contractor)
By _____
(Authorized Representative)
_____
(Title)
_____
(Date)

d. You shall, upon request, present to the contracting officer the original application, and a receipt, for any partial payment made by you under the authorization granted herein. If you are unable to obtain such receipt for a partial payment, you shall use your best efforts to supply such information with respect to such partial payment as may be necessary to protect the Government's interest therein.

e. Any partial payment made by you in accordance with this authorization shall have the same effect as a partial payment made with the specific approval of the contracting officer under the applicable prime contract. Such payments shall be subject to Section 9 (b) of the Contract Settlement Act of 1944, under which Section you are expressly relieved of liability for any excess payment and are entitled to receive payment or credit from the Government in the full amount of the payment that you have made.

7. The authorization to make settlements and partial payments provided for herein is not to be exercised in the case of a subcontractor or supplier who is affiliated with you. For this purpose you should consider a contractor to be affiliated with you if you are under common control, or there is any common interest between you, by reason of stock ownership or otherwise, which is sufficient to create a reasonable doubt that the bargaining between you is completely at arm's length.

8. The Government will, from time to time, review your methods used in negotiating settlements with your subcontractors. Where such a review indicates that you are not adequately protecting the Government's interests, this delegation will be revoked.

_____
(Contracting Officer or other official of service or bureau authorized to grant authorization)

[JTR 987.1]

§ 849.987–2 *No-cost settlement agreement for use in settling fixed-price subcontracts after complete termination where subcontractor presents no claim.*

(At the top insert all special details relating to the particular subcontract termination: e. g., the number of the terminated prime contract, the number of the subcontract, technical service or bureau involved, etc.)

This supplemental settlement agreement, entered into pursuant to the Contract Settlement Act of 1944, this _____ day of _____

194__, by _____ (hereinafter called "the Contractor") and _____ (hereinafter called "the Subcontractor"),

Witnesseth that:

Whereas, the Contractor and the Subcontractor have entered into Contract No. _____ under date of _____ 194__ which, together with any and all amendments, changes, and supplements thereto, is hereinafter referred to as "the Contract"; and

Whereas, the Contractor, by Notice of Termination dated _____ 194__, advised the Subcontractor of the complete termination of the Contract; and

Whereas, the Subcontractor is willing to waive unconditionally any claim against the Contractor by reason of such termination; and

Whereas, such unconditional waiver by the Subcontractor will expedite settlement of the Contract and will otherwise promote the objectives of the Contract Settlement Act of 1944,

Now, therefore, the parties hereto agree as follows:

ARTICLE 1. The Subcontractor hereby unconditionally waives any claim against the Contractor by reason of the termination of the Contract.

ART. 2. The parties agree to, and do hereby, release each other from any and all obligations arising under the Contract or by reason of its termination or under the Act, and all rights and liabilities of the parties so arising shall cease forthwith and be forever released except as follows:

[The parties may add appropriate exceptions depending upon the particular provisions of their contract.]

In witness whereof, etc.

[JTR 987.2]

§ 849.987–3 *No-cost settlement agreement for use in settling fixed-price subcontracts after partial termination where subcontractor presents no claim.*

(At the top insert all special details relating to the particular subcontract termination: e. g: the number of the terminated prime contract, the number of the subcontract, technical service or bureau involved, etc.)

This supplemental settlement agreement, entered into pursuant to the Contract Settlement Act of 1944, this _____ day of _____ 194__, by _____ (hereinafter called "the Contractor") and _____ (hereinafter called "the Subcontractor"),

Witnesseth that;

Whereas, the Contractor and the Subcontractor have entered into Contract No. _____ under date of _____ 194__, which, together with any and all amendments, changes, and supplements thereto, is hereinafter referred to as "the Contract"; and

Whereas, by Notice of Termination dated _____ 194__, the Contractor advised the Subcontractor of the partial termination of the Contract, as of the date and to the extent provided in such notice, to which reference is hereby made as to the part of the Contract terminated, and said part is hereinafter referred to as the "terminated portion of the Contract"; and

Whereas, the Subcontractor is willing to waive unconditionally any claim against the Contractor by reason of such termination; and

Whereas, such unconditional waiver by the Subcontractor will expedite settlement of the Contract and will otherwise promote the objectives of the Contract Settlement Act of 1944,

Now, therefore, the parties hereto agree as follows:

ARTICLE 1. The Subcontractor hereby unconditionally waives any claim against the Contractor arising under the terminated portion of the Contract or by reason of its termination including, without limitation, all obligations of the Contractor to make further payments or to carry out other undertakings in connection with said terminated portion, and the Contractor hereby unconditionally releases the Subcontractor from any obligation to perform further work or services or to make further deliveries of articles or materials under the terminated portion of the Contract: *Provided, however,* That nothing herein contained shall impair or affect in any way any other covenants, terms, or conditions of the Contract.

In witness whereof, etc.

[JTR 987.3]

§ 849.988 *Forms relating to direct settlement with subcontractors.* [JTR 988]

§ 849.988–1 *Form of article to be inserted in final settlement agreement where a prime contractor is unable to settle with a subcontractor.* The following form will be used in accordance with § 846.613.

ARTICLE ___. *Assumption of Contractor's Obligations to Subcontractor.* (1) The Contractor hereby transfers and assigns to the Government all of its right, title and interest in and to its subcontract no. _____ (hereinafter in this Article called "the Subcontract") with _____ (hereafter in this Article called "the Subcontractor"), insofar as such subcontract is allocable to the terminated portion of the prime contract.

(2) The Government hereby accepts the transfer and assignment of all of the Contractor's right, title and interest in and to the Subcontract and assumes and undertakes to settle with and pay to the Subcontractor such amounts as may be found to be due him by reason of the termination of the Subcontract, insofar as such amounts are allocable to the terminated portion of the prime contract and are not in excess of the amounts specified in paragraph (6).

(3) The Contractor hereby releases the Government from any obligation which the Government now has or may have to reimburse the Contractor for any sums which the Contractor might be required to pay to the Subcontractor by reason of the termination of the Subcontract.

(4) The Government hereby releases the Contractor from all obligation to negotiate and settle with and pay to the Subcontractor the amounts which are or will be due to the Subcontractor by reason of the termination of the Subcontract, insofar as such amounts are allocable to the terminated portion of the prime contract. The Government further agrees to hold the Contractor harmless in the event that any litigation arises in connection with such obligation, subject to the provisions of paragraphs (5) and (6) hereof.

(5) In the event that the Subcontractor institutes litigation against the Contractor in connection with any obligation referred to herein, the Contractor agrees promptly to notify the Government of such action and to defend such litigation or, if the Government so requests, to permit the Government to assume the defense of such litigation. The failure of the Contractor to comply with the provisions of this paragraph shall relieve the Government from all liability under this Agreement, or otherwise, to pay any claim arising in connection with any of such obligations.

(6) In no event shall the total amount to be paid to the Subcontractor by the Government under this Article exceed $_____ (Here insert an amount 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.)

[JTR 988.1]

§ 849.988–2 *Notice to subcontractor under section 7 (d) of act when Government undertakes to negotiate or determine amount due on termination claim.* The following form will be used in accordance with § 846.663–2 (a) when the contracting officer undertakes to negotiate or determine the amount due on account of the termination claim of a subcontractor, and to make payment of such amount to the subcontractor.

XYZ CORPORATION.

GENTLEMEN: Pursuant to section 7 (d) of the Contract Settlement Act of 1944, the United States of America, acting through the undersigned contracting officer, proposes to settle directly the termination claim which you have filed with _____ arising out of the termination of the subcontract (purchase order) for war production No._____, which subcontract (purchase order) is apparently allocable to Government Contract No. _____.

The Government will accept responsibility for settling this claim to the extent that it is allocable to the aforementioned Government contract on condition that you agree:

a. That the claim will be settled on the basis of the principles set forth in the Uniform Termination Article for use in Fixed-Price Supply Contracts (Joint Termination Regulation, § 849.931), in the same manner as if your claim arose under a prime contract with the Government containing that article; [1]

b. That upon the final settlement of your claim, by agreement or otherwise, you will, at the option of the Government, either (i) assign to the Government the claim against your purchaser resulting from the termination of your subcontract, or (ii) release your purchaser and the Government from all liability on account of the termination of your subcontract; and that you will execute such document or documents as a contracting officer of the Government may request to effect such assignment or release.

This assumption of liability relates only to your claim for compensation for the termination of your subcontract, and does not include any claim which you may have for completed articles delivered to your purchaser prior to the termination of your subcontract or thereafter in accordance with the notice of termination, or any other claim which you may have against your purchaser under the subcontract.

If you sign and return the consent set forth below, the Government shall become liable for the settlement of your claim on the foregoing conditions.

Very truly yours,

_____
Contracting Officer

Captain JOHN DOE,
Contracting Officer.

The undersigned subcontractor under Government Contract No. _____ consents to the direct settlement by the Government of its claim against _____ resulting from the termination of Contract (Purchase Order) No. _____ upon the conditions set forth in the foregoing letter.

_____
(Subcontractor)

[JTR 988.2]

§ 849.988–3 *Notice to subcontractor under section 7 (d) of act where Government adopts settlement previously made with subcontractor.* The following form will be used in accordance with § 846.–

[1] The contracting officer may omit condition a. or substitute therefor any other authorized basis of settlement that he considers reasonable under the circumstances. He may also add other conditions that he considers appropriate.

663–2 (a) when the contracting officer adopts a settlement previously made by the higher tier war contractor with the subcontractor and assumes to make payment of the amount due thereon.

XYZ CORPORATION

GENTLEMEN: Pursuant to section 7 (d) of the Contract Settlement Act of 1944, the United States of America, acting through the undersigned contracting officer, proposes to adopt and assume the settlement of the termination claim which you have filed with _____ arising out of the termination of the subcontract (purchase order) for war production No. _____ under Government contract No. _____.

The Government will accept responsibility for direct payment to you of the sum of $_____ in full and complete settlement of your claim for compensation for the termination of this subcontract, including all interest to which you are entitled under the Contract Settlement Act, on condition that you sign and return the consent and {assignment / release} set forth below.

The said sum of $_____ represents solely your claim for compensation for the termination of your subcontract and does not include any claim for completed articles delivered to your purchaser prior to the termination of your subcontract or thereafter in accordance with the notice of termination, or any other claim which you may have against your purchaser under the subcontract.

Very truly yours,

_____
Contracting Officer

Captain JOHN DOE,
Contracting Officer.

The undersigned subcontractor under Government Contract No. _____ consents to the direct settlement and payment by the Government of the sum of $_____ in full and complete settlement of its claim against _____ for compensation for the termination of Contract No. _____.

(In consideration of the payment of said sum of $_____, the undersigned subcontractor hereby releases the Government and _____ from all liability on account of the termination of its subcontract.)

(In consideration of the payment of said sum of $_____ the undersigned subcontractor does hereby assign, transfer and set over to the United States of America all its rights and claims against _____ under said subcontract and under the Contract Settlement Act of 1944 resulting from the termination of said subcontract.)

_____
(*Subcontractor*)

[JTR 988.3]

§ 849.988–4 *Notice to immediate purchaser of proposed direct settlement of termination claim of subcontractor.* The following form will be used in accordance with § 846.663–2 (b) when the contracting officer undertakes to negotiate or determine the amount due on account of the termination claim of a subcontractor and to make payment of such amount to the subcontractor.

ABC CORPORATION.

GENTLEMEN: Pursuant to Section 7 (d) of the Contract Settlement Act of 1944, the United States of America, acting through the undersigned contracting officer, is undertaking to settle directly the termination claim of _____ resulting from the termination by you of that company's subcontract (purchase order) under Government Contract No. _____. The named company has consented to have its claim settled directly by the Government and the Government recognizes its liability for the settlement of that claim to the extent that the terminated subcontract (purchase order) is allocable to the terminated portion of a Government prime contract. You are relieved of your obligation to negotiate a settlement of that company's termination claim and you should make no payment to the company on account of that claim and should include no provision for payment on account of that company's termination claim in any application for compensation for the termination of your contract.

You remain liable to pay for any completed items delivered under the above subcontract (purchase order) prior to the effective date of the termination thereof and for any completed items to be delivered to you under the Notice of Termination. It will also remain your responsibility to furnish the Government with the information and assistance necessary in the verification of the charges of the named company and in relating them to the terminated portion of the prime contract.

Very truly yours,

_____
(Contracting Officer)

[JTR 988.4]

§ 849.988–5 *Form of notice to immediate purchaser of assumption by Government of subcontract settlement.* The following form will be used in accordance with § 846.663–2 (b) when the contracting officer adopts a settlement previously made by the higher tier war contractor with the subcontractor and assumes to make payment of the amount due thereon.

ABC CORPORATION.

GENTLEMEN: Pursuant to section 7 (d) of the Contract Settlement Act of 1944, the United States of America, acting through the undersigned contracting officer, has adopted and assumed the settlement, in the amount of $_____, of the termination claim of _____ resulting from the termination by you of that company's subcontract under Government No. _____. The named company has consented to have its claim for compensation for the termination of its subcontract paid directly by the Government and the Government recognizes its liability for the payment of that claim. You should make no payment to the company on account of that claim and should include no provision for payment on account of the termination of that company's subcontract in any application for compensation for the termination of your contract.

You remain liable to pay for any completed items delivered under the above subcontract prior to the effective date of the termination thereof and for any completed items to be delivered to you under the notice of termination.

Very truly yours,

_____
Contracting Officer

[JTR 988.5]

§ 849.988–6 *Settlement agreement for use when the Government settles directly the termination claim of a fixed-price subcontractor.* The following form will be used in accordance with § 846.663–6 (a).

This agreement, entered into pursuant to the Contract Settlement Act of 1944, hereinafter called "the act", this _____ day of _____ 194_, by the United States of America, hereinafter called "the Government", represented by the Contracting Officer executing this Contract, and _____ _____, hereinafter called "the Contractor",

Witnesseth that:

Whereas, the Contractor has previously entered into a contract for war production with _____ which contract (hereinafter called "the Contract") is a subcontract under contract No. _____ between the Government and _____ _____ (hereinafter called "the Prime Contract"); and

Whereas, the Contract has been terminated as a result of the termination in whole or in part of the Prime Contract for the convenience or at the option of the Government; and

Whereas, the act requires that fair compensation be provided to war contractors by reason of such termination of their war contracts, and provides for the settlement by agreement of the amount payable as such fair compensation; and

Whereas, the Government, pursuant to section 7 (d) of the act, has undertaken to settle directly the claim of the Contractor for such fair compensation and has so notified the Contractor in writing and the Contractor has consented to such direct settlement of its claim; and

Whereas, the term "Contract termination inventory", as used herein, shall mean all materials (including a proper part of any common materials), determined by the parties hereto, in connection with this settlement, to be properly allocable to the terminated portion of the Contract, except any machinery or equipment subject to a separate contract or contract provision specifically governing the use or disposition thereof; and

Whereas, the term "subcontract termination inventory", as used herein, shall mean all materials (including a proper part of any common materials), determined by the parties to any subcontract under the Contract, in connection with the settlement thereof, to be properly allocable to the terminated portion of any such subcontract, except any machinery or equipment subject to a separate contract or contract provision, specifically governing the use or disposition thereof;

Now therefore, the parties hereto do mutually agree as follows:

ARTICLE 1. (Insert the appropriate form of Article 1 of the Supplemental Settlement Agreement for use in settling fixed-price prime contracts after complete termination (§ 849.931–1).)

ART. 2. (Insert Article 2 of said agreement (§ 849.931–1).)

ART. 3. (Insert Article 3 of said agreement (§ 849.931–1).)

ART. 4. Upon the execution of this agreement (and of the storage agreement(s) referred to in Article 1),[1] the Government agrees to pay to the Contractor, upon presentation of properly certified invoices or vouchers, the sum of $_____ (a) _____, representing the sum of $_____ (x) _____ less (1) the amount of $_____ (y) _____ representing partial payments previously made on account of the termination claim under the Contract and (2) the amount of $_____ (z) _____ representing all applicable property disposal credits. All interest to which the Contractor is entitled under the act to the date of payment is included in said sum of $_____ (a) _____, or, to the extent not so included, is expressly

[1] This phrase is to be inserted only when the second form of Article 1 is used.

waived by this agreement.[2] Said sum, together with all other sums heretofore paid, constitutes payment in full and complete settlement of the amount due the Contractor by reason of the complete termination of work under the Contract and under the act, in so far as it pertains to the terminated portion of the Contract, [except as hereinafter provided in Article 5 of this Agreement].[3]

(Insert whichever form of Article 5 is applicable. The Contracting Officer should decide in each case whether the Government has any interest, or possible interest, that would be protected by its taking an assignment of the Contract. If so, the first form should be used).

ART. 5. In consideration of the payment of said sum of $_____ (a) _____ as aforesaid, the Contractor does hereby assign, transfer, and set over to the United States of America all of its right, title and interest in and to its claim for fair compensation for the termination of the Contract and all its rights and claims against _____ for fair compensation for such termination, to the extent that the terminated portion of the Contract is allocable to the terminated portion of the Prime Contract, (or)

ART. 5. In consideration of the payment of said sum of $_____ (a) _____ as aforesaid, the Contractor hereby releases the Government from all liability with respect to its claim for fair compensation for the termination of the Contract under the Act and under the terminated portion of the Contract. In consideration of the payment of said sum, the Contractor also releases _____ from all liability and obligation to pay such claim for fair compensation for such termination in connection with the settlement of the Prime Contract to which the terminated portion of the Contract is allocable. Such releases, however, shall not apply to the following:

(Here insert any of the excepted items set forth in Article 4 (c) of the fixed price prime contract settlement agreement (§ 849.981–1), or appropriate modifications thereof, or other exceptions, which are applicable).

ART. 6. *Officials not to benefit.* (Insert the clause set forth in War Department Procurement Regulations § 803.322; Navy Procurement Directives par. 17,601.)

ART. 7. *Covenant against contingent fees.* (Insert the clause set forth in War Department Procurement Regulations § 803.323; Navy Procurement Directives par. 10,531.)

ART. 8. *Anti-discrimination.* (When the third form of Article 1 is used, insert the clause set forth in War Department Procurement Regulations § 803.325; Navy Procurement Directives par. 17,731.)

ART. 9. *Disputes.* (When the third form of Article 1 is used, insert the clause set forth in War Department Procurement Regulations § 803.326; Navy Procurement Directives par. 11,604.)

In witness whereof, etc.

[JTR 988.6]

[2] Where interest is not waived and the parties have not included in the Agreement a lump sum for interest to to the date of payment, the following should be substituted for this sentence: "Said sum of $_____ (a) _____ includes all interest to which the Contractor is entitled under the Act to the date of execution of this Agreement; for each day thereafter until final payment hereunder, the Contractor shall be entitled to interest at the rate of $_____ (u) _____ per day." Also, in the next sentence change the words "sum" to "sums" and "constitutes" to "constitute".

[3] The phrase in brackets is to be included only when the second form of Article 5 is used and rights under the act are excepted from the release.

§ 849.989 *Settlements of contracts with War Supplies Limited.* [JTR 989]

§ 849.989–1 *Form of certificate by War Supplies Limited.*

To: _____
(War Department establishment)
(appropriate Bureau of Navy Department)

_____
(Address)
Contract No. _____
Other identifying numbers or symbols _____

Pursuant to the letter understanding dated 8 January 1945 between the Under Secretary of War, the Secretary of the Navy and War Supplies Limited, War Supplies Limited (hereinafter called "the Corporation") certifies as follows:

1. With respect to the contract above identified, including all supplements or amendments thereto (hereinafter referred to collectively as "the Contract"), notice was given of Termination at the Option of the Government (War Department) (Navy Department) by and to the extent indicated in a notice dated _____, copy of which is annexed hereto, marked Schedule "1".

2. The Corporation, acting through the Department of Munitions and Supply, has, to the extent thus required by the (War Department) (Navy Department), terminated the contracts of suppliers and subcontractors involved in the performance of the Contract.

3. The Corporation, acting through the Department of Munitions and Supply, has settled the termination claims of such suppliers and subcontractors in accordance with the principles and procedures applied generally by the Canadian Government in the termination of its own contracts for its convenience, except that the (War Department) (Navy Department) has undertaken to settle the claims of those subcontractors situated in the United States listed in Schedule "2" hereto annexed, and has undertaken to settle and pay the claims of those subcontractors situated in the United States listed in Schedule "3" hereto annexed.

4. The Corporation has determined that the net amount which is or will be fairly and reasonably owing by the (War Department) (Navy Department) to the Corporation on account of the termination of the Contract is as follows:

(a) For completed supplies heretofore delivered under the contract prior to or in accordance with the notice of termination, at the contract prices therefor, less amounts for such supplies heretofore invoiced for payment:

(For all costs and expenses and amounts with respect to the fixed fee reimbursable or payable for the performance of the contract in accordance with its terms prior to the effective date of the notice of termination, less amounts heretofore invoiced for payment:)

Total for (a) _____

(b) For termination settlements made with suppliers and subcontractors properly allocable to the Contract, less appropriate deductions or offsets (and without duplication of item (a) above, or item (c) below:

[NOTE: Identify each settlement. Show the "net final payment" [Form M. & S. 1823] found to be due the supplier or subcontractor. Show the amount thereof which is allocable to the Contract, deducting the following items [which should be separately listed] to arrive at the amount due by the United States:

(i) The amount of deductions or offsets for the value of materials, work in process, tools, equipment, etc., taken over from the supplier or subcontractor by the Canadian Government, its agencies or wholly-owned corporations, in the course or as part of the settlement. Show how such value was established.

(ii) The amount of any charges, costs or expenses which under any agreement between the (War Department) (Navy Department) and the Corporation or the Canadian Government are not to be included as factors the cost.]

Total for (b) _____

(c) For termination settlements made with suppliers and subcontractors by the (War Department) (Navy Department) properly allocable to the contract, payments in respect of which have been or are to be made by the Corporation.

Total for (c) _____

(d) Net amount of (War Department's) (Navy Department's) liability:

Total for (a) plus total for (b) plus total for (c) _____

[NOTE: In the case of its cost-plus-fixed-fee contracts with the Agencies, the Corporation may omit the statement under (a) and may either reserve for later negotiation, or set forth separately under (b), any fee claimed to be payable to the Corporation with respect to all or any part of the amount shown under (b).]

5. The net amount shown in item 4 (d) above constitutes a fair and reasonable settlement of the obligations of the (War Department) (Navy Department) on account of the termination of the Contract (except insofar as the (War Department) (Navy Department) has undertaken to settle or settle and pay those subcontractors situated in the United States listed in Schedule 2 and/or 3 hereof) and was arrived at in accordance with the principles and procedures described in the letter understanding dated 8 January 1945. The amounts shown in item 4 (b) above as having been paid or as being payable to suppliers or subcontractors have been certified by the Department of Munitions and Supply as being a fair and reasonable settlement of the claims of such suppliers or subcontractors which are allocable to the Contract.

Dated _____ 19____.

WAR SUPPLIES LIMITED,
By _____
_____
(Title)

[JTR 989.1]

§ 849.989–2 *Form of settlement agreement with War Supplies Limited.*

Appropriation _____
Supplemental Agreement No. _____
To Contract No. _____

This supplemental agreement entered into this _____ day of _____ 19____, by the United States of America, hereinafter called "the Government", represented by _____ executing this contract, and War Supplies Limited, hereinafter called "the Corporation".

Witnesseth that:

Whereas, the Corporation and the Government entered into Contract No. _____ under date of _____ 19____, as amended and supplemented by _____ (hereafter referred to collectively as "the Contract"); and

Whereas, notice was given, with respect to the Contract, of Termination at the Option of the Government (War Department) (Navy Department) by and to the extent indicated in a Notice dated _____, 19____, copy of which is annexed as Schedule 1 to the Certificate hereafter referred to; and

Whereas, pursuant to the letter understanding dated 8 January 1945 between the Under Secretary of War, the Secretary of the Navy, and the Corporation, the Corporation has furnished a Certificate dated _____, 19____, a copy of which is annexed hereto; and

Whereas, the Corporation does hereby convey all of its right, title and interest in and

to the property listed in Schedule 1 hereto attached, which property is surplus property located in the plants of those United States subcontractors set forth in said Schedule 1, and has been handed over to the (War Department) (Navy Department) in accordance with the provisions of paragraph No. 1 of said letter understanding above referred to.

Now, therefore, it is agreed, pursuant to said letter understanding and Certificate, that upon payment by the Government to the Corporation of the net amount shown in item 4 (d) of the Certificate (and of any amounts heretofore invoiced for payment under the Contract), the Government will be released from all further liability and obligation under the Contract and the Corporation agrees to accept the net amount shown in item 4 (d) of the Certificate in full and complete settlement of all its rights, and all obligations and liabilities of the United States Government (War Department) (Navy Department) by reason of the termination pursuant to said Notice, excluding (a) claims of the Corporation for payment in accordance with the contract for unterminated work (except payments included in the amount shown in the certificate), (b) termination claims which may arise as a result of any subsequent further termination of the contract, and (c) such other excluded items, if any, as are expressly stated in the Certificate.

In witness whereof, the parties hereto have executed this contract as of the day and year first above written.

[JTR 969.2]

[F. R. Doc. 45-15593; Filed, Aug. 21, 1945; 12:31 p. m.]