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FEDERAL REGISTER

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Codification Guide

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, appears at the end of each issue beginning with the second issue of the month.

Monthly, quarterly, and annual cumulative guides, published separately from the daily issues, include the section numbers as well as the part numbers affected.

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Presidential Documents

Title 3—THE PRESIDENT

Executive Order 10946

ESTABLISHING A PROGRAM FOR RESOLVING LABOR DISPUTES AT MISSILE AND SPACE SITES

WHEREAS a successful missile program is vital to our national security, and a successful space program is vital to the national interest, therefore uninterrupted and economical operations at missile and space sites are imperative; and

WHEREAS manufacturers, construction concerns and labor unions involved in the missile and space programs have pledged their cooperation in avoiding uneconmical operations and work stoppages at missile and space sites; and

WHEREAS the Government has the clear responsibility for encouraging such cooperation and providing a proper framework for its effective operation:

NOW THEREFORE, by virtue of the authority vested in me as President of the United States, it is ordered as follows:

SECTION 1. For the purpose of developing policies, procedures, and methods of adjustment for labor problems at missile and space sites, there is hereby established a Missile Sites Labor Commission composed of: the Secretary of Labor, hereby designated as Chairman; the Director of the Federal Mediation and Conciliation Service, hereby designated as Vice-chairman; three representatives of the public, three representatives drawn from labor and three representatives drawn from management, as designated by the President.

Alternates may be designated by each member of the Commission.

In carrying out its duties the Commission shall consult fully with the Secretary of Defense, the Administrator of the National Aeronautics and Space Administration, and the Chairman and the General Counsel of the National Labor Relations Board, and such officers and the officers of other Government agencies concerned shall cooperate fully with the Commission.

The Commission is hereby empowered to employ an Executive Secretary and to delegate such powers to its Chairman, Vice-chairman and Executive Secretary as it may deem appropriate. Subject to the provisions of Section 9 of this order, the Commission may employ such staff as may be necessary and may incur other necessary expenditures.

SEC. 2. The Commission shall arrange for the establishment at each missile or space site of appropriate Missile Site Labor Relations Committees. Such Committees shall be composed of representatives of manufacturers and construction concerns, labor organizations, contracting agencies and a Mediator assigned by the Federal Mediation and Conciliation Service. These Committees will be so constituted and instructed as to take account of any necessary and appropriate distinctions in representational interests. It shall be the primary functions of such Committees to anticipate impending problems and to arrange for proper disposition of them prior to the time that such problems become acute, utilizing fully all voluntary settlement procedures already in existence, and encouraging establishment of adequate grievances and jurisdictional procedures where such procedures do not now exist, to the end of preventing any interruptions of efficient performance of work. The Commission will take such steps as are necessary to assure that labor organizations will assign appropriate international union representatives to missile sites on which their members are working for the purpose of obtaining the full cooperation of each such international union.

SEC. 3. The Commission shall establish procedures whereby it will be advised of any labor relations problem at any missile or space site which it appears cannot be settled by the voluntary settlement procedures already in existence or by action instituted by the local Missile Site Labor Relations Committee. In such event the Commission shall establish such procedures as appear to it necessary and appropriate to produce a satisfactory settlement of such problem, relying in the first instance on presently established private or governmental procedures, including available legal proceedings, so far as these will be effective.

SEC. 4. The Commission is authorized to establish special panels, composed of members of the Commission or others (as designated by the Chairman of the Commission), to hold hearings in disputed matters over which the Commission has jurisdiction, to make findings of fact, to make recommendations for the settlement of such disputes, to obtain agreement for final and binding arbitration of such disputes, to mediate such disputes, to issue such directives and to take such other action as the Commission may direct. These panels will be so constituted as to take account of any necessary and appropriate distinctions in representational interests, and in the event of conflict between manufacturing and construction groups of either industry or labor the panel shall be composed of public members only.

SEC. 5. The Commission shall develop with the federal contracting agencies and with the parties programs for obtaining, in collective bargaining contracts or other agreements or arrangements covering work at missile and space sites, the inclusion of effective commitments that there will be no lockouts or work stoppages at such sites, with adequate procedures being established for the expeditious resolution of grievances and labor problems at such sites.

SEC. 6. The Commission shall take such other action as will promote the policies of this order, and shall make recommendations to government agencies, labor organizations or other authorized employee representatives and employers to assure efficient and economical completion of missile programs.

SEC. 7. Contracting agencies shall make appropriate assignments of labor relations representatives to each missile or space site on which they are operating and issue instructions and directives to insure that the policies and purposes of this Order are fully understood and will be carried out by the persons responsible for the progress of work on a day-to-day basis.

SEC. 8. The National Labor Relations Board and the General Counsel of the Board are requested to establish accelerated procedures for dealing with matters at missile and space sites within the Board's jurisdiction, in accordance with law, and to make such assignment of personnel as is necessary to this end; provided that voluntary procedures for the adjustment of such matters shall continue to be used wherever available, appropriate and effective but the provisions of this Order shall not affect the authority of the Board under the National Labor Relations Act, as amended.

SEC. 9. The matter referred to in this Order is hereby found to constitute an emergency affecting the national interest within the meaning of the provisions appearing under the heading "Emergency Fund for the President—National Defense" in Title 1 of the General Government Matters Appropriation Act, 1961 (Public Law 86-642), approved July 12, 1960. During the fiscal year 1961 the expenditures of the commission may be paid out of an allotment made by the President from the appropriation made under the aforesaid heading "Emergency Fund for the President—National Defense"; and during the fiscal year 1962, to the extent permitted by law, such expenditures may be similarly paid from any corresponding or like appropriation made available for such fiscal year. Such payments may be made without regard to the provisions of (a) section 3681 of the Revised Statutes (31 U.S.C. 672), (b) section 9 of the act of March 4, 1909, 35 Stat. 1027 (31 U.S.C. 673), and (c) such other provisions of law as the President may hereafter specify. Members, and employees of the Commission and panel members appointed under this Order, shall, if not otherwise compensated, receive such compensation and allowances as the President shall hereafter fix, in a manner to be hereafter determined.

JOHN F. KENNEDY

THE WHITE HOUSE,
May 26, 1961.

[F.R. Doc. 61-5060; Filed, May 26, 1961; 1:32 p.m.]

Rules and Regulations

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

Department of the Navy

Effective upon publication in the FEDERAL REGISTER, subparagraph (1) of paragraph (a) of § 6.306 is amended and subparagraphs (6), (7), and (8) are added to paragraph (a) as set out below.

§ 6.306 Department of the Navy.

(a) *Office of the Secretary.* (1) Three civilian aides or executive assistants to the Secretary.

* * * * *

(6) Two civilian aides or executive assistants to the Under Secretary.

(7) Three civilian aides or executive assistants to the Assistant Secretary (Installations and Logistics).

(8) Two civilian aides or executive assistants each to the Assistant Secretary (Research and Development) and the Assistant Secretary (Financial Management).

(R.S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U.S.C. 631, 633)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] MARY V. WENZEL,
Executive Assistant to the Commissioners.

[F.R. Doc. 61-5038; Filed, May 26, 1961; 10:02 a.m.]

Title 6—AGRICULTURAL CREDIT

Chapter IV—Commodity Stabilization Service and Commodity Credit Corporation, Department of Agriculture

SUBCHAPTER D—REGULATIONS UNDER SOIL BANK ACT

[Amdt. 13]

PART 485—SOIL BANK

Subpart—Conservation Reserve Program for 1960

ESTABLISHMENT AND MAINTENANCE OF VEGETATIVE COVER AND PRACTICES

Section 485.513(b)(1) of the regulations governing the Conservation Reserve Program for 1960, 24 F.R. 7987, as amended, is hereby further amended by adding at the end thereof the following: "The destruction of the vegetative cover with the approval of the county committee for the purpose of establishing a clean cultivated strip, not to exceed one chain in width (66 feet), on the outer edges of the conservation reserve area where necessary to prevent the spread of grasses from the conservation reserve area to adjoining cultivated fields on the same farm or a neighboring farm, shall not be considered a violation of the contract."

(Sec. 124, 70 Stat. 198; 7 U.S.C. 1812)

Effective date: May 24, 1961.

H. D. GODFREY,
Administrator,
Commodity Stabilization Service.

[F.R. Doc. 61-4970; Filed, May 26, 1961; 8:49 a.m.]

[Amdt. 48]

PART 485—SOIL BANK

Subpart—Conservation Reserve Program for 1956 Through 1959

ESTABLISHMENT AND MAINTENANCE OF VEGETATIVE COVER AND PRACTICES

Section 485.157(b)(1) of the regulations governing the Conservation Reserve Program for 1956 through 1959, 21 F.R. 6289, as amended, is further amended by adding at the end thereof the following: "The destruction of the vegetative cover with the approval of the county committee for the purpose of establishing a clean cultivated strip, not to exceed one chain in width (66 feet), on the outer edges of the conservation reserve area where necessary to prevent the spread of grasses from the conservation reserve area to adjoining cultivated fields on the same farm or a neighboring farm, shall not be considered a violation of the contract."

(Sec. 124, 70 Stat. 198; 7 U.S.C. 1812)

Effective date: May 24, 1961.

H. D. GODFREY,
Administrator,
Commodity Stabilization Service.

[F.R. Doc. 61-4969; Filed, May 26, 1961; 8:49 a.m.]

Title 7—AGRICULTURE

Chapter VII—Commodity Stabilization Service (Farm Marketing Quotas and Acreage Allotments), Department of Agriculture

[Farm Marketing Quotas and Acreage Allotments; Amdt. 3]

PART 722—COTTON

Subpart—Regulations Pertaining to Acreage Allotments for the 1961 Crop of Upland Cotton

RELEASE AND REAPPORTIONMENT

The purpose of this amendment is to implement Public Law 87-33, approved May 16, 1961 (75 Stat. 78) which amends section 378 of the act and authorizes temporary release and reapportionment of pooled acreage allotments and also removes the prohibition on release and reapportionment of allotments on farms taken by an agency having the right of eminent domain and leased back to the former owner. The amendment contained herein is issued pursuant to the Agricultural Adjustment Act of 1938, as amended (52 Stat. 31, as amended; 7 U.S.C. 1281 et seq.).

Since cotton is now being planted generally, it is essential that this amendment be made effective as soon as possible. Accordingly, it is hereby determined and found that compliance with the notice and public procedure requirements and the 30-day effective date requirement of section 4 of the Administrative Procedure Act (60 Stat. 238; 5 U.S.C. 1003) is impracticable and contrary to the public interest and this amendment shall be effective upon filing of this document with the Director, Office of the Federal Register.

The regulations pertaining to acreage allotments for the 1961 crop of upland cotton, as amended (25 F.R. 9987, 10332, 12393, 12809, 12987) are hereby further amended as follows:

1. Section 722.418(a) of the regulations is amended to delete subparagraph (3) and renumber (4) and (5) and reads as follows:

(a) *Conditions under which farm allotments cannot be released.* The following farm allotments shall not be released in whole or in part:

(1) Allotments for new cotton farms.

(2) The allotment for an old cotton farm which is owned by the Federal Government and which was leased by an agency of the Federal Government as lessor on condition that no land on the farm shall be planted to cotton.

(3) The allotment for any farm where such release is opposed by the owner or operator.

(4) The allotment for any farm where the county committee, prior to approval of the particular release and prior to the final date for reapportionment of released allotments established for the county, determines that the farm is being acquired for governmental or other public purpose.

2. Section 722.418 is amended by addition of a new paragraph (e) to read as follows:

(e) *Release and reapportionment of pooled acreage allotments.* Any part or all of any 1961 farm allotment maintained as pooled acreage allotment pursuant to section 378 of the act and § 719.12 of the regulations pertaining to reconstitution of farms and farm allotments, as amended (Part 719 of this chapter) which remains in the allotment pool for 1961 may be released by the displaced owner for 1961 only to the county committee for reapportionment to other farms in the county. Such release shall be made by the applicable closing date for release established under paragraph (b) of this section and such reapportionment shall

be made by the county committee not later than the applicable closing date for reapportionment established under paragraph (b) of this section: *Provided, however,* That such closing dates may be extended by the State committee for a reasonable period in order to give effect only to release and reapportionment of pooled allotment under this paragraph. Reapportionment to other farms receiving farm allotments in the same county shall be in amounts determined by the county committee to be fair and reasonable on the basis of past acreages of cotton, land, labor, and equipment available for the production of cotton; crop-rotation practices; and soil and other physical facilities affecting the production of cotton. The State committee may establish standards and guidelines to the extent necessary to assure uniform application of the basic factors required to be considered in the reapportionment of released allotments to farms. The State committee may require an application in writing by the farm operator or owner as a condition of eligibility for consideration by the county committee to have released acreage reapportioned to the farm. Any pooled allotment released for 1961 only shall be considered to have been fully planted on the pooled allotment farm for purposes of establishing future pooled allotment and any pooled allotment which is reapportioned shall for purposes of establishing future farm allotments, not be regarded as planted on the farm to which the allotment was reapportioned. Pooled allotment released under this paragraph shall not be released by the county committee to the State committee for reapportionment to other counties.

(Sec. 375, 52 Stat. 66, as amended; 7 U.S.C. 1375. Interprets or applies sec. 378, 72 Stat. 995, as amended; 7 U.S.C. 1378)

Effective date. Date of filing with the Director, Office of the Federal Register.

Signed at Washington, D.C., on May 24, 1961.

H. D. GODFREY,
Administrator,
Commodity Stabilization Service.

[F.R. Doc. 61-4972; Filed, May 26, 1961; 8:50 a.m.]

[Farm Marketing Quotas and Acreage Allotments; Amdt. 4]

PART 722—COTTON

Subpart—Regulations Pertaining to Acreage Allotments for the 1961 Crop of Extra Long Staple Cotton

RELEASE AND REAPPORTIONMENT

The purpose of this amendment is to implement Public Law 87-33, approved May 16, 1961 (75 Stat. 78) which amends Section 378 of the act and authorizes temporary release and reapportionment of pooled acreage allotments and also removes the prohibition on release and reapportionment of allotments on farms taken by an agency having the right of eminent domain and leased back to the former owner. The amendment contained herein is issued pursuant to the Agricultural Adjustment Act of 1938, as amended (52 Stat. 31, as amended; 7 U.S.C. 1281 et seq.).

Since ELS cotton is now being planted generally, it is essential that this amendment be made effective as soon as possible. Accordingly, it is hereby determined and found that compliance with the notice and public procedure requirements and the 30-day effective date requirement of Section 4 of the Administrative Procedure Act (60 Stat. 238, 5 U.S.C. 1003) is impracticable and contrary to the public interest and this amendment shall be effective upon filing of this document with the Director, Office of the Federal Register.

The regulations pertaining to acreage allotments for the 1961 crop of extra long staple cotton, as amended (25 F.R. 9996, 12403, 12812, 26 F.R. 974) are hereby further amended as follows:

1. Section 722.468(a) of the regulations is amended to delete subparagraphs (3) and renumber (4) and (5) and reads as follows:

(a) *Conditions under which farm allotments cannot be released.* The following farm allotments shall not be released in whole or in part:

(1) Allotments for new ELS cotton farms.

(2) The allotment for an old ELS cotton farm which is owned by the Federal Government and which was leased by an agency of the Federal Government as lessor on condition that no land on the farm shall be planted to ELS cotton.

(3) The allotment for any farm where such release is opposed by the owner or operator.

(4) The allotment for any farm where the county committee, prior to approval of the particular release and prior to the final date for reapportionment of released allotments established for the county, determines that the farm is being acquired for governmental or other public purpose.

2. Section 722.468 is amended by addition of a new paragraph (e) to read as follows:

(e) *Release and reapportionment of pooled acreage allotments.* Any part or all of any 1961 farm allotment maintained as pooled acreage allotment pursuant to section 378 of the act and § 719.12 of the regulations pertaining to reconstitution of farms and farm allotments, as amended (Part 719 of this Chapter) which remains in the allotment pool for 1961 may be released by the displaced owner for 1961 only to the county committee for reapportionment to other farms in the county. Such release shall be made by the applicable closing date for release established under paragraph (b) of this section and such reapportionment shall be made by the county committee not later than the applicable closing date for reapportionment established under paragraph (b) of this section; *Provided, however,* That such closing dates may be extended by the State committee for a reasonable period in order to give effect only to release and reapportionment of pooled allotment under this paragraph. Reapportionment to other farms receiving farm allotments in the same county shall be in amounts determined by the county committee to be fair and reasonable on the basis of past acreages of ELS cotton, land, labor, and equipment available for the production of ELS cotton; crop-rotation practices; and soil and other physical facilities affecting the production of ELS cotton. The State committee may establish standards and guidelines to the extent necessary to assure uniform application of the basic factors required to be considered in the reapportionment of released allotments to farms. The State committee may require an application in writing by the farm operator or owner as a condition of eligibility for consideration by the county committee to have released acreage reapportioned to the farm. Any pooled allotment released for 1961 only shall be considered to have been fully planted on the pooled allotment farm for purposes of establishing future pooled allotment and any pooled allotment which is reapportioned shall for purposes of establishing future farm allotments, not be regarded as planted on the farm to which the allotment was reapportioned. Pooled allotment released under this paragraph shall not be released by the county committee to the State committee for reapportionment to other counties.

(Sec. 375, 52 Stat. 66, as amended; 7 U.S.C. 1375. Interprets or applies sec. 378, 72 Stat. 995, as amended; 7 U.S.C. 1378)

Effective date. Date of filing with the Director, Office of the Federal Register.

Signed at Washington, D.C., on May 24, 1961.

H. D. GODFREY,
Administrator,
Commodity Stabilization Service.

[F.R. Doc. 61-4971; Filed, May 26, 1961; 8:49 a.m.]

PART 729—PEANUTS

[Amdt. 9]

Allotment and Marketing Quota Regulations for Peanuts of the 1959 and Subsequent Crops

I. *Basis and Purpose.* (a) The amendment contained herein is issued pursuant to the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1281 et seq.), for the purpose of revising the allotment and Marketing Quota Regulations for Peanuts of the 1959 and Subsequent Crops (23 F.R. 8515, 24 F.R. 2677, 6803, 9611, 25 F.R. 897, 8065, 10567, 26 F.R. 1344, 2523) to amend (1) § 729.1024, as amended, by revising paragraph (c) to provide for the release and reapportionment of allotment acreage from a farm acquired by an agency having the right of eminent domain and held under lease or other agreement by the former owner and for the release and reapportionment for one year of allotment acreage pooled under the provisions of Part 719 of this chapter, and (2) §§ 729.1057, 729.1060, and 729.1061 to require persons drying farmers stock peanuts by artificial means to maintain specified records and make reports when required.

(b) Farmers in the peanut producing areas of the United States have begun planting the 1961 crop of peanuts. Hence, it is essential that State and county Agricultural Stabilization and Conservation Committees be placed in a position to utilize acreage released for reapportionment as provided herein at the earliest possible date. It is, therefore, hereby determined and found as to § 729.1024(e) that compliance with the notice and public procedure requirements and the 30-day effective date requirement of section 4 of the Administrative Procedure Act (5 U.S.C. 1003), is impracticable and contrary to the public interest and § 729.1024(e), as amended, shall be effective upon the filing of this document with the Director, Office of the Federal Register.

(c) Public notice of intention to amend §§ 729.1057, 729.1060, and 729.1061 was given (26 F.R. 3249) in accordance with the Administrative Procedure Act (5 U.S.C. 1003). Due consideration was given to recommendations submitted in response to such notice prior to publication of this amendment.

II. Section 729.1024, as amended, is hereby amended to revise paragraph (e) to read as follows:

§ 729.1024 Release and reapportionment.

* * * * *

(e) *Farms acquired by an agency having the right of eminent domain.* (1) Notwithstanding the foregoing provisions of this section, for 1961 any part or all of a peanut allotment for a farm acquired by an agency having the right of eminent domain and held under lease or other agreement by the former owner may be released to the county committee through June 15, 1961, and such released acreage may be reapportioned to other farms through July 1, 1961, without regard to an application being filed by a producer. Except as provided in this paragraph (e)(1), the release and reapportionment of such acreage allotments shall be subject to the provisions of paragraphs (a), (b), (c), and (d) of this section.

(2) Notwithstanding the foregoing provisions of this section, during any year of the period the peanut acreage allotment from a farm remains in the allotment pool pursuant to Part 719 of this chapter, the displaced owner may release for one year at a time any part or all of such allotment to the county committee. For the 1961 crop of peanuts such allotment shall be released no later than June 15, 1961, and the county committee, without regard to an application being filed by a producer, may through July 1, 1961, reapportion such released acreage to other farms in the same county having a peanut allotment. For 1962 and subsequent years such allotment must be released not later than the dates specified in paragraph (a) of this section, and applications for the reapportionment of acreage released under the provisions of this paragraph shall be filed by producers in States requiring an application no later than the dates specified in pafagraph (b) of this section. Acreage released under this paragraph (e)(2) may be reapportioned by the county committee, to other farms in the same county having a peanut allotment, in amounts determined by the county committee to be fair and reasonable on the basis of the past acreage of peanuts, land, labor, equipment available for the production of peanuts, crop rotation practices and soil and other physical facilities affecting the production of peanuts. Any increase in the allotment for a farm because of reapportionment under this paragraph shall not operate to increase the allotment for any subsequent year for the farm.

III. Section 729.1057 is hereby amended to delete paragraph (d) and to add new paragraphs (d) and (e) to read as follows:

§ 729.1057 Records and reports of buyers and others.

* * * * *

(d) *Record of peanuts dried by artificial means.* Any person who dries farmers stock peanuts by artificial means for a producer shall maintain records showing the following:

(1) Date drying is completed;

(2) Name and address of the person for whom peanuts were dried;

(3) Name of State and county wherein is located the farm on which such peanuts were produced;

(4) Quantity of peanuts dried (weight after drying, farmers stock basis); and

(5) Type of peanuts dried.

(e) *Additional records and reports.* Any person who dries farmers stock peanuts by artificial means for a producer, any buyer, warehouseman, producers, or common carrier of peanuts, any broker or dealer in peanuts, any agent marketing peanuts for a producer or acquiring peanuts for a buyer or dealer, any peanut growers cooperative association, any person engaged in the business of cleaning, shelling, crushing, or salting peanuts or manufacturing peanut products, or any person owning or operating a peanut-picking or peanut-threshing machine shall keep such records and furnish such reports to the ASC State office in addition to the foregoing, as the State committee may find necessary and require to insure the proper identification of the marketings of peanuts and the collection of penalties due thereon.

IV. Sections 729.1060 and 729.1061 are hereby amended to read as follows:

§ 729.1060 Failure to keep records or make reports.

Any person who dries farmers stock peanuts by artificial means for a producer, any buyer, warehouseman, processor, or common carrier of peanuts, any broker or dealer in peanuts, any agent marketing peanuts for a buyer or dealer, any peanut growers cooperative association, any person engaged in the business of cleaning, shelling, crushing, or salting peanuts, or manufacturing peanut products, or any person owning or operating a peanut-picking or peanut-threshing machine who fails to make any report or keep any record as required in accordance with §§ 729.1039 through 729.1064 or who makes any false report or record is guilty of a misdemeanor and upon conviction thereof is subject to a fine of not more than $500.00.

§ 729.1061 Examination of records and reports.

Any person who dries farmers stock peanuts by artificial means for a producer, any buyer, warehouseman, processor, or common carrier of peanuts, any broker or dealer in peanuts, any agent marketing peanuts for a producer or acquiring peanuts for a buyer or dealer, any peanut growers cooperative association, any person engaged in the business of cleaning, shelling, crushing or salting peanuts or manufacturing peanut products, or any person owning or operating a peanut-picking or threshing machine, shall make available for examination upon written request by the Director, the State Administrative Officer, or any agent of the Compliance and Investigation Division, Commodity Stabilization Service, United States Department of Agriculture, such books, papers, records, accounts, correspondence, contracts, documents, and memoranda as the Director, the State Administrative Officer or such agent has reason to believe are relevant to any matter under investigation in connection with enforcement of the act and regulations issued thereunder and which are within the control of such person."

(Secs. 358, 359, 373, 375, 378, 55 Stat. 88, 90, as amended, 52 Stat. 65, 66, as amended, 72 Stat. 995, as amended; 7 U.S.C. 1358, 1359, 1373, 1375, 1378, Pub. L. 87-33)

Done at Washington, D.C., this 24th day of May 1961.

H. D. GODFREY,
Administrator,
Commodity Stabilization Service.

[F.R. Doc. 61-4973; Filed, May 26, 1961; 8:50 a.m.]

Chapter IX—Agricultural Marketing Service and Commodity Stabilization Service (Marketing Agreements and Orders), Department of Agriculture

[Valencia Orange Reg. 228]

PART 922—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

§ 922.528 Valencia Orange Regulation 228.

(a) *Findings.* (1) Pursuant to the marketing agreement and Order No. 22, as amended (7 CFR Part 922), regulating the handling of Valencia oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Valencia Orange Administrative Committee, established under the said marketing agreement and order, as amended, and upon other available information, it is hereby found that the limitation of handling of such Valencia oranges as

hereinafter provided will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 1001–1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for Valencia oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such Valencia oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on May 25, 1961.

(b) *Order.* (1) The respective quantities of Valencia oranges grown in Arizona and designated part of California which may be handled during the period beginning at 12:01 a.m., P.s.t., May 28, 1961, and ending at 12:01 a.m., P.s.t., June 4, 1961, are hereby fixed as follows:

(i) District 1: Unlimited movement;

(ii) District 2: 475,000 cartons;

(iii) District 3: Unlimited movement.

(2) All Valencia oranges handled during the period specified in this section are subject also to all applicable size restrictions which are in effect pursuant to this part during such period.

(3) As used in this section, "handled," "handler," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in said marketing agreement and order, as amended.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: May 26, 1961.

FLOYD F. HEDLUND,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 61–5056; Filed, May 26, 1961; 11:11 a.m.]

[Grapefruit Reg. 340]

PART 933—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Limitation of Shipments

§ 933.1059 Grapefruit Regulation 340.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR Part 933), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of grapefruit, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 1001–1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of all grapefruit, grown in the production area, are presently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Growers Administrative Committee on May 23, 1961, such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such grapefruit; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of grapefruit, and compliance with this section will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade, diameter, standard pack, and standard box, as used herein, shall have the same meaning as is given to the respective term in the United States Standards for Florida Grapefruit (§§ 51.750–51.783; 26 F.R. 163).

(2) During the period beginning at 12:01 a.m., e.s.t., May 29, 1961, and ending at 12:01 a.m., e.s.t., June 12, 1961, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

(i) Any grapefruit, grown in the production area, which do not grade at least U.S. No. 1: *Provided,* That such grapefruit may have discoloration to the extent permitted under the U.S. No. 2 Russet grade, and may have slightly rough texture caused only by speck type melanose;

(ii) Any seeded grapefruit, grown in the production area, which are smaller than 3 1/16 inches in diameter, except that a tolerance of 10 percent, by count, of seeded grapefruit smaller than such minimum size shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances, specified in said United States Standards for Florida Grapefruit; or

(iii) Any seedless grapefruit, grown in the production area, which are smaller than 3 7/16 inches in diameter, except that a tolerance of 10 percent, by count, of seedless grapefruit smaller than such minimum size shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances, specified in said United States Standards for Florida Grapefruit.

(3) During the period beginning at 12:01 a.m., e.s.t., June 12, 1961, and ending at 12:01 a.m., e.s.t., August 7, 1961, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

(i) Any grapefruit, grown in the production area, which do not grade at least U.S. No. 2 Russet;

(ii) Any seeded grapefruit, grown in the production area, which are smaller than 3 1/16 inches in diameter, except that a tolerance of 10 percent, by count, of seeded grapefruit smaller than such minimum size shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances, specified in said United States Standards for Florida Grapefruit; or

(iii) Any seedless grapefruit, grown in the production area, which are smaller than 3 7/16 inches in diameter, except that a tolerance of 10 percent, by count, of seedless grapefruit smaller than such minimum size shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances, specified in said United States Standards for Florida Grapefruit.

(4) During the period beginning at 12:01 a.m., e.s.t., August 7, 1961, and ending at 12:01 a.m., e.s.t., September 11, 1961, no handler shall ship between the production area and any point out-

side thereof in the continental United States, Canada, or Mexico:

(i) Any grapefruit, grown in the production area, which do not grade at least U.S. No. 1;

(ii) Any seeded grapefruit, grown in the production area, which are smaller than $4\frac{3}{16}$ inches in diameter, except that a tolerance of 10 percent, by count, of seeded grapefruit smaller than such minimum size shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances, specified in said United States Standards for Florida Grapefruit; or

(iii) Any seedless grapefruit, grown in the production area, which are smaller than $3\frac{15}{16}$ inches in diameter, except that a tolerance of 10 percent, by count, of seedless grapefruit smaller than such minimum size shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances, specified in said United States Standards for Florida Grapefruit.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: May 25, 1961.

S. R. SMITH,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 61–4997; Filed, May 26, 1961; 8:51 a.m.]

[Lemon Reg. 901]

PART 953—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 953.1008 Lemon Regulation 901.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 53, as amended (7 CFR Part 953), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons as hereinafter provided will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 1001–1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on May 23, 1961.

(b) *Order.* (1) The respective quantities of lemons grown in California and Arizona which may be handled during the period beginning at 12:01 a.m., P.s.t., May 28, 1961, and ending at 12:01 a.m., P.s.t., June 4, 1961, are hereby fixed as follows:

(i) District 1: Unlimited movement;
(ii) District 2: 325,500 cartons;
(iii) District 3: Unlimited movement.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in the said amended marketing agreement and order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: May 25, 1961.

S. R. SMITH,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 61–4998; Filed, May 26, 1961; 8:51 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter III—Federal Aviation Agency

SUBCHAPTER E—AIR NAVIGATION REGULATIONS

[Airspace Docket No. 60–NY–127]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

PART 601—DESIGNATION OF CONTROLLED AIRSPACE, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Revocation and Alteration of Federal Airways, Associated Control Areas and Reporting Points

On March 29, 1961, a notice of proposed rule making was published in the FEDERAL REGISTER (26 F.R. 2649) stating that the Federal Aviation Agency proposed to revoke Red Federal airway No. 94 in its entirety, its associated control areas and reporting points; extend VOR Federal airway No. 167 from Providence, R.I., to Hyannis, Mass.; and realign the segment of VOR Federal airway No. 146 between Providence and Nantucket, Mass., via Martha's Vineyard, Mass.

No adverse comments were received regarding the proposed amendments.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendments having been published, therefore, pursuant to the authority delegated to me by the Administrator (25 F.R. 12582) and for the reasons stated in the notice, the following actions are taken:

1. Parts 600 and 601 (14 CFR Parts 600, 601) are amended by revoking the following sections:

§ 600.294 [Revocation]

(a) Section 600.294 Red Federal airway No. 94 (Providence, R.I., to Hyannis, Mass.).

§ 601.294 [Revocation]

(b) Section 601.294 Red Federal airway No. 94 control areas (Providence, R.I., to Hyannis, Mass.).

§ 601.4294 [Revocation]

(c) Section 601.4294 Red Federal airway No. 94 (Providence, R.I., to Hyannis, Mass.).

2. Section 600.6146 (14 CFR 600.6146; 25 F.R. 4859) is amended to read:

§ 600.6146 VOR Federal airway No. 146 (Wilkes-Barre, Pa., to Nantucket, Mass.).

From the Wilkes-Barre, Pa., VOR via the Huguenot, N.Y., VORTAC; INT of the Wilton, Conn., VOR 295° and the Poughkeepsie, N.Y., VOR 236° radials; Poughkeepsie VOR; Putnam, Conn., VORTAC; Providence, R.I., VOR; Martha's Vineyard, Mass., VOR; to the Nantucket, Mass., VOR. The portion of this airway which coincides with R–4104 shall be used only after obtaining prior approval from appropriate authority.

3. Section 600.6167 (14 CFR 600.6167) is amended to read:

§ 600.6167 VOR Federal airway No. 167 (Point Pleasant, N.J., to Hyannis, Mass.).

From the INT of the Coyle, N.J., VOR 058° and the Idlewild, N.Y., VORTAC 195° radials via the Idlewild VORTAC; Hartford, Conn., VOR; INT of the Hartford VOR 076° and the Providence, R.I., VOR 270° radials; Providence VOR; INT of the Providence VOR 101° and the Hyannis, Mass., VOR 224° radials; to the Hyannis VOR.

4. Section 601.6146 (14 CFR 601.6146; 25 F.R. 4859) is amended to read:

§ 601.6146 VOR Federal airway No. 146 control areas (Wilkes-Barre, Pa., to Nantucket, Mass.).

All of VOR Federal airway No. 146, excluding the airspace at and below 1,200

feet above the surface between the Providence, R.I., VOR and the Nantucket, Mass., VOR.

5. Section 601.6167 (14 CFR 601.6167) is amended to read:

§ 601.6167 VOR Federal airway No. 167 control areas (Point Pleasant, N.J., to Hyannis, Mass.).

All of VOR Federal airway No. 167, excluding the airspace at and below 1,200 feet above the surface between the Providence, R.I., VOR and the Hyannis, Mass., VOR.

These amendments shall become effective 0001 e.s.t., June 29, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on May 24, 1961.

LEE E. WARREN,
Acting Director, Bureau of Air Traffic Management.

[F.R. Doc. 61-4966; Filed, May 26, 1961; 8:49 a.m.]

[Airspace Docket No. 61-FW-10]

PART 601—DESIGNATION OF CONTROLLED AIRSPACE, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Alteration of Control Zone and Control Area Extension

The purpose of these amendments to §§ 601.2034 and 601.1028 of the regulations of the Administrator is to alter the Monroe, La., control zone and the Monroe control area extension.

The Monroe control zone is presently designated, in part, on the southwest course of the Monroe radio range station and the control area extension is designated, in part, upon the northeast and southwest courses of the radio range.

The Federal Aviation Agency plans to decommission the Monroe radio range station on or about June 30, 1961. The Monroe terminal area is adequately served by the Monroe VORTAC and an ILS. Therefore, action is taken herein to revoke the portions of the Monroe control zone and control area extension which are based upon the radio range.

Since these amendments impose no additional burden on the public, notice and public procedure hereon are unnecessary and they may be made effective immediately. However, since it is necessary that sufficient time be allowed to permit appropriate changes to be made on aeronautical charts, these amendments will not become effective until June 29, 1961.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 12582) the following actions are taken:

1. Section 601.2034 (14 CFR 601.2034) is amended to read:

§ 601.2034 Monroe, La., control zone.

Within a 5-mile radius of Selman Field (latitude 32°30'28" N., longitude 92°02'-20" W.), and within 2 miles either side of the 41° and 221° radials of the Monroe VORTAC extending from the 5 mile radius zone to a point 10 miles SW of the VORTAC.

2. Section 601.1028 (14 CFR 601.1028) is amended to read:

§ 601.1028 Control area extension (Monroe, La.).

Within 5 miles either side of the 41° and 221° radials of the Monroe VORTAC extending from the VORTAC to points 20 miles NE and SW.

These amendments shall become effective 0001 e.s.t., June 29, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on May 24, 1961.

LEE E. WARREN,
Acting Director, Bureau of Air Traffic Management.

[F.R. Doc. 61-4965; Filed, May 26, 1961; 8:49 a.m.]

[Airspace Docket No. 60-AN-32]

PART 608—SPECIAL USE AIRSPACE

Designation of Restricted Area/Military Climb Corridor

On February 10, 1961, a notice of proposed rule making was published in the FEDERAL REGISTER (26 F.R. 1188) stating that the Federal Aviation Agency (FAA) proposed to designate a Restricted Area/Military Climb Corridor R-2207 at Eielson AFB, Fairbanks, Alaska, and to alter the description of Amber Federal airway No. 2 to include reference to this restricted area.

The notice stated that the upper limits of R-2207 at and above 24,000 feet would be designated in terms of feet above mean sea level. However, these limits are designated herein as flight levels to conform to the use of a standard altimeter setting at these altitudes. In addition, no action is taken herein to alter the description of Amber 2 as proposed in the notice. Instead, the proposed change will be incorporated in a complete redescription of Amber 2 appearing in Airspace Docket No. 60-LA-36.

No adverse comments were received regarding the proposed amendments.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendment having been published, therefore, pursuant to the authority delegated to me by the Administrator (25 F.R. 12582) and for the reasons stated in the notice, the following action is taken:

In § 608.22 (26 F.R. 873) the following is added:

R-2207 Fairbanks, Alaska (Eielson AFB), Restricted Area/Military Climb Corridor

Boundaries. That area centered on the 016° radial of the Eielson AFB TACAN extending from 5 miles N. of the airbase (latitude 64°40'00" N., longitude 147°06'00" W.) to 32 miles N. of the airbase having a width of 2 miles at the beginning and a width of 4.6 miles at the outer extremity.

Designated altitudes. 3,500' MSL to 15,000' MSL from 5 miles N. of the airbase to 6 miles N. of the airbase. 3,500' MSL to flight level 240 from 6 to 7 miles N. of the airbase. 5,500' MSL to flight level 270 from 7 to 9 miles N. of the airbase. 7,000' MSL to flight level 270 from 9 to 15 miles N. of the airbase. 10,000' MSL to flight level 270 from 15 to 20 miles N. of the airbase. 13,000' MSL to flight level 270 from 20 to 25 miles N. of the airbase. 16,000' MSL to flight level 270 from 25 to 32 miles N. of the airbase.

Time of designation. Continuous.

Controlling agency. Federal Aviation Agency, Fairbanks Approach Control.

Using agency. Commander, Eielson AFB, Alaska.

This amendment shall become effective 0001 e.s.t., July 27, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on May 22, 1961.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 61-4937; Filed, May 26, 1961; 8:45 a.m]

Title 15—COMMERCE AND FOREIGN TRADE

Chapter II—National Bureau of Standards, Department of Commerce

SUBCHAPTER A—TEST FEE SCHEDULES

PART 201—ELECTRICITY

Standard Cells

In accordance with the provisions of section 4 (a) and (c) of the Administrative Procedure Act, it has been found that notice and hearing on these schedules of fees are unnecessary for the reason that such procedures, because of the nature of these rules, serve no useful purpose. This amendment is effective from July 1, 1961.

1. Part 201 is amended by the addition of the following note after item 201.201a, in § 201.201, to read as follows:

Note on item (a)—*Calibration of unsaturated standard cells.* After June 30, 1961 unsaturated standard cells, the portable type, will be accepted for calibration by the National Bureau of Standards only from public utilities and others having operations of such a nature as to require calibrations by the National Bureau of Standards.

(Sec. 9, 31 Stat. 1450, as amended; 15 U.S.C. 277. Interprets or applies sec. 7, 70 Stat. 959; 15 U.S.C. 275a)

[SEAL] A. V. ASTIN,
Director.

[F.R. Doc. 61-4962; Filed, May 26, 1961; 8:49 a.m.]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 20—FROZEN DESSERTS; DEFINITIONS AND STANDARDS OF IDENTITY

Ice Cream, French Ice Cream, Ice Milk, and Fruit Sherbets; Effective Date of Order Amending Standards of Identity

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055, as amended 70 Stat. 919, 72 Stat. 948; 21 U.S.C. 341, 371) and in accordance with the authority delegated to the Commissioner of Food and Drugs by the Secretary of Health, Education, and Welfare (25 F.R. 8625), notice is hereby given that no objections were filed to the order published in the FEDERAL REGISTER of April 8, 1961 (26 F.R. 3022) with regard to the optional ingredients mono- and diglycerides in the standards of identity for ice cream, french ice cream, ice milk, and fruit sherbets. Accordingly the amendments promulgated by that order will become effective June 7, 1961.

(Secs. 401, 701, 52 Stat. 1046, 1055, as amended 70 Stat. 919, 72 Stat. 948; 21 U.S.C. 341, 371)

Dated: May 22, 1961.

[SEAL] GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 61-4950; Filed, May 26, 1961; 8:46 a.m.]

PART 121—FOOD ADDITIVES

Subpart F—Food Additives Resulting From Contact With Containers or Equipment and Food Additives Otherwise Affecting Food

TRIETHYLENE GLYCOL

The Commissioner of Food and Drugs, having evaluated the data submitted in a petition filed by Olin Mathieson Chemical Corporation, New Haven, Connecticut, on its own behalf and for the Dow Chemical Company, Midland, Michigan, and Union Carbide and Chemical Company, 270 Park Avenue, New York 17, New York, and other relevant material, has concluded that the following regulation should issue in conformity with section 409 of the Federal Food, Drug, and Cosmetic Act with respect to the food additive triethylene glycol as a plasticizer in cellulosic packaging material. Therefore, pursuant to the provisions of the act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)), and under the authority delegated to him by the Secretary of Health, Education, and Welfare (25 F.R. 8625), Subpart F (21 CFR Part 121) of the food additive regulations is amended by adding thereto the following new section:

§ 121.2511 Triethylene glycol.

Triethylene glycol may be safely used in food-packaging materials when used in accordance with the following prescribed conditions.

(a) The food additive contains less than 0.1 percent of diethylene glycol.

(b) It is used or intended for use as a plasticizer in cellulosic food-packaging materials.

Any person who will be adversely affected by the foregoing order may at any time prior to the thirtieth day from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

Effective date. This order shall be effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1))

Dated: May 19, 1961.

[SEAL] GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 61-4951; Filed, May 26, 1961; 8:47 a.m.]

Title 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

SUBCHAPTER A—REGULATIONS

PART 512—REVIEW COMMITTEES FOR PUERTO RICO AND THE VIRGIN ISLANDS

With respect to employees covered by wage orders in effect in Puerto Rico and the Virgin Islands, the Fair Labor Standards Amendments of 1961 (P.L. 87-30, 87th Cong., May 5, 1961) provide for an increase of the rate or rates applicable under the latest wage orders issued prior to September 3, 1961, by 15 percentum and for a subsequent increase of an additional 10 percentum unless such increased rate or rates are superseded by the rate or rates prescribed in wage orders issued pursuant to the recommendations of review committees. In order to provide the procedure for promulgating wage orders pursuant to the recommendations of such review committees, and under the authority provided in the Fair Labor Standards Act of 1938 (29 U.S.C. 200), the Fair Labor Standards Amendments of 1961, Reorganization Plan No. 6 of 1950 (3 CFR 1949-53 Comp., p. 1004), and General Order No. 45-A of the Secretary of Labor (15 F.R. 3290), Title 29 of the Code of Federal Regulations is hereby amended to provide a new Part 512, as hereinafter set out. As this regulation is a rule of agency procedure, and must be effective immediately in order to accomplish its purpose, no provision for public participation in its formulation or delay in its effective date is required by the Administrative Procedure Act, and none is provided.

Sec.
512.1 Scope and application.
512.2 Statutory requirements prerequisite for appointment of review committees.
512.3 Industry.
512.4 Confidentiality.
512.5 Identification and filing date.
512.6 Majority of employees in the industry.
512.7 Financial and other information.
512.8 Payroll and employment data.
512.9 Other information.
512.10 Action on application.
512.11 Review committee procedure.
512.12 Effective period of the 15 percentum increase or the review committee wage order.
512.13 Surety undertaking.

AUTHORITY: §§ 512.1 to 512.13 issued under 29 U.S.C. 200 and P.L. 87-30, 87th Cong., May 5, 1961.

§ 512.1 Scope and application.

Paragraph (A) of proviso (1), subsection 6(c) of the Fair Labor Standards Act of 1938, as amended, requires, with respect to employees in Puerto Rico and the Virgin Islands, that the rate or rates applicable to them under the latest industry wage order prior to September 3, 1961, be increased by 15 percentum, unless such rate or rates are superseded by a rate or rates prescribed in a wage order issued pursuant to the recommendations of a review committee appointed under subsection 6(c), proviso (1), paragraph (C). The regulations in this part provide the procedure for applications for the appointment of such review committees, as well as the procedure to be observed by such committees in the conduct of investigations and hearings and in formulating their recommendations, and the procedure for the promulgation of wage orders giving effect to their recommendations.

§ 512.2 Statutory requirements prerequisite for appointment of review committees.

Under the terms of the governing statute, authority to appoint a review committee for the purpose provided in § 512.1 arises only where application is made to the Secretary of Labor in writing, by any employer or group of employers employing a majority of the employees in an industry in Puerto Rico or the Virgin Islands, for the appointment of a review committee to recommend the minimum rate or rates to be paid such employees in lieu of the rate or rates resulting from the percentage increases described in § 512.1. Such applications cannot be filed later than July 4, 1961. Appointment of a review committee pursuant to such application is

authorized only if the Secretary of Labor has reasonable cause to believe, on the basis of financial and other information contained in the application, that compliance with the applicable rate or rates referred to in § 512.1 will substantially curtail employment in such industry. It is provided that the Secretary's decision on such application shall be final.

§ 512.3 Industry.

Only one application for each industry shall be received. The definition of each industry shall conform to one of the definitions under the first section, entitled "Definition", in Parts 601 to 713, both inclusive, of this chapter excluding, however, Parts 694, 695, and 697 of this chapter. In the case of industries in the Virgin Islands, the definition of an industry shall conform to one of the lettered subsections of § 694.1 of this chapter. Every employer who joins a group of employers in filing an application must sign it. Signers on behalf of business organizations should be the employer's chief executive officer in charge of all its operations in the industry in Puerto Rico or the Virgin Islands, as the case may be, or an officer with supervisory authority over such chief executive. Each such application should be complete in one document. Where, however, substantial reason compels a particular employer to join a group of employers in filing an application by a separate document and if it meets the requirements provided in §§ 512.3 to 512.9, it will be received, considered, together with the presentation of the other employers in the group, and the employer will be accorded status as an applicant under § 512.13.

§ 512.4 Confidentiality.

Each application and the financial and other information contained therein shall, if the application is granted, become a matter of public record at the time the application is granted. Such documents will, upon appointment of the review committee, be referred to it in accordance with section 5(d) of the Fair Labor Standards Act. Prior to the granting of any such application, and both prior to and after the denial of any such application, access to such documents will be restricted, and the contents thereof will be revealed only to the Secretary and officers and employees of the Department of Labor whose duties require the examination of such applications.

§ 512.5 Identification and filing date.

Each application shall separately state for each employer participating in it, his name and address (in Puerto Rico or the Virgin Islands as the case may be), the products produced and services rendered by the employees to whom the application relates, and the applicable wage order and any classification or classifications applicable to such employees, all as defined in Parts 601 through 713, both inclusive, of this chapter. The application shall be filed no later than July 4, 1961. No clarification, supplement, or additional data filed after July 4, 1961, may be considered. If the application is sent by airmail between Puerto Rico or the Virgin Islands and the mainland, such filing shall be deemed timely if postmarked not later than July 4, 1961. The original and two copies of the application shall be filed at the Office of the Administrator of the Wage and Hour Division, United States Department of Labor, Washington 25, District of Columbia, and one copy shall be filed at the Office of the Territorial Director of the Wage and Hour Division, United States Department of Labor, New York Department Store Building, Fortaleza and San Jose Streets, San Juan, Puerto Rico.

§ 512.6 Majority of employees in the industry.

In order to provide the information necessary to determine whether the employer or employers applying for appointment of a review committee employ a majority of the employees in the industry, the application shall show the number of employees subject to the wage order for such industry who were employed by each such employer for the payroll week which includes May 1, 1961. In addition to this information, such information on employment during another specific payroll week may be submitted if the application shows that employers employing a majority of the employees in the industry and participating in the application agree upon such week as the most recent payroll week considered to be normal, and if the application presents facts which establish that employment during such other week is, because of factors such as seasonality or temporary abnormal conditions, more representative than the employment during the week which includes May 1, 1961. The name and address of each employing establishment in the industry which has not joined in the application shall also be stated, together with the estimated number of employees employed by it on May 1, 1961, and such other week as may be selected for counting employees of employers joining in the application. Employers filing information on employment in establishments operated by other employers in their industry who have not joined in the application shall supply the best information they are able to discover on this question, identifying its source.

§ 512.7 Financial and other information.

(a) The application shall set forth separately for each employer participating in such application the financial and other information with respect to his operations which is relied upon to establish reasonable cause for believing that substantial curtailment of employment in the industry will result if the rate or rates resulting from the percentage increases provided by the Amendments are required to be paid to the employees to whom they are made applicable. All other information with respect to the industry which is relied upon to establish reasonable cause for such belief shall also be included. If such information is not set forth in such pertinent detail as will permit the Secretary to conclude that there is reasonable cause to believe that such curtailment of employment will result, he is not authorized to appoint a review committee. It is therefore recommended that each application contain such information in at least the detail required by Part 511 of this chapter as a prerequisite to becoming a party to a proceeding before a special industry committee. In addition to such information as described in paragraph (b) of this section and § 512.9, necessary payroll and employment data as set forth in § 512.8 should be submitted.

(b) Each application should provide pertinent, unabridged profit and loss statements and balance sheets for a representative period of years (not less than three) covering the operations of each employer in the industry joining in such application, and include the most recent period of a year or fraction thereof for which such data are available. Such financial statements (except those relating to a period of less than a full fiscal year or a fiscal year ending less than 90 days prior to the filing of the application) should be certified by an independent public accountant, or verified by the employer to whom they relate, as conforming to, and being consistent with, the corresponding income tax returns covering the same years, so that the application presents all the detail in such returns pertinent to the question whether the 15 per centum increase referred to in § 512.1 will substantially curtail employment in the industry. The names of individuals or business organizations with whom transactions were accomplished, and other detail which is not pertinent to the appointment of a review committee, need not be revealed.

§ 512.8 Payroll and employment data.

Each application should separately present, for each participating employer, payroll data adequate to reflect for every worker employed by him who was subject to the industry wage order in the workweek or workweeks identified in § 512.6 at least the following: the wage rate at which the worker is employed, his hours worked in the workweek, his total earnings, and his straight time hourly earnings as computed from the weekly straight time earnings and hours of work. In reporting payroll data on homeworkers, only the number of homeworkers and the total amount paid to each need be shown. Those employees who are learners or apprentices working under special certificates shall be identified as such in the data. In addition to such payroll data, there should be stated the number of employees employed by each participating employer who were covered by the wage order for the industry during the preceding payroll periods as follows: 3 months, 6 months, 9 months, one year, and two years prior to the period for which information is supplied in compliance with § 512.6. The number of learners working under special certificates shall be stated separately.

§ 512.9 Other information.

Other information which the participants in the application deem necessary or appropriate for consideration on the question of whether the 15 per centum wage increase referred to in § 512.1 will substantially curtail employment in the

industry shall be supplied in the application. Among the types of data which may be considered pertinent, are those revealing (a) employment and labor conditions and trends in Puerto Rico or the Virgin Islands, as the case may be, and on the mainland, particularly after the effective date of the most recent applicable wage order, including such items as present and past employment, present wage rates, perquisites and fringe benefits, changes in average hourly earnings or wage structure, provisions of collective bargaining agreements, hours of work, labor turnover, absenteeism, productivity, learning periods, rejection rates and similar factors; (b) market conditions and trends in Puerto Rico or the Virgin Islands, as the case may be, and on the mainland, including changes in the volume and value of production, market outlets, price changes, style factors, consumer demand, and similar marketing factors; (c) comparative production costs in Puerto Rico or the Virgin Islands, as the case may be, with such costs on mainland and in foreign countries, together with the conditions responsible for the differences.

§ 512.10 Action on application.

Each application under this part will be considered promptly after July 4, 1961, and decisions thereon will be promptly communicated to employers participating in the application. On approval of any such application, an order of appointment of a review committee for the industry to which it relates will be published in the FEDERAL REGISTER. Approval of an application shall not, in proceedings before a review committee, be considered as evidence that any specific rate or rates which may be applicable or may be made applicable under any provision of the Act to employees in the industry concerned will or will not cause substantial curtailment of employment therein.

§ 512.11 Review committee procedure.

The provisions of sections 5 and 8 of the Fair Labor Standards Act of 1938 relating to special industry committees are applicable to review committees appointed pursuant to this part. Part 511 of this chapter, entitled "Wage Order Procedure for Puerto Rico, the Virgin Islands, and American Samoa" shall govern the procedure of review committees and the general method for issuance of wage orders pursuant to their recommendations, except insofar as Part 511 of this chapter may be inconsistent with this part or the Fair Labor Standards Amendments of 1961 (P.L. 87-30, 87th Cong., May 5, 1961).

§ 512.12 Effective period of the 15 per centum increase or the review committee wage order.

Except as provided in § 512.13, the 15 per centum wage increase or the superseding rate or rates prescribed in a wage order issued pursuant to the recommendations of a review committee, as referred to in § 512.1, shall be effective November 3, 1961, or one year after the effective date of the latest applicable wage order issued prior to September 3, 1961, whichever is later. The appointment of a review committee shall be in addition to, and not in lieu of, any special industry committee required to be appointed pursuant to subsection (a) of section 8 of the Fair Labor Standards Act of 1938, as amended, except that no special industry committee shall hold any hearing within one year after a minimum wage rate or rates for such industry shall have been recommended to the Secretary of Labor by a review committee to be paid in lieu of the 15 per centum referred to in § 512.1. The minimum wage rate or rates provided by such percentage increase, or by wage order making effective the recommendations of a review committee, shall be in effect only for so long as, and insofar as, such minimum wage rate or rates have not been superseded by a wage order fixing a higher minimum wage rate or rates (but not in excess of $1.15 per hour) hereafter issued by the Secretary of Labor pursuant to the recommendations of a special industry committee.

§ 512.13 Surety undertaking.

(a) *Eligibility for relief.* In the event a review committee has been appointed as provided in § 512.10 and its deliberations have not resulted in a wage order effective on or before the effective date referred to in § 512.12, the 15 per centum increase referred to in § 512.1 shall go into effect on the effective date referred to in § 512.12, except with respect to the employees of an employer who filed a timely application under § 512.5 to the extent that he qualifies for relief under paragraph (b) of this section.

(b) *Conditions of relief.* Each employer eligible for relief as provided in paragraph (a) of this section is hereby relieved, subject to the following conditions, from the obligation to pay the 15 per centum wage increase referred to in § 512.1 until the effective date of the wage order for his industry recommended by the review committee appointed under § 512.10. Such relief shall begin when, and continue as long as, the following conditions are complied with:

(1) He shall file with the Secretary of Labor a bond enforceable by the Secretary of Labor in the district court of the United States for the District of Columbia or for the district of Puerto Rico by service of process on a public officer in the District of Columbia or in Puerto Rico who is, by irrevocable appointment in the undertaking, authorized to receive service of process on the employer's behalf in any judicial proceeding to enforce the bond. The condition of the bond shall be such that liability for the amount of the undertaking may be avoided only if there is payment to each of his employees of an amount equal to the difference between the wages they actually receive and the wages they would have been entitled to receive, had there been no relief.

(2) The liability in such a bond shall be fully joined by a corporate surety identified currently by the Secretary of the Treasury under sections 6 through 13 of Title 6 of the United States Code as an acceptable surety on federal bonds who is licensed to transact a surety business and has a process agent, both in the District of Columbia and in Puerto Rico.

(3) The employer shall file with the Secretary of Labor a weekly report showing the cumulative difference between the total amount of wages he has paid to his employees through the end of the preceeding workweek and the total wages his employees will be entitled to receive if the review committee recommends an increase of 15 per centum.

(4) The relief shall not be effective for any period after the cumulative difference reported under subparagraph (3) of this paragraph exceeds 75 per centum of the amount of the undertaking, nor after the Secretary of Labor advises the employer that in his opinion the amount of the undertaking is inadequate to give satisfactory assurance that the employees whose wages are affected by the relief will ultimately receive the total compensation for their work that they would have received had there been no relief.

(5) The condition of the bond shall also require that sums due employees who cannot be located within three years after the effective date of the wage order recommended by the review committee shall be payable to the Secretary of Labor to be covered into the Treasury of the United States as miscellaneous receipts.

Signed at Washington, D.C., this 25th day of May 1961.

CLARENCE T. LUNDQUIST,
Administrator.

[F.R. Doc. 61-4996; Filed, May 26, 1961; 8:51 a.m.]

Title 32—NATIONAL DEFENSE

Chapter VII—Department of the Air Force

SUBCHAPTER J—AIR FORCE PROCUREMENT INSTRUCTIONS

MISCELLANEOUS AMENDMENTS TO SUBCHAPTER

The following miscellaneous amendments are issued to this subchapter:

PART 1007—CONTRACT CLAUSES

Subpart Y—Clauses and Arrangements for Letter Contracts

Revise § 1007.2504 to read as follows:

§ 1007.2504 Required clauses for fixed-price letter contracts.

The following clauses will be inserted in all letter contracts contemplating a fixed-price definitive contract. Clauses will be consecutively numbered. Any clause listed under § 1007.2504-3 which is inapplicable to a specific contract may be deleted from that contract. The list may be revised as necessary to keep current with ASPR revisions. Additional clauses, applicable to a specific contract (such as clauses in Subpart NN of this part) will be incorporated, to the extent required by the instructions pertaining to such clauses, by reference in Exhibit "A" to the contract.

Subpart KK—Clauses and Arrangements for Negotiated Utility Service Contracts

§ 1007.3706–1 [Amendment]

In § 1007.3706–1, add the following between "Appropriation chargeable * * *" and "This contract * * * called the Contractor": "Negotiated pursuant to 10 U.S.C. 2304(a)( )."

(Sec. 8012, 70A Stat. 488; 10 U.S.C. 8012. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U.S.C. 2301–2314)

PART 1008—TERMINATION OF CONTRACTS

In Part 1008, Subparts A, B, C, E, F, and G are revised, and new Subparts D and H are added, as follows:

Sec.
1008.000 Scope and applicability of part.

Subpart A—Definition of Terms

1008.101 Definitions.
1008.101–50 Administrative contracting officer.
1008.101–51 Engineering changes.
1008.101–52 Excess contractor inventory.
1008.101–53 Government-furnished aircraft equipment (GFAE).
1008.101–54 Plant clearance officer.
1008.101–55 Procuring contracting officer.
1008.101–56 Production method changes.
1008.101–57 Standby tooling.
1008.101–58 Subcontractor.
1008.101–59 Surplus contractor inventory.
1008.101–60 Termination authority.
1008.101–61 Termination contracting officer.
1008.101–62 Unadjusted contractual changes (UCC's).

Subpart B—General Principles Applicable to the Settlement of Fixed-Price Type Contracts Terminated for Convenience and to the Settlement of all Terminated Cost-Reimbursement Type Contracts

1008.200 Scope of subpart.
1008.200–50 Delegation of authority to Commander, AMC.
1008.200–51 Delegation of authority to Director of Procurement and Production, Hq AMC.
1008.200–52 Delegation of authority to the Chief, Contract Management Division, Hq AMC.
1008.200–53 Delegation of authority to terminate and to settle terminated contracts.
1008.200–54 Authority of oversea commands (also, respctive oversea Commanders MATS, ADC, and SAC activities, in areas not within the jurisdiction of any other major commander), air attaches and AF foreign missions.
1008.200–55 AF contracts executed without termination clauses.
1008.200–56 Approval of significant terminations by Hq USAF.
1008.201 Authority of contracting officers.
1008.202 Notice of termination.
1008,202–50 Termination of AF contracts.
1008.202–51 Termination of letter facilities contracts, facilities contracts, and facilities leases.
1008.202–52 Special procedures pertaining to deletions of spare parts from AF contracts containing provisioning documents.
1008.202–53 Termination of calls from a call contract.
1008.203 Methods of settlement.
1008.206 Fraud or other criminal conduct.
1008.207 Audit of settlement proposals and of subcontractor settlements.
1008.208 Settlement of subcontract claims.
1008.208–3 Settlement procedure.
1008.208–4 Authorization for subcontract settlements of $10,000 or less without approval or ratification.
1008.208–7 Government assistance in settlement of subcontracts.
1008.208–8 Assignment of rights under subcontracts.
1008.208–50 Inter-CMR referral for negotiation.
1008.209 Settlement agreements.
1008.209–1 General.
1008.209–2 Excepted items.
1008.209–4 No-cost settlement.
1008.209–6 Joint settlement of two or more claims.
1008.209–7 Settlement by determination.
1008.209–50 Claims in favor of the Government.
1008.209–51 Processing of negotiated termination settlements.
1008.209–52 Report of litigation.
1008.209–53 Closing and distribution.
1008.210 Contracting officer's negotiation memorandum.
1008.211 Review and approval of proposed settlements.
1008.211–1 Settlement review boards.
1008.211–2 Required review and approval.
1008.211–3 Scope of review.
1008.211–4 Action by board.
1008.212 Payment.
1008.212–1 Partial payments upon termination.
1008.212–2 Final payment.
1008.251 Recoupment of renegotiation debts.
1008.252 Settlement of unadjusted contractual changes (UCC's).
1008.253 Transfers between AF procurement field organizations.
1008.254 Settlement of claims and property disposal resulting from engineering changes.

Subpart C—Additional Principles Applicable to the Settlement of Terminated Fixed Price Type Contracts

1008.303 Allowance for profit.
1008.305 Deductions.
1008.306 Completed end items.
1008.307 Settlement proposals.
1008.307–1 Submission of settlement proposals.
1008.307–2 Basis for settlement proposals.
1008.307–50 Forms of settlement proposals.
1008.350 Equitable adjustment in unit price under fixed-price contracts in cases of partial termination.

Subpart D—Additional Principles Applicable to the Settlement of Terminated Cost-Reimbursement Type Contracts

1008.404 Procedure where contractor continues to submit vouchers.
1008.404–1 Submission of settlement proposal.
1008.405 Procedure where contractor discontinues use of vouchers.
1008.405–4 Notice to General Accounting Office of audit status date.
1008.405–5 Exceptions by the General Accounting Office.
1008.405–50 Procedure where there have been no reimbursed costs made under the contract.
1008.406 Partial termination.
1008.407 Termination for default.

Subpart E—Disposition of Termination Inventory

1008.501 General.
1008.501–2 General restrictions on contractor's authority.
1008.502 Contractor acquired property, purchase or retention at cost or returned to suppliers.
1008.502–1 Purchase of retention at cost.
1008.503 Inventory schedules.
1008.503–1 Submission of inventory schedules.
1008.503–2 Separate schedules.
1008.503–3 Inventory descriptions.
1008.503–6 Withdrawals from inventory schedules.
1008.503–7 Rejection and correction of inadequate inventory schedules.
1008.503–50 Allocability reviews on excess contractor inventory.
1008.504 Scrap and salvage.
1008.504–1 General.
1008.504–2 Scrap warranty.
1008.505 Screening serviceable and usable property.
1008.505–1 Scope of screening.
1008.505–2 Screening period.
1008.505–3 Acquisition by the Government.
1008.505–50 Transfers to the Civil Air Patrol.
1008.507 Sale or other disposition of termination inventory.
1008.507–1 General.
1008.507–2 Competitive sales.
1008.507–3 Other sales.
1008.507–4 Proceeds of sales.
1008.507–5 Applicability of anti-trust laws.
1008.507–50 Utilization, redistribution and disposal of contractor inventory-foreign.
1008.507–501 Scope.
1008.507–502 Appointment of plant clearance officers.
1008.507–503 Statement of allocability.
1008.507–504 Screening process.
1008.507–505 Inventory descriptions.
1008.507–506 Inventory transfer.
1008.507–507 Transfer of excess contractor inventory to agencies of the U.S. Government.
1008.507–508 Sales.
1008.507–509 Disposal of Air Force foreign excess contractor inventory by Army and Navy.
1008.507–510 Proceeds of sales.
1008.507–511 Review of property disposal.
1008.507–512 Storage of excess inventory.
1008.507–513 Subcontractor general policies.
1008.507–514 Reports.
1008.508 Donations.
1008.509 Destruction or abandonment.
1008.510 Special machinery, tooling and equipment.
1008.510–50 Duties of the local plant clearance officer.
1008.510–51 Screening agencies.
1008.510–52 Disposal.
1008.510–53 Program screening.
1008.510–54 Screening of standard test equipment items which are components of special tooling.
1008.511 Removal and storage.
1008.511–2 Storage at the expense and risk of the Government.
1008.511–50 No cost storage agreements.
1008.512 Review of property disposal.
1008.512–1 Property disposal review boards.
1008.512–2 Required review.
1008.512–50 Exceptions to required review.
1008.513 Subcontractor inventory.
1008.513–1 General policy.
1008.513–2 Inventory schedules.
1008.513–50 Referrals.
1008.513–51 Letter of referral.
1008.513–52 Action on referred cases.
1008.513–53 Supervision of referred cases.
1008.515 Accounting for termination inventory.
1008.515–50 Property administration.
1008.550 Appointment of plant clearance officers.

Subpart F—Termination for Default

1008.600 Scope of subpart.
1008.601 General.
1008.601–50 Contractor appeal rights.
1008.601–51 Waiver or abandonment of delivery schedules.
1008.601–52 Failure to deliver caused by the Government, actual or alleged.
1008.601–53 Cost reimbursement type contracts.
1008.602 Termination of fixed-price supply contracts for default.
1008.602–1 The Government's right to terminate for default.

AUTHORITY: §§ 1008.000 to 1008.871 issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U.S.C. 2301–2314.

§ 1008.000 Scope and applicability of part.

(a) This part implements Part 8 of this title. It covers Air Force procedures and policies relating to (1) termination of contracts or subcontracts for (i) convenience of the Government and (ii) default of a contractor, (2) settlements or other disposition of the aforesaid types of terminations, (3) utilization, redistribution and disposition of property which becomes excess and/or surplus because of contract terminations, changes, price redeterminations and completions. In addition, it sets forth Special Purpose Termination Clauses and various forms for use in connection with terminations, settlement and property.

(b) and (c) See § 8.000 (b) and (c) of this title.

(d) The provisions of Part 8 of this title shall be utilized in:

(1) The settlement of subcontracts terminated as a result of contract modifications or engineering changes.

(2) and (3) See § 8.000(d) (2) and (3) of this title.

Subpart A—Definition of Terms

§ 1008.101 Definitions.

See § 8.101 of this title.

§ 1008.101–50 Administrative contracting officer.

The term "administrative contracting officer" means those contracting officers authorized to administer the performance of contracts.

§ 1008.101–51 Engineering changes.

The term "engineering changes" includes all changes in the physical characteristics of an item when reflected in the design, plans, or specifications for the item.

§ 1008.101–52 Excess contractor inventory.

"Excess contractor inventory" means contractor inventory when it is no longer required by the contractor and such inventory when it is not required by any AF activity.

§ 1008.101–53 Government-furnished aircraft equipment (GFAE).

"Government-furnished aircraft equipment (GFAE)" means that portion of property which under the terms of an AF contract is procured by the Air Force and furnished to the contractor for inclusion or incorporation into an aircraft or missile.

§ 1008.101–54 Plant clearance officer.

"Plant clearance officer" means the representative of the Government appointed and designated to supervise, manage, handle and advise the Termination Contracting Officer or Administrative Contracting Officer in connection with the utilization, redistribution and disposition of Contractor Inventory and Termination Inventory. Authority to make final approval or disapproval in all such matters may be delegated by the aforementioned Contracting Officers to the Plant Clearance Officer. In appropriate instances, the Plant Clearance Officer may be appointed as a Contracting Officer for plant clearance matters.

§ 1008.101–55 Procuring contracting officer.

"Procuring contracting officer" means those Contracting Officers authorized to execute contracts for the procurement of supplies and services.

§ 1008.101–56 Production method changes.

"Production method changes" includes all changes in the production methods which are made in the interests of increased efficiency or for the solution of any production problem, provided they do not alter the physical characteristics of the end product. Production method changes do not include engineering changes.

§ 1008.101–57 Standby tooling.

"Standby tooling" means all special tooling held in storage in anticipation of future use, including engineering and production data necessary to set up the equipment for production use.

§ 1008.101–58 Subcontractor.

"Subcontractor" means any holder of one or more subcontracts (of any tier) under any AF prime contract or purchase order and includes vendors, suppliers, and materialmen.

§ 1008.101–59 Surplus contractor inventory.

"Surplus contractor inventory" means excess contractor inventory not required by the Department of Defense or other Federal agencies.

§ 1008.101–60 Termination authority.

"Termination authority" refers to a written authorization, prepared on AFPI Form 49 (as revised September 1958), to proceed with termination. Part I, "Termination Request," is prepared by the Activity originating the request or subsequently assuming responsibility for the procurement. Part II, "Termination Authorization," is prepared by the Procuring Contracting Office. Part III, "Remarks," is for the general use of all cognizant activities. Part IV, "Termination Assignment," is for use by the Readjustment organization of the Activity for assigning the termination to an appropriate office for settlement.

§ 1008.101–61 Termination contracting officer.

"Termination Contracting Officer" means any Contracting Officer authorized to terminate contracts and/or settle terminated contracts.

§ 1008.101–62 Unadjusted contractual changes (UCC's).

"Unadjusted Contractual Changes (UCC's)" means any contractual changes which have not been incorporated in the contract by change order, supplemental agreement, or otherwise. The term includes, without limitation, all changes evidenced by a contract change notification, by delivery schedule change, contract provisions for price redetermination, and other written types of authorizations issued to a contractor by a Contracting Officer authorized to bind the Government within the scope and limits of such Contracting Officer's authority.

Subpart B—General Principles Applicable to the Settlement of Fixed-Price Type Contracts Terminated for Convenience and to the Settlement of All Terminated Cost-Reimbursement Type Contracts

§ 1008.200 Scope of subpart.

This subpart sets forth:

(a) Delegations of Authority and extent thereof within the Department of The Air Force to terminate contracts for the convenience of the Government and effect settlements thereof.

(b) Procedures and responsibilities for initiating and issuing Notices of Termination (for Convenience) and assignment of such types of terminations for settlement.

(c) Implementing procedures (under Subchapter A, Chapter 1 of this title) for processing and handling convenience type terminations for settlement.

(d) Appointment and reviews by Settlement Review Boards.

(e) Payments.

(f) The handling in termination settlements of Unadjusted Contractual Changes (UCC's).

(g) The application of termination settlement procedures to terminated subcontracts resulting from Engineering Changes issued under Prime Contracts.

§ 1008.200–50 Delegation of authority to Commander, AMC.

The following duties and authorities are hereby delegated to the Commander, AMC, with power of redelegation, to be exercised subject to the provisions of Subchapter A, Chapter 1 of this title, this Subchapter, and other pertinent publications and directives as now or hereafter published.

(a) The authority to terminate for the convenience of the Government contracts entered into under the Armed Services Procurement Act of 1947, 41 U.S.C. 151–161, re-enacted and codified as 10 U.S.C. 137, to settle such terminations, to dispose of contractor inventory, appoint Settlement Review Boards and Property Disposal Review Boards, and perform other related matters pursuant to Part 8 of this title. (Note: Delegation of authority also extends to contracts and/or claims pursuant to First War Powers Act of 1941, Contract Settlement Act of 1944 and the Joint Termination Regulation, however questions in connection therewith should be referred to AMC (MCPK).)

(b) The authority for the preparation of operating instructions on any phase of: (1) Contract termination and settlement, (2) redistribution within the Department of the Air Force or among its contractors of industrial property, (3) reclamation, utilization and disposition of excess personal property, industrial real estate, scrap, salvage, and (4) redistribution, reclamation, utilization and disposition of contractor inventory. This authority includes the development of contract termination and settlement operations and the supervision of training personnel in contract termination and settlement matters.

§ 1008.200–51 Delegation of authority to Director of Procurement and Production, Hq AMC.

The authorities vested in the Commander, AMC, as set forth in § 1008.200–50, are hereby delegated with power of redelegation to the Director of Procurement and Production, Hq AMC, and in his absence, the Acting Director of Procurement and Production, Hq AMC.

§ 1008.200–52 Delegation of authority to the Chief, Contract Management Division, Hq AMC.

The authorities vested in the Director of Procurement and Production, Hq AMC, pursuant to § 1008.200–51 are hereby redelegated, with power of further redelegation, to the Chief, Contract Management Division, Hq AMC, for the purpose of performing all of the staff and operational functions for and in behalf of the Director of Procurement and Production, Hq AMC.

§ 1008.200–53 Delegation of authority to terminate and to settle terminated contracts.

(a) Authority to terminate contracts for the convenience of the Government and to settle such terminations, according to the provisions of this Part, and to enter into settlement agreements, is delegated as hereafter described to the following:

(1) Commanders of major commands (other than AMC and ARDC) within the Continental United States.

(i) Authority to terminate for convenience. No limitation.

(ii) Authority to settle termination claims and to enter into settlement agreements is limited to termination claims involving $2,500 or less.

The foregoing authorities may be redelegated to and exercised by duly appointed contracting officers in base or central procurement activities.

(2) Commanders AMC centers.

(i) Authority to terminate for convenience. No limitation.

(ii) Authority to settle termination claims and to enter into settlement agreements without limitation as to the amount of settlement costs.

The foregoing authorities may be redelegated to and exercised by duly appointed contracting officers assigned to a single procurement office within the respective AMC centers.

(3) Commanders AMC contract management regions.

(i) Authority to terminate for convenience. No limitation.

(ii) Authority to settle termination claims and to enter into settlement agreements without limitation as to amount of settlement costs.

The foregoing authorities may be redelegated to duly appointed contracting officers assigned to the readjustment activity of the respective AMC contract management regions and settlement authority may be redelegated to the chiefs of their respective air procurement districts, Air Force Plant Representatives or equivalent activities, who may, in turn, redelegate such authorities to duly appointed contracting officers within their respective organizations.

(4) Commanders air materiel areas, AF depots, 2709th AF Vehicle Control Group, and Wright-Patterson AFB, Ohio.

(i) Authority to terminate for convenience. No limitation.

(ii) Authority to settle termination claims and to enter into settlement agreements is limited to termination claims involving $2,500 or less.

The foregoing authorities may be redelegated to and exercised by duly appointed contracting officers assigned to a single procurement office within the above activities.

(b) The Commander, ARDC, is hereby delegated authority:

(1) To terminate for the convenience of the Government contracts issued under his jurisdiction. This authority may be delegated to the Director of Procurement, Hq ARDC, with power of redelegation to contracting officers in equivalent staff offices at subordinate ARDC activities.

(2) To settle, according to the provisions of Part 8 of this title and this Part, at ARDC activities other than Hq ARDC, RADC, AFCCDD, WADD, and the European Office of ARDC, such convenience terminations and enter into settlement agreements, where the settlement amount does not exceed $2,500. This authority is subject to the provisions of §§ 1008.201 and 1008.202–50(d)(5)(iv) and may also be redelegated to the Director of Procurement, Hq ARDC, with power of redelegation to contracting

officers in equivalent staff offices at subordinate ARDC activities.

(3) To settle and enter into settlement agreements, without regard to amount of settlement costs, according to the provisions of Part 8 of this title and this Part, those contracts issued (or subsequently assuming responsibility therefor) by the following ARDC activities:

(i) Hq ARDC.

(ii) Rome Air Development Center.

(iii) AF Command and Control Development Division.

(iv) Wright Air Development Division.

(v) European Office, ARDC.

The authority contained in this subparagraph (3) may be redelegated to the Director of Procurement, Hq ARDC, with power of redelegation to contracting officers in activities listed in subdivisions (i) through (v) of this subparagraph.

(4) The ARDC activities referred to in § 1008.200–53(b)(3), may assign their respective terminations directly to an AMC air procurement district or AFPR for settlement, complying with the provisions of §§ 1008.202–50(d)(4), 1008.202–50(d)(5)(iv), 1008.202–50(e), 1008.202–50(f), and 1008.202–52(b) as applicable.

§ 1008.200–54 Authority of oversea commands (also, respective oversea Commanders MATS, ADC, and SAC activities, in areas not within the jurisdiction of any other major commander), air attaches and AF foreign missions.

(a) Authority to terminate contracts for convenience of the Government and to settle such terminations is hereby delegated to the following persons, with power of redelegation to duly warranted contracting officers:

(1) Commanders of major oversea commands.

(2) Commander, Air Materiel Force, Pacific Area (AMFPA).

(3) Commander, Air Materiel Force, European Area (AMFEA).

(4) Commanders of Military Air Transport Service, Air Defense Command, and Strategic Air Command installations outside the continental United States, and not within the jurisdiction of any other major commander.

(5) Air Attaches.

(6) Chiefs of USAF Foreign Missions or Chiefs of USAF Sections of Joint Military Missions not operating under the jurisdiction of a major oversea commander.

(b) The foregoing delegation of authority is subject to compliance with all applicable provisions of Subchapter A, Chapter 1 of this title concerning the termination of contracts and the settlement of such terminations.

§ 1008.200–55 AF contracts executed without termination clauses.

(a) Standard and special Termination clauses for use in various types of contracts are set forth in Part 8 of this title, this Part, and in Part 1007 of this chapter.

(b) Where a contract does not contain a Termination for the Convenience of the Government clause, the following procedures will apply:

(1) If it is determined to be in the best interest of the Government to terminate a contract for the convenience of the Government and the contract does not contain a clause expressly reserving the right of the Government to terminate, the contracting officer will forward to the contractor a copy of an appropriate Termination clause (see Part 8 of this title, Part 1007 of this chapter, and Subpart G of this part), together with a request that the contractor agree to a termination of the contract according to the provisions of the clause. Attention is invited particularly to the short form Termination clauses in § 8.705 of this title which may be appropriate in certain cases.

(2) If the contractor agrees in writing to a termination pursuant to such clause, the contracting officer will issue a Notice of Termination and the case will then be processed according to this Part. However, in the event the contractor is agreeable to a termination at "no-cost" to the Government, the contracting officer may enter into a "no-cost" termination supplemental agreement as set forth in §§ 8.806–6 and 8.806–7 of this title without the issuance of a termination notice or the incorporation of a Termination clause in the contract. The "Recitals," i.e. (Whereas clause), in the Settlement Agreement Forms stating that the Government may terminate whenever a termination is deemed to be in the best interest of the Government and that the Government advised the contractor of the termination on a certain date should be deleted and a "Recital" stating that the Government and the contractor have mutually agreed to the termination of the contract effective on a specified date should be incorporated in lieu thereof. In addition, a new article or clause will be added immediately after the "Now, Therefore * * *" provision of the agreement stating that the Government and the contractor mutually agree to the termination of the contract for their convenience effective on a specific date.

(3) If the contractor declines to agree upon a termination of the contract in the manner set forth above, the contracting officer will submit the matter promptly for advice and instructions to the Terminations Branch (MCPKT), Hq AMC. Where time is of the essence, submission of the matter by telephone or telegram is authorized. MCPKT will advise the requesting office whether the contract will be terminated. If termination is desired, MCPKT will furnish the requesting office with the type of termination notice to be sent to the contractor. In reviewing such matters, reviewing authorities should consider all factors, particularly: (i) Whether the termination, if effected, will constitute a breach of contract by the Government, (ii) what the dollar amount of a potential liability may amount to, and (iii) whether, when taken in perspective, the action will be economically beneficial to the Government.

(4) Where a contractor declines to agree upon a termination of the contract in the manner set forth herein in the case of contracts that come under the cognizance of major oversea commands, air attaches, AF foreign missions, AMFEA, and AMFPA, the matter will be submitted to the commanders, air attaches, or chiefs of foreign missions, or their designated representatives.

§ 1008.200–56 Approval of significant terminations by Hq USAF.

(a) Because of existing Department of Defense directives and keen Congressional and community interest in contract terminations, the prior approval by Hq USAF is required of all significant proposed contract terminations as well as the release of information concerning such actions. Proposed terminations of the following types of contracts are to be included: Contracts for the procurement of weapon systems, support systems, ground support equipment, engines, major subsystems, major items of equipment, large contracts for modification, IRAN, and overhaul, as well as other contracts which by their nature or impact on an industrial facility or a community would be of interest to members of Congress.

(b) The following information is to be submitted to Hq USAF (AFMPP) through AMC (MCPKT), Wright-Patterson AFB, Ohio, in requesting prior approval for such terminations:

(1) The nature of the contract.

(2) The reason for the termination.

(3) The companies involved.

(4) The total dollar amount involved.

(5) The anticipated recoupments.

(6) The anticipated use of the recoupments.

(7) The total number of employees involved.

(8) Anticipated impact on the company and the community.

(9) Efforts by the Air Force to alleviate such impact.

(10) Total subcontracts and subcontractors involved as well as the impact in this area, if known.

(11) Total corollary contracts (for example, contracts for engines or equipment) and impact in this area.

(12) Total dollar amount expended to date on each contract.

(13) Draft of suggested public release of information which would be in the best interest of the Air Force. This draft should be unclassified.

(c) It is essential that this approval be requested as far in advance as possible in order to expedite coordination and to prevent delays in termination actions. Information is to be released only on a need to know basis until the proper clearance has been received from Hq USAF.

§ 1008.201 Authority of contracting officers.

Duly appointed contracting officers (see § 1001.454 of this chapter) may be designated pursuant to the authorities set forth in §§ 1008.200–50 through 1008.200–54, as applicable, to terminate contracts for the convenience of the Government and to enter into settlement agreements within the scope of the authority delegated. Any contracting officer exercising any portion of the convenience termination of settlement function will be furnished:

(a) AFPI Form 77, "Certificate of Air Force Contracting Officer" (see § 1001.-452(e) of this chapter) which, in addition to any other requirements, will specify whether such authority pertains solely to settling terminations, or includes both functions, or, in the alternative;

(b) In addition to AFPI Form 77 (without aforementioned specification) a Letter of Authority that will specify whether such authority pertains solely to terminating contracts for convenience of the Government, solely to settling terminations, or includes both functions.

§ 1008.202 Notice of termination.

§ 1008.202–50 Termination of AF contracts.

This section sets forth procedures and responsibilities for initiating and processing the termination of AF contracts for the convenience of the Government, except facility contracts and leases which are covered in § 1008.202–51.

(a) *General.* (1) When any part of the supplies or services called for under a contract are to be terminated and the contractor is obligated to continue further work under the contract, the deletion will be processed as a partial termination as hereinafter set forth.

(2) When the supplies or services called for under the contract are to be terminated in their entirety or if the termination of a part of the supplies or services would result in the contractor not being required to perform any further work, the deletion will be processed as a complete termination.

(3) Changes in the scope of supplies or services called for under the contract which result from engineering changes or contract modifications will be handled according to other provisions of this Subchapter. See § 1008.254.

(4) On centrally procured items, termination should normally be taken only when the estimated cost of supplies or services to be terminated exceeds $1,000; on locally procured items, $300. However, if the termination action can be effected at "no-cost" to the Government, then the termination may be accomplished where the cost of supplies and services involved would be less than $1,000 or $300 respectively. These criteria apply to all activities including those overseas.

(5) While no hard-and-fast rules can be formulated on an overall basis as to when supplies or services should be terminated, the following criteria are relevant to the decision and should be considered in arriving at a decision to terminate:

(i) Items which are on order, undelivered, but for which, as far as can be foreseen, the Air Force will have no use, should normally be terminated.

(ii) If the undelivered portion of a contract comprises small quantity and dollar value, the policies set forth in subparagraph (4) of this paragraph, should normally be followed and the small quantity should be accepted; this is particularly so if the costs of the termination would be disproportionate to the contract price of the items concerned.

(iii) The probable amount of the net settlement (as distinguished from the gross settlement) and the consequent net reduction in total contract price; the type and nature of the termination inventory which will be involved; and the possible utilization, diversions, and recoveries from sales and other dispositions should also be considered.

(iv) Whether adequate stocks of supplies of the items being considered for termination exists.

(v) Possible obsolescence (present or future) of the items, plus costs and operational burdens of receiving and storage in lieu of termination.

(vi) Probable additional costs and operational burdens to the Air Force in connection with any termination inventories which might require storage.

(b) *Initiation of termination authority, AFPI Form 49.* (1) Part I, AFPI Form 49, "Termination Request", will be issued by the activity (except Hq USAF and MIPR actions) which initiated or subsequently assumes responsibility for the original request for procurement (includes "call" and "open" type contracts).

(2) Instructions for completing Part I, AFPI Form 49 are contained in § 1008.850(a)(1).

(3) Preparation, to the maximum extent possible, and dispatch of Part I, AFPI Form 49, will be handled on a most expedited basis. No hard and fast rules are hereby formulated due to varying conditions. Major command implementation of this provision will apply. However, it is expected that AFPI Form 49 will be handcarried to the procuring contracting officer wherever possible. When the initiator of the procurement is located some distance from the procuring contracting officer air mail will be utilized; under conditions involving substantial production costs for each day the items to be terminated remain on contract, the use of long distance telephone (confirming AFPI Form 49 required) or teletype containing all information required by Part I, AFPI Form 49 (confirming AFPI Form 49 not required) are authorized. Each copy of the AFPI Form 49 will have a time and date stamp affixed to denote its time of dispatch to the procuring contracting office.

(4) An original and five copies of AFPI Form 49 will be prepared. The original and four copies will be forwarded, as set forth in subparagraph (3) of this paragraph, with the activity originating the request retaining one copy for file purposes.

(5) Termination requests may also be issued by a MIPR action or Hq USAF directive in a format not identical to Part I, AFPI Form 49 (see paragraph (c)(2) of this section).

(6) Special procedures for handling deletions or reductions of spare parts from AF contracts containing provisioning documents are set forth in § 1008.202–52. If cost deletions are involved, the administrative contracting officer will accomplish Items 3 through 6, 10, 13, 14, and 16 through 27 of AFPI Form 49.

(c) *Responsibilities of the procuring contracting office regarding termination.* (1) Receive and immediately date stamp (hour and date) all copies of the AFPI Form 49 (Part I completed by the activity initiating the original request for procurement) or teletype in lieu of Part I, AFPI Form 49 and conduct an adequate review to assure that the termination is in the best interests of the Government—taking into consideration requirements, state of production, costs, and similar factors. The procuring contracting officer will also review the AFPI Form 49 to ascertain its completeness and accuracy.

NOTE: Insofar as possible resolve any minor problems on Part I, AFPI Form 49, without returning to originator).

(2) Process instructions to terminate under a MIPR, AMC–MCP Form 190, or (in the case of aircraft termination) Hq USAF directive (see paragraph (b)(1) of this section). In any of the aforementioned events, if termination is warranted, the procuring contracting officer (or buyer) will also prepare Part I, AFPI Form 49, as applicable, and will attach one copy of the aforementioned instructions (date and hour of receipt indicated on all copies) to each copy of the AFPI Form 49.

(3) Select the source or sources to be terminated when the Termination Request does not specify the source and more than one source is producing or developing the end items.

(4) Request the appropriate supply activity to furnish instructions relating to termination of spares, spare parts, tools, and ground handling equipment pertaining to the particular end item terminated, when spares, etc., are called for under the contract. However, preparation and processing of an AFPI Form 49 will not be withheld pending receipt of instructions pertaining to spare parts. The AFPI Form 49 may later be amended to provide instructions regarding spare parts by use of teletype or letter.

(5) At Hq AMC, AMC Aeronautical Systems Center, Hq WADD and Wright-Patterson AFB, notify the appropriate laboratory of WADD of all terminations which may directly or indirectly affect engineering projects or contracts either contemplated or in progress. Hq WADD will, upon receipt of such notice, examine applicable contracts or projects and initiate action to effect termination or curtailment when considered necessary or desirable.

(6) Part II, AFPI Form 49 will be prepared according to instructions contained in § 1008.850(a)(2).

(7) Complete Parts I, II, and III, AFPI Form 49, as applicable, and hand carry, if possible, an original and three copies (time and date stamp all copies to denote time of dispatch) to the local readjustment activity. Retain one copy of AFPI Form 49 for procuring contracting office files. If AFPI Form 49 cannot be hand carried to the readjustment activity for valid reasons, such as excessive distances, the next most expeditious means of dispatch of the form will be utilized.

(8) Procuring contracting offices, within AMC, will complete all termination action within eight working hours. Any delay in excess of eight working hours will be explained under Part III, AFPI Form 49.

(9) At AMCASC only, send a copy of the AFPI Form 49 to GFAE, Control Division (LMES) when the contract involves GFAE.

(d) *Responsibilities of readjustment activities or individuals assigned the termination function.* (1) Receive and immediately date stamp (hour and date) all copies of the AFPI Form 49. Assign Termination Authority Docket Number pursuant to paragraph (f) of this section.

(2) Review and analyze the AFPI Form 49, the contract (including "call" or "open" type contracts) and related documents to ascertain whether the termination should be for (i) The convenience of the Government or (ii) for the default of the contractor. In all termination matters the Government's interest must be fully protected, and the responsibility rests with the termination contracting officer to insure, through his own personal and diligent efforts, and through his independent judgment, that termination actually results in a convenience to the Government. If it is determined that any actionable basis for default exists, including contractor delinquencies under the delivery schedule, the termination contracting officer will, regardless of the recommendations under Items 8 and 16 of AFPI Form 49, follow the procedures for default investigation as set forth in Subpart F of this part.

(3) Issue a Notice of Termination for Convenience of the Government to the contractor (including "calls" and "open" type contracts) as soon as the termination contracting officer personally ascertains such action is justified. The Termination Notice will normally be issued to the contractor within eight working hours after receipt of the AFPI Form 49, however, the quality of the review and analysis of the termination will be the paramount consideration. Any delay in excess of eight hours will be explained and justified under Part III, AFPI Form 49.

NOTE: Termination of a basic contract under which "calls" are issued will have the effect of terminating any existing "calls" thereunder and precluding the further issuance of any "calls" under that basic contract, although the termination notice should state that existing "calls" are also terminated. As to the termination of individual "calls" only, the terminated contractor will normally be invited to submit a Settlement Proposal pursuant to § 8.801–2 of this title for termination costs; however, if the termination involves only the basic contract, and no calls are in existence thereunder, the terminated contractor will not be invited to submit the Settlement Proposal, or otherwise made to believe that the Government will entertain settlement costs, since settlement costs attach only to the respective "calls" and not to the basic contract. In most cases where the Government has not issued any calls under a call contract, it is not necessary to terminate the basic contract, but merely to refrain from the issuance of any calls if no contract articles are desired. In the event the contract guarantees a number of calls, the basic contract should be terminated.

(4) Maintain a permanent type docket ledger, utilizing AFPI Form 49A, "Termination Authority Register," to include the following:

(i) Termination Authority Docket Number (see paragraph (f) of this section).

(ii) Contract or Purchase Order Number.

(iii) Name of Contractor.

(iv) Termination Authority.

(*a*) Part I dated _____.

(*b*) Part II dated _____.

(*c*) Date and hour received by termination activity.

(v) Symbol or identification of procuring contracting office submitting AFPI Form 49.

(vi) Contract Price Items Terminated.

(vii) Date Termination Notice Issued.

(viii) Date Termination Assigned for Settlement. (Applicable only to AMA's, AF depots, CMR's, centers, 2709th AF Vehicle Control Group, Wright-Patterson AFB, and to ARDC activities cited in § 1008.200–53(b)(3)).

NOTE: (1) When it is known in advance (preferably in writing) that the contractor will accept deletions (partial or complete) from his contract without cost to the Government, the procuring contracting officer (buyer), with the coordination of the local termination activity, may prepare a "no-cost" supplemental agreement without the issuance of a termination notice. In such cases the Docket Ledger will contain a citation to the "no-cost" deletions for record purposes. (2) Within AMA's, AF depots, CMR's, and centers, and ARDC activities cited in § 1008.200–53(b)(3), the Docket Ledger will also contain a Termination Authority Docket Number (to be cited in the Supplemental Agreement) for "no-cost" deletions (see paragraph (f)(1)(viii) of this section) however, a docket file need not be opened or maintained. In the event it cannot be ascertained in advance if costs will be incurred, the readjustment activity will assign a Termination Authority Docket Number pursuant to paragraph (f)(1) of this section, and issue a Termination Notice, but will not subsequently change the docket number pursuant to paragraph (f)(1)(viii) of this section if the termination results in "no-cost" to the Government. This "no-cost" supplement agreement will not be used with cost reimbursement type contracts.

(5) Assign the termination case for settlement by completing Part IV, AFPI Form 49.

(i) Hq AMC, MCPK:

(*a*) May, if it issues a notice of convenience termination, assign the termination case for settlement directly to an APD or AFPR, or to a termination contracting officer at AMC (MCPKT) (see paragraph (e) of this section and § 1008.202–52(c)).

(*b*) Prepare and maintain a permanent type docket file.

(*c*) May transfer and reassign any convenience termination for settlement irrespective of the activity which originally terminated and assigned the case for settlement.

(ii) AMA, AMC Center, AF Depot, 2709th AF Vehicle Control Group and Wright-Patterson AFB, readjustment activities will assign termination cases for settlement as follows:

(*a*) AMA and AF Depot termination activities will assign the termination case for settlement to the APD or AFPR administering the contract (see paragraph (e) of this section). Concurrently with the direct assignment, the issuing AMA or AF Depot readjustment activity will forward three copies AFPI Form 50, one copy of AFPI Form 49, and one copy of the Termination Notice to AMC (MCPKT); the CMR exercising supervision over the aforementioned administering activity will receive one copy of AFPI form 49, AFPI Form 50, and the Termination Notice from the AMC terminating activity.

(*b*) AMC center readjustment activities may, pursuant to § 1008.200–54, terminate their contracts for convenience of the Government and may retain the case and enter into settlement agreements without limitation as to amount of settlement costs. However, the case should normally be assigned directly to the APD, or other designated activity geographically nearest to the terminated contractor for settlement. Concurrently with the direct assignment, the issuing AMC center readjustment activity will forward three copies of AFPI Form 50, one copy AFPI Form 49, and one copy of Termination Notice to AMC (MCPKT); the CMR exercising supervision over the settling activity will receive one copy of AFPI Form 49, AFPI Form 50, and the Termination Notice from the AMC terminating activity. Where an AMC center issued contract has been administered by a facility other than the issuing AMC center and the AMC center retains settlement responsibility, the administering facility will be advised accordingly.

(iii) AMAs, AF depot, and Wright-Patterson AFB readjustment activities will issue the termination notices terminating base procurement contracts initiated at their installation. The respective readjustment activities may subsequently assign the termination case for settlement to their base procurement contracting officer in lieu of the procedure set forth in paragraph (d)(5)(ii) of this section if the termination will result in "no-cost" to the Government or the contractor's termination claim does not exceed $2,500.

(iv) ARDC termination cases (other than Hq ARDC, RADC, AFCCDD, WADD and European Office, ARDC) will be handled pursuant to paragraph (d)(5)(v) of this section when the contractor's claim exceeds $2,500.

(*a*) Hq ARDC, RADC, AFCCDD, WADD, and European Office, ARDC may settle their own termination cases regardless of amount of termination claim pursuant to paragraph § 1008.200–53(b)(3) or may assign their terminations directly for settlement pursuant to § 1008.200–53(b)(4). Concurrently with the direct assignment, the ARDC assigning activity will forward three copies of AFPI Form 50, one copy of AFPI Form 49, and one copy of the Termination Notice to AMC (MCPKT); the CMR exercising supervision over the aforementioned administering activity will receive from the respective aforementioned ARDC activities one copy of AFPI Form 49, AFPI Form 50, and the Termination Notice.

(*b*) No-cost settlement agreements, including construction contracts (with or without the issuance of a Termination Notice as deemed appropriate), may

be issued by the ARDC activity delegated authority to terminate the contract. Paragraph (f) of this section will be complied with.

(v) Base procurement activities at major commands (other than AMC) within the Continental United States will, after issuing the termination notice, retain the termination case for settlement by their contracting officers appointed to perform the readjustment function when it is known the settlement will be at no-cost to the Government or not in excess of $2,500. Contracting officers who issue the termination notice will include in such notice to the contractor a request for information as to whether or not the contractor intends to submit a termination claim. If, on the basis of the contractor's reply, it appears the settlement costs will not be in excess of $2,500, or if it is known that the termination will result in "no-cost" to the Government, the base procurement activity may process and consummate the settlement of the case regardless of the contract price of items terminated. If the settlement costs will exceed $2,500 the base procurement activity will refer the matter to the readjustment activity of the contract management region in whose geographical jurisdiction the terminated contractor is located furnishing the information and records required by paragraph (e) (1), (2), (3), (4), (5), (7), (8), (9), and (10) of this section.

(vi) Oversea commands, AMFEA, AMFPA, air attaches, and AF foreign missions (see § 1008.201(c)) will assign their respective termination cases for settlement to their termination activity.

(6) When necessary, return termination cases to the initiator(s) of the AFPI Form 49 for cancellation, correction, or any other reasons.

(7) Maintain staff surveillance over termination, settlement and plant clearance of all termination cases.

(8) Maintain proper records reflecting the status of settlement of termination cases.

NOTE: The above procedures will be used only within the scope of authority set forth in §§ 1008.200–50 through 1008.200–54. All cases beyond this scope will be referred to AMC (MCPKT), for decision, issuance of Notice of Termination, and/or assignment and settlement.

(e) *Referral of cases.* Whenever in this section a termination case is required to be referred to an APD or AFPR for settlement, the office referring the case will transmit the following information and documents:

(1) Copy of the contract that has been terminated (partial or complete) and all change orders, supplements, and amendments thereto, unless the office to which the case is being referred possesses such documents.

(2) A copy of AFPI Form 49.

(3) Information as to the existence of assignees, creditors, or sureties having an interest in the contract, if any, with names and addresses of such persons.

(4) Total contract price as of the last effective amendment.

(5) Amount of payments made under the contract if contract has been administered by an activity other than the activity which will settle the termination.

(6) A copy of AFPI Form 50. (Applies to AMC and ARDC only.)

(7) Whether any claim against the contractor in favor of the Government is known to exist and what inquiries have been made to discover the existence of such a claim.

(8) Four copies of the Termination Notice.

(9) Advance supplemental agreement number for the termination settlement agreement. (Applies only to major commands other than AMC and the ARDC activities listed in § 1008.200–53(b)(3).)

(10) Any other information which may be helpful in negotiating the settlement.

(f) *Assignment of termination authority docket number by termination activity.* (1) All Termination Notices relating to terminations issued by an authorized activity of AMC or ARDC, will be identified by a Termination Authority Docket Number. In AMC AMA terminations the termination activity at the terminating AMA will be responsible for the assignment of a termination docket number; in AMC center, CMR, AF Depot, 2709th AF Vehicle Control Group and Wright-Patterson AFB terminations the individual assigned responsibility for readjustment matters at the aforementioned terminating activity will be responsible for assignment of a termination docket number. In ARDC terminations the readjustment office at Hq ARDC or the authorized centers will be responsible for assignment of a termination docket number. The first and second digits of the termination docket number will identify: (i) The origin of the Notice of Termination, and (ii) the CMR or other activity responsible for settlement, respectively. The third and subsequent digits will identify the numerical sequence of the termination action. For purposes of identifying: (*a*) Hq AMC and AMA's, (*b*) AMC Centers, (*c*) AF Depots, (*d*) Contract Management Regions, (*e*) Wright-Patterson AFB, (*f*) 2709th AF Vehicle Control Group, (*g*) certain ARDC activities, (*h*) Department of the Navy, and (*i*) no-cost terminations, the following codes are assigned:

(*1*) Hq AMC and the AMAs will be identified by code numbers:

1—MAAMA	6—SAAMA
2—NOAMA	7—WRAMA
3—OOAMA	8—Hq AMC
4—OCAMA	9—SBAMA
5—SMAMA	R—ROAMA

(*2*) AMC centers will be identified by code numbers:

A—AMC	Aeronautical Systems Center.
B—AMC	Ballistic Missiles Center.
E—AMC	Electronic Systems Center.

(*3*) AF depots will be identified by code letter: D—Dayton.

(*4*) CMR's will be identified by code letters:

C—Central.	G—Western.
F—Eastern.	

(*5*) Wright-Patterson AFB will be identified by code letter: P.

(*6*) The 2709th AF Vehicle Control Group will be identified by code letter: M.

(*7*) ARDC activities will be identified by code letters:

W—WADD	Y—AFCCDD
X—RADC	Z—Hq ARDC

(*8*) All cases assigned to the Department of the Navy for settlement, the second digit will be identified by code letter: N—Navy.

(*9*) No-cost terminations: The second digit code number will, in all cases, be: O—No-cost.

(2) Major commands authorized pursuant to § 1008.200–53 to issue termination notices will be responsible for the assignment of a termination docket number (also see paragraph (d)(4) of this section) to each contract terminated, including no-cost terminations. With activities that do not have code numbers assigned in the preceding subparagraph (1) of this paragraph, the first part of the docket number will be the major command abbreviation such as TAC, the second part will be the base or installation identification, such as Langley, and the third part will be a numerical sequence beginning with "001". The numerical sequence will continue uninterrupted from year to year rather than start again with "001" at the beginning of a fiscal or calendar year.

Example. TAC–Langley—001.

(3) Oversea commanders authorized pursuant to § 1008.200–54 to issue termination notices will be responsible for the assignment of a termination docket number (also see paragraph (d)(4) of this section). The method of assignment thereof will be at the discretion of the Commander concerned. No-cost as well as "cost" terminations will be identified by a docket number.

(g) *Preparation of notice of termination.* A priority Telegraphic Notice of Termination (Western Union Telegram—Request Written Report Delivery) as set forth in § 8.801–1 of this title will be used to notify the contractor of a convenience termination except when factors such as amount of contract, distance involved, effective date of termination, and status of contract indicate that the use of a Letter Notice of Termination as set forth in § 8.801–2 of this title will not result in additional termination costs. Subsequent to transmittal of a Telegraphic Notice of Termination, a confirming Letter Notice of Termination as set forth in § 8.801–2 of this title will be sent (Registered Mail—Return Receipt) to the contractor, but in the case of the termination of a basic call contract under which no calls have been issued, only paragraphs 1, 8, and 9 of the confirming letter will be issued. A Letter Notice of Termination, original or confirming, will contain in duplicate an acknowledgment of Notice. When executed and returned by the contractor, the two acknowledged copies will be proof of service, or personal service may be made upon a responsible representative, and a proof of service indicating the date of service will be executed. The Notice of Termination should inform the contractor of the office to which any inquiries relative to the termination should be addressed. Where a termination case is referred for settlement at

the time the contract is terminated, the office to which the case is referred should be set forth in the Notice of Termination. Where the termination case is referred to another office subsequent to the issuance of the Notice of Termination the contractor should be so informed. The termination contracting officer in the office that issued the Notice of Termination will be responsible for sending a copy of the convenience termination notice to each of the following:

(1) Any assignee of record who has filed a proper notice of assignment with respect to the terminated contract. (See § 8.202 of this title.)

(2) Any guarantor or surety of the contractor whose obligation relates to the terminated contract. (See § 8.202 of this title.)

(3) The finance officer designated to make payments under the contract.

(4) The accounting activity recording transactions affecting the funds applicable to the contract.

(5) Other activities according to the distribution directives applicable to the particular procuring activity that issued the Notice of Termination.

(h) *Amendment of termination notice.* (1) Amended termination notices will be used to:

(i) Correct mistakes which occurred in the preparation of the original Notice of Termination or to add supplemental data or instructions.

(ii) Rescind previously issued termination notices by reinstating acceptable supplies which were completed prior to the effective date of termination and for which delivery is desired.

(iii) Terminate additional items of work under a contract which has previously been partially terminated; provided that 60 days have not elapsed since the date of the original notice of partial termination and the contractor has not submitted a settlement proposal to the termination contracting officer.

(iv) If 60 days have elapsed since the date of the original notice of partial termination, a further Notice of Termination (as set forth in §§ 8.801–1 or 8.801–2 of this title) will be issued. Activities listed in paragraph (f) of this section will assign new termination authority docket numbers.

(2) Amendments may be effected by issuing an Amended Letter or Telegraphic Notice of Termination. An amended termination notice is not necessary for a portion of terminated supplies or services which has been completed, accepted, and shipped prior to the effective date of termination. However, if all of the supplies or services covered by a termination notice have been completed, delivered, and accepted prior to the effective date of termination, a notice rescinding the initial notice will be issued by the originating readjustment activity to close the termination case. Except as set forth above, termination notices will not be modified in any way unless written authority is obtained from the Chief, Contract Management Division, Hq AMC.

(i) *Reinstatement of terminated contracts or portions thereof.* (1) Requests for reinstatement of terminated contracts or portions thereof will not be made unless an inquiry as to practicability of reinstating the contract or portion thereof has been made to the contractor within a 60-day period. Exceptions to this limitation may be made when:

(i) Reinstatement of a terminated contract is directed by Hq USAF.

(ii) Adequate reason for reinstating an experimental or development contract exists.

(iii) Reinstatement of contracts based upon MIPR is requested by the initiating activity.

(iv) Unusual circumstances indicate clearly that the Government will benefit by use of reinstatement procedures rather than initiation of a new procurement.

(2) Subsequent to the issuance of a notice of termination and prior to bilateral execution of a formal supplemental settlement agreement it may be in the best interests of the Government to rescind a termination notice by reinstating the terminated contract or some portion thereof. While the power to terminate a contract is a unilateral right residing only in the Government, the partial or complete rescission by the Government of a previously issued Notice of Termination cannot be effective without the consent of the contractor. Consequently the Government must obtain the contractor's agreement and, in addition, secure the terms and conditions upon which the latter will consent to the rescission and reinstatement of the terminated portion of the contract. If the contractor has materially changed his position in reliance upon such termination notice, he is entitled to be reasonably compensated for any expenses allocable to a reinstatement action.

(3) The procuring activity which authorized the termination is responsible for processing written authority (letter or telegram) to the cognizant termination activity for reinstatement of terminated contracts or portions thereof. Upon determination that such action is in the best interests of the Government, the procuring activity shall advise the cognizant termination activity, as follows:

(i) That settlement negotiations have not been finalized by supplemental settlement agreement.

(ii) Extent of the reinstatement desired and monetary value thereof.

(iii) Whether the contractor agrees to the reinstatement.

(iv) Whether the contractor will or will not assert a claim for reinstatement costs. (If reinstatement costs are involved the negotiation of such costs will be the responsibility of the procuring activity.)

(4) Requests for reinstatement of terminated contracts shall be subject to the approval of the Chief of the appropriate buying activity, or his designated representative.

(5) Upon receipt by the termination activity, a Notice of Rescission will be issued to the contractor provided the criteria established herein has been met. If there has been a referral of the termination for settlement, the termination activity issuing the Notice of Rescission will furnish copies simultaneously to the CMR and APD or AFPRO settling the termination and to AMC (MCPKT).

(6) If the reinstatement is partial, an Amended Notice of Termination (First, Second, Third, etc.) will be issued by the activity which issued the original notice; the amendment will refer to the original Notice of Termination and the extent of rescission of such notice. If the reinstatement constitutes a complete rescission of the original Notice of Termination, a Notice of Complete Rescission making reference to the notice being rescinded will be issued to the contractor. The terms of a contractor's offer to reinstate the contract (e.g., at no additional cost to the Government) will be incorporated in the Amended Notice of Termination or Notice of Complete Rescission.

(j) *Processing of terminations affecting classified contracts.* (1) Whenever supplies or services to be terminated under the contract are classified as Top Secret, Secret, or Confidential, the Notice of Termination to be issued to the contractor creates an administrative problem unless the article being terminated can be identified by the use of unclassified descriptions. Therefore, documents used in initiating and processing the termination will not indicate nomenclature of the classified contract item(s) being terminated other than to insert "see contract." In such a case, the termination contracting officer who issues the Notice of Termination will inform the contractor by means of an uncoded termination notice of the contract number, purchase order number, or letter contract number which is affected, and of the contract item number(s) and the quantity terminated therefrom but will omit any statement as to the nomenclature of the contract articles.

(2) The Armed Forces Industrial Security Regulations No. 5220.20 establishes the responsibility and procedure for notifying the cognizant provost marshal of termination action taken under prime contracts and/or subcontracts involving the release or generation of classified information hereinafter referred to as classified contracts.

(3) The CMR assigned administration cognizance over any classified AF prime contract is responsible for notifying the appropriate provost marshal of the following actions:

(i) The partial or complete termination of a classified prime contract.

(ii) The partial or complete termination of classified subcontracts for any reason, such as, termination of subcontracts resulting from contract changes or formal termination action under the prime contract. The notification of the termination of a classified subcontract will be given to the CMR provost marshal within which the subcontractor is geographically located.

(4) *Base procurement or central procurement contracts entered into by AF commands (other than AMC) and not administered by a CMR.* The purchasing offices of such commands will be responsible for notifying their command

provost marshal of any action which results in the partial or complete termination of a classified AF prime contract or classified subcontract for which such purchasing office has cognizance.

(5) *Base procurement contracts entered into by activities of AMC.* The AMC purchasing office that enters into a classified base procurement contract will be responsible for notifying the appropriate provost marshal having security surveillance for such contract of any action which results in the partial or complete termination of the contract or classified subcontracts thereunder. Such notification should be given the provost marshal of the AMA within which the prime contractor or subcontractor is geographically located.

(6) The activity responsible for initially notifying the appropriate provost marshal of the termination of a prime contract or subcontract will also be responsible for notifying the provost marshal of the removal or retention of classified materials from the prime contractor's and/or subcontractor's facility. If the prime contractor or subcontractor is permitted to retain classified materials pertaining to the terminated contract for any purpose, notification of the details of such arrangement will also be given the provost marshal.

§ 1008.202–51 Termination of letter facilities contracts, facilities contracts, and facilities leases.

(a) *Termination of letter facilities contracts*—(1) *General.* This paragraph sets forth the procedures for processing the partial and complete terminations of letter facilities contracts. The following subparagraphs prescribe, in addition to other matters, the settlement procedures whether the contractor "vouchers out" under the termination or submits his claim on a settlement proposal. Special problems which may arise with respect to the partial or complete termination of letter facilities contracts should be referred for advice to AMC (MCPKT).

(2) *Partial terminations.* In the event of a partial termination of a letter facilities contract, payments made to a contractor prior to termination should be considered in the nature of progress payments. Under a partial termination of such type of contract the terminated portion usually consists of the further use by the contractor of facilities previously acquired (even if installed) installations costs of such facilities, the contemplated use by the contractor of machine tools and equipment remaining to be completed, machine tools and equipment on order which have been partially completed and which are directed to be canceled, and costs of initial repairs and parts replacement of Government furnished machines and equipment. The contractor may submit his termination claim on either DD Form 540, "Settlement Proposal (Inventory Basis)," DD Form 541, "Settlement Proposal (Total Cost Basis)," or DD Form 547, "Settlement Proposal for Cost-Type Contracts," whichever the contracting officer deems appropriate. The contracting officer and the contractor may agree upon the total amount due the contractor for the acquisition of machine tools and equipment, installation, initial repair and replacement costs, and termination claims of vendors and suppliers (subcontractors). Under such circumstances, the Audit Status Date as provided in Subpart D, Part 8 of this title, relating to cost reimbursement contracts, is not required. The settlement should be evidenced by an appropriate type of Settlement Agreement (Amendment), the form of which should be requested from AMC (MCPKT), a copy of the Settlement Memorandum will be submitted with such request for use in preparing the appropriate form of agreement.

(3) *Complete termination.* If the letter facilities contract has been completely terminated, the contractor may elect to "voucher out" his costs. Where the contractor discontinues the submission of Standard Form 1034 cost vouchers and submits his termination claim on the appropriate Termination Settlement Proposal form, the Audit Status Date procedure in Part 8 of this title will be followed. Where a partial termination is involved and the continuing work can be completed within a reasonable period of time and/or before the parties are ready to effect settlement, it is recommended that the termination be considered as a complete termination of the contract pursuant to § 8.406 of this title; the Audit Status Date procedure will be followed in such instance where the contractor discontinues the submission of Standard Form 1034 vouchers and submits his claim on the Settlement Proposal form. The termination settlement agreement form set forth in § 8.806–4 of this title may be used to evidence the negotiated settlement of a complete termination; appropriate revisions should be made in the form to refer to "the contract" as "the Letter Facilities Contract".

(b) *Termination of facilities contracts and facilities leases*—(1) *Scope of paragraph.* This paragraph establishes responsibilities and procedures within AMC with respect to the following:

(i) Determination of the necessity for terminations of facilities contracts and facilities leases and/or the withdrawal from the contractor's possession of Government-owned facilities covered thereby.

(ii) Preparation and transmittal of requests for termination of facilities contracts and facilities leases.

(iii) Withdrawal from the contractor's possession of those Government-owned facilities covered by facilities contracts and facilities leases.

(2) *Responsibilities of CMR's.* The Chief, APD or AFPR will submit recommendations through his CMR Headquarters to the AMC Aeronautical Systems Center (LMBI), whenever, in his opinion, a total or partial termination of a facilities contract or lease executed by AMC, and/or the withdrawal of facilities covered thereby, is in the public interest. Termination of leases executed on MCP 71–648, "Facilities Lease Agreement" (except the default terminations), will be effected according to § 1013.3006–2 of this title. Settlement of the termination should be handled by a designated termination contracting officer. In furtherance of such responsibilities, continuing surveillance of Government-owned facilities in the possession of contractors will be maintained by the CMR headquarters in an effort to determine the necessity for allowing such Government-owned facilities to remain in the possession of the contractors. If default by the contractor is involved, the termination of the contract will be processed pursuant to Subpart F of this part.

(3) *Responsibilities of Industrial Facilities Division (LMBI), Aeronautical Systems Center.* The Chief, LMBI, will:

(i) After coordination with the buying branches responsible for the production contracts involved, make all determination necessary for: (*a*) Total or partial termination of facilities contracts and facilities leases (other than those issued on MCP 71–648), and (*b*) The withdrawal from the contractor's possession of Government-owned facilities covered thereby.

(ii) Where total or partial termination is necessary, forward a Termination Authority, AFPI Form 49, to the Termination activity, AMCASC (LMPET).

(iii) Where it is necessary to effect withdrawal of facilities from a contractor's possession and no other termination actions are required, the Chief, LMBI, will normally: (*a*) Forward a request to MCPKP, Hq AMC, to effect the necessary plant clearance or, (*b*) Direct issuance of shipping authorization for the air procurement district office to issue appropriate shipping instructions.

§ 1008.202–52 Special procedures pertaining to deletions of spare parts from AF contracts containing provisioning documents.

(a) This section deals with the deletion of both priced and unpriced spare parts authorized under various types of Provisioning Documents as listed in § 1055.206 of this chapter. "Supply Component" as used herein is defined to include, in addition to the supply components of the Air Force, the appropriate agencies of the other services whose requirements are being filled under AF Contracts.

(b) Deletion of spare parts: When it has been determined by the supply component activity that certain items authorized under Spare Parts Provisioning Documents are no longer required, the supply activity will notify in detail the cognizant APD, or AFPRO, by means of AMC Form 296, "Spare Parts Documents Correction Sheet", of the extent of deletion desired. If Hi-Valu items are involved, a telegraphic notification should be immediately sent by the supply activity to the APD or AFPRO prior to the usual preparation and issuance of AMC Form 296. Upon receipt of a telegraphic or AMC Form 296 notification, the administrative contracting officer (ACO) will in turn immediately notify the Contractor by telegraphic notice or letter notice, as appropriate, with instructions to effect the requested deletions. When a telegraphic notice is used by the ACO, the Contractor will be requested to reply by telegraphic message (or other appropriate means) to the ACO with an acknowledgment of receipt thereof. When

a letter notice to the Contractor is used the ACO will request the Contractor to sign and date a prepared acknowledgment of receipt which the ACO will incorporate immediately below his own signature block.

(1) *Unpriced spare parts.* Deletion of items which result in "no cost" or a "cost" claim from the Contractor will be processed and negotiated by the Contracting Officer in accordance with the procedures of the "Changee Clause" of the contract. However, if there is any excess property resulting from the deletion, such excess property will be processed and disposed of according to the provisions of Subpart E, Part 8 of this title and Subpart E, Part 1008 of this Chapter.

(2) *Priced spare parts*—(i) *No cost deletions.* If it is determined that the entire deletion can be effected without cost to the Government, the cognizant Contracting Officer of the APD or AFPRO will, upon the receipt of a Cancellation Addendum, Spare Parts Change Request, or other appropriate list from the Contractor, review the document for completeness and incorporate the deletions in a contractual document. The contractual document will contain appropriate legal releases to the Government such as those provided in the no-cost settlement forms set forth in §§ 8.806–6 and 8.806–7 of this title. These types of deletions do not require the issuance of a confirming termination telegraphic or letter notice to the Contractor and will not be processed as a termination in accordance with the provisions of Part 8 of this title.

(ii) *Cost deletions.* If it is determined that all or part of the items directed to be deleted will involve costs to the Government, the ACO, upon receipt of a Cancellation Addendum, Spare Parts Change Request, or other appropriate list from the Contractor, will process the individual document as a whole, without distinguishing between "cost" deletions or "no cost" deletions. The contracting officer will ascertain whether the Contractor desires to: (a) Submit his claim forthwith, or (b) wait until a group of deletions have been accumulated over a period of 30, 60 or 90 days. The ACO and the Contractor should agree upon one of the foregoing procedures and thereafter as promptly as possible the Contractor should submit his claim for the settlement of proper costs resulting from the deletions. The ACO, after receiving the Contractor's claim, will prepare and forward an AFPI Form 49 in quadruplicate to the Readjustment office at the AMA, AMC center or AF depot, as appropriate. The AFPI Form 49 will identify the number, extent, and effective dates of the deletions. Upon receiving the AFPI Form 49, the readjustment activity will issue a confirmatory type of termination notice and will issue a docket number as provided in § 1008.202–50.

(c) No deviation to the procedures set forth herein will be made without the prior approval of AMC (MCPK).

§ 1008.202–53 Termination of calls from a call contract.

Termination requests for termination of a call, a number of calls, or portions of a call, from a call or open contract will be initiated on an AFPI Form 49 and will contain the information required by § 1008.202–50(b). The notice of termination for convenience of such calls or portions of calls will be issued by the readjustment office of the procuring activity which issued the calls. (For definition of call and open contracts, see §§ 1003.405–5 and 1003.405–50 of this chapter.)

§ 1008.203 Methods of settlement.

(a) Negotiation is the preferred method of settlement and should be used to the maximum extent possible. In those exceptional cases where it is not possible to settle by negotiation all elements of the termination claim, the termination contracting officer and the contractor may negotiate a settlement as to those elements of the termination claim on which agreement can be reached; the termination contracting officer should render a written determination or finding concerning those elements of the termination claim on which the parties cannot agree. If the contractor has filed an appeal, or has indicated that an appeal will be taken from the determination, or if the amount (or any part thereof) due the contractor has not been paid to him when the settlement agreement is to be executed, then the settlement agreement should incorporate, in addition to its other provisions, an appropriate reservation with respect to the rights of the parties under the determination.

(b) The termination contracting officer, as soon as possible after a terminated contract to be settled has been assigned to him, should obtain the original contract file reflecting the procuring contracting officer's previous actions in connection with the negotiation and award of the contract. In addition, the termination contracting officer should confer with the administrative contracting officer to obtain all available information pertaining to the administration and performance of the contract.

§ 1008.206 Fraud or other criminal conduct.

In the event of suspicion of fraud or other criminal conduct, the Termination Contracting Officer will report the facts of the case to higher authority.

§ 1008.207 Audit of settlement proposals and of subcontractor settlements.

(a) The scope of the accounting examination requested should vary depending on the amounts involved and the complexities of the claim, and requests for field audit should be limited to those situations where such action is necessary. Settlement proposals involving less than $2,500 will receive an accounting examination by an appropriate member of the termination team other than the auditor. The individual making the accounting examination will make a written summary of the review for incorporation into the docket file.

(b) The Termination Contracting Officer will satisfy himself that the reviewing prime contractor or higher tier subcontractor has established an adequate system for the examination of their respective subcontractor settlement proposals, and that accounting examinations are accomplished by competent accounting personnel. The TCO will require the contractor to submit a copy of the accounting examination to him when the subcontractor's settlement proposal is submitted for ratification or approval. If the TCO is not satisfied with the accounting examination made by the contractor or higher tier subcontractor, he will submit the subcontractor's settlement proposal, with the accounting examination made by the contractor, to the appropriate office of the Auditor General for examination and recommendation. The requirement that subcontractor settlements of $25,000 or more be submitted for review and recommendation by the cognizant audit agency does not relieve the prime contractor or upper tier subcontractor from making an accounting examination.

§ 1008.208 Settlement of subcontract claims.

See § 8.208 of this title.

§ 1008.208–3 Settlement procedure.

(a) Each contractor and each subcontractor will carefully examine and approve each settlement proposal submitted to him by a lower tier subcontractor. Each contractor and subcontractor will use his own staff to accomplish these functions. The termination contracting officer must satisfy himself that the staff, including the accountant, negotiator, and property disposal personnel, are competent, that the methods are adequate, and that settlements are effected in conformance with Subchapter A, Chapter I of this title. In connection with subcontracts terminated as a result of contract modifications or engineering changes, see §§ 1008.000(d) and 1008.254.

(b) The termination contracting officer should emphasize to the contractor the necessity of submitting a complete "package" of the subcontract settlement to the contracting officer for approval. The "package" should consist of copies of the claim, inventory schedules (if any), accounting reviews, memorandum of the settlement, certificate as required in § 8.208–3 of this title and any other supporting documents which will explain the settlement.

(c) Approval or ratification of subcontract settlements: (1) Except where settlement of subcontractors claims in the amount of $10,000 or less has been authorized, all settlement proposals submitted from any prime contractor or subcontractor must be reviewed and approved or ratified by the termination contracting officer as provided under this section.

§ 1008.208–4 Authorization for subcontract settlements of $10,000 or less without approval or ratification.

(a) Purpose and authority: The purpose of the authorization to a contractor to settle with subcontractors in the amount of $10,000 or less is to expedite settlements. This authorization will not be used to provide a circuitous route for the redelegation of the termination contracting officers responsibility. Thus,

while more than one settlement of $10,000 or less may be effected with a subcontractor, a high degree of care should be exercised by the termination contracting officer in his review to establish clearly the propriety of the separate claims. Termination contracting officers should encourage contractors to request a delegation of authority to settle subcontractors claims.

(1) Prior to granting authorization to conclude settlements with subcontractors up to $2,500 or requesting approval for authorization to settle claims over $2,500 and not in excess of $10,000, the termination contracting officer, with the assistance of the auditor and plant clearance officer, will review and examine the contractors written procedures for processing subcontractors termination claims, including its procedures for conducting accounting reviews, inspection and disposition of subcontractor inventory, and competency of the contractor personnel assigned to perform this function. The termination contracting officer will satisfy himself that such procedures and practices are adequate and competent, conform to sound business and accounting practices, and properly safeguard the interests of the Government. The termination contracting officer is not required to obtain approval from Hq AMC in those instances where he deems it appropriate to grant authority to contractors to conclude settlement with their subcontractors up to $2,500. The termination contracting officer will prepare a memorandum for the docket file setting forth in detail the basis for his determination authorizing the contractor to conclude settlements with its subcontractors up to $2,500. This memorandum will also state the names of the auditor and plant clearance officer who assisted in the review, together with copies of their written reports.

(2) and (3) See § 8.208–4(a) (2) and (3) of this title.

(4) The termination contracting officer may authorize the contractor, subject to the prior written approval of the Deputy for Procurement, Hq AMC, to settle with its subcontractors when the settlement is over $2,500 and not in excess of $10,000. This authorization may be for any amount which the termination contracting officer has determined the contractor is capable of settling but cannot be in excess of $10,000.

(5) The contractors written request for authorization to conclude settlements of subcontractors claims over $2,500 and not in excess of $10,000 will be submitted by the termination contracting officer for approval to Hq AMC, ATTN: Deputy Director/Procurement (MCP–1) through the Chief, Contract Management Division (MCPK). The termination contracting officer's letter of transmittal will set forth in sufficient detail the reviews and examinations conducted on the points outlined in (but not limited to) subparagraph (1) of this paragraph, showing the contracting officers basis for recommending approval of the contractors request. The names of the auditor and plant clearance officer who assisted in the review, together with copies of their written reports to the termination contracting officer shall also be furnished. This information should be in such detail as to enable a person not familiar with the contractors operations to determine that the contractor is competent and qualified to conclude settlements with its subcontractors. A copy of the contractors approved written procedures for settling subcontractors termination claims shall also be furnished.

(b) Plant clearance provisions: Examples A and B below are illustrations of instances where the subcontractor has on hand completed articles allocable to the terminated subcontract, disposal of such completed articles may be accomplished without screening provided the total of the amount represented by the completed articles (at the subcontract price) added to the termination settlement does not exceed the authority granted to the prime contractor.

Example A ($10,000 subcontract authorization):

Subcontract termination—inventory	$5,000
Settlement—other costs	1,000
	6,000
Completed articles	3,000
Total	9,000

Example B ($6,000 subcontract authorization):

Subcontract termination—inventory	$2,000
Settlement—other costs	1,500
	3,500
Completed articles	2,000
Total	5,500

In examples A and B the total is less than the authorization: the completed articles and the inventory are excepted from §§ 8.513–1(a), 8.513–3 and 8.513–4 of this title. Where the cost of the completed articles (at the subcontract price) when added to the amount of the subcontract settlement exceeds the contractor's delegation of authority, disposition of all such completed articles is subject to all the provisions of § 8.513 of this title. See examples C and D below:

Example C ($10,000 subcontract authorization):

Subcontract termination—inventory	$4,000
Settlement—other costs	1,000
	5,000
Completed articles	7,000
Total	12,000

Example D ($6,000 subcontract authorization):

Subcontract termination—inventory	$2,500
Settlement—other costs	1,500
	4,000
Completed articles	3,000
Total	7,000

In examples C and D the total is in excess of the authorization. The total value of the inventory (not merely the amount in excess of the authorization) is subject to all the provisions of § 8.513 of this title.

(c) and (d). See § 8.208–4 (c) and (d) of this title.

(e) Special provisions: The delegation of authority under § 8.208–4 of this title does not empower a contractor, either expressly or by implication, to grant similar authority to its subcontractors. However, a subcontractor may be granted such authority either by the termination contracting officer having cognizance over the settlement of the applicable terminated prime contract, or by a termination contracting officer located in the geographical area of, or having cognizance over, the subcontractor's AF work. In the latter case, settlements effected by a subcontractor will be accepted by the termination contracting officer handling the settlement of the applicable terminated prime contract. It is recommended that the authorizations to subcontractors be processed by the termination contracting officers located in the geographical area of the AF subcontractor. If an authorization has been granted to a contractor in either of its capabilities as the holder of an AF prime contract or as an AF subcontractor, it will be recognized as applicable to settlements effected by the contractor in either of such capacities unless otherwise specifically limited in the letter of authorization. To carry out the purpose of the preceding sentence, the letter of authorization should therefore, ordinarily, not be limited to specific AF contracts, and a definite statement should be incorporated therein setting forth that the authorization is applicable to all of the contractor's or subcontractor's AF prime contracts or subcontracts. In addition, the letter of authorization will specify that: (1) It applies only to subcontractor termination settlements that are within the limits of the delegation of authority, computed according to § 8.101–1 of this title, (2) the settlement will be made according to the provisions of Part 8 of this title and this part, (3) the termination inventory will be disposed of according to Part 8 of this title and this part, (4) each settlement will be accompanied by a certificate in the form set forth in § 8.802 of this title, and (5) the Government reserves the right to revoke the authorization at any time. The authorization provided for in § 8.208–4 of this title may be granted to a contractor to settle its terminated subcontracts resulting from changes made in the prime contract, which includes changes resulting from contract change notifications. A subcontractor who has been granted authorization under § 8.208–4 of this title will immediately notify his upper tier contractor of the fact and will attach to and submit with his settlement proposal a certified true copy of the document. Whenever an authorization granted to a contractor in the United States under § 8.208–4 of this title has been withdrawn, a copy of the revocation will be sent to AMC (MCPK).

(f) The termination contracting officer may delegate the authority to settle any subcontract termination claims relating to a terminated prime contract being handled by him, irrespective of the amount thereof, to a contracting officer having jurisdiction over, or located at, the subcontractors facilities. In such

event, the subcontract settlements effected by the designated contracting officer will be accepted as final and conclusive by the termination contracting officer delegating the authority. (See § 1008.208–7.)

§ 1008.208–7 Government assistance in settlement of subcontracts.

In certain instances it might be advisable for the termination contracting officer to participate in the negotiation settlements between the prime contractor and subcontractor; this would be so, particularly, in cases where large and substantial sums are involved. In addition, there may be instances where because of distances involved or for other reasons, assistance by the Government in settling the terminated subcontract is advisable. It is not necessary in each of these instances that a triparty agreement be entered into, unless the contracting officer deems it advisable. Where a triparty agreement is to be used the form is set forth in Subpart H of this part.

§ 1008.208–8 Assignment of rights under subcontracts.

(a) If the Government assumes the direct settlement of a subcontractor termination claim under the assignment-of-rights provision of the standard termination clauses, the termination contracting officer will obtain a written assignment from the contractor in the form set forth in § 1008.857. When the settlement has been agreed upon between the subcontractor and the termination contracting officer, the parties will enter into a bilateral settlement agreement substantially in the form set forth in § 1008.855.

(b) See § 8.208–8(b) of this title.

(c) Procedure: (1) The termination contracting officer will send, through channels, a letter to AMC (MCPK) recommending and requesting approval to assume the subcontractor's termination claim for direct settlement. The contracting officer will set forth in the letter the pertinent facts relating to the claim and will specify the reasons relied upon by the contracting officer in recommending the assumption for direct settlement.

(2) If the request is approved by the Chief, Contract Management Division (MCPK), Hq AMC, the contracting officer will then obtain from the prime contractor an assignment as set forth in § 1008.857. In addition, the contracting officer should obtain from the subcontractor whose termination claim is being assumed by the Government for direct settlement a written concurrence as set forth in § 1008.861.

(3) The contracting officer will then process the settlement according to normal termination procedures. Upon settlement of the termination, the contracting officer will prepare and enter into a direct settlement agreement with the subcontractor in the form set forth in § 1008.855.

(4) If the subcontractor is located in a CMR, other than that in which the prime contractor is located, the termination contracting officer administering the terminated prime contract may obtain the assistance of the CMR in whose jurisdiction a subcontractor is located by transmitting the following documents:

(i) Copy of the prime contract or supplemental settlement agreement under which the Government assumed the obligation to settle with the subcontractor.

(ii) Copies of the prime contractor's assignment and the subcontractor's request and/or concurrence for direct settlement.

(iii) The information listed in § 1008.208–50.

(iv) Designation of paying finance officer.

§ 1008.208–50 Inter-CMR referral for negotiation.

(a) The termination contracting officer will obtain the prime contractor's consent (see § 8.208–7 of this title) and prepare in triplicate a letter of transmittal of the subcontract case for negotiation. The letter of transmittal will be sent to the appropriate referral APD or AFPRO with information copies of the transmittal letter to the CMR's having jurisdiction of both the prime and subcontractors and to AMC (MCPK). The letter of transmittal will contain the following information and documents:

(1) Name and address of prime contractor.

(2) Prime contract number.

(3) Termination docket number.

(4) Name and address of subcontractor.

(5) Copy of terminated subcontract.

(6) Copy of Termination Notice sent by prime contractor to subcontractor.

(7) Statement of payments made for completed items and any other advance or partial payments.

(8) Copy of termination claim filed by subcontractor if a claim has been filed.

(9) Specific detailed reasons in support of referral for direct negotiation of subcontractor's claim by the Government on behalf of the prime contractor.

(10) Copy of correspondence containing written consent given by the prime contractor to direct negotiation on behalf of the prime contractor by the Government of subcontractor's termination claim.

(11) Identification of assignees, sureties, and guarantors of the subcontractor.

(12) A summary of all prior negotiations between the prime contractor and the subcontractor.

(13) Such other available information as may be helpful in negotiations and processing of subcontractor's claim.

(b) Action by CMR and/or APD office in which the subcontractor is located: Upon receipt of a letter of transmittal of a subcontract case for negotiation, the chief of the APD or the AFPR having jurisdiction over the subcontractor will assign a contracting officer and any other personnel necessary to administer the negotiation of the amount due the subcontractor. The termination contracting officer to whom the subcontract is assigned will have complete charge of and responsibility for handling the subcontractor's claim and will perform the duties normally required in the negotiation of the amount due a prime contractor on a termination claim. Appropriate assistance in plant clearance matters will be furnished by the office in whose jurisdiction the subcontractor is located. The final summary of plant clearance activities by the plant clearance officer will be made directly to the contracting officer to whom the subcontract is assigned, instead of the contracting officer administering the prime contract. Direct communication between the contracting officer administering the terminated subcontract and the contracting officer administering the terminated prime contract is authorized.

(c) Agreement as to the amount due subcontractor: When the subcontractor and the contracting officer have agreed as to the amount due on the subcontractor's termination claim, the contracting officer will execute a certificate in the form prescribed in § 1008.859 with respect to such agreement. Prior thereto, the proposed settlement will be reviewed, as required, by a settlement review board in the CMR in which the subcontractor is located. If no agreement can be reached after a reasonable period of negotiation, the contracting officer will return the subcontract file to the contracting officer administering the terminated prime contract, with a summary of the negotiations and the principal bases for disagreement. Every reasonable effort should be made, however, to establish the amount due the subcontractor by negotiation.

(d) Closing of case: Upon final negotiation of the amount due the subcontractor on his termination claim, the contracting officer will send the following to the contracting officer administering the terminated prime contract:

(1) A copy of the subcontractor's termination claim (original and any supplements).

(2) A copy of audit report of subcontractor's termination claim.

(3) A final summary report on plant clearance activities showing disposition of termination inventories, Government-furnished property, etc.

(4) A copy of the Settlement Memorandum.

(5) Approval of CMR settlement review board, if review by each board was required.

(6) Gross amount of settlement, disposal credits, advance or partial payments, and net amount to be paid to subcontractor.

(7) Completed certificate as prescribed in § 1008.860.

(e) Payment: Payment in inter-referral cases will be made through the prime contractor just as in any other termination subcontract settlement subject to any right of set-off which the prime contractor may have against the subcontractor.

(f) Common subcontractors: The procedures in paragraphs (a) to (e) of this section may be used with respect to any subcontractor who is ascertained by the cognizant chief, APD, to be a common subcontractor for substantially the same material under more than one unsettled terminated prime contract. Normally, such a situation will come to

the attention of the chief, APD, through his own readjustment personnel. In such a case, whether before or after reference of a subcontractor's claim under a single prime contract, the chief, APD, under whose jurisdiction the subcontractor is located may suggest that the action set forth in the preceding paragraphs be initiated. The procedure outlined in this paragraph may be followed in determining the overall amount due the common subcontractor by the several prime contractors. The amount due should then be allocated by the contracting officer administering the negotiation of the sums due the subcontractor on an equitable basis among the prime contractors. In such cases appropriate assistance in plant clearance matters will be furnished by the APD in whose jurisdiction the subcontractor is located.

§ 1008.209 Settlement agreements.

§ 1008.209–1 General.

Settlement agreement forms relating to the settlement of a direct settlement with a subcontractor, settlement of reservations, settlement of two or more claims in one agreement, settlement of CPFF partial terminations, and settlement of a partial termination of a letter facility contract are set forth in Subpart H of this part.

§ 1008.209–2 Excepted items.

When an item is excluded from the settlement agreement and is settled at a later date the parties are required under the provision of § 8.209–2 of this title to enter into another and separate settlement agreement. A short form of such settlement agreement which may be used in most cases is set forth in § 1008.856 under "Settlement of Reservations."

§ 1008.209–4 No-cost settlement.

(a) See § 8.209–4(a) of this title.

(b) Under a terminated cost type contract, without fixed fee, if the contractor elects to cost out on "1034" vouchers no settlement agreement will be required. However, when the final cost voucher is submitted a release should be obtained from the contractor.

§ 1008.209–6 Joint settlement of two or more claims.

The consolidation of two or more termination dockets under the same contract or separate contracts, will not result in the closing of any dockets for record purposes, until the execution of a termination supplemental agreement or amendment.

§ 1008.209–7 Settlement by determination.

(a) *General.* In rendering a determination settlement, where it is apparent that the contractor would have incurred a loss on the entire contract had it been completed, the allowable costs will be appropriately reduced and no profit whatsoever will be allowed. Thus, regardless of whether the settlement is to be arrived at by agreement, or by determination, there will be, in the case of a loss contract, an adjustment to reflect the indicated rate of loss. (See § 8.304 of this title.) Prior to rendering a written determination the termination contracting officer will comply with the provisions of § 1054.503–2 of this chapter by sending the proposed findings to the Staff Judge Advocate, Hq AMC, through AMC (MCPKT).

(b) *Notice to contractor.* In addition to sending the required signed copy to the contractor, the termination contracting officer will promptly send one signed copy of the determination and findings to AMC (MCPKT).

(c)–(e) See § 8.209–6 (c)–(e) of this title.

(f) *Appeals.* Upon expiration of the time specified in the Disputes clause of the contract, or in applicable laws and regulations, for filing an appeal or upon final decision by the appeal authority if a timely appeal is filed, the termination contracting officer will:

(1) Prepare an appropriate cover sheet to reflect the necessary fiscal information.

(2) Distribute, with the cover page attached, additional copies of the findings and decision, or of the amended findings and decision, in the same manner and to the same extent as is required of termination supplemental agreements.

For appeal of Determination and Findings see Subpart E, Part 1054 of this chapter for preparation and procedure.

§ 1008.209–50 Claims in favor of the Government.

Prior to the execution of a termination supplemental settlement agreement, the termination contracting officer must be satisfied that no claim exists in favor of the Government which would be unintentionally released under the provisions of the agreement. It will be deemed that due inquiry has been made if the finance officer is consulted as to the existence of unliquidated advance, progress, partial payments made under the terminated contract, the procuring contracting officer, the administrative contracting officer, the property administrator administering the contract are consulted as to the existence of any claims for loss, destruction, or damage to Government property, or for any other cause known to such officers. Termination docket files should reflect that such inquiry has been accomplished by the termination contracting officer.

§ 1008.209–51 Processing of negotiated termination settlements.

(a) *Scope.* This section establishes policies, procedures, and responsibilities for processing documents prepared as a result of the termination of contracts for the convenience of the Government.

(b) *Applicability.* This section applies to all AF procurement field organizations responsible for processing documents which arise as the result of complete or partial termination of contracts terminated for the convenience of the Government where the contracts were written or administered by the Air Force within the continental United States except:

(1) Contracts written, administered, or terminated by Rome Air Development Center or Air Force Cambridge Research Center.

(2) Local purchase or AMC depot activities who effect settlement of contracts terminated for the convenience of the Government which are not assigned to a CMR for settlement.

(c) *Responsibilities.* Termination supplemental settlement agreements or amendments written to evidence termination settlements will be prepared in the office administering the termination case, unless otherwise designated by the Chief, Contract Management Division (MCPK), Hq AMC, or the CMR commander concerned and will be executed by the assigned termination contracting officer.

(d) *Review by legal personnel.* The Chief, MCPK, Hq AMC, and the CMR commanders will provide for review by qualified legal personnel of all termination supplemental settlement agreements or amendments written in their respective jurisdiction.

§ 1008.209–52 Report of litigation.

Contracting officers will report the filing of litigation in connection with terminated contracts.

§ 1008.209–53 Closing and distribution.

(a) *Closing.* Termination cases will be closed, upon final execution of the termination supplemental settlement agreements or amendments, after determination by qualified legal personnel in the CMR or offices thereunder that the agreement is legally sufficient. After execution of the termination supplemental agreement, AFPI Form 50, "Contract Termination Status Report," will be promptly prepared and forwarded, according to § 1008.205–52, with the agreement.

(b) *Distribution.* The termination contracting officer will make immediate distribution of termination supplemental settlement agreements or amendments by forwarding one signed copy of the agreement to the contractor, one signed copy to the appropriate docket file, one signed and one authenticated copy to the paying accounting and finance office(s) and one authenticated copy to each accounting and finance office whose funds are cited in the contract if different than the paying office. The TCO will also send three signed and one authenticated copy of the agreement and the reproducible master of same to the contract distribution office at the cognizant AMA, AF depot, AMC center, or the purchasing installation for reproduction and completion of normal distribution. One authenticated copy of the agreement, together with a copy of the settlement memorandum, will be sent to AMC (MCPKT).

§ 1008.210 Contracting officer's negotiation memorandum.

(a) The settlement memorandum, which is required for every settlement regardless of the amount involved, will be prepared in such a manner that standing alone it will impart to any reviewing authority a complete narrative summary of the termination settlement. Outlines for Fixed-Price and Cost-Plus-Fixed-Fee Settlement Memorandum set

forth in §§ 1008.862 and 1008.863 respectively, are intended as guides and are not intended to be inflexible.

(b) If a lump-sum settlement has been negotiated, the settlement memorandum will set forth in narrative form the various factors considered by the termination contracting officer as to each element of the claim and indicate generally the extent to which the contracting officer considered the item in determining the amount of the lump sum settlement. If it was agreed that any item was disallowed completely, that should be indicated. It is not necessary, however, that a specific amount for each element be stated unless the negotiation resulted in agreements for individual elements of the settlement proposal.

(c) If the negotiated settlement was agreed upon on an item-by-item basis, the termination contracting officer will set forth the specific amounts allowed and disallowed for each item of the claim as well as a narrative explanation of the factors considered.

(d) Exhibits to negotiation memorandum shall not serve as a substitute for factual information which should be contained in the settlement memorandum, but rather as a substantiation thereof.

§ 1008.211 Review and approval of proposed settlements.

§ 1008.211–1 Settlement review boards.

(a) The authority to establish settlement review boards according to the provisions of § 8.211–1 of this title has been delegated by the Commander, AMC, to the Director of Procurement and Production, Hq AMC, who has further delegated the authority, without power of redelegation to:

(1) Deputy Directors of Procurement and Production, Hq AMC.

(2) [Reserved]

(3) Chief and Deputy Chief, Contract Management Division, Directorate of Procurement and Production, Hq AMC.

(4) Commanders and Vice Commanders of oversea commands. (As used herein the term "oversea commands" includes major air commands located in territories and possessions of the United States as well as those in foreign countries.)

(5) Commander and Deputy Commander, Air Materiel Force, Pacific Area (AMFPA). Pursuant to § 8.211–2 of this title, AMFPA settlements over $1,000,000 will be sent, after approval by AMFPA to the Settlement Review Board, Hq AMC, for further review and approval or disapproval.

(6) Commander and Deputy Commander, Air Materiel Force European Area (AMFEA). Pursuant to § 8.211–2 of this title, AMFEA settlements over $1,000,000 will be sent after approval by AMFEA, to the Settlement Review Board, Hq AMC, for further review and approval or disapproval.

(b) Appointment of settlement review boards: (1) The Chief, MCPK, Hq AMC, will appoint members of the board at Hq AMC.

(2) Written nominations of members of the CMR boards will be submitted by the CMR commanders to the Chief, MCPK, Hq AMC. A brief but thorough resume of the qualifications of each nominee will accompany the nominations. The CMR commander may nominate such boards within his CMR as he deems desirable.

(3) The chiefs of APD's and AFPRO's will submit written nominations of board members to the CMR commander. If he deems it necessary, the CMR commander will forward these nominations with his recommendation to the Chief, MCPK, Hq AMC.

(4) The nominations and special orders appointing members to the boards will designate, in each instance, the chairman, vice chairman, and recorder, and will indicate whether the recorder may vote.

(5) The accounting member and alternate, whenever feasible, will be from the Office of the Auditor General. The nominations and special orders appointing the board will recite that the selection of personnel from the Office of the Auditor General has been coordinated with the Auditor General.

§ 1008.211–2 Required review and approval.

(a) When required a board may consider and act upon any or all matters within its jurisdiction, previously presented to any defective or invalid board or any valid board which it may succeed. A board may correct any defective proceedings or records upon matters within its jurisdiction previously submitted to any defective or invalid board and may correct any defective proceedings or records previously submitted to a valid board which it has succeeded.

(1) Because of distances between the CMR's, APD's, and AFPRO's, and CMR commanders may agree upon and designate an established board not located within the contract administration area of the CMR having responsibility for the settlement to review the proposed settlement of a contractor located near such board though not within such board's contract administration area.

(2) (i) *Fixed fee.* When the settlement is limited to the adjustment of the fixed fee, and the total amount of the fixed fee as adjusted is $25,000 or more, the matter will be submitted for review and approval to a settlement review board. In arriving at the amount which represents the adjusted fixed fee, the progress fixed-fee payments made prior to the termination will not be deducted.

(ii) *Partial terminations.* (*a*) In handling the settlement of a partial termination of cost-type contracts, reference should be made to § 8.406 of this title. Generally such terminations will result in a reduction of the overall estimated cost as well as an adjustment of the fixed fee relating to the terminated portion of the contract. If a separate fixed fee for the terminated portion is not stated separately in the contract, the allocable portion of the fixed fee should be estimated. Where the amount of the fixed fee relating to the terminated portion of the contract, which is to be retained by the contractor for work performed, is $25,000 or more, the matter will be submitted for review and approval to a settlement review board.

(*b*) Where there is a partial termination and a written determination is made by the Contracting Officer that the costs pertaining to the terminated portion are, pursuant to § 8.406(a) of this title, clearly severable, the settlement may be limited to an adjustment of the fixed fee or may include costs and fixed fee. The policies set forth in the preceding subparagraphs relating to settlement review boards will be applicable whether the settlement is limited to an adjustment of the fixed fee or includes costs and fixed fee.

(3) and (4) See § 8.211–2(a) (3) and (4) of this title.

(5) *Subcontractor settlements.* The same review and approval by a settlement review board is required in connection with subcontract termination settlement as for prime contracts. If a prime contractor holding a cost-reimbursement type contract elects to voucher out costs, termination settlements with its subcontractors are subject to settlement review board review and approval if the settlement requires payment of $25,000 or more, as computed according to § 8.101–1 of this title. Such action should be taken prior to approval of any Standard Form 1034 vouchers containing such costs.

The board at Hq AMC has original and concurrent jurisdiction over all settlements where necessary as well as over settlements according to § 8.211–2 of this title. Settlements in excess of $1,000,000 will be forwarded by the board at the CMR, APD, AFPRO, AMFEA, or AMFPA with the written minutes and certificates of the recorder to Hq AMC Settlement Review Board, Attn: Recorder, for review, consideration, approval or disapproval, and such other action as may be deemed necessary.

(b) *Submission of information:* The termination contracting officer will furnish a minimum of five copies of supporting papers and related documents called for in § 8.211–2(b) of this title. Every settlement memorandum and supporting documents submitted by the TCO will be mailed to the attention of the recorder, or delivered to the recorder. The date of receipt by the recorder will be considered the date of submission. The TCO will appear before the board when his presence is desired.

§ 1008.211–3 Scope of review.

A board will not act on any matter prior to 24 hours after distribution of memorandum copies to members, except in extremely urgent cases. The presence of special advisers to the board of Government personnel, or of contractor's representatives will be within the discretion of the particular board, unless the appointing authority directs otherwise.

§ 1008.211–4 Action by board.

(a) Three members of the board will constitute a quorum. The board may act by a majority of members present. The chairman will call the meetings of the board.

(b) Minutes will be prepared for each meeting, signed by the chairman and recorder, and will contain at least the following:

(1) The number and date of the order appointing the board.

(2) The meeting place and time.
(3) The contract number and termination docket number or engineering change order number, if applicable.
(4) The names of members present and absent, and the designation of members acting as chairman and recorder.
(5) The name of the TCO requesting action by the board.
(6) A resume of the discussion of the case.
(7) Where it is deemed appropriate, a listing and identification of documents (in addition to those attached to the settlement memorandum as exhibits), which were examined by the board. These documents need not be attached to the minutes as exhibits.
(8) A copy of the settlement memorandum.
(9) The decision or action of the board.

(c) A Settlement or determination in excess of $1,000,000 after approval by a board at the CMR, APD, AFPRO, AMFEA, or AMFPA, will be sent to AMC (MCPK), and will include the following documents:
(1) A copy of the settlement memorandum.
(2) The auditor's report.
(3) The minutes of the meeting of the board and a copy of the recorder's certificate.
(4) Where final approval of the Hq AMC board is necessary because the proposed settlement is in excess of $1,000,000, the CMR, AMFEA, and AMFPA board will send, in addition to the documents enumerated above, five copies of the minutes and supporting documents of such lower board to the Commander, AMC, Attn: AMC Settlement Review Board, for final approval of the proposed settlement.

(d) Authority of contracting officer to proceed: If a proposed negotiated settlement is disapproved by the cognizant settlement review board, the TCO will thereafter renegotiate a settlement which may be submitted for approval. In the event of his inability to negotiate satisfactory settlement, he will render findings and effect a settlement by determination.

(e) Responsibilities of the recorder: The recorder of the board will:
(1) Notify the Chairman promptly upon receipt of each settlement memorandum and will distribute immediately a copy to each member and alternate.
(2) Incorporate in the minutes of the board in addition to the material required by paragraph (b) of this paragraph the following:
(i) Questions raised by members.
(ii) Substance of the discussion.
(iii) A comprehensive report of the proceedings indicating the extent to which a review of the case was made by the board. Such report may be in narrative form and need not be a stenographic transcript of the proceedings. The minutes should state clearly the questions raised by members of the board, the resolution of the questions, the reasons in support thereof, and the essentials of discussion, setting forth areas of agreement and disagreement.
(3) Notify the TCO promptly in writing of approval (or disapproval with recommendations) in the form of a certificate together with copies of the minutes of the meeting.
(4) Maintain a separate record of each case submitted. This record will show the following, where applicable:
(i) The date of receipt.
(ii) The contractor's name and address.
(iii) The contract number.
(iv) The termination docket or engineering change order number.
(v) A statement of the action taken.
(vi) The date such action was taken.
(vii) The date the TCO was notified.
(5) Maintain signed copies of the minutes and certificate of the recorder properly indexed in the permanent records of the board.

§ 1008.212 Payment.

§ 1008.212–1 Partial payments upon termination.

(a) General: See § 8.212–1(a) of this title.

(b) In arriving at a decision as to whether an accounting review should be made in connection with a contractor's application for partial payment, the termination contracting officer should consider such factors as past Government experience with the contractor, essentiality of the contractor in relation to the AF procurements, reasonableness of the requested partial payment in the light of all the facts and circumstances and the financial status of the contractor.

(c) Recognition of assignments: See § 8.212–1(c) of this title.

(d) Security for partial payments: Generally the Government should take title to any property when a partial payment is made to the contractor. In such instances, a written transfer of title from the contractor to the Government of the property, free and clear of any and all encumbrances thereon, will be obtained. Where the termination contracting officer deems it in the best interest of the Government not to accept title upon the making of a partial payment to the contractor, a form of lien as set forth in § 1008.857 will be obtained from the contractor as security for the partial payment.

(e) Deductions in computing amount of partial payment: Whenever any property, upon which the Government has title or a lien by virtue of a partial payment, is disposed of by a contractor pursuant to authorization therefor by the termination contracting officer, the proceeds received or derived from such disposal will be immediately credited to, or turned over to, the Government in the manner directed by the contracting officer.

(f) Limitation on total amount: effect of overpayment: See § 8.212–1(f) of this title.

(g) Certification and approval of partial payments: In addition to the provision set forth in Subchapter A, Chapter 1 of this title, the termination docket number will be included on the voucher or invoice. This can be listed immediately after the contract number.

§ 1008.212–2 Final payment.

(a) *Negotiated settlement.* The contractor will be required to accomplish the following certificate on the Standard Form 1034 voucher for payment under a settlement agreement: "I certify that the above bill is correct and just and that payment therefor has not been received." The certification will be made by a duly authorized official of the contractor.

(1) Under the description "Articles or Services" on the face of the Standard Form 1034 voucher, the termination contracting officer (TCO) will insert: "Payment in full in accordance with the attached Supplemental Settlement Agreement No. _____ to Contract No. _____, Docket No. _____." If title to property is being taken by the Government through the settlement agreement, the following statement will also be inserted: "Acquisition of property by the Government is involved. The Property Account No. _____." If no property is involved or title thereto was taken by the Government prior to the execution of the settlement agreement, the following provision will be inserted: "Acquisition of property by the Government is not involved." The administrative certificate to be completed by the TCO on the face of the voucher will be lined out and the words "Certificates on Reverse Hereof" substituted. The TCO will accomplish the following certification in lieu of the above deletion: "Pursuant to authority vested in me, I certify that the within payment is due and payable under the terms of the attached Supplemental Settlement Agreement No. _____ and that title to all property, if any, was transferred." The following additional statement will be inserted below the contracting officer's certification and on the same line as his signature. "Payment in the amount of $_____ approved."

(2) When invoices are submitted with Standard Form 1034, the TCO will be responsible for obtaining the original and three properly certified copies of the contractor's invoice; the original and two copies will be attached to the Standard Form 1034 and the one will be filed in the docket file. The original and four copies of Standard Form 1034 will be prepared and certified by the TCO for submission to the accounting and finance officer along with the executed termination supplemental settlement agreement and the above invoices. One copy of Standard Form 1034 will contain the TCO's name and mailing address so that after payment it may be so noted and returned to the accounting and finance officer.

(3) When Standard Form 1034 is used for payment, when contractors use Standard Form 1034 without invoices being attached, the items for which payment is sought must be properly identified and the contractor must accomplish the certificate set forth on the form. The TCO must also certify the voucher. The original and four copies of Standard Form 1034 will be prepared; one copy will contain the TCO's name and mailing address so that after payment, it may be so noted and returned by the accounting and finance officer.

(b) *Settlement by determination.* (1) A provision should be included in the voucher setting forth that the amount of the payment was determined under the "Disputes Clause" of the contract.

(2) The Standard Form 1034 voucher for final payment under a determination from which an appeal has been taken and decided should contain substantially the following statement:

> The payment covered by this voucher is a full and final payment of the amount due the Contractor for its termination claim under contract No. ------ as determined pursuant to the "Disputes" clause of the contract by the Armed Services Board of Contract Appeals in its decision dated ----------, ASBCA Case No. -------.

Copies of the TCO's written determination and the decision of the appeals board will be attached to the voucher. An appropriate cover sheet containing necessary information and financial data will be prepared by the TCO and attached to his determination. The TCO's certification referred to in § 8.212–1(g) of this title will be modified to show that the payment is certified according to the determination. If the TCO approved payment pending determination of an appeal, the voucher will contain substantially the following statement:

> The payment covered by this voucher is made pursuant to Armed Services Procurement Instruction 8–212.1(a) in connection with the contractor's termination claim under Contract No. ------ as determined by the Department of the Air Force in the attached Findings and Determination dated ----------. The payment provided for herein shall be made without prejudice to the rights of either the Government or the contractor by reason of the appeal filed by the contractor with the Armed Services Board of Contract Appeals. If the aforesaid Board or any court of competent jurisdiction determines finally that the payment provided for herein is the total amount due the contractor, such payment shall be deemed to constitute final and full payment to the contractor; otherwise, it shall be deemed to constitute a partial or over payment of the amount due the contractor. If his payment, together with all other payments made on such claim is determined finally by the aforesaid Board or any court of competent jurisdiction to exceed the amount finally payable to the contractor on such claim, the contractor agrees to repay the excess amount to the Government on demand.

The certificate of the contractor on the face of the voucher will be amended to read as follows: "I certify that payment of the above bill has not been received and hereby consent and agree to the provisions contained in the above statement for payment." The certification of the TCO referred to in § 8.212–1(g) of this title will be modified to fit the circumstances. (See § 1008.209.)

(c) *Interest.* See § 8.212–2(c) of this title.

(d) *Determination of credits and release of funds*—(1) *Determination of credits.* Upon receipt of the distribution copy of the final termination supplemental settlement agreement or amendment and a copy of the voucher from the finance officer, the accounting and finance division of the activity concerned will determine the exact amount of funds to be released. The accounting and finance division will further determine the distribution among the allotments cited in the contract of credits resulting from the reduction in contract price effected by the settlement. If, however, the settlement has resulted in an increase in the contract price and the additional funds obligated to liquidate the increase was more than the sum required, the accounting and finance division will determine the excess sum and the allotment to be credited upon the release of such funds.

(2) *Release of funds.* After making the determination set forth in subparagraph (1) of this paragraph, the accounting and finance division will effect appropriate final release of funds from obligation and notify the accounting and finance officer concerned. If any adjustment to the records of the accounting and finance officer is necessary, the accounting and finance division will initiate such action.

§ 1008.251 Recoupment of renegotiation debts.

(a) *Scope of section.* This section establishes responsibilities and procedures in termination cases for recouping renegotiation debts from defaulting contractors.

(b) *Definitions.* As used in this part, the following terms will have the meanings indicated:

(1) "Defaulting contractor" is a prime contractor or a subcontractor in default in payment of its indebtedness to the United States for profits agreed or determined to be excessive under statutory renegotiation proceedings.

(2) "Default list" is the list of defaulting contractors, entitled "Contractors Indebted to the United States," issued periodically by the Chief, Finance Division, Comptroller Department, Hq USAF.

(c) *Responsibilities.* Contracting officers charged with the settlement of terminated contracts will determine from the default list the renegotiation debt status of each prime contractor and subcontractor whose termination claim is in process of settlement. Contracting officers will make a reasonable effort, under the circumstances of each case, to identify all subcontractors who have submitted claims under terminated prime contracts for the purpose of determining from the default list the renegotiation debt status of each such subcontractor. Such renegotiation debt status will be coordinated with the appropriate accounting and finance officer.

(d) *Procedures.* (1) The contracting officer negotiating a termination settlement will, under the authority of the Renegotiation Act of 1951 (Public Law 9, 82d Congress), section 105(b), as implemented by Part 1461 of the Renegotiation Regulations (1951 Act), direct the prime contractor to make no termination payments to any defaulting subcontractor, except after withholding for the account of the Government the amount of subcontractor's renegotiation debt to the Government.

(2) Proof of withholding for the account of the Government, or of payment to the Government, will be accepted by the contracting officer as satisfaction of the defaulting subcontractor's claim to the extent of the amount so withheld or paid over.

(3) Whenever the contracting officer sends an accounting and finance officer a voucher for a partial payment or a settlement payment, any of the proceeds of which would normally be paid to, or for the benefit of, any defaulting contractor, he will attach to the voucher a statement enabling the accounting and finance officer to make appropriate deductions and requesting the accounting and finance officer to advise the payee of the deductions made. At the same time, the contracting officer will, by letter, advise the payee of the voucher as to the deductions being made and as to the manner in which the deductions are to be given effect in transmitting payments down the contractual chain.

§ 1008.252 Settlement of unadjusted contractual changes (UCC's).

(a) *Scope of section.* This section prescribes procedures and responsibilities for the settlement of unadjusted contractual changes (as defined in § 1008.101–62) outstanding at the time of partial or complete termination of AF contracts.

(b) *Responsibility.* (1) With each request for either a partial or a complete termination of an AF contract, the branch or office which initiated the AFPI Form 49, "Termination Authority," will list, all outstanding UCC's relating to the terminated portion of the contract. Where the termination is a partial one, a statement will be included in the AFPI Form 49 as to which UCC's will be formalized to supplemental agreement within 60 days by the procuring contracting officer (buyer).

(2) If a contract has been terminated in its entirety, the termination contracting officer (TCO) will settle all outstanding UCC's under the contract. The TCO will check the list of UCC's furnished by the buyer with the administrative contracting officer, to assure himself that all pertinent UCC's are known. In addition, the TCO will coordinate with and obtain the recommendations of the buyer concerning each outstanding UCC included in the termination settlement. However, the final decisions as to allowability or nonallowability of amounts for the UCC's are the responsibility of the TCO.

(3) Where a contract has been partially terminated, any outstanding UCC's relating to the terminated portion will normally be handled by the procuring contracting officer (buyer) unless authority to include the UCC's in the termination settlement is delegated by the buyer to the TCO. The delegation, if issued, will be processed by the buyer to the TCO through AMC (MCPKT).

(4) Where a contract has been partially terminated and the information submitted by the buyer discloses that the UCC's will not be formalized within 60 days or a reasonable period of time thereafter, the TCO should if he deems it practical under all the circumstances, request the buyer to delegate authority to him to settle the outstanding UCC's relating to the terminated portion of the contract.

(5) If the outstanding UCC's relate to both the terminated and the continuing portion of the contract, the TCO will effect the termination settlement on the basis of the established contract price as it exists prior to its being adjusted as a result of the unadjusted contractual changes. In such cases, a provision should be included in the settlement agreement reserving the contractor's rights with respect to the outstanding UCC's. If all the outstanding UCC's are formalized by the procuring contracting officer (buyer) prior to the termination settlement of the partial termination, the revised contract price will be used as the basis for the settlement of the partial termination. In such cases, a reservation of the contractor's rights is not required.

(c) *Contractual documents.* Prior to execution of the termination supplemental settlement agreement, each UCC relating to the terminated portion must be either incorporated in an executed contractual instrument by the buyer, incorporated in the termination supplemental settlement agreement, or expressly excluded in the termination supplemental settlement agreement. When UCC's are formalized in the termination settlement, a statement and listing of the UCC's which have been included in the settlement will be incorporated in the termination supplemental settlement agreement.

§ 1008.253 Transfers between AF procurement field organizations.

Where sufficient reason appears, a termination case may be transferred from the APD or AFPRO to which it was originally assigned for processing and settlement to another field office. The request for transfer should be made to the readjustment office of the AMA, AMC centers, AF depots, or ARDC centers which issued the termination and assigned the case for settlement. Upon approval by the appropriate readjustment office, the docket file and other pertinent papers will be forwarded directly by the transferring office to the receiving field office for processing and settlement. (See § 1008.208–50 for Inter-CMR referrals.)

§ 1008.254 Settlement of claims and property disposal resulting from engineering changes.

(See § 1003.850–2 of this title.)

(a) *Scope of section.* This section sets forth the extent to which termination methods and procedures of Part 8 of this title apply: (1) In determining an equitable adjustment as a result of any modification of a contract pursuant to the Changes clause, and (2) in disposing of contractor inventory arising out of such modification.

(b) *Applicability of section.* This section applies to the Directorate of Procurement and Production, Hq AMC, and AMC field procurement activities.

(c) *Application of Part 8 of this title.* (1) If work to be done by the contractor is to be reduced to such an extent as to create any doubt as to whether the change should be processed as a change order or a termination, the facts will first be referred to the readjustment office of the CMR, AMC centers or MCPKT, Hq AMC, for determination prior to issuance of a notice to the contractor. Contract modifications or engineering changes which will substantially reduce the work to be performed under a prime contract will be processed as terminations. If issuance of AFPI Form 35, "Contract Change Notification" (CCN), is authorized and the procuring contracting officer doubts whether the issuance of a CCN is appropriate and considers that the change should be processed as a termination, he will advise the appropriate buying office of the facts causing such doubt. The chief of the buying office, after coordination with the appropriate readjustment office will instruct the procuring contracting officer as to whether the modification will be adjusted as a change or processed as a termination.

(2) Property which becomes obsolete or excess by reason of a contract modification or engineering change under a fixed-price prime contract will be disposed of according to appropriate provisions of Subpart E, Part 8 of this title, if the cost of the property is involved in the contractor's claim for an equitable adjustment in price. All property which becomes obsolete or excess by reason of a contract modification or an engineering change under a cost-reimbursement contract will be disposed of according to appropriate provisions of Subpart E, Part 8 of this title. If such obsolete or excess property has been retained or disposed of by the contractor at prices approved by the contracting officer or properly authorized plant clearance officer, according to Subpart E, Part 8 of this title, the amount agreed upon for the retention or the amount realized from the disposition will be recognized as the proper credit to be allowed for the property by the contracting officer, Hq AMC, or the contracting officer of the appropriate AMC field procurement activity, responsible for negotiating the adjustment necessitated by the change.

(3) If contract modifications or engineering changes in prime contracts result in a total or partial cancellation of any subcontracts, the provisions of Part 8 of this title will be followed in determining the amount of the subcontract cancellation charges and in disposing of the subcontractor's termination inventories to be included in the contractor's claim for equitable adjustment. The amount of any such subcontract settlements which have been approved or ratified by a contracting officer according to § 8.513 of this title will be accepted as a proper cost by the contracting officer, Hq AMC, responsible for negotiating the equitable adjustment necessitated by the change, and, in the case of cost-reimbursement-type contracts, will be recognized as a reimbursable item of cost by the administrative contracting officer responsible for certifying the public voucher covering such costs.

(d) *Procedure.* (1) Costs quoted as a part of Engineering Change Proposals submitted by contractors may be based upon preliminary estimates, including the estimated cost of settling subcontracts to be terminated and estimated property disposal credits. CCN's may be issued on such proposals based upon those estimates.

(2) To the extent that supplemental agreements that formalize CCN's involve subcontract cancellation charges and property disposal credits, they will be based upon actual settlement costs and actual credits.

(i) If the quotation to be formalized by a contract supplemental agreement involves charges for property made obsolete or excess by reason of a contract modification or engineering change, and the property disposal action has been completed according to Subpart E, Part 8 of this title, the contractor will be required to indicate: (*a*) The manner in which credit has been, or is to be, allowed the Government for such property, or (*b*) that the property has been turned over to the Government. To the extent that proeprty has been turned over to the Government, the quotation will be accompanied by an inventory of such property. In order that there is no delay in issuance of supplemental agreements, in the event property disposition is incomplete at the time the supplemental agreement can otherwise be accomplished, property disposal credits may be excluded from the supplemental agreement and reserved for future settlement by appropriate reference in the supplemental agreement. In this event, the property will be accounted for according to Part 8 of this title, and any credits may be accumulated and subsequently credited to the contract provided there is no undue delay in processing the credits.

(ii) If it is impractical to segregate property disposal credits by supplemental agreement or by contract, such credits may be allowed to the Government in such other manner as the contracting officer may approve, provided such credits to the Government fully reflect actual, not estimated, property disposal credits to which the Government is entitled. In this case, the contracting officer must determine that the Government s interests in the disposal credits are fully protected.

(iii) If the quotations to be formalized by a supplemental agreement involve any subcontract cancellation charges, the contractor will be required to indicate that the charges represent actual settlements approved or ratified by a contracting officer. In order that there will be no delay in issuance of a supplemental agreement, in the event it is impossible to agree upon actual subcontractor cancellation charges at the time the supplemental agreement is accomplished, such charges may be excluded and reserved for future settlement, provided the contractor submits with his proposal a list of the subcontracts to be adjusted and an estimate of the maximum amount of funds required for settlement of the excluded subcontracts. In such case, (*a*) the supplemental agreement accomplishing the adjustment will specifically exclude subcontracts not yet settled and will include an agreement for the settlement of the excluded subcontracts at a later date and (*b*) subsequent quotations may be submitted, including actual subcontract cancellation charges, and for-

malized by supplemental agreement. (Subcontract cancellation charges subsequently submitted may be accumulated for incorporation in a supplemental agreement provided they are referenced to the applicable change orders which generated such cancellation charges.)

(e) *Prime contractor's cost-reimbursement type proposal for adjustment in fee.* Proposals of a cost-reimbursement type for adjustment in fixed fee by reason of an engineering change may in the absence of actual known costs and to the extent deemed proper by the contracting officer, be based on estimates. In adjusting the prime contractor's fixed fee, the amount of subcontractors' termination claim settlements will not be used as the basis for the adjustment. However, consideration may be given in adjusting the prime contractor's fixed fee to the work performed under the terminated subcontracts and the work accomplished by the prime contractor in effecting settlements of its terminated subcontracts.

Subpart C—Additional Principles Applicable to the Settlement of Terminated Fixed Price Type Contracts

§ 1008.303 Allowance for profit.

(a) *General.* Profit represents the reward which a contractor earns in performing his contract. It has a vital effect upon major aspects of his business such as expansion, improvements, development and incentive. It is, therefore, of the utmost importance that this portion of a contractor's termination claim be as carefully considered and evaluated as any other phase so that—absent a loss contract being involved—the final settlement will ultimately result in the contractor being compensated fairly as a reward for the work which he has done in connection with the portion of the contract that has been terminated.

(b) *Factors to be considered.* (1) Section 8.303(b) of this title sets forth the major factors which should be considered in evaluating profit. The enumeration of these factors is not meant to imply that each factor (or as each such factor is represented in various elements of a contractor's termination Settlement Proposal) merits the same degree of consideration. Some elements of the claim may be deserving of a higher consideration and others a lesser or even nominal type of consideration. Each case must stand upon its own merits. For example, generally, material upon which a contractor has performed little or no work (other than ordering, receiving and storing the property) would not merit as much consideration as engineering or fabrication work performed by the contractor. The application of one rate of profit to all of those elements of a contractor's claim to which profit may be properly applied would not, except in the most unusual and exceptional case, be equitable or fair to the Government. While the total dollars eventually arrived at as the allowance for profit in the settlement will represent an overall profit rate, the process of arriving at those dollars should be considered and evaluated on the basis of separate rates for the separate elements of the claim involved.

(2) The complexities and difficulties of the work involved, the extent and quality of work accomplished and the efficiencies demonstrated and effected by a contractor should certainly be recognized, considered and appropriately rewarded. A contractor should not be penalized in the profit portion of his claim for having attained and effected a high degree of efficiency and contract cost savings. While this latter factor is certainly applicable to every case, it is of particular importance in considering and evaluating the profit factor in terminated incentive types of contracts.

(3) Section 8.303(b)(7) and (9) of this title state that the rate of profit a contractor would have earned had the contract been completed or the rate of profit which both parties contemplated at the time the contract was issued may be considered in evaluating the amount of profit which should be allowed in the termination settlement. These are not mandatory factors. They are guide lines. Nor are they the only methods which could or should be considered in arriving at a fair profit. As stated in paragraph (a) of § 8.303 of this title, any reasonable method which will result in fairness to both contracting parties may be used. Generally, in order to ascertain the rate of profit which a contractor might have earned had the contract been completed, it would have been necessary for the contract work to have been substantially completed prior to termination and the contractor would have to submit, with a reasonable degree of accuracy, information and data as to the amount it would have cost to have completed the contract work. If these two factors are not present and cannot be established, the evaluation of the profit on the basis of ascertaining the rate the contractor would have earned if the contract had been completed would not be practical or realistic. Consideration of the profit on the basis of the rate both parties contemplated at the time the contract was issued may or may not be equitable and fair, depending upon the circumstances and facts of each case. Where, on the effective date of termination, most of the contract work had been performed and completed, consideration on such latter basis would appear to be appropriate. On the other hand, if at the time of termination, very little or less than a substantial portion of the work had been performed and completed, the use of such basis would not appear to be equitable. It must be borne in mind that when a contract is issued, the amount or rate of profit agreed upon in the contract price contemplates that the Government will receive the finished end items and supplies or services being procured and contracted for. When the contract is terminated, the contractor's legal responsibilities and liabilities are materially changed. He is no longer required to deliver finished acceptable quality end items, supplies or services. He is no longer responsible for obtaining, making and merging subassemblies, components, fabricated and purchased parts into the workable completed item originally ordered and called for under the contract. His legal liabilities as to warranties and guarantees under the contract in connection with completion of the end items have changed. Consequently, an entirely different set of facts has been created and exists than that when the contract was issued as a result of which consideration of the profit element on a basis differently than that contemplated when the contract was issued may be justified and should be used.

(4) A contractor is entitled to profit for the effort and work that he has expended and performed in connection with subcontracts issued by him under his prime contract or higher tier subcontract. The statement in § 8.303(b)(8) of this title which reads "but the profit shall not be measured by the amount of the contractor's payments to subcontractors for settlement of their termination claims" is not intended to, nor does it, mean that the contractor is not to be given recognition in the amount of profit allowed for the effort and work he has incurred and expended with respect to his subcontractors. A contractor must select, negotiate, prepare and issue the subcontract or subcontracts. He is responsible for the subcontractor's timely performance and quality of work. This requires supervision, management, liaison, technical and other types of assistance. The scope and extent of these actions, and responsibilities will, of course, vary depending upon the character, nature and types of subcontract work purchased, the capability and competency of the subcontractor and other factors. In some instances, all of these phases may be routine and require very little, if any, or only nominal type management, supervision and assistance. In other instances a heavy management, supervisory and assistance responsibility and program may be required. The charges which the contractor incurs for all of these various actions and responsibilities are recorded, included and reflected in the (prime) contractor's own elements of costs claimed above the profit line in the Settlement Proposal. For example, costs incurred in selecting, negotiating and issuing subcontracts would very likely be included in the contractor's General and Administrative Expense Account; costs incurred for rendering engineering assistance to subcontractors would probably be included in the category of "Other (Direct) Charges" of his claim; other types of technical or liaison assistance would generally be included in overhead pools or other types of indirect charges in the Termination Settlement Proposal. In considering and evaluating the effort expended and the work done by the contractor with respect to his subcontractors, the Contracting Officer should not simply consider the dollar amount incurred. He should "look behind the dollars" to ascertain what they represent as to extent, necessity and difficulty of effort incurred and expended by the contractor, caliber, number and technical competency of personnel utilized in rendering technical assistance to the subcontractors, and degree of management and supervision exercised. It is, of course, up to the contractor to submit and substantiate such evidence. If the

contractor's work and efforts are approached and evaluated upon the basis of the foregoing described aspects, a fair evaluation of the profit portion as it relates to the subcontracts should be arrived at. There are three principal reasons for the prohibition against measuring the contractor's portion of the profit by the amount of payments to subcontractors for settlement of their termination claims: (i) Such consideration and method would result in giving to the contractor two profits on subcontracts for as hereinbefore described the costs for the efforts and work which the contractor incurs and expends in connection with his subcontractors are included in his own charges, (ii) dollars incurred for settlement of the subcontractor's termination claims are not a true criteria of the work accomplished and could result in an underpayment or overpayment of profit and (iii) by the terms of the Termination Clause included in the prime contract, the contractor agrees that he is to be paid his appropriate and allocable costs with a reasonable profit thereon only on work done by the contractor. Payment of profit to a contractor on the amount of payments he makes to his subcontractors in settlement of their termination claims would, in effect, be paying the contractor for work done by someone else.

§ 1008.305 Deductions.

(a) In determining the amount to be deducted representing the fair value of any property which is destroyed, lost, stolen, or damaged, consideration will be given to the direct cost and any burden charges including profit which the contractor included in his settlement proposal.

(b) In addition to the deductions listed under § 8.305 of this title there will be deducted from the amount found to be due the contractor under a settlement, whether by negotiation or by determination: (1) Any unliquidated advance, partial, or other payments theretofore made to the contractor, and (2) any claim which the Government may have against the contractor in connection with the contract concerned. The TCO should coordinate with the administrative contracting officer and Financial Office of the AMA and APD concerning any partial payments, advance payments, guaranteed loans, or other payments which have been made prior to the effective date of termination. In connection with advance payments, the TCO will comply with the provisions of Subpart G, Part 1058 of this chapter.

(c) In the preparation of Standard Form 1034, "Public Voucher for Purchases and Services Other Than Personal," for submission to the finance officer for payment under the settlement agreement, the termination contracting officer will specify and deduct any claim which the Government has against the contractor in connection with any other matter which may properly be deducted and concerning which the termination contracting officer has knowledge.

§ 1008.306 Completed end items.

The termination contracting officer should take care to determine that the completed articles are acceptable and have been accepted by the AF Inspector as they may have been previously rejected. If the completed articles are accepted and are to be invoiced in the usual manner as provided in § 8.306 of this title, the TCO will request the office which issued the Notice of Termination to amend the notice so that payment for the accepted articles can be processed by the Finance Officer.

§ 1008.307 Settlement proposals.

§ 1008.307–1 Submission of settlement proposals.

Settlement proposals and supporting data must be submitted with proper accuracy and detail. Government audit is for the purpose of verifying adequately described costs and will not be used to elaborate, develop, or define costs inadequately described in the settlement proposal.

§ 1008.307–2 Basis for settlement proposals.

(a) *Inventory basis.* See § 8.307–2(a) of this title.

(b) *Total cost basis.* (1) The following are examples, in addition to the situations cited in § 8.307–2(b) of this title as to when use of the total cost basis may be permitted by the Termination Contracting Officer:

(i) If production has not commenced and the accumulated costs represent planning and "get ready" expenses;

(ii) If the contractor's accounting system will not readily lend itself to the establishment of unit costs for work-in-process and finished products;

(iii) If the contract does not specify unit prices;

(iv) If the contract contains a repricing clause and at the effective date of termination, the repricing has not been effected;

(v) If the termination is total and involves a Letter Contract.

(2) and (3) See § 8.307–2(a) (2) and (3) of this title.

(4) If the contractor's or subcontractor's settlement proposal is submitted on a total cost basis (DD Form 541) or is for settlement of a cost type contract (DD Form 547), the termination contracting officer will satisfy himself that all termination inventory has been listed on inventory schedules to the extent that the cost is included in the settlement proposals. In connection with fixed-price contracts, one method of accomplishing this is to price the termination inventory, using estimates to the extent that it is not practicable to obtain actual costs, and reconstructing the contractor's settlement proposal on an inventory basis (DD Form 540), allocating such items as "dies, jigs, fixtures, and special tools," "other costs," and "general and administrative expenses" appropriately between the terminated and the completed portion of the contract. The result of such an analysis should be closely related to the amount of the settlement proposal submitted on total-cost basis. Selective checks of individual items listed in the termination inventory schedules may also be made, comparing the quantities of these items with the purchases and usage recorded in the contractor's records; however, this will not disclose items entirely omitted from the termination inventory. In connection with cost-type contracts, contractor's records of Government property maintained under § 30.2, Appendix B of this title should reflect the balances of material on hand which should be checked with the inventory schedules, but usually such records will not reflect materials included in work-in-process or the equity of the Government in any material charged through the overhead account. Selective usage checks of individual items together with comparison of purchases and termination inventory schedules may also be necessary in individual cases to verify whether all material has been listed on inventory schedules.

(c) *Other bases.* No other basis for submission of Settlement Proposals may be used unless prior approval is obtained from the Chief or Deputy Chief of the Contract Management Division (MCPK), AMC.

§ 1008.307–50 Forms of settlement proposals.

(a) The standard settlement proposal forms may be reproduced by contractors or by commercial firms for them. If any change whatsoever is made in the forms, the change must be approved by the termination contracting officer and the Government form numbers will be omitted.

(b) The purpose of DD Form 546, "Schedule of Accounting Information," is to furnish to the termination contracting officer and the auditor adequate information concerning the contractor's accounting methods on which an intelligent evaluation of the settlement proposal can be made. The information contained in DD Form 546 will be used to the fullest extent by the termination contracting officer in evaluating the termination claim and negotiating the settlement. Care should be taken to obtain information from contractors on DD Form 546 pertinent to the contractor's accounting system. Contractors should be advised to indicate the inapplicable portions in the form by a proper notation therein. The termination contracting officer will satisfy himself that the data contained in the settlement proposal are consistent with the methods and information described in DD Form 546.

(c) The termination contracting officer may waive the requirement for submission of DD Form 546 where the completed Form has been submitted in connection with previous termination settlements and is considered adequate by the termination contracting officer.

§ 1008.350 Equitable adjustment in unit prices under fixed-price contracts in cases of partial termination.

(a) If, as a result of a partial termination, the contractor determines that an adjustment in price is necessary for the continuing portion of the contract and submits in writing a request according to the termination clause of the contract for an equitable adjustment of the price or prices specified in the contract, the termination contracting officer will

send the request to the appropriate procuring contracting officer.

(b) The procuring contracting officer will have final responsibility for negotiating an equitable adjustment in the price relating to the continued portion of the contract and will effect a supplemental agreement covering any changes in price. Consideration for the change in price will be specified in the supplemental agreement. The procuring contracting officer will satisfy himself on the basis of evidence he deems proper (including coordination with the termination contracting officer), that no portion of any increase in price has been included in any termination settlement previously made or currently in process.

(c) The termination contracting officer responsible for the termination settlement will satisfy himself on the basis of evidence he deems proper (including coordination with the procuring contracting officer) that no portion of the costs included in the equitable adjustment for the continued portion of the contract are included in the termination settlement.

Subpart D—Additional Principles Applicable to the Settlement of Terminated Cost-Reimbursement Type Contracts

§ 1008.404 Procedure where contractor continues to submit vouchers.

§ 1008.404–1 Submission of settlement proposal.

(a) General: The contractor's request for an adjustment of the fixed fee must be submitted in writing but need not be presented on a formal settlement proposal form. The submission may be in the form of a letter containing sufficient and necessary information and also containing the type of certificate set forth in DD Form 547. This procedure is applicable on complete or partial terminations and the negotiations must be evidenced by a proper supplemental agreement.

(b) Adjustment of fixed fee: (1) The standard termination clause for CPFF contracts provides that the termination contracting officer and the contractor may agree upon, i.e., negotiate, the settlement of the fixed fee. Therefore, any method which is fair and equitable to both contracting parties may be used to adjust the fixed fee unless a specified basis is prescribed in the contract. Where the parties are unable to agree on an adjustment of the fixed fee and the termination was effected for the convenience of the Government, the fee to be paid, if any, must be established in accordance with the formula provision contained in the contract clause.

(2) Generally, the percentage of completion basis constitutes a fair and equitable method of adjusting the fixed fee. One method of arriving at the percentage of completion is to compare the actual costs incurred with the estimated cost to complete the contract, adjusting the resulting percentage according to the difficulty or importance of each type of cost concerned. Under this method, it is necessary to obtain a breakdown of the estimated costs negotiated in connection with the awarding of the contract and an estimate of the cost to complete each category of items shown in the settlement proposal.

(i) The first step in the computation is to segregate the costs contained in the original cost estimates used in arriving at the contract price into the categories listed in the settlement proposal. Each category should then be assigned a weighted percentage of importance. No specific formula can be prescribed for developing the weighted percentages for each category of costs: the weighting necessarily must be predicated on proper evaluation and sound judgment by the termination contracting officer of the importance and difficulties of the various categories of work and the circumstances surrounding each individual contract. For example, generally, material purchases (including purchased parts) should carry a lower weight than skilled direct labor costs incurred by the contractor; similarly, the latter category of costs should carry a higher weight than costs incurred for work performed for the contractor outside its own plant.

Example of the first step: If the direct material costs represented 30 percent and the direct labor 20 percent of the total contract costs, these percentages should, if justified by a proper evaluation, be adjusted in the weighted percentage to reflect the fact that the direct labor costs represented a greater factor in work accomplished than that represented by direct material costs. The result would be adjusted weighted percentage for such categories of perhaps 12 percent for direct material (giving consideration to the extent of subcontracting included) and 28 percent for direct labor.

(ii) The second step would be to compare the actual allowable costs incurred under each category with the estimated costs to complete such category of work to determine the extent to which the contractor had completed each element included in the claim.

Example of second step: If the actual allowable costs incurred for direct labor was $500,000 and the estimated direct labor costs to complete the contract was $500,000, the direct labor would then be 50 percent complete even though the original estimated direct labor costs did not correspond with the total of the actual allowable costs incurred and the estimated costs to complete the work under the contract.

(iii) The third step would be to multiply the percentage of completion of each category (as determined in step 2) by the (weighted) percentage established for the category under step 1. Accordingly, if the direct labor was 50 percent complete (as described in step 2) and the direct labor had been weighted as 28 percent (as described in step 1), this particular category of the claim would represent a percentage of completion under the contract of 14 percent.

(iv) The fourth step would be to add the percentage of completion ascertained for each category. Example of fixed-fee computation described in subparagraph (2) of this paragraph.

	Negotiated estimated cost	Percentage of total	Weighted percentage of each category	Allowable cost incurred	Estimated cost to complete	Percentage of completion each category	Percentage of contract completed
1. Direct material (including subcontract parts completed and delivered to the prime contractor	$1,000,000	25	12	$700,000	$350,000	66⅔	8
2. Direct labor	800,000	20	28	500,000	500,000	50	14
3. Indirect factory expense	1,000,000	25	30	650,000	650,000	50	15
4. Dies, jigs, fixtures, and special tools	600,000	15	14	720,000	80,000	90	12.6
5. Other costs	200,000	5	6	150,000	100,000	60	3.6
6. General and administrative expense	400,000	10	10	270,000	180,000	60	6
Total cost	4,000,000	100	100	2,990,000	1,860,000		59.2

The above method of computing the percentage of completion of a CPFF contract is not intended to be inflexible where the settlement of the fee is being effected by negotiation but, in such cases, it can serve as a useful basis for arriving at a negotiated adjustment settlement of the fixed fee.

(c) It should be noted that in the determination of the extent of completion, each category of work accomplished is separately evaluated, giving greater weight to those elements which reflect the more substantial or significant work. Thus, if the production costs disclosed that a large quantity of raw material was received upon which only a small amount of direct labor hours had been incurred when compared with the direct labor hours originally estimated under the entire contract, then it would be obvious that very little fabrication or work-in-process had been performed on the material. In such case, the allowable percentage of fixed fee relating to the direct material should be considered in the nature of a handling charge and weighted lower than other categories of costs. This same method of evaluation can be applied to tooling costs, engineering, and other costs listed in the claim.

(d) In evaluating the category of tooling costs, care should be taken to ascertain if the completed tooling on hand at the time of termination represents all the tooling required under the entire contract. The fact that the contractor has on hand complete tooling in connection with that portion of the contract which has been performed does not mean that the tooling is 100 percent complete. In order for the tooling to be 100 percent complete, it must be all the tooling, including maintenance of such tooling which would have been required had the contract been fully performed.

(e) Another method of arriving at an adjustment of the fixed fee on the basis of percentage of completion is to have

the engineering and other technical personnel concerned with the contract evaluate the percentage of completion of work under the contract from a strictly technical standpoint. However, care must be exercised by the termination contracting officer to insure that the technical evaluation is based on physical completion and not on costs incurred as such costs may represent a substantial overrun or underrun of the estimated costs.

(f) The ratio of costs incurred to the total estimated costs of performing the contract is another method of determining percentage of completion. However, inasmuch as any substantial overrun or underrun of costs could result in a misleading physical percentage of completion, and since this method does not take into consideration the various degrees of complexities or difficulties of the work accomplished, this method should rarely be used. If this method is used then the various factors such as the extent and difficulty of the various phases of the contract work (including but not limited to those described in § 8.404–1 of this title) should be carefully evaluated and weighed. The real value of the method described in this paragraph lies in its use for comparison with the percentage of completion figure computed under the other methods described in the preceding paragraphs.

(g) The termination contracting officer should take into consideration the effort and work expended and performed by the prime contractor in connection with subcontracts issued by him under his prime contract so as to assure that the prime contractor is compensated fairly in the fee for such effort and work which he has expended and performed. This is particularly important in terminated procurements of Weapon Systems where a large or substantial portion of the work called for under the prime contract is subcontracted out by the prime contractor. If the extent and scope of the prime contractor's selection and placement of subcontracts and his management, supervisory and technical assistance responsibilities have been heavy and extensive, these facts would be reflected, among other means, in the prime contractor's recorded own charges. As in the case of terminated Fixed-Price contracts, the burden of proving and substantiating such facts is upon the prime contractor. If this aspect of the contractor's claim for fee is properly considered and evaluated, it should result in the prime contractor's own efforts, insofar as they relate to that part of the work subcontracted out, being appropriately weighted (regardless of which method is used in adjusting the fee), and the contractor being fairly compensated for this aspect in the settlement of the entire fee. The portion of the adjusted fee, if any, to be allowed the contractor in the settlement for its subcontracted (out) work will not be predicated or measured by the amount of the contractor's payments to its subcontractors for settlement of the latter's termination claims. However, unlike the prohibition attached to evaluating and considering profit in connection with a terminated Fixed-Price contract, the termination contracting officer may consider and allow in the adjustment of the fee an amount to fairly compensate the contractor for the work he has done in settling the claims of his terminated subcontractors and disposing of termination inventory.

(h) It is not necessary to agree on the amount of fixed fee applicable to each element of the termination claim; a lump-sum fee may be agreed upon. However, under no circumstances will the fixed fee, either as it may be negotiated as to each category of the claim or as a lump sum, be used as a device for allowing the contractor either costs or fixed fee which would otherwise be disallowable.

(i) The methods of adjusting the fixed fee, hereinbefore described, are applicable whether the termination involved is a partial or complete termination of a CPFF contract.

§ 1008.405 Procedure where contractor discontinues use of vouchers.

§ 1008.405–4 Notice to General Accounting Office of audit status date.

In addition to the copy of the notice and information required to be sent to the Termination Contracting Office, the AF Finance Officer charged with the responsibility of sending the DD Form 547–1, "Notice of Audit Status Date," to the General Accounting Office (GAO) will send a copy of the notice and information as to the date on which the DD Form 547–1 was received by the GAO, to AMC (MCPK).

§ 1008.405–5 Exceptions by the General Accounting Office.

(a) See § 8.405–5(a) of this title.

(b) Replies to the GAO Formal Exceptions to clear such Exceptions will be submitted by the contractor, with complete supporting documents, to the termination contracting officer, who will transmit such replies, with his written analyses and review, recommendations and any additional supporting documents to the GAO through the cognizant finance officer. Replies to GAO informal inquiries will be prepared and processed in the same manner as above, except that the replies will be sent by the termination contracting officer directly to the GAO which originated the inquiry, instead of through the finance officer.

§ 1008.405–50 Procedure where there have been no reimbursed costs made under the contract.

If no costs have been reimbursed under the contract, and if the settlement is to include costs and fee, the settlement of the terminated contract may be made without following the procedure prescribed in Subchapter A, Chapter 1 of this title, §§ 1008.405–3, 1008.405–4, 1008.405–5 and § 8.405–6(a) of this title.

§ 1008.406 Partial termination.

In order that the termination contracting officer may properly evaluate and adjust the fee in the case of a partial termination of a cost reimbursement type contract, it is necessary that he ascertain the costs incurred allocable to the terminated portion of the contract. To the extent possible, actual costs incurred should be obtained; however, if they are unavailable, reliable estimated costs may be used to expedite the settlement. The amount of the fixed fee pertaining to the work performed on the terminated portion of the contract is then negotiated. The settlement will reflect a decrease in the fixed fee ascertained by deducting from the total amount of the fixed fee under the contract, the difference between the amount negotiated as allowable fee for work performed under the terminated portion and the amount of fee which had previously been allotted to the terminated portion. The decrease in estimated costs is established by deducting from the estimated costs allocable to the contract the difference between actual or estimated costs incurred in connection with the terminated portion and the estimated costs which had been allocated thereto (in the terminated portion) prior to termination. An amendment to the contract, substantially as set forth in § 1008.851 should then be executed to decrease and reestablish the total fixed fee and estimated costs under the contract as a result of the partial termination. This amendment, unlike the settlement agreement in the case of a complete termination of the contract, does not provide for payment of the amount agreed upon as a result of the termination. It reestablishes the amount of the estimated costs and fixed fee, i.e. total contract price, thus enabling the contractor to obtain reimbursement by the submission of a Standard Form 1034 voucher under the contract as amended.

§ 1008.407 Termination for default.

If a contract is cancelled for the default of a contractor, the amount of fixed fee which may be allowed under the standard CPFF Termination clause is determined on the basis of the number of completed items delivered under the contract in relation to the total number of such items called for under the entire contract. For example, if the contract calls for 100 units and on the effective date of the default termination the contractor has delivered one completed unit, the fixed fee allowable would be 1/100 of the total fixed fee under the contract. If no items have been completed and delivered, the contractor is not entitled to any fee regardless of the status of completion of work under the contract.

Subpart E—Disposition of Termination Inventory

§ 1008.501 General.

This subpart applies to the utilization, redistribution and disposal of all "Contractor Inventory" (see § 8.101–6 of this title) which includes in its scope Termination Inventory and Government-owned property.

§ 1008.501–2 General restrictions on contractor's authority.

(a) to (d) See § 8.501–2 (a) to (d) of this title.

(e) Classified surplus contractor inventory: When classified articles are determined to be scrap or salvage, the plant

clearance officer may destroy the material according to paragraph 22f, AFR 205–1 (Safeguarding Military Information). The residue of such scrap or salvage will be disposed of according to § 8.504 of this title and § 1008.504.

(f) A listing of serviceable or usable classified property included in the contractor's inventory schedules will be submitted for screening in accordance with § 1008.505.

(g) In the event there are no requirements for the classified property and destruction in accordance with paragraph (e) of this section appears unwarranted, the following information will be forwarded to AMC (MCPKP) for disposal instructions.

(1) The classification of the property. (Top Secret, Secret or Confidential)

(2) The authority and particular office or officer initially responsible for the security classification, to the extent available.

(3) Facts or circumstances making destruction of the property under AFR 205–1 unwarranted.

§ 1008.502 Contractor acquired property, purchase or retention at cost or returned to suppliers.

§ 1008.502–1 Purchase or retention at cost.

In some cases, property purchased or retained by a contractor from a terminated contract is for diversion to a continuing Government contract, and as a result of this diversion, the contractor plans to terminate subcontracts under the continuing Government contract. Since § 8.502–1 of this title allows these terminated subcontract costs as termination charges under the terminated contract, it should be determined prior to the subcontract being terminated that these costs are reasonable in comparison to the cost of the property to be diverted. If the anticipated subcontract termination charges contain sizable costs, it may be more beneficial to the Government not to terminate the subcontract. When diversion of material in this manner is planned, a careful cost evaluation should be made before a contractor is permitted to terminate subcontracts. In addition, in every instance the case will be submitted to a Property Disposal Review Board for its prior review and approval. If the original acquisition cost of material to be diverted to a continuing contract as described above exceeds $100,000, any proposed diversion will be subject to the prior approval of a Property Disposal Review Board located at AMC.

§ 1008.503 Inventory schedules.

§ 1008.503–1 Submission of inventory schedules.

The plant clearance officer will aid and assist the contractor in the proper preparation and timely submission of inventory schedules. He will monitor their submission and insure that the Contractor: (a) Is familiar with the need for adequate reporting of property, (b) prepares schedules in accordance with the requirements contained in § 1008.865, and (c) submits schedules as promptly as possible.

§ 1008.503–2 Separate schedules.

See § 1008.865–1.

§ 1008.503–3 Inventory descriptions.

See § 1008.865–2.

§ 1008.503–6 Withdrawals from inventory schedules.

The screening agency will be notified of all withdrawals of property from inventory schedules.

§ 1008.503–7 Rejection and correction of inadequate inventory schedules.

See § 8.503–7 of this title.

§ 1008.503–50 Allocability reviews on excess contractor inventory.

(a) When property is reported excess by an AF contractor by reason of termination, modification, or completion of the contract, or excess to an AF contract for any other reason wherein the Government has or may take title, it is necessary that the interests of the Government be protected by insuring that property reported is physically, quantitatively, and technically allocable to the contract in question, and cannot reasonably be diverted to other operations of the contractor. When a plant clearance officer has been delegated responsibility for disposal of excess contractor inventory he also assumes responsibility for the adequacy of allocability reviews.

(b) In carrying out this responsibility, various factors will determine the extent of the plant clearance officer's allocability review, i.e., the reliability of the contractor, whether the cost of declared property will or will not be part of a claim, the size and complexity of the claim, etc. Depending upon the circumstances involved, the plant clearance officer must exercise good judgment and assure that the various aspects of an allocability review are considered to the extent necessary to protect the interests of the Government.

(c) The plant clearance officer is entitled to request assistance from quality control Price Analyst, Production, Auditor, or other qualified personnel as appropriate, when such assistance is necessary due to the size and complexity of the claim, existing workload, technical requirements of review, geographical location, etc.

(d) A statement of opinion as to the allocability of termination inventory will be prepared by the cognizant plant clearance officer for use by Air Force or cognizant Government auditors in auditing termination settlement proposals and by the termination contracting officer concerned. The statement is required in connection with all terminated prime contracts and subcontracts which produce termination inventory and in all cases where the cost of declared property will be part of a claim. AFPI Form 52 "Statement of Allocability" will be used. This statement is not required when the prime contractor has been authorized to settle subcontract terminations, according to § 8.208–4 of this title. Copies of the completed form will be sent to the AF or Government auditor and the contracting officer. One copy will be retained for the plant clearance file. Statements of allocability shall comment on each of the following factors:

(1) The extent to which the termination inventory could have been used in the performance of or is excess to the terminated portion of the contract.

(2) Location of the termination inventory.

(3) The accuracy of the information regarding the stage of completion of work-in-progress.

(4) The extent to which the termination inventory complies with the technical specification requirements of the contract.

(5) Whether any of the termination inventory could be reasonably diverted without loss to other work of the contractor.

(e) When declared property is not applicable to a terminated prime or subcontract or the cost of declared property will not be part of a claim, preparation of AFPI Form 52 will not be necessary. Under these circumstances the plant clearance case file will be documented to indicate extent of physical inspection of the inventory to determine the accuracy of reported count, condition, segregation, etc.

§ 1008.504 Scrap and salvage.

§ 1008.504–1 General.

The plant clearance officer when delegated plant clearance responsibility will make scrap and salvage determinations. In arriving at the determination the plant clearance officer will consider recommendations from the contractor, quality control and other relevant agencies. No approval of the determinations will be required unless the provisions of § 8.512–2(a) of this title are applicable.

§ 1008.504–2 Scrap warranty.

(a) AFPI Form 51 "Scrap Warranty" will be used to comply with § 8.504–2 of this title.

(b) and (c) See § 8.504–2 (b) and (c) of this title.

§ 1008.505 Screening serviceable and usable property.

(a) *Letter of transmittal.* All inventory schedules submitted for screening will be accompanied by a transmittal letter prepared by the plant clearance officer. Transmittal letters are exempt from reports control clearance. The following will be listed:

(1) Acquisition cost of the inventory.

(2) The life expectancy of inventory which may be expected to deteriorate in storage such as chemicals, film, rubber, paints, dopes, parachutes, etc.

(3) The condition code of property affixed to contractor-owned property, the cost of removal, and probable condition code after severance.

(4) Date that the plant clearance period began.

(5) The shipping authorization number of items of controlled equipment.

(6) Complete and specific reasons why items exempt from screening due to dollar value limitation or unserviceable condition are submitted for screening action.

(7) When property is excess to a production contract, a statement as to

whether or not the items appear on the spare parts provisioning list.

(b) *Other forms.* Three (3) copies of AFTO Form 50, "Preventive Maintenance Requirements and Technical Inspection of USAF Vehicular Equipment," will be furnished when automobiles and other vehicles are listed. The Form will be prepared by qualified maintenance inspectors according to T.O.00-20B-5.

§ 1008.505-1 Scope of screening.

(a) to (f) See § 8.505-1 (a) to (f) of this title.

(g) Fifteen (15) copies of inventory schedules will be submitted to each screening activity.

(h) Controlled Industrial Production Equipment that has been declared excess to the Industrial Equipment Production Support Inventory will be reported to the Plant Clearance Branch (WRUTP), Technical Support Division, Directorate of Industrial Production Equipment, WRAMA. Separate inventory schedules will be prepared for each FSC or SCC Group (i.e. 3400 Group; 3900 Group, 6600 Group) regardless of the number of FSC or SCC Groups on the Shipping Authorization that transferred the property to plant clearance status.

(1) WRUTP will screen for AF, DOD and other Government agencies requirements in accordance with § 8.505-1(b) of this title and will forward appropriate disposal instructions to plant clearance officers. FSC 3400 controlled industrial production equipment will be shipped to Air Force activities only upon receipt of shipping instructions or approval from WRUTP, WRAMA.

(2) A copy of the shipping document evidencing final disposition will be forwarded to WRUTP, WRAMA. This document will indicate the method of disposal, and in the event disposal was by sale, the amount of sales proceeds.

(i) Excess Non-Controlled Industrial Production Equipment will he reported to the Plant Clearance Branch (WRUTP), Technical Support Division, Directorate of Industrial Production Equipment, WRAMA. Currently with reporting excesses to WRUTP, informational copies of listings will be furnished, in duplicate, to each AMC Center: AMC Aeronautical Systems Center (LMBIM), Wright-Patterson AFB, Ohio; AMC Electronic Systems Center (LEPP), Laurence G. Hanscom Field, Bedford, Massachusetts; AMC Ballistic Missiles Center (LBEBS), AF Unit Post Office, Los Angeles 45, California.

(1) When the acquisition cost of the excess listing is less than $50,000, AMC Centers will maintain information copies for contractors' review and will refer contractors desiring approved items to WRUTP, WRAMA for determination of availability.

(2) When the acquisition cost of the excess listing exceeds $50,000, the AMC Center having cognizance over the facility contract will advise the plant clearance officer and WRUTP, WRAMA within five (5) days after receipt of listings as to whether or not on-site screening is desired.

(3) After AMC Centers have completed on-site screening, the plant clearance officer will submit listings of unselected items to WRUTP, WRAMA, with advice that on-site screening has been completed.

(4) WRUTP, WRAMA will screen excess listings with contractors, AF activities, DOD, and other Government agencies for authorized requirements and will forward appropriate disposal instructions to plant clearance officers.

(j) Special tooling: See § 1008.510.

(k) GFAE: See AMCR 65-19.

(l) Bailed property will be screened in accordance with the provisions of § 1013.2004(c)(13) (ii) and (iii) of this chapter. When instructions exist in a bailment agreement for the return of bailed property, the Property Administrator will obtain a reaffirmation of those instructions. If no return instructions exist in a bailment agreement or the specified activity has indicated no requirement, the plant clearance officer will screen excess bailed items for prime commodity classes requirements as set forth in paragraph (p) of this section and/or other appropriate activities, i.e. other services. Bailed property excess to an ARDC bailment contract will be screened concurrently with the ARDC Center that issued the bailment agreement. A copy of the shipping document evidencing disposition will be forwarded the office that initiated the bailment agreement.

(m) IRAN and modification contracts: All excess property generated under IRAN and Modification contracts will be disposed of according to contract provisions.

(n) Experimental property excess to a Research and Development Contract will be screened with the project engineer on that contract. Wright Air Development Division contract excesses will be forwarded to Wright Air Development Division, Attn: WWSS, Wright-Patterson AFB, Ohio, for screening with pertinent project engineers and laboratories.

(o) All other excess contractor inventory which can be related to a contract end item (facility excesses described in paragraphs (h) and (i) of this section and experimental property in paragraph (n) of this section excluded) will be reported to the Processing Control Branch, Operations Support Division, Directorate of Materiel Management at the AMA or depot having prime logistic responsibility for the end item. This activity will effect screening for logistic support and base activities.

(p) When excess contractor inventory cannot be related to a contract end item (bailed property, cases where end item is a report, etc.) screening will be accomplished by the Processing Control Branch at each AMA or depot where appropriate prime commodity classes are located.

(q) Excess contractor inventory common to other services will be screened by the plant clearance officer with those services after AF requirements have been honored. Property excess to contracts that quoted Army and Navy funds will also be screened with appropriate services.

(1) Navy aviation items will be screened with the Aviation Supply Office, Department of Navy, Attn: CDO-A, Philadelphia, Pa.

(2) Army aviation items and Transportation Corps items will be screened with Transportation, Supply & Maintenance Command (TCSMC-PN), P.O. Box 209, Main Street, St. Louis, Missouri.

(r) Screening will be accomplished as set forth in paragraphs (a) through (q) of this section except as indicated below:

(1) Property in N-4, E-4, O-4, R-3, R-4 and X condition is exempt from screening. This exemption includes bailed property.

(2) Work-in-Process (Schedule C, DD Form 544) is exempt from screening.

(3) Property exempted in § 8.505-1 (c) through (f) of this title.

§ 1008.505-2 Screening period.

The plant clearance officer will not notify the contractor that property may be sold or disposed of until written release is received from the screening agency.

§ 1008.505-3 Acquisition by the Government.

Transfer of excess contractor inventory to Department of Defense activities and other Government agencies will be on a non-reimbursable basis. General Services Administration approval is required for property transferred to other Government agencies.

§ 1008.505-50 Transfers to the Civil Air Patrol.

Excess contractor inventory may be transferred to the Civil Air Patrol (CAP) on a non-reimbursable basis under authority of 10 U.S.C. 9441 and AFR 65-46 (Supply and Maintenance for Civil Air Patrol). The Civil Air Patrol will have priority of selection over all activities participating in the donation program (§ 1008.508). All requests for transfer under this authority will be sent to Hq CAP-USAF, Washington 25, D.C. for approval with an information copy to the applicable AF screening agency. However, no transfers will be executed under this authority until the property is released for disposal by the applicable AF screening agency.

§ 1008.507 Sale or other disposition of termination inventory.

§ 1008.507-1 General.

Under no circumstances whatsoever will property be sold on credit. Contractor inventory will not be sold to debarred, ineligible or suspended bidders (§ 1.601-1 of this title and Subpart F, Part 1001 of this chapter).

§ 1008.507-2 Competitive sales.

(a) to (c). See § 8.507-2 (a) to (c) of this title.

(d) *Contractor sales.* Contractor sales may be made of property owned by the contractor or by the Government, if the Government has the right to receive the proceeds of sale or a credit for such proceeds. If a sales contract requires approval of a contracting officer,

any plant clearance officer may be designated as an authorized representative of the contracting officer. (Note: This does not include execution of a Direct Sales contract between the Government and a Purchaser unless he is also a contracting officer).

(1) *Sealed bid method.* All the contractor's forms and procedures will be approved by the plant clearance officer and will conform with sound commercial practice. The plant clearance officer should use instructions contained in paragraph (e) of this section and § 1008.866 as a guide when instructing the contractor conducting a contractor sale. Bids by the contractor or any of its employees will be submitted to the plant clearance officer concurrently with other bids.

(2) *Auction sales.* Auctions will be held only upon permission by MCPKP. If both contractor's property and Government property are sold at the same auction, a written agreement will be executed between the contractor, the auctioneer, and the Air Force. Subpart V, Part 1002 of this chapter is inapplicable to contractor sales.

(e) *Direct sales.* Direct sales include all sales made by contracting officers or plant clearance officers and are limited to Government-owned property. This method will not be used where contractual provisions provide for the crediting of disposal receipts to an AF contract or termination settlement claim. All direct sales will be evidenced by written contracts through the use of Standard Form 114, Invitation Title Page; SF 114A, Bid and Award Page; SF 114B, Item Bid Page; SF 114C, General Terms and Conditions; and AF Form 330, Description and Location of Property. Standard Form 114 will be prepared and executed in the manner prescribed in § 1008.866.

(1) *Duties of plant clearance officer.* The designated plant clearance officer will:

(i) Review and evaluate all bids at the time of opening and recommend for acceptance those bids which are responsive and in the best interest of the Government.

(ii) Prepare an "Abstract of Bids" AFPI Form 371 and file all bids received.

(iii) Forward copies of the invitation for bids to the successful bidder for completion in the same manner as the original bid. If the successful bidder is to receive only a portion of the items listed on the invitation for bid, inapplicable items will be deleted.

(iv) Complete the contract and accomplish the "Acceptance by the Government" section and confirm by the contracting officer's signature the proper certificate on the form.

(v) Accomplish vouchers of refund of deposits to unsuccessful bidders. If a successful bidder's deposit is larger than required for the items awarded, instruct the accounting office to credit the deposit to the purchase price, and refund the balance in excess of the purchase price.

(vi) Accomplish all other documents necessary to consummate the sale.

(vii) Distribute contracts.

(viii) Issue written instructions to the contractor directing that the property be released to the purchaser and secure the countersignature of the contracting officer. If the plant clearance officer and the contracting officer are acting in a dual capacity, the countersignature of the chief of contract branch will be obtained.

(ix) Assemble and maintain on each transaction a file containing all relevant information.

(x) Send proceeds from each sale to the appropriate accounting office according to § 1008.507–4(c).

(xi) Insure that property sold by weight is weighed on scales that have been certified as accurate by a Government agency (Federal, State, county, or municipal). Scales will be recertified as required by local law, but not less frequently than once a year. When property is sold by weight, a certified certificate establishing the accurate weight of the property must be obtained. The weight certificates must be furnished by a responsible individual who is not a party to the sale. Weights furnished by a railroad for a shipment in transit or by a mill upon receipt of the shipment are exceptions to these requirements and may be accepted without compliance therewith.

(2) *Duties of the contracting officer.* Before signing the contract, the contracting officer will assure that: (i) The sales contract is in proper order, (ii) the sales price is fair and reasonable, and (iii) the sale is authorized by applicable regulations. Before releasing the property to the purchaser, the contracting officer will insure that sale proceeds have been collected by the plant clearance officer and properly transmitted to the appropriate accounting office. When an individual is acting in the dual capacity of plant clearance officer and contracting officer, he will secure the countersignature of the chief of the contract branch. Where property must be released to determine the total sales price, as in the case of sales of scrap on a weight basis, the contracting officer will assure that proceeds are received and transmitted immediately following determination of the total sales price.

(f) *Sales of industrial production equipment.* In addition to the requirements of paragraphs (a) through (e) of this section, the following actions will be accomplished when any item(s) of Industrial Production Equipment is (are) to be sold:

(1) On the same day that the announcement of sale is made to the general public, copies of Invitation for Bid will be mailed to the following:

Two copies to—
Office of Assistant Secretary of Defense (Supply and Logistics),
Production Equipment Branch,
Washington 25, D.C.

Two copies to—
Office of Civil and Defense Mobilization,
Director, Equipment and Components Office,
Attn: Mr. Howard W. Smith,
Washington 25, D.C.

One copy to—
The manufacturer of each make of machine tool included in the sale (except foreign make machine tools).

One copy to—
WRAMA (WRUTP Directorate of Industrial Production Equipment), Robins AFB, Georgia.

(2) When one hundred (100) or more machine tools in FSC 3411 through 3419 and 3441 through 3449 in screenable condition are excess, it will be the responsibility of the plant clearance officer to request a Market Impact Survey and receive an authorization to conduct the sale prior to the issuance of an Invitation for Bid. The request for a Market Impact Survey will be forwarded to the Directorate of Industrial Production Equipment (WRUTP), Robins Air Force Base, Georgia, concurrently with the submission for screening, of the Inventory Schedules listing the machine tools. WRUTP will obtain the necessary authorization to conduct the sale and advise the plant clearance officer. No sale of one hundred (100) or more machine tools will be conducted without benefit of a Market Impact Survey. The fact that it may be necessary to screen machine tools in increments of less than one hundred (100) does not obviate the requirement for a Market Impact Survey if the items are later to be combined into a sale of one hundred or more. The Air Force may sell a maximum of seven hundred and fifty (750) machine tools per month. The responsibility for maintaining this limitation is assigned to WRUTP, WRAMA. In order that sales may be properly coordinated, each plant clearance activity will notify WRUTP no later than the 20th of each month the number of machine tools in FSC 3411 through 3419 and 3441 through 3449 which will be sold the following month under the activity's supervision.

(3) When twenty-five (25) or more items of production equipment are offered for sale the following distribution of Invitations for Bid will be required, in addition to the above:

One copy to: AMC (MCPKP).
One copy to: Each of the Small Business Administration Offices.

(4) When the acquisition cost of production equipment to be sold exceeds $25,000 the plant clearance officer will forward a notice of the sale to the U.S. Department of Commerce, Room 1300, 433 West Van Buren Street, Chicago 7, Illinois, for publication in the "Synopsis of U.S. Government Proposed Procurement, Sales and Contract Awards."

(5) The scheduling of auction sales of production equipment will be subject to prior approval of AMC (MCPKP).

(6) Upon completion of sale of twenty-five (25) or more items of production equipment, a summary of that sale will be forwarded to AMC (MCPKP). Minimum information will include (i) Acquisition cost of each item, (ii) sale price of each item, (iii) percentage of return on metal working machines (3400), (iv) percentage of return on related production equipment, (v) number of IFB's mailed out, (vi) number of bids received, and (vii) number of successful bidders.

§ 1008.507–3 Other sales.

(a) *Negotiated sales.* Termination inventory may be sold by negotiation

provided the price is fair and reasonable and is not less than that which could be expected by a competitive sale. Property under a facilities lease may not be sold on a negotiated basis. A property disposal review board will review sales without competitive bids whenever the acquisition cost of the property exceeds $25,000. In addition to the aforementioned review, the sale will be subject to the approval of the Hq AMC Property Disposal Review Board if the acquisition cost of the property sold without competitive bid exceeds $100,000.

(b) to (c) See § 8.507–3 (b) to (c) of this title.

(d) *Production generated scrap procedures.* Contractor manufactured parts, castings, extrusions, etc. peculiar to the end item being produced, which have been rendered excess due to engineering changes, and which are not carried in the Air Force inventory may be scrapped without further screening through the contractor's scrap and salvage procedures according to § 30.2, Appendix B, paragraph 403 of this title. These items will be listed in any acceptable manner (i.e. tag, work order, etc.) certified by the contractor and AF representative as being excess and peculiar to the end item, and then released for disposal under the approved scrapping procedures.

§ 1008.507–4 Proceeds of sales.

(a) The proceeds from the sale of contractor inventory will be credited to the contract under which the property was acquired or furnished if the following conditions are fulfilled:

(1) The contract allows any one or combination of the following procedures.

(i) That the proceeds may be applied in reduction of the contract price.

(ii) That the proceeds may be applied to reduce the cost of the work under the contract.

(iii) That the proceeds may be applied as the contracting officer may direct.

(2) Payments, either actual or anticipated in the near future, remain due to the contractor under the applicable contract.

(3) In the event it cannot be determined which contract generated the inventory, or if the inventory came from a multiple funded contract, then the proceeds will be credited as the contracting officer directs.

(b) If the proceeds from the contractor's sale of contractor inventory are not credited to an AF contract or termination claim, DD Form 732 "Account of Sales of Public Property at Public Auction or on Sealed Proposals" will be used. DD Form 732 will be prepared, executed, and distributed by the plant clearance officer in the number of copies require by the activity receiving the proceeds. The following notation will be attached: "To cover the sale of Government-owned property which has been determined by competent authority to be surplus to the needs of the Federal Government" (or, if scrap and salvage), "which has been determined by competent authority to be scrap or salvage."

(c) Direct sales: The plant clearance officer shall collect bid deposits and proceeds and forward such proceeds by letter to the appropriate APD/AFPR accounting office on the next workday following the date of collection. When a deposit is inclosed with a sealed bid, the date of collection is the date the bid is opened. The accounting office will acknowledge receipt by indorsement by the close of the workday following receipt. The proceeds of a sale will be accompanied by a copy of the executed contract, Standard Form 114.

(d) Indorsement: Any payment instrument drawn in favor of the Treasurer of the United States will be indorsed:

For credit to the
Treasurer of the United States
Date: ----------
(Name of Plant Clearance Officer or Contracting Officer)
(Installation)

§ 1008.507–5 Applicability of anti-trust laws.

(a) Pursuant to § 8.507–5 of this title, whenever property with a total acquisition cost of $3,000,000 or more is offered for sale by a competitive bid a provision comparable to the following statement will be included in the Invitation For Bid:

If, under this invitation, a bidder is the successful bidder of property with a total acquisition cost of $3,000,000 or more, the award will be subject to a determination by the Attorney General that the award will not be incompatible with existing Anti-Trust Laws.

(b) In a negotiated sale of property with a total acquisition cost of $3,000,000 or more, the prospective purchaser will be informed that final consummation of the sale is subject to determination by the Attorney General that the sale would not be incompatible with existing Anti-Trust Laws.

(c) The plant clearance officer, after receiving and opening the competitive bids and determining the prospective purchaser or if a negotiated sale, upon a tentative agreement as to prices and terms, will send the following information to the Commander AMC, Attention: MCPKP.

(1) With respect to the purchaser:

(i) Full name and address of proposed purchaser, including principal place of business.

(ii) If a corporation, give State and date of incorporation.

(iii) If a partnership, give names and home addresses of partners and date when incorporated.

(iv) Names and addresses of affiliates, if any.

(v) Nature of business (products produced or handled).

(vi) Geographical area of operations, name State or States (U.S.A.) or foreign countries where business is conducted.

(vii) U.S. dollar sales volume for latest calendar or fiscal year.

(viii) Net worth.

(2) Other data:

(i) Location and brief description of the property covered by the proposed award.

(ii) Acquisition cost to the property other than patents, processes, techniques and inventories.

(iii) If the property is scrap, the tonnage.

(iv) If the proposed sale is by competitive bid, the invitation number, the number of bids solicited, and the number of bids received.

(v) If the proposed sale is by negotiation, the extent of the competition obtained, and the amount to be paid by and other consideration to be received from the proposed purchaser for the property.

(vi) Inclusion of the question in the message to MCPKP is unnecessary, however, answers to questions will be identified by subdivision designation (i.e. (i), (ii), (iii), etc.) and sequence in the same order as above. The Plant Clearance Branch (MCPKP), AMC will forward the information to the Department of Justice, Anti-Trust Division and the General Services Administration. Consummation of the sale will await notification from AMC that the sale is not incompatible with existing Anti-Trust Laws.

§ 1008.507–50 Utilization, redistribution and disposal of contractor inventory—foreign.

§ 1008.507–501 Scope.

(a) This paragraph applies to the utilization, redistribution and disposal of contractor inventory (as defined in § 8.101–5 of this title) generated as a result of overseas procurement and includes Government-owned and Government-furnished property. Excess Government property under the control of a specific Government activity (e.g. machine tools) will not be subject to the provisions of this paragraph unless the controlling activity releases the property for disposition action.

(b) Property which has become excess or obsolete by reason of contract modification, price redetermination, or engineering change under a fixed-price type contract will be disposed of according to appropriate provisions of this paragraph, if the cost of such property is included in the contractor's claim for an equitable adjustment in price. All property which has become obsolete or excess by reason of contract modification, price redetermination, or engineering change under a cost-reimbursement-type, labor-hour or time-and-material contract will be disposed of according to appropriate provisions of this paragraph. If such obsolete or excess contractor inventory has been retained or disposed of by the contractor at prices approved by the termination contracting officer, or properly authorized plant clearance officer, according to this paragraph, the amount agreed upon for the retention or the amount realized from the disposition will be recognized as a proper credit to be allowed for the property.

(c) "Foreign excess property" means contractor inventory located outside the United States, Alaska, Hawaii, Panama Canal Zone, Puerto Rico, and Virgin Islands, and excess to the needs of the oversea command in which located. Foreign excess contractor inventory located in Canada will be disposed of through the Crown Assets Disposal Corporation (CADC), according to agree-

ment between the United States and Canada.

(d) Since it is impossible to anticipate the effect of the laws, customs, and practices of each foreign country, this paragraph is confined to those policies which appear susceptible to uniform application. To the extent this paragraph is silent, the policies established in Subpart E, Part 8 of this title, will govern. Requests for deviations from Subchapter A, Chapter 1 of this title because of conflict with foreign law or custom should be sent to AMC (MCPC), through MCPKP. Any conflicts between this paragraph or Subchapter A, Chapter 1 of this title and existing agreements, treaties, memoranda of understanding, etc. between a foreign country and the United States will be resolved in favor of the agreement, treaty, or memoranda of understanding.

§ 1008.507–502 Appointment of plant clearance officers.

The Contracting Officer may perform the plant clearance functions or may designate an individual to assume these responsibilities except that no individual may be appointed the plant clearance officer for excess contractor inventory who previously was responsible for the property accountability of such inventory.

§ 1008.507–503 Statement of allocability.

The provisions of § 1008.503–50 apply.

§ 1008.507–504 Screening process.

(a) Unless specified otherwise, disposal of excess oversea contractor inventory not retained by the contractor according to § 8.502 of this title will be accomplished in the following descending order of preference.

(1) Transfer to another requiring AF contract within the same general locality (i.e., same country or vicinity).

(2) Transfer to another requiring AF contract located within the geographical jurisdiction of the major air command.

(3) Transfer to another requiring AF contract located outside the geographical jurisdiction of the major air command including the Zone of Interior.

(4) Transfer to satisfy supply requirements of the major oversea command where the property is located.

(5) Transfer to satisfy other military requirements within the major oversea command.

(6) If no requirements develop through the above actions, line items costing in excess of $5,000, will, except as provided in paragraph (d) of this section, be listed on inventory schedules (Subpart E, Part 8 of this title), and screened in accordance with § 1008.505 for ConUS AF requirements. If 60 days after submission of inventory schedules, no shipping instructions are received, the property (unless it is critical or strategic materials) may be disposed of subject to §§ 1008.507–508 and 1008.507–509. If necessary this screening may be accomplished concurrently providing the priorities established above will control in the case of competing requisitions.

(b) When screening foreign excess contractor inventory within the major oversea command, it is not necessary to screen line items where the acquisition cost is less than $300 or total inventories where the acquisition cost is less than $2,500 unless special circumstances make it desirable to do so.

(c) Foreign excess contractor inventory determined to be scrap or salvage will be disposed of locally unless critical or strategic materials are involved.

(d) Purchased parts, finished components, finished products, and work-in-process excess to a contractor's requirements need not be screened for ZI requirements unless critical or strategic materials are involved. Strategic or critical materials will be reported to AMC (MCPKP) and held for disposal instructions.

§ 1008.507–505 Inventory descriptions.

Foreign contractor inventory will be reported on the forms prescribed by §§ 8.802–4 through 8.802–8 of this title, or on substantially similar forms.

(a) The descriptions of items to be screened within the oversea area will be determined by the requirements of the screening activities. The following minimum information should be included: size, shape, weight, specifications, manufacturer's name or part number, application, percentage of completion, condition, estimated cost, AF stock number and any other information which would assist the screening activity in identifying the property.

(b) Inventory screened within the ZI will be listed on the forms (15 copies) prescribed in §§ 8.802–4 through 8.802–8 of this title. However, if the number of line items is not large or voluminous, substantially the same information can be furnished in a letter of transmittal or electrically transmitted message.

§ 1008.507–506 Inventory transfer.

The United States diplomatic or consular representative in the country in which the property is located and such representative in the country in which the property may be transferred according to situations cited in § 1008.507–504 will be consulted with regard to possible customs, duties, and taxes, or other limitations upon import or export of the property, applicable under the laws of the countries involved. Where compliance with applicable laws would make the transfer uneconomical the property will be disposed of by one of the other methods set forth in § 1008.507–504.

§ 1008.507–507 Transfer of excess contractor inventory to agencies of the U.S. Government.

AF excess contractor inventory may be transferred within the Department of Defense and to other Government agencies without reimbursement. Packing, handling and crating costs incident to the transfer will be borne by the receiving agency. These costs will either be actual or estimated and will be subject to price negotiations between the departments concerned. Transportation charges incident to transfers mentioned above will be the responsibility of the recipient agency, which will furnish the necessary authorizations.

§ 1008.507–508 Sales.

(See also § 8.507–6 of this title.)

(a) The Commander of an oversea major command, or his designated representative, will establish and maintain liaison with United States diplomatic representatives and/or consular offices, and will advise such personnel in advance regarding the disposition of foreign excess contractor inventory, in order that comments and suggestions of the Department of State may be obtained with respect to the proposed disposal. Disposal plans will include, if possible, the names of prospective bidders or any proposed sale involving property, having a total acquisition cost of $250,000 or more. It is not intended that the diplomatic missions will be concerned with the determination of the value of the items to be disposed of. The receipt of such plans will afford the diplomatic missions an opportunity to consider possible foreign policy aspects, and to transmit to the AF activity concerned any views of such aspects, together with any available information regarding particular purchases or other matters which may be helpful in concluding a sale. Sales involving property having a total acquisition cost of less than $250,000, but in excess of $50,000 will be reported to the diplomatic mission at the completion of the sale.

(b) Notwithstanding the above, any sales, regardless of the total acquisition cost of property, which might have a significant effect on the economic or political situation in a particular area, should be discussed with the appropriate diplomatic mission before the sale is made.

(c) The general policy of the Air Force is to sell foreign excess property by competitive bids. However under conditions indicated in § 8.507–3 of this title sales may be made without competitive bids (negotiated sales). In those cases where a foreign government is a party to a contract or agreement for the sale of United States foreign excess property, the authorization and execution of such contract or agreement will be effected only with the prior approval of the diplomatic mission in the country concerned.

(d) The contractor is required to use its best efforts to sell termination inventory (see contract termination clause), including termination inventory in the possession of subcontractors, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the termination contracting officer. In those oversea areas where disposal agencies of the Air Force or other military source are established, such disposal agencies may be used for disposal of surplus contractor inventory. Local conditions and the economics of a particular situation should determine the advisability of using either a contractor sale or the services of the established disposal agency. Personnel of the procuring activity will not themselves undertake sales of surplus contractor inventory unless specific approval is obtained from the chief of the foreign procurement activity or his delegated representative.

(e) Custom duties, taxes, or similar charges may be levied by certain foreign

governments against the seller or purchaser of foreign excess property sold within their jurisdiction. Therefore, in addition to the requirements of § 8.507–6(b) of this title, each sales offering will include a statement and each contract will include a clause providing that the purchaser will pay all duties, taxes, etc. and furnish the AF contracting officer receipts therefor, prior to the release of the property. The United States diplomatic or consular representative, in the area where the sales are to be made, will be consulted and requested to effect appropriate arrangements with the foreign government concerned regarding the collection of duties and taxes.

(f) All notices of sale and all sales contracts will include the following provisions:

The property sold hereunder will not be imported into the United States of America, unless the Secretary of Agriculture (in the case of any agricultural commodity, food, or cotton or woolen goods), or the Secretary of Commerce (in the case of any other property) has determined that the importation of such property would relieve domestic shortages or otherwise be beneficial to the economy of the United States, and this sale is made expressly subject to this condition.

(g) Applicability of antitrust laws: The provisions of § 1008.507–5 apply to oversea plant clearance.

§ 1008.507–509 Disposal of Air Force foreign excess contractor inventory by Army and Navy.

When AF foreign excess contractor inventory is transferred to the Departments of Army and Navy activities for disposal, pursuant to local agreements or to orders of the theater commanders, the responsibility to comply with State Department requirements outlined in this section is the responsibility of the service making disposal.

§ 1008.507–510 Proceeds of sales.

(a) Foreign currency: (1) Ordinarily, all sales of foreign excess contractor inventory will be made for United States dollars or for the equivalent in currency which is readily convertible into United States dollars. When United States dollars are not available and it is proposed to accept foreign currency, prior approval will be obtained from the treasury attache of the staff of the United States diplomatic mission, except where the amount involved does not exceed $5,000 as set forth below.

(2) In countries where there is no treasury attache on the staff, such cases will be submitted direct to the Office of International Finance, United States Treasury Department, Washington 25, D.C. Where the amount involved in an individual transaction does not exceed $5,000 the Treasury Department has authorized the Department of Defense to accept such amounts without consultation, provided that:

(i) Assurance has been obtained through the local State Department representative that such currency may be used in payment of any and all United States Government expenditures in that country.

(ii) It is not feasible to sell the property for United States dollars or to ship such property to a country (but not the United States, except where property is of a type authorized for return) where is may be sold for United States dollars or for a freely convertible foreign currency.

(iii) It is not a country under occupation by United States forces.

(iv) It is not a country whose assets in United States are blocked under Treasury Department regulations.

(v) It is not in a country with which diplomatic relations are not maintained.

(b) Proceeds of sales conducted by the contractor will be credited to the contract. Proceeds of sales by other disposal agencies will be credited as the appropriate finance activity directs.

§ 1008.507–511 Review of property disposal.

(a) *General.* No person will serve as a member of a property disposal review board when it reviews or approves a proposed disposition in which such person participated.

(b) *Property disposal review board; foreign.* Each board will be composed of at least three qualified officers or civilian employees. The order appointing the board will designate, in each instance, the person who will act as a recorder for the board and will indicate whether or not the recorder may vote. An alternate will be appointed for each member of the board if possible. Prior to the appointment of any individual to a property disposal review board an analysis will be made of the written qualifications and experience of the individual concerned.

(c) *Required review.* Reviews will be conducted as required by § 8.512–2 of this title.

(d) *Preparation of memorandum for property disposal review board.* The individual submitting a proposed action for consideration by a property disposal review board will prepare and furnish to the board a memorandum setting forth in sufficient detail the parties involved, nature of the property, contemplated action and reasons therefor, and any other information which would enable the board to make a decision.

(e) *Procedures of property disposal review boards.* Property disposal review boards will act promptly upon matters submitted to them for action and according to formally established procedures. The proceedings of the board and the decision rendered will be reflected in a written record. The recorder of each board will maintain a separate record of each case submitted to the board.

§ 1008.507–512 Storage of excess inventory.

If, at the expiration of the plant clearance period, the contractor requests payment for storage under a terminated contract, the cost of such storage may be charged to settlement expense. If the excess contractor inventory is generated other than by termination, the costs of storage may be charged to the existing contract or to other available funds. If this is not possible, consideration will be given to moving the excess contractor inventory to a local depot.

§ 1008.507–513 Subcontractor general policies.

Section 8.513 applies.

§ 1008.507–514 Reports.

The reports in §§ 1008.551 and 1008.552 will apply.

§ 1008.508 Donations.

(a) to (c) See § 8.508 of this title.

(d) In addition to Department of Health, Education, and Welfare (D–HEW) activities, contractor inventory listed in the donable property file may be donated to service education activities listed in § 1008.867. Service education activities will have priority of selection during the donation period of ten (10) calendar days. (The donation period for property reportable to Department of Defense as listed in § 8.505–1(b) is fifteen (15) calendar days). All donations to service education activities must have the prior approval of its National Headquarters and the General Services Administration. When property is donated to a service education activity, one copy of the shipping document will be sent to the State Agent for D–HEW in the State where the donee is located.

(e) Notification by the Headquarters of the requesting activity of action on a requested transfer or donation will constitute authority to hold the property for a period not to exceed forty (40) days. However, no donations will be effected until the property is released for disposal by the applicable AF screening agency.

(f) Each plant clearance file will indicate: (1) The date the case was placed in the donable property file, (2) the date a "hold" was placed on any selected items, (3) the expiration date of any forty (40) day "hold" period, (4) correspondence and disposition instructions relating to any selected items, and (5) the date the case was removed from the donable property file.

§ 1008.509 Destruction or abandonment.

(a) to (c) See § 8.509 of this title.

(d) If the acquisition cost of material, including Government-furnished property, exceeds $1,000, it will not be destroyed or abandoned without prior approval of a property disposal review board according to the provisions of § 8.512–2(d) of this title. If the acquisition cost of the material, including Government-furnished property, exceeds $100,000, it will not be destroyed or abandoned without obtaining the additional prior approval of the Property Disposal Review Board located at AMC. (See § 1008.512–2(c).)

§ 1008.510 Special machinery, tooling and equipment.

Excess special tooling will be screened in the following cases:

(a) *Termination.*

(b) *Contract completion.* Screening will be accomplished according to § 1008.510–53 if possible.

(c) *Engineering changes.* Screening is required unless any one of the following conditions exist:

(1) The part produced by the new tooling is interchangeable with the part produced by the old tooling.

(2) The old part can be produced with the new tooling.

(3) The old tooling was never used in the manufacture of an end item.

(d) *Production method changes.* Screening is required unless any one of the following conditions exist:

(1) Interchangeability of the items produced is not affected.

(2) The contractor has sufficient tooling to meet all production requirements.

(3) The design contractor, if one exists, has no foreseeable need for the tooling.

(e) *Exceptions.* Special tooling need not be screened if any one of the following conditions exist:

(1) The acquisition cost of the total amount of tooling provided under the contract is less than $2,500.

(2) The tooling is in N–4, E–4, O–4, R–3, R–4, or X condition.

(3) The tooling is scrap as defined in § 8.101–17 of this title.

§ 1008.510–50 Duties of the local plant clearance officer.

When screening is required, the local plant clearance officer will insure that:

(a) The contractor properly lists on DD Form 545, "Inventory Schedule D (Dies, Jigs, Fixtures, Etc., and Special Tools)," see § 8.802–7 of this title (BOB No. 22–R077), by AF part number the parts produced by the tooling, or in the absence of part numbers furnishes a description of the tooling. Program screening (§ 1008.611–53) will not require schedules.

(b) Letters of transmittal are prepared by the local plant clearance officer stating the following information:

(1) Name of contractor to which tooling is excess.

(2) Design contractor if other than subparagraph (1) of this paragraph.

(3) Contract number.

(4) Type of contract (i.e., Supply or R&D).

(5) Plant clearance case number.

(6) Docket number if applicable.

(7) Acquisition cost of the tooling (estimate will suffice).

(8) Description of the end item produced by the tooling.

(9) Is end item common to other services?

(10) Designation of the weapon system for which subparagraph (8) of this paragraph is a component (if applicable).

(11) Condition of the tooling.

(12) Indicate contract clause which controls contractor's obligation with respect to special tooling.

(13) Why the tooling is excess to contractor's requirements.

(14) Whether the tooling has been screened by the prime contractor and found excess to his needs for possible utilization as checked below.

(i) Current or future use in the manufacture of spare parts under the provisioning program.

(ii) Current or future use on other Government contracts.

(iii) Current or future use by subcontractors on Government contracts.

(15) The professional recommendation of the plant clearance officer concerning the disposal of the tooling based on discussions with contractor personnel and other information.

(c) The inventory schedules will be forwarded to all appropriate screening agencies by an original transmittal letter.

§ 1008.510–51 Screening agencies.

(a) AMA or depot: Inventory schedules will be forwarded to the Processing Control Branch, Operations Support Division, Directorate of Materiel Management at the AMA or depot prime for the item produced by the tooling. Screening procedures will be established within the AMA or depot, to determine whether interested activities (supply, maintenance, modification, IRAN, MAP, Offshore procurement, purchasing office (if located at the AMA or depot) weapons phasing and program groups) have potential requirements and to develop disposal recommendations.

(b) Purchasing office: Two copies of the schedules will be forwarded to the office through which procurement was accomplished (if not located at the AMA or depot prime for the end item).

(c) Wright Air Development Division (WADD): Two copies of the schedule will be forwarded to the assigned project office within WADD if the contract was executed at WADD.

(d) Department of the Navy: Three copies of schedules listing excess AF special tooling will be forwarded to the Bureau of Naval Weapons, Department of the Navy, Washington 25, D.C., when the end item is common to the Navy. The Navy will be advised that special tooling required by the Navy will be transferred provided there are no Air Force requirements.

(e) Department of the Army: Three copies of the schedules listing excess AF special tooling will be forwarded to the Department of the Army, Washington 25, D.C., when the end item is common to the Army. Special tooling required by the Army may be transferred, provided there are no Air Force requirements.

(f) Research and Development contracts under which no end items have been assimilated within the supply system (this may be determined from either the buyer or contractor) will only be screened according to paragraphs (b) and (c) of this section.

§ 1008.510–52 Disposal.

(a) Disposition will be accomplished by the local plant clearance officer according to the recommendations received from screening agencies and in conformance with Subpart E, Part 8 of this title. In instances where dual requirements are received as a result of concurrent screening under § 1008.510–51, requirements of the purchasing office will receive priority. Disposition will not be accomplished until receipt of reply from all activities to whom schedules were submitted according to § 1008.510–51. Followup will be initiated if reply has not been received in 40 days.

(b) Unless otherwise stated, instructions to dispose of tooling used in the fabrication of a specific end item under a prime contract will be sufficient authority to dispose of tooling required for production of the same end item at a subcontractor's plant.

(c) When the screening agency desires retention of the special tooling they will state in their recommendation: (1) Reason for retention, (2) the period of time it is desired to retain the tooling in storage, and (3) office responsible for disposal recommendation in the event tooling is not utilized by expiration of the storage period. The designated plant clearance officer based upon instructions received from the screening agency, will make arrangements with the contractor for the storage of special tooling for the period requested by the screening agency. All storage agreements will be prepared according to § 1008.511 using the form prescribed in § 1008.868. The storage agreements, if possible, will be executed on a no cost basis. When a no cost storage agreement cannot be negotiated, the screening activity which requested that the tooling be stored shall be contacted and provided with the estimated weight of the tooling, the cubic area required for storage, and cost proposal incident to the execution of a cost type storage contract. Screening activity will be requested to furnish the necessary fund citation to cover the cost type storage contract, if after the consideration of the cost involved, the requirements justify the expenditure of funds to retain the tooling in storage.

(d) Two months prior to the completion of the contract, the contracting officer will request the plant clearance officer to contact the activity(s) for which the tooling was stored to determine whether: (1) The tooling should be retained for an additional period of time or (2) disposition accomplished according to Subpart E, Part 8 of this title.

§ 1008.510–53 Program screening.

The term screening means the process of screening special tooling related to a complete airframe, engine, or major component before the tooling becomes excess due to production phase-out. This program will be used whenever possible. The general procedures are as follows:

(a) The local plant clearance officer will determine through the contractor when phase-outs are contemplated. The local plant clearance officer will screen the special tooling with the screening agencies by means of a transmittal letter prepared according to § 1008.510–50 and include the approximate date of production phase-out. (Schedules are not required.)

(b) Disposition of the tooling will be accomplished according to the recommendations received from the screening activities and § 1008.510–52.

§ 1008.510–54 Screening of standard test equipment items which are components of special tooling.

In some instances property reported as special tooling or special test equipment may include as a component or unit of a composite item of special tooling or special test equipment, standard shelf type items or items of standard test

equipment. Listings containing such items will initially be screened as prescribed in § 1008.510–51 to determine any continuing requirement in connection with the end item procured under the contract.

(a) If there are no further end item requirements for special tooling as composite units, the items of special tooling will be reviewed to determine whether there are standard shelf type or test equipment items which are components of the special tooling which may be economically removed and reused. In event the contractor has a continuing requirement for such items under other cost type or facilities contracts, the administrative contracting officer will authorize their removal from the composite units and transfer to the appropriate contracts.

(1) If the requirement is such that the item is appropriately classified as a facility item, the transfer to a facility contract will be coordinated with WRU, Warner Robins AMA, and upon approval AMC Form 51 (BOB No. 21–RO71.3), "Industrial Equipment Inventory and Inspection Report," will be prepared and submitted to WRU.

(2) In event the continuing requirement is in connection with the fabrication of other special tooling items, into which the standard test items are to be incorporated, the transfer will be to the supplies contract. In this instance, the equipment will not be reported to WRU but will be controlled as a separate item (by the contractor) until incorporated into the special tooling, at which time control will be established as a component of the tooling.

(b) Standard test equipment items which may be economically removed from the composite unit and reused, having a unit cost of $500 or more and falling within the categories established as "controlled items" by AMCM 78–1, which are excess to the known requirements of the contractor, will be listed and reported to WRU, WRAMA, see paragraph 6*b*(2), chapter 4, part one, AMCM 78–1, for decision as to whether the items are desired for inclusion in the Industrial Reserve Inventory. In event the items are not required for inclusion in the Industrial Reserve Inventory, WRU will so advise the originator of the listing and disposition of the composite unit will be accomplished through plant clearance action.

(c) All other items of standard test equipment which are components of special tooling items and which may be economically removed and reused, and are excess to the known requirements of the contractor, will be adequately described and listed as noncontrolled facility items on a DD Form 543, Inventory Schedule B and reported for screening as prescribed by § 1008.505–1(a). The items will not be removed from the composite units of special tooling unless and until decision has been made that the articles are desired. In event no requirement is established for retention of the items, the composite units will be disposed of through plant clearance sections. Standard items will be completely identified and described if offered for donation or sale.

§ 1008.511 Removal and storage.

§ 1008.511–2 Storage at the expense and risk of the Government.

(a) *General.* (1) All storage agreements at the expense and risk of the Government will be in the form prescribed in § 1008.868. Variations in this format must be approved by AMC (MCPC). The property stored must be listed on inventory schedules.

(2) The plant clearance officer, subject to the approval of the contracting office, will execute storage agreements according to policies expressed in Parts 2 and 3 of this title and Parts 1002 and 1003 of this chapter. Negotiated contracts will cite as authority 10 U.S.C. 2304(a)(10) according to § 1003.210.

(3) The APD and AFPRO will prepare and forward DD Form 350 "Individual Procurement Action Report" for storage agreements which obligates funds over $10,000 and DD Form 1057 "Monthly Summary of Purchasing Office" if the amount is less than $10,000.

(4) The contract will be approved according to § 1001.457 of this chapter. If the contract executed exceeds the dollar limitations set forth in § 1001.457 of this chapter, approval of higher authority as provided in Subpart E, Part 1053 of this chapter is required.

(b) *Special tooling.* Special tooling will be stored only upon the recommendation of one or more of the screening agencies. The screening activity requesting the storage of the special tooling will be required to furnish the necessary fund citation to cover the cost, if after the consideration of the cost involved, the requirements justify the expenditure of funds to retain the tooling in storage. Renewals of storage contracts will be made according to § 1008.510–52(d).

§ 1008.511–50 No cost storage agreements.

(a) Storage at "no cost" to the Government will be covered by an appropriate storage contract. The contract will cite as authority 10 U.S.C. 2304(a)(10) according to § 1003.201 of this chapter. The form of the contract is prescribed in § 1008.868–1. Variations in this format require the written approval of AMC (MCPC). The contract will be executed by the plant clearance officer. (See § 1008.511–2(a)(2).)

(b) Care will be taken to insure that the cost of storage which is purported to be at no cost to the Government is not being recovered by the contractor as an indirect charge to other Government work unless expressly approved by the contracting officer. Furthermore care will be taken by the contracting officer to insure that his consent when granted under the "Right of Use" clause will not place the contractor in a more favorable competitive position than other contractors. The contracting officer will also insure that any use by the contractor of the stored property will be governed by Part 13 of this title and § 30.2, Appendix B of this title.

(c) When future additional storage requirements are anticipated, the contract may be made "open end" by use of the optional clause set forth in § 1008.868–1.

§ 1008.512 Review of property disposal.

§ 1008.512–1 Property disposal review boards.

(a) *Appointment of property disposal review boards.* The authority to establish Property Disposal Review Boards according to § 8.512–1 of this title has been delegated to the Director of Procurement and Production, AMC, who has further delegated the authority, without power of redelegation to:

(1) Deputy for Procurement, Hq AMC.

(2) Chief and Deputy Chief, Contract Management Division, Directorate of Procurement and Production, AMC.

(3) Commander and Vice Commander, ARDC. Further redelegation may be made to the Director of Procurement, Hq ARDC, with respect to the establishment of Property Disposal Review Boards within the European Office, ARDC.

(4) Commanders and Vice Commanders of oversea commands. The term "oversea commands" includes major air commands located in territories and possessions of the United States as well as those in foreign countries.

(5) Commander and Deputy Commander, Air Materiel Force, Pacific Area (AMFPA).

NOTE: In exercising this authority, the policies and procedures set forth in Part 8 of this title and Part 1008 of this chapter will be followed; however, the approvals required in § 1008.512–2 will be performed by the Property Disposal Review Board, Hq AMFPA, in lieu of the AMC Board.

(6) Commander and Deputy Commander, Air Materiel Force, European Area (AMFEA).

NOTE: In exercising this authority, the policies and procedures set forth in Part 8 of this title and this part will be followed; however, the approvals required in § 1008.512–2 will be performed by the Property Disposal Review Board, Hq AMFEA, in lieu of the AMC Board. Any orders appointing any Board will designate the person who will act as Recorder for the Board, and will indicate whether or not the Recorder may vote. An alternate will be appointed for each member of the Board if possible.

(b) *Property Disposal Review Board, AMC*—(1) *Appointment.* Upon designation by the Chief or Deputy Chief, Contract Management Division, AMC (MCPK), the Chairman, Recorder, members and alternates of the Board will be appointed by AMC Special Orders. The Board will consist of not less than three officers or civilian employees of the Directorate of Procurement and Production, AMC. A majority but not less than three members will constitute a quorum.

(2) *Jurisdiction.* The Property Disposal Review Board, AMC, will have unlimited jurisdiction.

(c) *Property Disposal Review Boards, CMR's*—(1) *Establishment and appointment.* CMR Commanders may request authority from the Chief or Deputy Chief, Contract Management Division AMC (MCPK), to establish Boards at the CMR's, APD's, and AFPRO's. Nomination of Board members or alternate members will be submitted by the CMR

to AMC (MCPK), with a brief but thorough résumé of the qualifications of each nominee. Members will be appointed by AMC Special Orders. A majority, but not less than three members will constitute a quorum. Requests for changes in Board memberships will be sent to AMC (MCPK), and will state the reason for the requested changes.

(2) *Jurisdiction.* Jurisdiction of the Boards over property disposal matters will be in accordance with § 8.512–2 of this title.

(d) *Function.* Property Disposal Review Boards will review and approve or take appropriate action concerning any classification of property with respect to degree of serviceability, any authorization to sell property by negotiated sale, any determination to donate or abandon property, or any release from a scrap warranty, when such action is required by directives to be acted upon by a Property Disposal Review Board.

(e) *Preparation of plant clearance memorandum.* Each request for Board approval will be supported by a memorandum, signed by the plant clearance officer. The Memorandum will be prepared according to instructions set forth in § 1008.869.

(f) *Procedures of property disposal review boards.* (1) Procedures may be established for the administrative review of plant clearance memoranda prior to submission to a Property Disposal Review Board provided that such review shall not pass on the merits of any proposed sale or classification and provided that such review does not create undue delay.

(2) *Review Board procedures.* (i) Board meetings will be held as often as necessary. Failure of the Board to act within thirty days after submission will operate as Board approval unless otherwise specifically directed by the Board.

(ii) Unless it is impractical or unnecessary, the plant clearance officer submitting the memorandum will be present at the meeting. The presence of special advisors or of contractor's representatives at the Board meetings lies within the discretion of the particular Board unless the CMR Commander otherwise provides.

(iii) Every Board action will take the form of approval or disapproval, of the plant clearance officer's recommendation, or if appropriate its own recommendation or advice.

(iv) The plant clearance officer will be notified immediately of the Board's action.

(v) Adequate records of Board meetings will be maintained. However, a verbatim stenographic transcript is not required except in unusual cases and a narrative type minutes should normally suffice. Although minutes of each meeting may be concise, they should clearly reflect the various areas considered and discussed by the Board in arriving at a decision and be sufficiently complete to permit any reviewing authority to understand the reasons for the recommended action of the Board. The minutes of each meeting will be signed by the Chairman and Recorder.

(vi) The minutes of the Board will contain at least the:

(*a*) Number and date of the order appointing the Board and headquarters by which it was issued.

(*b*) Meeting place and time.

(*c*) Contract number and termination docket number, or engineering change order number, if applicable.

(*d*) Names of members and alternates present and absent, and the designated chairman and recorder.

(*e*) The name of the officer, requesting the action of the board.

(*f*) The action of the board and action voted for each member.

(*g*) A summary of all important points discussed at the meeting.

(*h*) Where it is deemed appropriate, the minutes of the board may show that documents, in addition to the inventory and those attached to the plant clearance memorandum as exhibits, were examined by the board and may identify such documents. These documents need not be attached to the minutes as exhibits.

(vii) A signed copy of the minutes will be kept in a board file appropriately indexed. The recorder will furnish the plant clearance officer with a copy of the minutes.

(viii) There will be filed with such minutes, or with a certified extract therefrom pertaining to a particular case, an original copy of the plant clearance memorandum, a copy of each exhibit thereto attached, the inventory presented to the board, and a signed copy of the written notice sent to the plant clearance officer of the board's action.

(ix) The recorder of each board will maintain a separate record of each case submitted to the board. This record will show the following items when applicable: The date the plant clearance memorandum was received, the contractor's name, the contract number, the termination docket or engineering change order number, the action taken by the board, the date the action was taken, the date the plant clearance officer was notified.

§ 1008.512–2 Required review.

In addition to those matters listed in § 8.512–2 of this title, review is required in the following situations:

(a) If the original acquisition cost of materials to be sold without competitive bids, or diverted according to § 1008.502–1 exceeds $100,000, the sale or diversion will be subject to the prior approval of the Property Disposal Review Board located at AMC.

(b) In every case concerning diversion of material according to § 1008.502–1, the diversion will be subject to the prior review and approval of a property disposal review board.

(c) If the acquisition cost of material exceeds $100,000, it will not be destroyed or abandoned without obtaining the prior approval of the Property Disposal Review Board located at AMC.

(d) Whenever the contracting officer deems it appropriate.

§ 1008.512–50 Exceptions to required review.

Approval of scrap determination by a Property Disposal Review Board will not be required in case of production generated scrap.

§ 1008.513 Subcontractor inventory.

§ 1008.513–1 General policy.

(a) In connection with claims resulting from the termination or modification of a prime contract the plant clearance officer will obtain:

(1) The contractor's purchase order numbers for all terminated subcontracts.

(2) A copy of the Notice of Termination issued to subcontractors.

(3) The cost, if known, otherwise the approximate cost of the subcontractor inventory involved.

(b) If, in accordance with § 8.513–1 of this title, it is determined by the contracting officer to submit inventory schedules through all intermediate tiers of subcontractors instead of using direct submission procedures, a copy of the determination will be sent to AMC (MCPKP).

§ 1008.513–2 Inventory schedules.

All subcontractor inventory schedules are required to be certified by the claiming subcontractor and the prime contractor as being allocable to the terminated subcontract.

§ 1008.513–50 Referrals.

(a) The plant clearance of subcontractor inventories located outside the geographic area of the termination contracting officer of the prime contractor may be referred to the plant clearance officer in the area in which the subcontractor is located when insufficient information is available to effect plant clearance action. Referrals may be effected within CMR's as well as between CMR's. Plant clearance cases should be referred to another AF office only if the distance of the subcontractor's plant is so great that excessive supervisory expenses would result if the case was not referred.

(b) All referrals will be effected according to instructions in § 1008.513–51. If it is determined that referral of disposition of subcontractor inventory located outside the APD or AFPRO in which the prime contractor is located will have to be accomplished, prior to the transmission of a formal request as provided in paragraph (c) of this section, the initiating plant clearance officer will advise the cognizant plant clearance office that will supervise the subcontractor inventory disposition, of the pending referral. The selected plant clearance officer will consult with the subcontractor to assure that required schedules are properly prepared, and will give such other assistance as is necessary to assure prompt and effective plant clearance of the subcontractor's inventory.

(c) The receiving plant clearance officer will promptly acknowledge and "open" all referred cases unless substantive inadequate information is presented. The initiating office will immediately be notified of any inadequacy which prohibits opening the case. If the inadequacy is unacceptable inventory schedules, the case will be retained and receipt acknowledged. The case will be

opened upon receipt of adequate inventory schedules. The date the case is opened (as appearing in AFPI Form 56) will be recorded as part of the official case record. Acceptance of referral responsibility will be evidenced by the transmission of the assigned plant clearance case number to the initiating office.

§ 1008.513–51 Letter of referral.

Whenever plant clearance cases are referred according to § 1008.513–50, the subcontractor's inventory schedules will be sent to the cognizant plant clearance officer. The schedules will be accompanied by a letter of referral, copies of which will be sent to the initiating and receiving CMR's. If the referral must be accomplished prior to receipt of the subcontractor's inventory schedules, informal notification as described in § 1008.513–50(b) may be made. In the case of such informal referrals, the cognizant plant clearance officer will advise the subcontractor to insure that adequate inventory schedules are prepared, and that prompt plant clearance action is effected. The formal letter of referral will contain the following information and supporting documents. Omissions should be noted with an estimated date the information will be supplied.

(a) Name and address of the subcontractor.

(b) Date of award of prime contract, type of contract (supply, R&D, facilities) and specific information concerning the end item produced.

(c) Date of notice of termination and docket number.

(d) Copy of the subcontractor's purchase order, and a copy of the subcontractor's settlement proposal.

(e) Copy of termination notice directed to the subcontractor.

(f) Location of terminaiton inventory.

(g) Twenty copies of inventory schedules.

(h) Prime contractor's estimate of the amount of the claim and amount of the inventory.

(i) Prime contractor's certificate of allocability.

(j) Prime contractor's statement of no further requirements for the material.

(k) The extent that screening has or has not been accomplished together with any disposition instructions.

(l) Statement delegating authority to the plant clearance officer with cognizance of the subcontractor concerned, signed by the contracting officer or plant clearance officer (if signed by plant clearance officer, a copy of his delegation from the contracting officer will be included) in the following form:

"The Contracting Officer (plant clearance officer) hereby delegates to the assigned plant clearance officer complete authority to take and approve all necessary and appropriate actions to effect disposition of the contractor inventory related to subject contract in accordance with existing regulations."

(m) The office that has been assigned audit responsibility of the subcontractor's claim.

§ 1008.513–52 Action on referred cases.

Upon receipt of a referred case, the plant clearance officer will insure that the property is handled in a manner consistent with Subpart E, Part 8 of this title and Subpart E of this part.

(a) When the disposition of all allocable property listed in the subcontractor's certified inventory schedules is completed, the plant clearance officer at the subcontractor's plant will submit a copy of the initial inventory schedules and all supplemental schedules to the contracting officer initiating the referral. In addition, the following will also be submitted unless the initiating contracting officer requests the entire plant clearance file.

(1) Certificates of allocability by the prime contractor, subcontractor and plant clearance officer.

(2) List of items to which exception as to allocability has been taken.

(3) The amount of all disposal credits.

(4) A list of all property transferred to the Government.

(5) An explanation of any discrepancy between the allocable property on the inventory schedules and the property included in subparagraphs (3) and (4) of this paragraph.

(6) Statements signed by the plant clearance officer and the subcontractor that all property originally listed by the subcontractor has been accounted for and has been retained, sold, transferred to the Government, deleted with the knowledge of the subcontractor, or otherwise disposed of.

(b) The prime contractor is authorized in negotiating settlements with subcontractors, and the contracting officer is authorized in reviewing the subcontractor's settlement, to accept as proper without further investigation, any disposition of property made or approved by a plant clearance officer pursuant to the procedures contained herein.

§ 1008.513–53 Supervision of referred cases.

The CMR Commander should insure that referred cases are being handled expeditiously. If a closing report (AFPI Form 57, see § 1008.552) is not submitted within 120 days from the date of case acceptance, and "opening", a status report will be sent to the initiating office.

§ 1008.515 Accounting for termination inventory.

See § 8.515 of this title.

§ 1008.515–50 Property administration.

In a complete or partial termination, a property administrator, previously appointed, will continue to act in that capacity. If none has been appointed, the plant clearance officer will act as property administrator for the purpose of accounting to the contracting officer for any property listed on inventory schedules until disposal action is completed or until the Government acquires title to the property and enters into a storage agreement.

§ 1008.550 Appointment of plant clearance officers.

(a) A plant clearance officer may be appointed the authorized representative of a contracting officer, with authority to act on plant clearance matters, or he may be designated a contracting officer according to § 1001.452 of this chapter. His authority to act as a contracting officer will be limited to matters in connection with the disposal of excess property and to the negotiation and executing of contracts covering the storage or disposal of industrial Government property.

(b) Only the contracting officer can delegate authority on plant clearance matters; no other person is authorized to execute the delegation on his behalf. All delegations executed by the contracting officer will become part of the case file.

(c) Contractors will be immediately notified of the appointment of a plant clearance officer.

(d) Except as provided in § 1008.515–50, no person will concurrently be assigned the duties of a plant clearance officer and property administrator, nor will any plant clearance personnel or responsibilities be assigned to or placed under the jurisdiction of a property administrator.

Subpart F—Termination for Default

Subpart F is revised to read as follows:

§ 1008.600 Scope of subpart.

This subpart sets forth: (a) Circumstances under which AF contracts are terminated for default, (b) authority to terminate for default, and (c) responsibilities and procedures in connection with default actions. In addition, guidance is furnished as to the procedure to follow when a contract does not contain a Default clause and the contract should be terminated for "Breach of Contract" on the part of the contractor. As pertains to service or construction contracts, references made herein to "contract delivery schedule" will have application to "contract delivery or performance schedules."

§ 1008.601 General.

(a) It is AF policy to use default termination procedures when a contractor, without excusable cause, fails to comply with the terms and conditions of the contract and, as a result of such failure, cannot deliver the supplies or perform the services called for under the contract in the manner and within the time which the AF has need for such supplies and services. It is not AF policy to use default termination as a punitive measure, but to use it as a method to insure the contractor's adherence to his contractual obligations and to protect the Government from any loss which might be sustained as a result of the contractor's failure to comply with his contract obligations.

(b) to (c) See § 8.601 (b) to (c) of this title.

§ 1008.601–50 Contractor appeal rights.

The Disputes clause in most AF contracts permits the defaulted contractor

to file appeals for one or both of the following reasons: (a) Default termination and (b) assessment of excess costs, if any. Appeals may be filed by the defaulted contractor and should be addressed to the Secretary of the Air Force through the termination contracting officer. Appeals are heard, usually at Washington, D.C., by the Armed Services Board of Contract Appeals as the duly appointed representative of the Secretary. A written appeal to the Secretary of the Air Force need not follow any particular form or format, however, the appellant must perfect the appeal within the period of time allowed under the Disputes clause contained in the contract, and must set forth in the appeal notice the contract number, the nature of the appeal (either default termination of the contract or assessment of excess costs), the name of the termination contracting officer, and the complete address of the appellant. The appellant need not furnish support or justification for his action to perfect an initial appeal notice. Upon receipt of the appeal the Armed Services Board of Contract Appeals will docket the case for hearing and advise the appellant as to subsequent procedures to be followed (see § 1054.504).

§ 1008.601–51 Waiver or abandonment of delivery schedules.

In the event a contractor becomes delinquent under the terms of a contract delivery schedule, or any extension thereof, the Government may be considered to have waived or abandoned the delivery schedule under certain circumstances. The following general statements are intended only as a guide to the factors and problems which may be involved; their application depends on the particular facts of the case. Advice as to the probable effect of a particular course of action should be sought from the local Staff Judge Advocate. Agreement with the contractor as to the intent of both parties is most desirable; documentation and communication to the contractor of the contracting officer's intent is also essential.

(a) The unqualified acceptance of late partial deliveries waives the right of the Government to terminate the contract for default as to those accepted quantities. Such acceptance is not beyond the authority of the contracting officer because the Default clause found in most AF contracts permits termination when there is an inexcusable schedule delinquency, but does not require such termination when the best interests of the Government indicate otherwise. Such acceptance does not necessarily constitute a waiver by the Government of any right to damages because of the late delivery.

(b) Whether or not acceptance of a late partial delivery constitutes a waiver of the delivery schedule as to any goods or services called for other than those involved in the accepted partial delivery would normally be determined by the intention of the parties to the contract, either expressed or inferred from their conduct, and by the extent to which the contractor was justifiably misled by the acts of the Government into believing that there would be no default termination as to the balance of the contract. Acceptance of a late partial delivery very rarely occurs without the intervention of other factors, but rather in conjunction with other acts and statements by the agents of both parties. While each situation must be decided upon its own merits, and the circumstances in any two delinquencies are never the same, the following general rule of thumb may normally be applied when the circumstance under consideration is solely the acceptance of late partial delivery:

(1) If the entire delivery schedule is delinquent at the time of the partial acceptance, it may normally be assumed that an unqualified acceptance amounted to a waiver of the entire delivery schedule because of the Government's knowledge of delinquency at the time of acceptance.

(2) If a substantial quantity of installments are not yet delinquent it may normally be assumed that the acceptance of one late installment of partial delivery would not necessarily be construed as a waiver of that portion of the delivery schedule which is not yet delinquent. If such acceptances are repeated sufficiently often that a course of action is established and the contractor is misled into believing that the Government will continue to accept late deliveries, the Government may be estopped from denying that it intended this result because the Government's acts contributed to the misleading and it would be unfair to allow the Government to repudiate this intention. Whether or not there has been such a course of action established to invoke estoppel depends upon the facts of each case, because what may be construed to reasonably establish estoppel in some circumstances may not be so construed in others.

(c) The basic reason for considering that a delivery schedule has been waived is that the parties intended, either actually or constructively that it be waived. Assuming both parties agree that acceptance of a late delivery is for mitigation of damages only and not to be construed as waiving any delivery schedule delinquency, this would be strong evidence of the actual intent of both parties. A unilateral notice to this effect issued by the Government at the time of, or prior to, the acceptance would indicate what the Government intended by the acceptance and would prevent the application of doctrine of estoppel against the Government. The value of this unilateral notice would be diminished by successive acceptances because the course of action to continue acceptances of late deliveries, notwithstanding the unilateral notice, would be established and the contractor would thus be misled. It would normally take longer to establish such a course of action with the notice than without such a notice. An appropriate notice should read substantially as follows:

"Any assistance rendered to the Contractor on this contract, or acceptance by the Government of delinquent goods or services hereunder, will be solely for the purpose of mitigating damages, and is not to be construed as an intention on the part of the Government to condone any delinquency, or as a waiver of any rights the Government may have under subject contract."

(d) If the termination contracting officer ascertains during his investigation (see § 1008.602–3(d)) that a waiver of the contractual delivery schedule is probable or an enforceable delivery schedule is nonexistent, he may, nevertheless, terminate the contract for other good and valid reason, or in the alternative may proceed to re-establish a new and enforceable delivery schedule and hold his default termination decision in abeyance pending contractor performance thereunder. To the maximum extent possible there should be mutual agreement between the contractor and the Government that any re-established delivery schedule is realistic and possible of performance. The contractor should be afforded ample opportunity to set forth his reasons for prior nonperformance and should thereafter be requested to submit his written proposal to the Government, as his free act and voluntary deed, which will contain his firm and unqualified commitment to adhere to his proposed re-established delivery schedule. The termination contracting officer will give careful consideration to all aspects of the contractor's proposal and, if consistent with the Government's best interest, will immediately render a written acceptance to the contractor on behalf of the Government. In the event the Government and the contractor cannot reach mutual agreement as to a re-established delivery schedule the termination contracting officer may, as a unilateral action, establish a new delivery schedule. When such action becomes necessary the termination contracting officer will also incorporate in the file relating to the case all facts and circumstances that have necessitated his unilateral action. Thereafter, the termination contracting officer may retain cognizance over any contract during the period of the re-established delivery schedule and consider default termination at any time the contractor fails to adhere to any of the contractual provisions including the re-established delivery schedule. The administrative contracting officer will continue his administration of a contract concurrently with the termination contracting officer according to § 1008.602–3(a)(6).

§ 1008.601–52 Failure to deliver caused by the Government, actual or alleged.

(a) At the expiration of the delivery schedule, as contained in the contract, the Government is not in a position to terminate for default upon nondelivery or nonconformance with the terms of the contract if:

(1) The Government has delayed in furnishing certain necessary equipment or material to the Contractor, which it has obligated itself to do by the terms of the contract.

(2) Contractor is unduly delayed awaiting test results to be furnished by the Government under terms of the contract.

(3) The Government demands more than the contract actually required and thus makes delivery impossible.

(4) The Government furnishes technical specifications with which the con-

tractor complies fully, but completed supplies do not pass the performance tests the Government desires.

(b) Where the contractor's nondelivery and/or nonconformance with contractual requirements are a direct result of Government delay or failure, an equitable adjustment in delivery schedule and/or other contract provisions may be necessary. Normally such adjustment will be made by supplemental agreement to the contract. Where there is an area of controversy between the contractor and the Government as to causes for delay, such as illegible or incomplete printed specifications which were not detected until delivery of the first articles or completed supplies, the allegations of the contractor will be carefully investigated to ascertain if the Government is completely or partially responsible for contractor delay or failure. If the termination contracting officer finds in favor of the contractor, adjustments and/or negotiations are authorized. Where it is not possible to assess fault or negligence solely to the contractor or the Government, negotiations may be conducted to resolve the controversy and permit performance to continue under the contract, as adjusted. Or in the alternative, if termination of the contract is desired by the Government the termination contracting officer may, in lieu of termination for default of the contractor, negotiate a pretermination agreement provided such action is actually for the convenience and in the best interest of the Government.

§ 1008.601–53 Cost reimbursement type contracts.

In the case of cost-reimbursement type contracts terminated for default, the contractor is normally reimbursed his allowable costs and the fee reduced where appropriate. When a time-and-material contract is terminated for default, the contractor is normally reimbursed his allowable costs less the profit factor. In defaults involving cost-reimbursement and time-and-material contracts, the Government does not generally hold the contractor liable for excess costs of reprocurement.

§ 1008.602 Termination of fixed-price supply contracts for default.

§ 1008.602–1 The Government's right to terminate for default.

There are normally three general causes for terminating a contract for default of the contractor:

(a) *Failure to deliver.* If the contractor fails to deliver the supplies or perform the services within the time specified in the contract the right (in the absence of excusable or Government caused delays) has accrued to the Government to immediately terminate for default. In addition, if the contractor does make timely delivery, but delivers defective supplies or improperly performs services, and the contractor is unable to take corrective action within the unexpired delivery schedule period, the Government also has the right to terminate for default.

(b) *Failure to make progress.* If it is ascertained during the period of the contract delivery schedule that the contractor is failing to make satisfactory progress so as to endanger performance according to the terms of the contract, the contractor should immediately be put on written notice (Registered Mail—Return Receipt) by the ACO under the appropriate provisions of the Default clause contained in the contract. The contracting officer must notify the contractor that a period of 10 days after receipt of notice (or such longer period as the contracting officer may authorize in writing as being reasonably necessary) will be allowed to cure such failures (see § 1008.602–3 (a)(1) and (b)). The "cure" notice (see § 1008.871(a)) from the ACO must set forth the nature and extent of the defects the contractor is notified to "cure", and, as deemed appropriate, the ACO may call the contractor's attention to that portion of a specification which is applicable to a defective item(s). The period of time allowed by the contracting officer to cure contractor defects must be realistic, and based upon sound judgment. Where the allowed cure period is, through necessity, rather lengthy, the contracting officer may call upon the contractor within 10 days after receipt of the "cure" notice to show evidence of his actions to insure subsequent compliance with the "cure" notice. Upon the failure of the contractor to cure his defects, or show proper evidence of his actions to insure subsequent compliance within the cure period allowed, the Government may, subject to the limitations as set forth in the Default clause, invoke termination for default of the contractor.

(c) *Failure to perform any of the other provisions of the contract.* If the contractor fails to perform any of the other provisions of the contract according to its terms and does not cure such defect within a period of 10 days after receipt of a "cure" notice (or longer period as the contracting officer may authorize in writing), see § 1008.871(a), the Government may, subject to the limitations as set forth in the Default clause, terminate the contract in whole or in part for default of the contractor. Special procedures are set forth in § 30.4, Appendix D of this title in connection with violations of gratuities clauses.

§ 1008.602–3 Procedure for default.

(a) *Responsibility of administrative contracting officer.* ACOs have primary responsibility for initiating prompt action pertaining to possible termination of contracts. Base procurement activities see § 1008.651.

(1) Pursuant to the Default clause contained in most AF contracts, the ACO is empowered to furnish a "cure" notice (see §§ 1008.602–1(b) and 1008.871(a)) to a contractor endangering performance of his contract. The procuring contracting officer, the office having production administrative responsibilities, the readjustment activity in the responsible Contract Management Region, and AMC (MCPKT) will receive an information copy of the aforementioned "cure" notice, however the ACO may dispatch the "cure" notice on his own initiative and without prior procuring contracting officer coordination or approval. If the contractor fails to cure the condition endangering contract performance, the administering activity, will immediately furnish full information to the procuring contracting officer by means of a letter or DD Form 375 plainly stamped or marked "Action Document" in large red letters and recommend that the contractor be notified by a "show cause" letter of the possibility of the contract being terminated for default (see paragraphs 3(c)(2) of this section and § 1008.871(d)). A copy of the recommendation from the administering activity to the procuring contracting officer will be furnished to: (i) AMC (MCPKT), and (ii) the readjustment activity located at the responsible Contract Management Region.

NOTE: There is no legal requirement for sending a "show cause" letter where the contractor has failed to comply with the terms of a "cure" notice. However, unless time for delivery has become critical, it is advisable to issue such a letter.

(2) In the event the contract is already delinquent, or will become delinquent prior to the expiration of a reasonable cure period, the ACO should promptly recommend issuance of a "show cause" letter to the procuring contracting officer. Such a recommendation can be made on a DD Form 375 "Action Document", by separate letter, telegram, telephone call or any other means as dictated by the urgency of the situation. In the event an apparently reliable production estimate indicates that the contract will be completed within thirty (30) days after becoming delinquent, it is not necessary to issue any notice to the contractor except as advisable to prevent a waiver of delivery schedule such as might arise with the unqualified acceptance of late partial deliveries (see § 1008.601–51). However, care should be exercised to insure that no contract delinquency attributable to the fault of the contractor or his subcontractor/supplier is allowed to continue for a period beyond thirty (30) days without issuance of a "show cause" letter.

(3) If the procuring contracting officer (see paragraph (c)(2) of this section) concurs in the advisability of notifying the contractor to show cause the ACO will, within 5 days after receipt of the procuring contracting officer's concurrence, notify the contractor by letter (Registered Mail—Return Receipt, or handcarried to the contractor and receipted copy obtained) that the Government is considering termination for default by reason of the contractor's failure to comply with the delivery schedule or contractual specifications, failure to make progress so as to endanger performance or failure to comply with other contractual provisions (as applicable). The contractor should be requested to submit within 10 days (or such longer time as the ACO deems reasonable under the circumstances) his reasons why the contract should not be terminated for default. The letter by the ACO should call the contractor's attention to the liabilities that may be invoked if the contract is terminated for default. Suggested formats for this letter are set forth in § 1008.871. Before release, the

letter should be coordinated with the cognizant production and quality control personnel; after release, no further action under the contract will be taken by production or quality control personnel without prior approval of the administrative contracting officer. One copy of the ACO's letter to the contractor will (with appropriate identification as to origin) be furnished to each of the following:

(i) The office having primary production responsibility.

(ii) The office having primary quality control responsibility.

(iii) The procuring contracting officer.

(iv) Contractor's sureties, assignees, or guarantors, if any.

(v) The appropriate accounting and finance officer where the contractor has a guaranteed loan, progress payment, or advance payment.

(vi) Readjustment activity delegated authority to terminate for default of contractor (see § 1008.650).

(vii) Terminations Branch AMC (MCPKT).

(4) Upon receipt of the contractor's reply, or if no reply is received at the expiration of the period for contractor's reply to the letter notifying him of the possible default action, the ACO will immediately send the following information in writing to the procuring contracting officer with information copies to activities shown in subparagraph (3)(vi) and (vii) of this paragraph:

(i) ACO's evaluation of the contractor's promises and excuses (if any have been submitted) and an estimate of the time deemed reasonable for the contractor to complete the contract.

(ii) The current status of production.

(iii) ACO's recommendations as to whether or not the contract should be terminated for default.

(5) It is recognized that despite the most diligent efforts on the part of production personnel and ACO's, some contractors will fail or refuse to adhere to contractual obligations. When such failure or refusal is detected it is incumbent upon the ACO to recommend affirmative action adequate to remedy the unsatisfactory aspects of the contract being administered. While it is not contemplated that default termination will be recommended for each and every contract as soon as it becomes delinquent as to any substantive provision, nevertheless ACO will be responsible for recognizing at an early date the existence of any unsatisfactory conditions that may result in the contractor's failure to meet the contract delivery schedule or deliver supplies in conformance with contract specifications. (See § 1001.305–52(c)(4) of this chapter.) Inasmuch as the Government may be adjudged to have abandoned or waived the delivery schedule (§ 1008.601–51) unless action is taken incident to default termination within a reasonable time after expiration of the delivery schedule, it is of paramount importance that ACOs, insofar as possible, anticipate contractor failures and be prepared to initiate timely action that properly protects the Government's interest. It is highly desirable to initiate a written "cure" notice (see § 1008.602–1 (b) and (c)) at the earliest point during the contract delivery schedule when it becomes apparent the contractor is endangering performance (see § 1008.871(a) for "cure" letter format). While oral admonitions may attain desired results in many instances, such actions are of no avail to the Government if it is subsequently ascertained that the contract should be terminated for default of the contractor, and they may prejudice the Government's position by indicating acquiescence in the contractor's failure. Therefore, the ACO should issue proper and timely written notices to the contractor and make timely recommendations for default termination, as warranted, so as to avoid the aforementioned waiver or abandonment of the delivery schedule and the resultant delay in obtaining delivery of needed supplies, services or construction.

(6) Responsibilities subsequent to request for default investigation: The ACO while continuing his administrative duties in connection with a contract will maintain close liaison with the termination contracting officer (TCO) and the procuring contracting officer subsequent to the request for default investigation, and will:

(i) Coordinate in advance with the TCO any contemplated action in connection with the contract under investigation.

(ii) Coordinate with the TCO before allowing production or quality control personnel to visit contractor's facility in connection with contract being investigated or accepting quantities of items thereunder.

NOTE: The provisions of this section do not preclude acceptance of delinquent items, however, the ACO should insure the contractor has been notified substantially as set forth in § 1008.601–51(c).

NOTE: This provision does not pertain to other contracts with the same contractor that are not under investigation, however, all Government personnel should refrain from discussing any aspects of contracts being investigated for possible default termination unless specifically requested to do so by the TCO.

(iii) Release unexpended funds under contracts terminated for default: The contracting officer responsible for the administration of the terminated contract will determine the exact amount of funds unexpended under the contract as of the effective date of default termination. Upon receipt of information from the TCO that notice of default termination has been released to the contractor, the ACO will prepare and issue an appropriate administrative notice to release the unexpended funds. The administrative notice will: (*a*) Reference the termination action taken and set forth the exact amount of funds to be released and (*b*) will specify that released funds are to be retained for use by the procuring activity in effecting reprocurement of goods or services terminated. (See § 1008.602–6.) If the termination action under the Default clause is subsequently reversed by the Armed Services Board of Contract Appeals, or the notice of default termination is converted to a termination for the convenience of the Government, and either of these actions results in a cost settlement with the terminated contractor, funds in the amount necessary to accomplish settlement of the contractor's claim will be re-obligated to the terminated contract by the appropriate procuring activity.

(b) *Responsibility of production follow-up activities.* Within AMC, production activities will be governed by AMCM 84–2.

(c) *Responsibility of procuring contracting officer.* Procuring Contracting Officers are charged with the responsibility of deciding whether or not a contract should be submitted to a TCO for investigation incidental to default investigation. Procuring contracting officers may submit their recommendation for default termination based upon (1) Information obtained from an administrative contracting officer, (2) their own initiative, or (3) unified efforts of all Government personnel concerned (base procurement activities see § 1008.651).

(i) It is not possible to establish specific and steadfast guidelines as to when the procuring contracting officer should or will request default investigation, inasmuch as each individual contract must be considered on its respective merits. However, the following general guidelines are furnished for application as appropriate.

(*a*) It is not necessary to establish a prima facie case before requesting investigation for default termination.

(*b*) If in doubt as to whether or not a request should be made for default investigation, such doubt should always be resolved in favor of requesting the default investigation.

(*c*) In arriving at a decision for or against requesting default investigation, consideration must be given to the current status of the contract in question, and what effect a delay in action will have upon the rights of the Government. Waiver or abandonment of a delivery schedule must be avoided. In the event it is decided that extension of the delivery schedule is necessary because of the existence of excusable delay, or it will be mutually advantageous to the Government and the contractor, such extension should be promptly covered by a supplemental agreement to the contract. While consideration must normally be obtained for any extension of delivery schedule necessitated by the fault of the contractor, such consideration is not necessarily limited to monetary recoupment and, if justified, may be nominal. In any event, the procuring contracting officer is very seldom justified in permitting a contract to become delinquent and remain delinquent longer than thirty (30) days without taking affirmative action incident to: (*1*) Default termination or (*2*) extension of the delivery schedule.

(ii) Within 5 days after receiving a recommendation from the ACO that the contractor be notified by a "show cause" letter of possible default termination, the procuring contracting officer will notify the ACO of his concurrence or nonconcurrence. If the procuring contracting officer is unable to make a de-

cision within 5 days, he will notify the ACO of the date when a decision may be expected. Under any circumstances, a copy of the procuring contracting officer's reply to the ACO will be concurrently forwarded to the responsible CMR readjustment activity and to AMC (MCPKT). In turn, the readjustment activity of the CMR where the contract is being administered will monitor developments and furnish advice and guidance as deemed appropriate with a view toward protecting the Government's interest and avoiding "waiver" or "abandonment" situations where default termination appears warranted.

(iii) After receiving the ACO's recommendations following the contractor's reply to the Government letter informing him of possible default termination (see paragraph (a)(3), and (4) of this section), the procuring contracting officer will make his decision as to the advisibility of pursuing further default action. In making the decision, the procuring contracting officer will consider the following, in addition to the factors set forth in § 8.602–3(a) of this title:

(*a*) Any changes under the contract, or other action on the part of the Government which might have contributed to the cause or failure to perform.

(*b*) The possibility of collection of liquidated damages (if provided in the contract).

(*c*) Whether it appears that the contractor submitted an unrealistic delivery schedule to obtain an advantage over competitors.

(iv) If the procuring contracting officer, after careful evaluation of all factors involved, decides not to pursue further action incident to requesting default investigation he will:

(*a*) Prepare a detailed statement of findings in at least four copies and obtain concurrence with such findings from the local staff judge advocate.

NOTE: In the event the staff judge advocate does not concur in the aforementioned findings, the procuring contracting officer will hold further action in abeyance and refer the matter to the readjustment activity of the CMR where the contract is being administered for appropriate decision.

After the aforementioned concurrence, the following distribution of the findings will be made promptly by the procuring contracting officer:

(*1*) Contract file (original).

(2) CMR readjustment activity.

(3) Administrative contracting officer.

(4) AMC (MCPKT).

(*b*) If a decision has been reached to permit the contractor to continue performance, prepare the necessary supplemental agreement extending the delivery schedule if the present schedule is about to expire or has already expired.

(*c*) If the contract delivery schedule has not expired and the delinquent contractor has made a satisfactory reply to the ACO's "cure" notice (see paragraph (a)(5) of this section), the contractor may be advised substantially as set forth in § 1008.871(c). Care should be taken to insure that the contractor is not advised that default will be withheld to a date beyond the expiration of the delivery schedule (see § 1008.601–51).

(v) The procuring contracting officer upon reaching the decision to request default investigation will immediately prepare and forward AFPI Form 49, "Termination Authority," in four copies to the readjustment activity of the CMR within whose jurisdiction he is located. In the event that a show cause notice has not been previously issued, the procuring contracting officer may concurrently issue, or instruct the ACO to issue, a "show cause" notice in substantially the form set forth in § 1008.871 (b) or (d) as appropriate.

NOTE: "Stop Work" provision to be used only under certain circumstances. See Footnote with § 1008.871(d).

Inasmuch as the termination contracting officer must rely on the information submitted by the procuring contracting officer, and other Government representatives, it is especially important that every effort be made to provide the data that will be required to successfully accomplish the investigation. Incomplete or inaccurate information results in a delayed investigation and unnecessary communication expense.

(vi) In addition to the requirements of paragraph (a)(5) of this section, the following will be transmitted to the CMR:

(*a*) One legible and complete copy of the contract, change orders, and supplemental agreements thereto.

(*b*) A copy of all pertinent correspondence.

(*c*) A copy of all notices sent to the contractor with proof of service.

NOTE: Normally the aforementioned copies cannot be returned to originator inasmuch as they become a part of permanent records or are used in defending an appeal, if taken by the contractor.

(vii) The procuring contracting officer will notify the ACO promptly of any action taken in relation to default termination. Thereafter, the procuring contracting officer will assist the TCO to the maximum extent possible (see paragraph (d)(4)(i) of this section).

(viii) If the requirements for the supplies or services under a delinquent contract no longer exist and the contractor is agreeable to the acceptance of a no-cost termination, the procuring contracting officer may enter into a no-cost settlement agreement referred to in §§ 8.806–6 and 8.806–7 of this title if such action is in the best interest of the Government (see § 8.602–4(c) of this title). The procedure as set forth in § 1008.653 will be followed in this event (see § 8.602–5 of this title). As an additional requirement, the "Memorandum for File" will spell out: (*a*) When it was first ascertained that the supplies or services were no longer required, and if at that time the contract was delinquent as to substantive provisions, and (*b*) the specific reasons, in detail, why the supplies or services are no longer required. If the contractor is not agreeable to accepting a no-cost termination and the elements of actionable default are present, the procuring contracting officer will send the file, properly prepared according to paragraph (c)(3)(v) of this section, to the responsible CMR readjustment activity for default investigation.

(d) *Responsibility of termination contracting officers authorized to terminate contracts for default.* When a duly designated TCO is assigned to conduct an investigation as to whether or not there is a basis for default termination, he will proceed to make his determination in the manner set forth below:

(1) Expeditiously conduct a thorough review of AFPI Form 49, "Termination Authority", and its attachments, the contract, the facts and circumstances surrounding the contract, all correspondence and related documents, the specific failure of the contractor, the contractor's excuses, if any, for such failures, applicable regulations, and contract law. As deemed appropriate, the TCO may invite the contractor to discuss the matter in person at a conference (see § 8.602–3(b) of this title), and will always insure that the contractor is afforded an ample opportunity to set forth any reasons why the contract should not be terminated for default.

(2) Section 8.602–3(a) of this title sets forth factors that a TCO should consider. In addition, if the records do not reveal sufficient facts to determine whether the contractor's failure is excusable under the terms of the contract, and a "show cause" notice has not been issued, then such notice may be issued by the TCO. The notice will fix a date for reply, advise the contractor that failure to present an excuse may through necessity be considered an admission that none exists, and if appropriate inform the contractor that, pending receipt of the contractor's reply, the work is to be suspended under the contract. If the default action is predicated upon any failure of the contractor other than failure to make timely delivery, the contractor will be given written notice specifying the failure, and a period of at least 10 days will be granted within which to cure such failure. If the contractor fails to cure such failure within the specified time, or if termination action is predicated upon the contractor's failure to make timely deliveries, the contract may be terminated for default immediately. During the default investigation and prior to issuing any default termination to a contractor, the TCO will coordinate with the local staff judge advocate as to the existence of an actionable default and the advisability of terminating the contract for default. However, the final decision as to the action to be taken and the determination of the facts to be included in the findings must be made by the TCO according to his independent judgment. In issuing the notice of termination for default the TCO will comply with § 8.602–3 (c) and (d) of this title. In those cases involving failure to make timely delivery, the termination notice will normally be dispatched by telegram to the contractor (Written Report of Delivery Requested) with telegraphic information copies to the administrative and procuring contracting officer(s). In all other instances (except where time is of the essence) the termination notice (Registered Mail—Return Receipt) will usually follow a letter format, setting forth the pertinent data, including complete and adequate findings. Supplemental distribu-

tion will be according to subparagraph (4)(iii) of this paragraph.

NOTE: A default termination is a unilateral exercise of a right by the Government and a follow-up supplemental agreement to cover this type termination is not issued. If contractor appeal of a default termination to ASBCA is sustained see § 1008.655(e).

(3) If it is determined that the facts are insufficient to support an immediate default termination and it is nevertheless desired by the initiator of the AFPI Form 49 to terminate for good and cogent reasons the termination contracting officer may pursue pretermination negotiation action pursuant to § 1008.602–4. If pretermination negotiation is not warranted or fails to provide a satisfactory solution, the TCO will terminate for default of the contractor or for convenience of the Government, as deemed appropriate, or in the alternative, take action as outlined in § 8.602–4 of this title.

(4) Authority and responsibility of the TCO are set forth below:

(i) Assume full cognizance over the contract upon receipt of AFPI Form 49. After referral to the readjustment activity the initiator of the AFPI Form 49 will not take independent action on any matters pertaining to the contract under investigation without prior approval or concurrence of the TCO.

(ii) Incidental to the default investigation, the TCO may, by unilateral or bilateral action, re-establish a reasonable and realistic delivery schedule for the contract in question if it is ascertained that the delivery schedule in the contract, or amendments thereto, has probably been waived by the Government (see § 1008.601–51). As deemed appropriate by the TCO, the delivery schedule may be re-established by use of: (*a*) letter, (*b*) telegram, or (*c*) formal supplemental agreement to the contract. To the extent practicable this action will be coordinated in advance between the TCO and the initiator of the AFPI Form 49, with notification to the ACO.

(iii) Distribution of notices of default termination and assessment or non-assessment of excess costs (also applicable to breach of contract). The TCO will comply with § 8.602–3(e) of this title and be responsible for accomplishing distribution of copies of the foregoing notices to the following activities:

(*a*) Two copies to contractor by certified or registered mail—return receipt requested. Telegraphic notice of termination (Western Union—Written Report Delivery) may be used when advisable.

(*b*) One copy to buyer.

(*c*) One copy to initiater of the procurement.

(*d*) One copy to accounting and finance office designated to make payment under the contract.

(*e*) One copy to accounting and finance office at Headquarters of TCO.

(*f*) One copy to surety and/or assignee.

(*g*) One copy to APD, AFPRO, or other office responsible for administration of the contract. Base procurement offices also send a copy of breach notices to the appropriate CMR.

(*h*) Contract distribution office: Sufficient copies to service all other distributees under the contract involved.

(*i*) Hq AMC as follows: One copy to Contract Management Division (MCPKT). One copy to Financial Branch (MCPMF).

(5) If an appeal is taken by the defaulted contractor, the TCO will comply with § 1054.504 of this chapter.

(6) Assessment or non-assessment of excess costs of reprocurement: If after conducting a review as set forth in the preceding subparagraphs, the TCO finds and determines that the facts substantiate a default termination (or "breach"), and such action is taken, the TCO will thereafter request the initiator of the AFPI Form 49 to furnish detailed information as to reprocurement of similar supplies or services and the total amount of excess costs, if any, incurred by the Government as a result of the contractors default (for Breach of Contract see § 1008.652). Upon receipt of the requested information, the TCO will prepare findings in which demand will be made upon the defaulted (or "breached") contractor, its sureties and guarantors for payment of the amount of excess costs as computed in the findings, and the contractor will be directed to forward a certified check for such amount (payable to the Treasurer of the United States) to the comptroller, financial division, at the headquarters to which the TCO issuing the notice of assessment is assigned. If funds due to the contractor for work performed under the contract and utilized by the Government are in possession of the accounting and finance office concerned in an amount sufficient to satisfy the assessment, the Notice of Excess Costs will reflect this application of funds, and it will not be necessary for the contractor to make separate payment. If the information submitted by the initiator of the AFPI Form 49 indicates that there is to be no reprocurement of similar supplies or services or that reprocurement of similar supplies or services was accomplished without the Government's incurring any excess cost, a finding as to nonassessment of excess cost (not applicable to Breach of Contract) will be issued to the contractor by the TCO (see §§ 1008.602–6 and 1054.2200 of this chapter).

§ 1008.602–4 Procedure in lieu of termination for default.

In addition to the courses of action set forth in § 8.602–4 of this title the TCO may negotiate a pretermination agreement with the contractor whereby a settlement ceiling amount less than would be payable under an ordinary convenience termination is established, subject to audit verification of contractor costs. This procedure may be considered when the Government received something less than it was entitled to under the contract and yet did receive some benefit for which the contractor should be reimbursed. It can also be utilized where a termination is desired when both the contractor and the Government are at fault to some degree. The fault of the Government may make a default termination unsupportable and yet the fault of the contractor may make an unlimited convenience termination unconscionable. Termination notices issued upon this basis will specifically set forth the limitations upon the respective liabilities of the parties resulting from the termination according to the previously agreed upon conditions. In the event the contract is terminated upon this basis, the TCO may, if deemed necessary, obtain prior coordination of the initiator of AFPI Form 49 and will prepare a written statement to be placed in the termination docket file.

§ 1008.602–6 Repurchase against the contractor's account.

The contracting officer has no authority to waive any or all of the assessment of excess costs. If reprocurement of a like number of items of equal or better quality is accomplished at a cost below the price of the defaulted contract, the Government and not the defaulted contractor is entitled to the savings. However, the contractor will be liable for any excess costs incurred by the Government as a result of reprocurement of supplies or services similar to those terminated for default. Where there is a default of two or more items under a contract, with some of those items being reprocured with resultant excess costs and the remainder being reprocured at a savings to the Government, the contractor is liable only for the next excess costs. For example, when the total savings are greater than the total excess costs for items reprocured, the Government sustains no loss, and excess costs are not assessed. Procuring contracting officers will, if requirements still exist, cause new procurements to be initiated within 30 days after receipt of notice from the TCO that the contract has been terminated for default. Such reprocurement customarily requires a replacement purchase request for any of the terminated contract items still required. Such reprocurement may, however, be effected prior to the issuance of the notice of default termination when the reprocurement meets the criteria for a public exigency contained in § 3.202 of this title. If there is to be a reprocurement, a purchase request will be issued promptly and transmitted to the procuring contracting officer by the organization responsible for requesting the supplies and/or service. Upon receipt of the purchase request, the procuring contracting officer will take prompt action concerning the reprocurement. Unreasonable delay in consummating a reprocurement contract in substitute of a defaulted contract, and/or procurement on the basis of a specification which is materially changed may release a contractor from liability for excess costs of reprocurement. Therefore, before reprocurement is made on the basis of a materially changed specification, consideration will be given to determining whether such change and consequent release of the contractor from any excess costs which may result from such reprocurement is in the best interest of the Government. In general it may be said that the Government's obligation in effecting a repurchase is simply to act reasonable to minimize the damages—otherwise it will lose its right to assess the excess costs. The repurchase must be made within a reasonable time after the termination. The

supplies repurchased must be as similar as practicable to those terminated in quality, unit, and specifications, and the contract terms should vary as little as possible. The contracting officer does have considerable discretion in effecting the repurchase. Since repurchase contracts are for the defaulted contractor's account, they are not subject to the statutory advertising requirements, and the contracting officer may let the contract either by competitive bidding or by negotiation, whichever he deems in the best interests of the Government, so long as his action is reasonable and adequately protects the interests of the defaulted contractor. The face page of the reprocurement contract will bear a statement reading "This contract constitutes a reprocurement of supplies and/or services which were terminated for default under Contract No. ____". Unexpended funds remaining on the terminated contract are normally available to initiate the new procurement (see § 1008.602–3(a)(6)(iii)).

§ 1008.603 Termination of fixed-price construction contracts for default.

§ 1008.603–1 Termination of the contractor's right to proceed.

See § 8.603–1 of this title and refer to § 1008.602–1.

§ 1008.603–3 Procedure for default.

In addition to § 8.603–3 of this title follow the procedures in § 1008.602 as applicable to construction contracts.

§ 1008.650 Authority to terminate for default.

(a) *Delegation of authority to the commander, AMC.* The authority to terminate for default of the contractor those contracts entered into pursuant to the various citations in § 1008.200–50 is hereby delegated to the Commander, AMC, with power of redelegation, to be exercised subject to the provisions of Subchapter A, Chapter 1 of this title and this subchapter, and other pertinent publications and directives.

(b) *Delegation of authority to Director of Procurement and Production, Hq AMC.* The authority vested in the Commander, AMC, in paragraph (a) of this section, is hereby delegated with power of redelegation to the Director of Procurement and Production, Hq AMC, and in his absence, the acting Director of Procurement and Production, Hq AMC.

(c) *Redelegation of authority from the Director of Procurement and Production, Hq AMC.* The authority to terminate contracts for default of the contractor is hereby delegated to the respective Commanders of the Commands and/or activities named below, with power of redelegation to duly appointed contracting officers:

(1) Chief, Contract Management Division, Hq AMC.

(2) Commander, each Contract Management Region, within the CMR readjustment division.

(3) Director of Procurement, Hq ARDC, with authority to redelegate the appointing power to equivalent staff officers at subordinate ARDC activities.

(4) Outside the continental United States:

(i) Major oversea commanders.

(ii) Commander, AMFPA.

(iii) Commander, AMFEA.

(iv) Respective commanders, MATS, ADC and SAC installations, in areas not within the jurisdiction of any other major commander.

(v) Chief, AF foreign missions.

(vi) Air Attaches.

§ 1008.651 Contracts administered by contracting officers authorized to act in dual capacity as PCOs and ACOs.

This category includes contracts executed by organizations such as base procurement activities where the contracts are administered by the contracting officer effecting the procurement rather than referring them to a CMR for administration. Insofar as is applicable to contracting officers in base procurement activities, the provisions of § 1008.602–3 (a) and (c), will be complied with to the maximum extent practicable.

(a) When the facts and circumstances require the initiation of a request for default investigation, the cognizant base procurement contracting officer will normally issue a "show cause" notice to the contractor in substantially the format set forth in § 1008.871 (b) or (d). Concurrently with the preparation of the "show cause" notice the base procurement contracting officer may immediately prepare and forward AFPI Form 49, "Termination Authority," as set forth in paragraph (b) of this section. The Termination Authority will recommend investigation for default termination and will be supported by a signed detailed memorandum, and exhibits thereto, incorporating the requirements of § 1008.602–3(c) (5) and (6).

(b) The Termination Authority and supporting data will be forwarded by the base procurement contracting officer as follows:

(1) Within the continental United States by:

(i) Base procurement or other procurement activity within ARDC only: as directed by Commander, ARDC.

(ii) Base procurement activities of all major commands, other than ARDC: directly to the readjustment activity of the contract management region in whose geographical region they are located, with information copies, if any, distributed according to instructions from the commanders of the respective major commands.

(2) Outside the continental United States: To the TCO specifically designated to terminate contracts for default of the contractor as set forth in § 1008.650(c)(4).

§ 1008.652 Procedure for handling termination for breach of contract with contracts not over $2,500, that do not contain default clauses.

(See § 16.303 of this title.)

(a) Where a contractor has failed to perform according to the terms of his contract without justifiable excuse and the base procurement or equivalent contracting officer at the activity issuing the contract is of the opinion that the contractor has thereby "breached" a contract that does not contain a default clause, the contracting officer will take the following action:

(1) Conduct an investigation as described in § 1008.602–3(d) in the degree necessary to determine whether or not the Government may refuse to accept further deliveries and subsequently reprocure the supplies or services from another source. Should such an investigation indicate that the Government may not at the time refuse to accept goods or services, the contracting officer may thereafter attempt to negotiate for and expedite delivery, or in the alternative he may terminate the contract for convenience of the Government on a cost or no cost basis, as warranted. If doubt exists as to whether a bilateral contract exists, it is suggested that the advice of the local staff judge advocate be obtained.

(2) If the investigation indicates that the Government is not obligated to accept future deliveries and may purchase the goods or services from another source, the contracting officer at the activity issuing the contract will, after obtaining a local staff judge advocate review (see Subpart E, Part 1054 of this chapter), notify the contractor by telegram (Written Report of Delivery) or registered mail (Return Receipt) in substantially the format shown below:

> You are hereby notified that your failure to perform (Contract or Purchase Order No. ------) in the time required by the terms thereof constitutes a Breach of Contract. The Government will no longer accept delivery thereunder and at its option may procure the undelivered supplies from another source. The Government will hold you liable for any and all damages resulting from your Breach of Contract.

(3) Upon receipt of the "breach" notice by the contractor the contracting officer may then reprocure the goods or services from another source if the requirement still exists.

(4) Upon execution of the reprocurement contract, the contracting officer will, after coordination with the local staff judge advocate, make demand upon the "breached" contractor for all valid damages, in the form of a letter "Demand for Payment of Damages as a Result of Breach of Contract." The letter demanding damages need not follow any particular format but should clearly state: (i) Contractor's name and complete address, (ii) contract or purchase order number, (iii) the date of the notice of breach of contract, (iv) name and complete address of reprocurement contractor plus the date and contract number, (v) a reasonable detailed computation of the method of arriving at the extent of damages, and (vi) demand to forward payment to the appropriate accounting and finance activity (payable to the Treasurer of the United States).

(5) Concurrently with the issuance of the demand for payment of damages notice, the contracting officer will furnish a copy of that notice to the appropriate accounting and finance office, as cited in the breached contract, to permit the instituting of necessary collection procedures (see Subpart V, Part 1054 of this chapter). After referral to the appropriate accounting and finance compo-

nent the contracting officer is not required to make any further attempts to recover the damages caused by the "breach of contract," unless requested to do so by the accounting and finance office.

(b) Some AF contracts do contain a Disputes Clause although the termination clauses have not been incorporated therein. If the contract contains a Disputes Clause the "breached" contractor may properly appeal the "breach notice" to the Secretary of the Air Force. In the event of an appeal the provisions of § 1054.504 of this chapter will be complied with.

(c) If the contract contains neither a default termination clause nor a disputes clause the contractor is not entitled to invoke the appellate procedures afforded by the Disputes Clause. The "breached" contractor may normally resort to a court of law for his remedy, if any.

(d) Distribution of copies of notices: Upon issuance to the contractor of (1) A "breach" notice or (2) a demand for payment of damages, one (1) copy of each notice will be distributed to each recipient of a copy of the contract, and one (1) copy of each notice will be promptly forwarded to Hq AMC (MCPKT). Further distribution of copies of the aforementioned notices will be kept to a minimum, however, major commands may implement this distribution provision to the extent deemed appropriate.

§ 1008.653 Estimated administrative expense of default termination.

It is estimated that the cost to the Government (exclusive of costs involved in defending any appeal) for processing a termination for default involves a minimum administrative expense of $200. Therefore, in cases where the procuring contracting officer is of the opinion that default action is warranted, but determines by contacting other potential suppliers that the excess costs of reprocurement will not exceed $200, a no cost convenience supplemental agreement may be entered into with the contractor if the procuring contracting officer deems such action to be in the best interests of the Government, subject to the following.

(a) Prepare a "statement of findings" for the contract file stating, along with the reasons therefor, the estimated excess costs of reprocurement and the sources that were contacted to obtain such estimate.

(b) In lieu of the preparation of AFPI Form 49 obtain coordination on the aforementioned "statement of findings" from the local staff judge advocate.

(c) Obtain or assign a Termination Authority Docket Number for the no cost termination.

(d) Enter into a no cost termination supplemental agreement as set forth in §§ 8.806–6 or 8.806–7 of this title.

(e) AMC activities will also provide the CMR readjustment activity with one copy of the "statement of findings" and a copy of the termination supplemental agreement.

NOTE: It is not anticipated this provision will be invoked in small dollar procurements as a means of avoiding "breach" action if otherwise justified.

Whenever a lessee has violated any provision of the lease, such as failure to pay rent, failure to preserve and maintain leased property, or any other provision of the Lease Agreement, the ACO will serve the lessee with a "Notice to Cure" by Registered Mail—Return Receipt, and forward a copy to the CMR authorized to terminate the lease for default. The "Notice to Cure" will grant the lessee a reasonable period of time of not less than 10 days to cure the delinquency. The suggested format for "Notice to Cure" letter, below, may be used:

1. As a result of your failure to _____ as required by Clause _____ of subject Facilities Lease Agreement, the Government is considering terminating subject agreement under the provisions of Clause _____ (Default).

2. You are hereby granted _____ days within which to cure your delinquency. Failure to do so may result in default termination without further notice.

3. Your attention is invited to the rights of the Government in event the lease agreement is terminated for default.

§ 1008.655 Responsibilities of Hq AMC, CMR's, and Hq ARDC readjustment activities incident to default.

(a) When a request for default investigation is received from a procuring contracting officer or a base procurement contracting officer, the readjustment activity will ascertain that the initiating contracting officer has complied with all requirements of this Subpart F. In the event additional requirements are to be met in order to assure the completeness and accuracy of the case, endeavor to avoid excessive delay in completing the default investigation. Consistent with good management practices, use the most expeditious means of communication available to avoid long or unreasonable delays in reaching a decision incident to terminating a contract for default of the contractor.

(b) All requests for default investigation submitted by procuring contracting officers or base procurement contracting officers will be forwarded to a TCO empowered to terminate contracts pursuant to § 1008.650. This decision (default) is reserved solely to termination contracting officers empowered under the provisions of § 1008.650.

(c) All termination notices relating to default of the contractor will be identified by a Termination Authority Docket Number. A separate docket number will be used for each individual contract, even though a single contractor may be concurrently under consideration for default on several different contracts.

(1) In CMR terminations the readjustment office at the terminating CMR will be responsible for the assignment of a termination docket number.

(2) In ARDC terminations the individual assigned responsibility for readjustment matters at the terminating activity will be responsible for assignment of a termination docket number.

(3) The first symbol of the default docket number for AMC and ARDC activities will be according to procedure set forth in § 1008.202–50(f). The second symbol will always be "D" for default. A five symbol code will be used. Beginning with the third symbol the numbering of dockets will commence with 001 and will continue uninterrupted from year to year. A new numbering series will not be initiated at any particular time, such as the beginning of the fiscal or calendar year.

Example. The first default docket number for the Central CMR would be CD001, the second CD002, the third CD003, etc. The first default docket number for the Western CMR would be GD001, the second GD002, the third GD003, etc.

(d) Subsequent to a default investigation if the decision is made to terminate the contract for the convenience of the Government, the investigation will be closed out under the default docket number (paragraph (c) of this section) and reopened under a convenience docket number according to § 1008.202–50(f).

(e) If the Armed Services Board of Contract Appeals sustains the contractor's appeal, and a motion for reconsideration thereof is not made by the Government, or is denied, the TCO will upon receipt of a copy of the ASBCA decision from Hq AMC (MCJF) issue a Notice of Conversion converting the termination to one for convenience of the Government. The procedure applicable to convenience termination actions, as outlined in § 1008.202 will be followed, including the substitution of a convenience docket number. Normally, the default docket file including a copy of the ASBCA decision will be made available for use by the TCO assigned to negotiate the settlement of the converted termination.

(f) AFPI Form 80A, "Default Record", will be prepared and maintained for each contract investigated for default. This card will serve as a permanent alphabetical default record.

(g) AFPI Form 80, "Termination Activity Report". Each CMR, and Hq ARDC (includes information from all ARDC activities) will prepare AFPI Form 80 as of the last day of February, April, June, August, October, and December. The Form will be prepared in duplicate; original to be mailed to AMC (MCPKT) (due on 10th day after end of reporting period) and one copy retained by the activity preparing the form.

(h) Retirement of termination docket files. In the event that the defaulted contractor does not appeal within the period authorized in the disputes clause of the contract, or if such appeal is denied by the Armed Services Board of Contract Appeals, AFPI Form 14, "Contract Records Disposition Notice," will be prepared by the TCO issuing the default notice and forwarded to contract distribution of the procurement activity. The remarks section of AFPI Form 14 will contain the following statement:

This contract was terminated for default of the contractor by notice dated _____. Paragraphs 1, 2, and 3 above are not applicable. The official termination docket file was closed on _____.

In the event a contractor's appeal is sustained, or the default termination is for any other reason converted to a termination for convenience of the Govern-

ment (see paragraph (e) of this section) the readjustment activity issuing the conversion notice will forward the default docket file to the contracting officer to whom the contract has been referred for settlement, who will subsequent to settlement prepare the AFPI Form 14.

Subpart G—Clauses

Subpart G is amended as follows:

1. Add § 1008.700 as follows:

§ 1008.700 Scope of subpart.

This subpart contains special purpose termination clauses for fixed-price personal services, nonpersonal services, technical services, time and material, facilities and letter contracts.

§ 1008.751 [Amendment]

2. Redesignate § 1008.751 as § 1008.750, and add: "(Oct. 1957)" following the title of the clause.

§ 1008.752 [Amendment]

3. Redesignate § 1008.752 as § 1008.751 and add "(Oct. 1957)" to the title of the clause.

§ 1008.753 [Amendment]

4. Redesignate § 1008.753 as § 1008.752; add "(Dec. 1960)" to the title of the clause, and revise paragraph (c) to read as follows:

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer its termination claim, in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than 1 year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within such 1-year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such 1-year period or any extension thereof. Upon failure of the Contractor to submit its termination claim within the time allowed, the Contracting Officer may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

5. Add §§ 1008.753 and 1008.754 as follows:

§ 1008.753 Termination clause for facilities contracts.

See §§ 1007.2703–13 and 1007.2803–9 of this chapter.

§ 1008.754 Termination clause for letter contracts.

See §§ 1007.2504–6 and 1007.2506–8 of this chapter.

§§ 1008.762—1008.762–8 [Deletion]

6. Delete §§ 1008.762 through 1008.762–8.

Subpart H—Forms

1. Add § 1008.850 as follows:

§ 1008.850 Instructions for completing AFPI Form 49, "Termination authority."

(a) This form, consisting of four parts, will be completed (six copies) as follows:

(1) Part I, AFPI Form 49, Termination Request, will set forth the following information with respect to the termination:

(i) Item 1: Full designation of the procuring contracting office, including organizational code and any other appropriate identifying information, such as particular contracting officer or buyer.

NOTE: In activities; such as base procurement, where the multiple functions of: (*a*) Originating requests for procurement, (*b*) procuring, and (*c*) administering the contract are consolidated, Item 1 and Item 2 will be completed to the extent necessary to reflect the multiple functions.

(ii) Item 2: Full designation of the activity originating the request for procurement, including (*a*) Initiator, (*b*) Organizational Code, (*c*) Telephone Extension.

(iii) Item 3: Name of Contractor.

(iv) Item 4: Contractor's address, including (*a*) Street and number, (*b*) city, (*c*) postal zone, and (*d*) state, as appropriate.

(v) Item 5: Contract or purchase order number.

(vi) Item 6: Property Class when specified.

(vii) Item 7: Termination to be effective (*a*) Immediately, (*b*) on an exact future date to be specified, or (*c*) for other reasons to be fully explained under Part III (Remarks), AFPI Form 49.

(viii) Item 8A: Convenience of the Government Termination, either (*a*) Partial or (*b*) complete. Inexcusable contractual delinquency is normally a basis for default investigation.

NOTE: The originator of a recommendation of a termination for convenience of the Government must thoroughly assure himself no actionable basis exists for an investigation for default termination under the provisions of Subpart F of this part, Default.

(ix) Item 8B: Default of the Contractor. See Subpart F of this part.

(x) Item 9: Furnish brief factual resume of justification for termination. Justification based on "no further requirements by the Government" will require an explanation for the lack of requirement indicating why termination is more economically feasible than acceptance of the item(s).

NOTE: When used by AMC supply activities, only, a statement of justification indicating the program against which the computation was accomplished will be sufficient justification, e.g., "Reduction in Requirements as a result of (specific program or authority)".

(xi) Item 10: Items Terminated:

Note: If contract is Classified prepare according to § 1008.202–50(j).

For unclassified contracts list: (*a*) Contract items number, with only one item to a line, (*b*) quantity to be terminated, (*c*) unit of measure, such as each pair, or assemblies, (*d*) adequate description of nomenclature as should appear in the termination notice, and (*e*) total actual or estimated value of items to be terminated, listing each item separately (exact amount, or careful estimate if exact amount cannot be ascertained) with a Grand Total of all items terminated.

(xii) Item 11: Disposition of Terminated Inventory and Special Tooling. Item 11A, 11B, 11C, and 11D are self-explanatory. Accurate and complete information assists the contracting officer effecting settlement of the termination and reduces or eliminates the necessity for post termination inquiry to the originating activity regarding disposition of inventory and tooling.

(xiii) Item 12: Coordination and Approval are to be held to absolute minimum to insure expeditious processing of the Termination Request. Obtain only the necessary coordination prior to forwarding AFPI Form 49 to the procuring contracting office. Information routing will be accomplished after approval and dispatch.

(2) Part II, AFPI Form 49, Termination Authorization prepared by the procuring contracting office, will set forth the following information with respect to the termination.

(i) Item 13: Enter the name of the local readjustment activity, citing symbol, as appropriate.

(ii) Item 14: Enter full designation of procuring contracting office, including: (*a*) Name of initiator, (*b*) organizational symbol, and (*c*) telephone extension.

(iii) Item 15: Self-explanatory.

(iv) Item 16A: See subparagraph (1) (viii) of this paragraph.

(v) Item 16B: See Subpart F of this part, (Default).

(vi) Item 17: See subparagraph (1) (x) of this paragraph. Comment upon justification given under Item 9, Part 1, AFPI Form 49 and supplement as warranted.

(vii) Item 18: See subparagraph (1) (vii) of this paragraph.

(viii) Items 19, 20, 21, 22, 23, 24, 25, and 26: Self-explanatory.

(ix) Item 27: Only essential coordination and approval will be effected prior to dispatch of the AFPI Form 49 to the local readjustment activity. Informational routing may be accomplished concurrently, or later, but will not delay the action required hereunder.

(3) Part III, AFPI Form 49, Remarks. Include any other pertinent information or special instructions.

(4) Part IV, AFPI Form 49, Termination Assignment. Assign the termination case for settlement by completing this part (see § 1008.202–50(d)).

§ 1008.712–50 [Amendment]

2. Redesignate § 1008.712–50 as § 1008.851 and add: Note: See § 1053.407 of this chapter, "Execution of contracts; requirements", at end of the agreement.

§ 1008.712–51 [Redesignation]

3. Redesignate § 1008.712–51 as § 1008.852.

§ 1008.712–52 [Amendment]

4. Redesignate § 1008.712–52 as § 1008.-853 and add the following at the end of the agreement:

NOTE: See corporate secretary's certificate in § 1008.851; see also § 1053.407 of this chapter.

§ 1008.712–53 [Amendment]

5. a. Redesignate § 1008.712–53 as § 1008.854.

b. Following Clause 6 insert:

(See Article 6 (1) through (9) in § 8.806–1 of this title and Article 6 (5) through (14) in § 8.806–4 of this title for examples of excepted or reserved items.) 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, shall be reserved as far as the Subcontractor as well as the Contractor is concerned. These clauses pertain to, without limitation, the following topics: labor law, contingent fees, domestic articles, employment of aliens, "Official not to benefit".

c. At the end of the agreement change Note to read as follows:

NOTE: See corporate secretary's certificate in § 1008.851; see also § 1053.407 of this title.

§ 1008.712–54 [Amendment]

6. Redesignate § 1008.712–54 as § 1008.-855, and add the following at the end of the agreement:

NOTE: See corporate secretary's certificate in § 1008.851; see also § 1053.407 of this chapter.

§ 1008.712–55 [Amendment]

7. Redesignate § 1008.712–55 as § 1008.-856, and add the following at the end of the agreement:

NOTE: See corporate secretary's certificate in § 1008.851; see also § 1053.407 of this chapter.

§ 1008.756 [Amendment]

8. Redesignate § 1008.756 as § 1008.857, and add the following at the end of the assignment:

NOTE: See corporate secretary's certificate in § 1008.851 (insert the designation "Assignment" in place of "Supplemental Settlement Agreement" in such certificate). See also § 1053.407 of this chapter.

§§ 1008.757, 1008.763, 1008.764 and 1008.765 [Redesignation]

9. Redesignate §§ 1008.757, 1008.763, 1008.764 and 1008.765 as §§ 1008.858, 1008.859, 1008.860 and 1008.861.

§ 1008.761 [Deletion]

10. Delete § 1008.761.

11. Add §§ 1008.862, 1008.863, 1008.-863–1, 1008.863–2, 1008.864—1008.864–9, 1008.865—1008.865–2, 1008.866 and 1008.-867 as follows:

§ 1008.862 Settlement memorandum for fixed-price terminated contracts.

The following outline is prescribed for use in preparing the Settlement Memorandum pertaining to a terminated fixed-price contract. Appropriate modifications may be made as required (see § 1008.210).

(a) *Heading.* (1) Date of memorandum.

(2) Designate as Settlement Memorandum for File or Settlement Review Board; if latter, identify by complete name (e.g., Headquarters, Air Materiel Command, Settlement Review Board) and include address.

(3) Subject: List name and address of contractor, whether prime or subcontractor, contract number, and Termination Docket Number. If settlement pertains to a subcontract, list applicable prime contractor and contract number as well as subcontractor, in the subject.

(b) *Body.* (1) Opening paragraph: Set forth the purpose of the Memorandum (i.e., the Memorandum summarizes the pertinent facts relating to the settlement of the terminated contract). If the Memorandum is addressed to a settlement review board, state the reason for such submission.

(2) Names, titles, and addresses of Government and contractor personnel who participated in the negotiation.

(3) Name and address of contractor: If a proprietorship or a partnership, include names and addresses of owner or all of the partners; if a corporation, set forth name of State in which incorporated. If claimant is a subcontractor, set forth that information and list the prime contractor and all intervening subcontractors; state whether the subcontractor is affiliated with the prime contractor or upper-tier subcontractors and explain any such affiliation.

(4) Description of terminated contract:

(i) Date of contract and contract number: (If claimant is a subcontractor, include the prime contract number and purchase order number, if any, between the prime contractor and the Government.)

(ii) Type of contract: fixed-price, fixed-price with price redetermination, letter contract, etc.

(iii) General description of items covered by the contract.

(iv) Total contract price.

(v) Brief summary of the essence of the termination clause. (Identify by contract clause number.)

(5) Description of the termination:

(i) Nature of termination: i.e., total or partial, items and quantity canceled, unit prices (estimated if not specifically set forth in the contract) and total contract price of items canceled. State whether there were any amendments or changes to the Notice of Termination and their result. Include statement showing whether or not termination was for convenience of the Government. If not, explain reason for termination. (See also subdivision (iii) of this subparagraph).

(ii) Effective date of termination.

(iii) State whether contractor stopped work on effective date of termination and notified subcontractors to do likewise. If not, give reasons for delay and whether or not the delay was approved or ratified by the termination contracting officer. If the delay was not approved or ratified, include a definite statement as to whether or not costs incurred by the contractor or subcontractor during such time were recognized as allowable or nonallowable in the settlement. If the latter costs were allowed, explain why.

(iv) If claimant is a subcontractor and the termination did not result from termination of the prime contract but from other circumstances (such as engineering changes) which require the Government to bear the cost of settling the terminated subcontract, describe those circumstances.

(6) Description of contractor's settlement proposal:

(i) Date filed and amount: If interim claims were filed, include information such as the number of claims, amounts, and any other facts deemed pertinent.

(ii) Type of settlement proposals: i.e., inventory basis, total cost basis, or other basis. If settlement proposal was filed on other than the inventory basis, include statement as to required approvals (see § 8.307–2 (b) and (c) of this title, and § 1008.307–2) and give the reasons for such approval.

(7) Description of reviews and settlement proposal.

(i) Date copy of Settlement Proposal referred to Auditor General for review and written report; type of review requested.

(ii) Date audit report received.

(iii) In the event of an item-by-item settlement set forth either in the body of the Memorandum or as an exhibit thereto, a tabular summary of the contractor's claim, the Auditor General's recommendations, and the terminating contracting officer's recommendations substantially as follows:

Items claimed	Amount claimed	Auditors recommendation for: Acceptances, nonacceptances, further consideration	Termination contracting officer's recommendation
List of the items in the contractor's Settlement Proposal for which reimbursement is claimed.	List amount after each item claimed by contractor in its Settlement Proposal.	List the separate amounts after each item recommended by the auditor in each of the 3 categories above.	List the amount after each item allowed by the TCO.

(iv) Describe any other reviews made such as legal, engineering, plant clearance; give dates, names, titles or reviewers, and type and extent of reviews.

(8) Describe the factors considered in arriving at the negotiated settlement. This is particularly important in case of lump-sum settlement:

(i) Date or dates of negotiation.

(ii) Breakdown.

(*a*) Take each item of the claim and discuss each separately. State the amount claimed for the item by the contractor, show what the Auditor General recommended as to acceptance, nonacceptance, or further consideration. In addition, make specific references and comments as required under § 8.210 of

this title as to any items included in the settlement proposal which are listed in Part 15 of this title.

(b) If the settlement was negotiated on an item-by-item basis, set forth the exact amounts allowed and disallowed by the termination contracting officer and explain the major and pertinent factors considered for each item resulting in the specific allowances and disallowances.

(c) If items recommended for nonacceptance or for further consideration by the Auditor General have been allowed in the settlement, state the reasons for the Auditor General's recommendation and explain fully and clearly the basis upon which the termination contracting officer allowed all or any part of the amount for such items.

(d) If the settlement was negotiated on a lump-sum basis, the provisions of (a), (b), and (c) above, explaining the factors considered should be complied with but specific amounts allowed and disallowed as to each item are not required to be set forth. However, if an item was completely disallowed, that information should be stated.

(e) State whether the inventory and items of the claim are allocable to the terminated portion of the contract, and set forth the steps taken to verify such allocability.

(f) If a partial termination is being settled, state whether contractor has filed a request for an equitable adjustment for the continuing portion of the contract.

(g) Describe and explain any adjustments included in the settlement in connection with any price redetermination clause in the contract, contract change notifications, or Unadjusted Contractual Changes.

(h) Profit: Explain the basis and factor considered in arriving at the profit. If there was an item-by-item settlement, set forth the percentage and amount.

(i) Termination expense: Explain in manner described in (a), (b), and (c) above.

(j) Loss contract: If a loss would have been incurred had the contract been completed, explain what adjustment for the loss was made in arriving at the settlement amount.

(k) Subcontractors' claims.

(l) List the number of subcontractors' claims settled substantially as follows:

	Number of claims	Total dollar amounts
Approved by termination contracting officer		
Approved by contractor under authority of § 8.208–4 of this title		
Approved by Settlement Review Board [1]		
No-cost settlements		

[1] If the amount of the subcontractor settlement requires review and approval of a settlement review board, it must be submitted to the board with a separate Settlement Memorandum and will not be incorporated in the prime contractor Settlement Memorandum.

(2) Set forth the facts pertaining to any unusual subcontractor matters and settlements.

(3) Explain the procedure used by the termination contracting officer in reviewing and approving subcontractors' claims and in making selective reviews of subcontractor settlements made by the contractor under the authority of § 8.208–4 of this title.

(9) Plant clearance:

(i) Give name of plant clearance officer who handled plant clearance actions. State whether dispositions were approved by termination contracting officer or by plant clearance officer under delegation of authority from the termination contracting officer.

(ii) Set forth whether all plant clearance action has been completed; describe dispositions. List dollar amounts of inventory requisitioned by Government, inventory sold, and the sums received from the sales. Comment on any unusual matters relating to plant clearance actions.

(iii) Indicate disposition of Government-furnished property, if any.

(iv) Set forth pertinent facts relating to disposition of special tooling and equipment.

(10) Deductions:

(i) Payments: List information as to any unliquidated advance or partial payments and explain how recouped in settlement.

(ii) Credits: List plant clearance disposal credits resulting from plant clearance actions, such as retentions by contractor and sales.

(iii) Other deductions: List and explain any claims by the Government against contractor and state how recouped in settlement.

(11) Assignments: List name and address of any assignee of the contract, amount of assignment, extent (that is, complete or partial assignment of funds under the contract) and whether any payment is being made to assignee.

(12) Summarize the settlement in tabular form substantially as follows:

(i) Gross termination on settlement	$----
(ii) Loss: Disposal credits	----
(iii) Net settlement amount	----
(iv) Less:	
(a) Advance payments outstanding	----
(b) Interest on advance payments	----
(c) Partial payments outstanding	----
(d) Previous partial settlements	----
(e) Other credits or deductions	----
Total	----
(v) Termination amount payable	----
If complete termination, add following to the above:	
(vi) Total contract price	$----
(vii) Less:	
(a) Total payments to date (includes payments for completed items or work plus items (iv) (a), (c), and (d) above)	----
(b) Termination amount payable (less (iv) (b) and (c) above)	----
(c) Funds reserved for exclusions	----
If partial termination, add the following to the above:	
(vi) Contract price of items canceled	$----
(vii) Less: Net Settlement cost (item (iii) above).	
(viii) Reduction in contract price (credit)	----
(8) Final contract price (items (vii) (a), (b), and (c) above)	$----
(9) Reduction in contract price (credit) (item (vi) minus item (viii) above)	----

(13) Exclusions: Describe any items reserved from the settlement for later disposition and indicate the amount of funds, if any, reserved.

(c) *Recommendation.* Set forth the amount of the gross settlement less amount of appropriate credits resulting in the net settlement recommended by the termination contracting officer and include a definite statement that the settlement is considered by the termination contracting officer as being fair and reasonable to the Government and contractor.

(d) *Settlement memorandum.* Must be signed by the termination contracting officer.

§ 1008.863 Settlement Memorandum for terminated cost and CPFF contracts.

The following outline is prescribed for use in preparing the Settlement Memorandum pertaining to a terminated cost or cost-plus-a-fixed-fee contract. Appropriate modifications may be made as required (see § 1008.210).

(a) *Heading.* Same as § 1008.862.

(b) *Body.* (1), (2), (3). Same as corresponding numbered items of § 1008.862.

(4) Description of terminated contract.

(i) Furnish same information as listed in subdivisions (i), (iii), and (v) of § 1008.862(b)(4).

(ii) Type of contract: Cost reimbursement, cost-plus-a-fixed-fee, letter contract, etc.

(iii) Total contract price: Estimated cost and fixed fee in the case of cost-plus-a-fixed-fee contracts.

(iv) Summarize briefly the history and performance under the contract prior to termination.

(5) Description of termination: Same as § 1008.862(b)(5) except that:

(i) In lieu of unit prices as required under the Fixed-Price Memorandum, the estimated costs and fixed fee of the canceled items and the estimated total contract price of the cancellation will be listed.

(ii) If subsequent to a partial termination, the contracting officer determines, pursuant to Part 8 of this title and this part, that performance of the contract is virtually complete or that performance of any continued portion is only on subsidiary items or spare parts or is otherwise not substantial so that the partial termination is in effect a complete termination, this will be so stated.

(6) Description of contractor's settlement proposal.

(i) Same as § 1008.862(b)(6), including amount of costs and fixed fee claimed.

(ii) Type and extent of settlement proposal: For example, DD Form 547. Explain whether the settlement proposal includes costs and fixed fee or is limited to the adjustment of the fixed fee. If the proposal includes costs and fixed

fee, state whether the contractor discontinued submission of Standard Form 1034 vouchers and when. If the proposal is for the fixed fee only, state that the contractor has been, or is, "vouchering out" its costs under Standard Form 1034 vouchers.

(7) Audit status date: State whether required and date established; set forth information as to date General Accounting Office final audit status letter was received and whether any formal exceptions were issued. Identify and describe essence of any GAO exceptions.

(8) Description of reviews of settlement proposal: Set forth the same type of information as outlined in § 1008.862 (b) (7) (i), (ii), and (iv).

(9) Explain the negotiated settlement: Describe the factors considered in arriving at the agreed upon amount. This is particularly important in the case of lump-sum settlements.

(i) In the case of a complete termination, summarize the proposed settlement in tabular form substantially as listed in §§ 1008.863–1 and 1008.863–2.

(ii) Date or dates of negotiation.

(iii) Breakdown.

(*a*) Set forth the same type of information required under § 1008.862(b) (8) (ii) (*a*) through (*e*).

(*b*) If any costs previously disallowed by a contracting officer are included in the proposed settlement, identify and explain the reason for inclusion of such costs.

(*c*) Describe and explain any adjustments included in the settlement resulting from any contract change notifications or Unadjusted Contractual Changes.

(*d*) Show disposition of GAO exceptions by breakdown substantially as follows:

(*1*) Amount of GAO exceptions shown to be outstanding in final audit status letter. $_____.

(*2*) Amount cleared by GAO withdrawal and included in settlement. $_____.

(*3*) Amount cleared by refund and waived by contractor in settlement. $_____.

(*4*) Amount cleared by refund and subject to Reclaim Voucher approved for payment by GAO but not paid and to be reserved in settlement agreement. $_____.

(*5*) Amount cleared by refund but subject to Reclaim Voucher not approved for payment by GAO, not waived by contractor, and to be reserved in settlement agreement.

(*6*) Amount to be cleared by deduction in proposed settlement. (State whether contract waives right to claim amount or whether same is to be reserved in the settlement agreement.) $_____.

(*e*) Describe and explain disposition in the settlement of any item of cost of the same nature as GAO exception. (See § 8.405–6(c) of this title.) Include, among the information, amount of the items, amount waived by contractor, and amount, if any, which contractor has not waived and for which rights, if any, are to be reserved in settlement agreement.

(*f*) Termination or settlement expense. Same as § 1008.862(b) (8) (ii) (*i*).

(*g*) Other adjustments in cost: Describe and explain any substantial or otherwise important adjustments in cost not covered by any of the items above.

(*h*) Subcontractor claims:

(*1*) Same as § 1008.862(b) (8) (ii) (*k*) (*1*), (*2*), and (*3*).

(*2*) If any subcontractor settlements were not presented on DD Form 547 or substantially similar settlement proposal form and the amounts were "vouchered out" by the subcontractor on Standard Form 1034 vouchers, furnish such information, including the number and dollar amount of such settlements.

(*i*) Fixed fee: State what basis was used in adjusting the fixed fee, for example, percentage of completion; if other basis, identify and describe adequately. Describe how the total fixed fee was computed, including in the description the factors considered and the extent to which such factors were weighed. Include any tabular summaries or breakdowns deemed helpful to understanding the computation process. For a discussion as to adjustment of the fixed fee, see § 8.404–1 of this title and § 1008.404–1.

(10) Plant clearance: Same as § 1008.862(b) (9).

(11) Deductions: Same as § 1008.862 (b) (10). Include under this category any deductions resulting from liability of the contractor for property if same has not been described and explained under item (10) above.

(12) Assignments: Same as § 1008.-862(b) (11).

(13) Exclusions: Same as § 1008.862 (b) (13). Include subcontractor, claims reserved for later settlement, Reclaim vouchers, and GAO exceptions which have not been waived by contractor.

(c) *Recommendations.* Set forth the amount of the gross settlement less amount of settlement recommended by the termination contracting officer, and include a definite statement that the settlement is considered by the termination contracting officer as being fair and reasonable to the Government and contractor.

(d) *Signature.* The Settlement Memorandum must be signed by the termination contracting officer.

(e) *Partial terminations.* The Settlement Memorandum relating to the adjustment of the fixed fee in the case of a partial termination of a CPFF contract will include to the extent applicable information outlined in paragraphs (a) and (b) of this section. In addition, the Memorandum will contain a full and complete explanation of how the fixed fee was computed and adjusted and recommendation and signature as required under paragraphs (c) and (d) of this section. Where the percentage of completion basis is used in adjusting the fixed fee, a tabular summary similar to that set forth in § 1008.404–1 is deemed advisable as an exhibit.

§ 1008.863–1 Summary of CPFF final settlement.

1. Costs reimbursed on Standard Form 1034 cost vouchers (excluding progress payments on account of unsettled overhead included in item 2):		
a. Total paid		$_____
Less: b. Uncleared GAO exceptions	$_____	
c. GAO exceptions cleared by refund only	_____	_____
d. Net reimbursement on Standard Form 1034 cost vouchers		_____
2. Unreimbursed costs submitted on DD Form 547 and included in settlement. (See breakdown, § 1008.760–2)		_____
3. Other costs submitted and paid on Standard Form 1034 vouchers and not included in item 1 or 2:		
a. Post-termination expense	$_____	_____
4. Reclaim vouchers authorized for payment by GAO but not yet paid		_____
5. Gross costs included in settlement (total items 1–4)		_____
6. Total fixed fee		_____
7. Gross settlement (total items 5–6)		_____
8. Less: Deductions not reflected in items 1–7:		
a. Disposal credits	$_____	
b. Liability for property	_____	
c. Other charges against contractor arising from contract	_____	_____
9. Net settlement cost		_____
10. Less: a. Payments of fixed fee on Standard Form 1034 vouchers	$_____	
b. Progress payments on account of unsettled overhead	$_____	
c. Net reimbursement on Standard Form 1034 vouchers (item 1d)	_____	
d. Cost paid on Standard Form 1034 vouchers (item 3)	_____	
e. Uncleared GAO exceptions	_____	
f. Reclaim vouchers authorized for payment (item 4)	_____	
g. Partial payments	_____	
h. Partial settlements	_____	
i. Unliquidated balance of advance payment	_____	
j. Interest on advance payment fund	_____	_____
11. Net amount payable under settlement agreement		_____
12. Claims excluded from settlement—contractor's rights to be preserved:		
a. Reclaim vouchers authorized by GAO for payment but not yet reimbursed		_____
b. Other reimbursable claims not liquidated (estimate)		_____
c. Reimbursability disputed: 6–20 MM		
(1) Uncleared GAO exceptions deducted in this settlement		_____
(2) Reclaim vouchers not authorized by GAO for payment		_____
(3) GAO exceptions cleared by previous deduction or refund and not subject to reclaim vouchers		_____
(4) Unreimbursed costs identical in nature with those subject to GAO exceptions		_____
(5) Other reimbursed costs disallowed by the Contracting Officer		_____

§ 1008.863–2 Unreimbursed costs submitted on DD Form 547.

(See item 2 of § 1008.863–1.)

Costs	Amounts claimed by contractor's proposal	Auditor's recommendation for—			Contracting officer's computation
		Acceptance	Nonacceptance	Further consideration	
1. Direct material 2. Direct labor 3. Indirect factory expense 4. Dies, jigs, fixtures, and special tools 5. General and administrative expense 6. Engineering and development expense 7. Other production expense 8. Settlement expense 9. Settlements with subcontractors	(List information as to amounts as required under § 1008.863(b)(9)(iii). If the settlement was negotiated on a lump sum basis, specific amounts as to each item are not required under the category of "Contracting Officer's Computation." However, total amount of Contracting Officer's computation must be shown under item 10 hereof.)				
10. Total costs (items 1–9)					

§ 1008.864 Cover sheets for termination supplemental agreements.

§ 1008.864–1 General.

(a) An appropriate cover sheet will be attached to each settlement agreement, listing pertinent information such as, but not necessarily limited to, the supplement, contract, and termination docket numbers; property classification; type of contract settled; name and address of contractor; a statement whether the agreement relates to the settlement of a partial or complete termination of the contract, settlement of an exclusion or exclusions from a previous settlement, correction of errors, or other reason that the agreement has been written; and the name of the AF office which negotiated the settlement. The cover sheet will also contain such financial data relating to the settlement as may be required by the cognizant AF accounting and finance officer. The accounting and finance officer (with address) designated under the contract to make payment will be included. The cover sheet will also direct the accounting and finance officer to make payment under the settlement agreement out of any available balances under the contract. A provision will be inserted at the bottom of the cover page stating that the cover sheet is for administrative purposes only and that it does not constitute a part of the settlement agreement.

(1) Termination agreement cover sheets will set forth the amount of the reduction in the contract price or other amount to be credited to the contract. The accounting classification to which the funds are credited will be typed on the cover sheet. If the contract cites more than one accounting classification, the TCO preparing the cover sheet will allocate such decreases to the appropriate accounting classifications which will be typed immediately below the line showing the "Reduction in Contract Price (Credit)." The allocation of funds will be based upon the knowledge and best judgment of the termination contracting officer in the light of all the facts relating to the case. Should they deem it necessary, termination contracting officers may consult with accounting and finance personnel before preparing the cover sheets.

(2) The following explains the use of cover sheets which are applicable to the various types of agreements and situations. Instructions for the preparation of specimen cover sheets are also provided. Definition of terms contained in instructions are intended solely for the purposes of the cover sheet to which the term pertains and are not necessarily applicable to any other usage.

(3) Local reproduction of the specimen cover sheets by typewriter or reproducible masters, with any necessary alterations, is authorized.

(4) The items and the language of the items contained in the specimen cover sheets are not mandatory or inflexible, but are suggested for use with such modifications as may be appropriate to each particular case. Where items set forth on specimen cover sheets do not apply to the particular case, they will be omitted from the cover sheet instead of being shown as zero. However, the basic requirements, prescribed in the following sections, as to the contents of the cover sheets will be met.

(5) Credit Purchase Requests (PR's) will not be written for any termination settlement agreements. Instead the office responsible for preparation of the settlement agreement will prepare and attach thereto a cover sheet containing suitable recapitulation of fiscal information sufficient for the purpose of the paying finance officer and the appropriate accounting division of AMC.

(b) If a case occurs for which no applicable specimen cover sheet is provided herein, a cover sheet containing suitable items will be devised to meet the basic purposes of the cover sheet and modeled, to the extent practicable, after the specimens contained in § 1008.864.

§ 1008.864–2 Explanation of items on cover sheet for final cost settlement of complete or partial termination of fixed-price contracts.

(a) The numbered items below correspond with those numbered items on the specimen cover sheet for the above type agreement as found below.

(1) *Gross termination settlement.* This item is the sum of amounts allowed on the final settlement for: (i) Payment at contract price for completed articles for which payment has not been previously made and for which invoices or vouchers have not been submitted to the accounting and finance officer, (ii) payment of cost, profit, and subcontractor's termination claims, together with any amounts paid on previous partial settlements, if any, with the contractor and settlements with subcontractors.

(2) *Gross disposal credits.* This item is the sum of prices agreed upon for retention and the proceeds of sale of terminated inventory retained or sold by the contractor.

(3) *Net settlement costs.* This item is the "Gross Termination Settlement" less "Gross Disposal Credits" and represents the cost to the Government of the settlement of the termination.

(4) *Advance payments outstanding.* This item is the sum of advance payments made under the contract which have not previously been recouped, and are to be recouped by deduction from the final settlement payment. The amount of outstanding advance payments to be recouped on the termination settlement will be ascertained from the paying accounting and finance officer and checked by close coordination with the contracting officer administering advance payments under the contract, and, where necessary, with the appropriate accounting and finance division or divisions of AMC.

(5) *Interest on advance payments.* This item is the amount of interest remaining due on advance payments under the contract and to be recouped on the settlement. The amount of "Interest on Advance Payments" will be ascertained in the same manner as "Advance Payments Outstanding," described in the preceding subparagraph. This item is separately stated for the accounting and finance officer's attention because recouped interest on advance payments must be credited to Miscellaneous Receipts. Interest on advance payments ceases to accrue as of the date of termination.

(6) *Partial payments outstanding.* This item is the sum of progress or partial payments made under the contract before termination and not liquidated by deliveries under the contract and partial payments made as interim financing after notice of termination not previously liquidated on any partial settlement and all of which are to be liquidated on the final settlement. The amount of such "Partial Payments Outstanding" will be ascertained from the paying finance officer.

(7) *Previous partial settlements.* This item is the total amount (before deduction for advance payments, interest on advance payments and partial payments) of previous partial settlements, if any, and amounts paid on direct settlement with subcontractors, if any.

(8) *Termination amount payable.* This item is the amount of money actually to be paid to the contractor upon the execution of the settlement agreement. It is the "Net Settlement Cost" less the sum of "Advance Payments Outstanding," "Interest on Advance Payments," "Partial Payments Outstanding," and "Previous Partial Settlements."

(9) *Total contract price (prior to this agreement).* This item is the same as the total amount of funds which have been obligated on the contract up to the time the settlement agreement is written and may be ascertained from the contract file (if the total amount of funds obligated on the contract is in fact dif-

ferent from the total contract price, the designation of this item should be changed to "Total Funds Obligated Prior to This Agreement"). However, if any interim release of funds has been made by either unilateral administrative action or by an administrative notice (REF's), such interim release will be disregarded in computing the amount of the "Total Contract Price." In case of doubt as to the "Total Contract Price," verification of the amount may be obtained by electrically transmitted message request to Terminations Branch, Contract Management Division, Hq AMC, or by communication with the paying accounting and finance officer. In the case of a partial termination, this item is the cost price of item/units terminated (CPIT), and it is the value, at prices established by the contract, of the undelivered balances of the items terminated. The undelivered balances may be ascertained by communication with the contractor and verification with the paying accounting and finance officer, contracting officer, and local inspection records.

(10) *Payments to date.* This item is the total sum of disbursements made by the paying accounting and finance officer on account of the contract up to date of the settlement agreement. Included are outstanding advance, progress, and partial payments, payments for deliveries under the contract, payments for settlement of previous partial terminations, total cost of previous partial settlements on this termination, and payments on direct settlements with subcontractors. The sum of such payments will be obtained from the paying accounting and finance officer. Special care will be exercised to ascertain from the contractor and accounting and finance officer that all invoices and vouchers for completed articles, properly delivered under the contract, are in fact paid before the execution of the agreement and preferably before its preparation, as the amount thereof will be included in the recital in the settlement agreement of the amount previously paid and will not be included in the amount agreed to be paid under the settlement agreement. Only such completed and delivered items for which invoices or vouchers have not been submitted to the paying accounting and finance officer will be included in the amount provided to be paid in the settlement agreement and hence in the "Gross Termination Settlement." Exercise of care in the foregoing respect will prevent the possibility of underpayment or overpayment to the contractor.

(11) *Termination amount payable.* This item is the same as item (8).

(12) *Final contract price.* This item represents the entire cost of the contract to the Government paid and to be paid out of the funds obligated. It is computed by adding items (10) and (11) above.

(13) *Excess funds released.* This item represents funds released by letter as provided in § 1008.205–51. Each release letter should be listed showing the date thereof and the amount of funds released.

(14) *Reduction in contract price (credit).* This item is the amount of obligated funds to be released because of the reduction effected by the termination. It is the difference between the "Total Contract Price" immediately before the agreement and the "Final Contract Price" as determined by the agreement and less any funds released as reported in item (13). If item (9) is changed to read "Total Funds Obligated (Prior to this Agreement)," then this item (14) should also be changed to read "Reduction in Funds Obligated (Credit)." In the case of a partial termination, it is the difference between the "Contract Price of Items/Units Terminated and the Net Settlement Cost."

(b) *Direction to paying accounting and finance officer.* Each cover sheet will contain a direction to the applicable accounting and finance officer to make payment out of available balance of funds obligated on the original contract (purchase order) as amended. The cover sheet will also direct the accounting and finance officer to follow the established practice of making payment from the various accounts on the basis of items involved.

(c) *Variations*—(1) *Increase in contract price.* Where, as may occasionally happen, the amount of payments made and to be made under the contract and settlement thereof is more than the amounts of funds theretofore obligated on the contract or in partial termination where the amount of payments to be made will exceed the cost price of items/units terminated, the following changes will be made in the specimen cover sheet; item (14) will read, "Increase in Contract Price (Debit)." Add to the legend directing the accounting and finance officer to make payment the words:

and out of Procurement Authority ------, which is available to the additional extent of $------ for increase in contract price authorized and effected by this Agreement.

On the cover sheet the legend "No Purchase Request Issued" will be deleted and there will be substituted "Purchase Request No. ------"

(2) Reservations from settlement. If the termination settlement excludes any unsettled claims of subcontractors assumed by the Government or reserved for later settlement or any other minor element of the claim, the amounts to be reserved will be shown as additional determination, the amounts to be reserved will be shown as additional deductions under "Cost Price of Items/Units Terminated" and thereby will be reflected in the "Reduction of Contract Price (Credit)."

(3) *Additional deductions from "Gross termination settlement."* If there are any credits or claims of the Government against the contractor arising from the contract which have not been taken into consideration in the negotiation of the "Gross Termination Settlement Amount" but are to be deducted from the settlement, such credits or claims will be shown and deducted under "Gross Termination Settlement" (See item 3 under CPFF instructions, § 1008.864–3).

(4) *Payment out of lapsed appropriations.* If the funds obligated on the contract have lapsed, add the following on the cover sheet under the direction to the accounting and finance officer:

Lapsed Allotment Nos. ------ to be forwarded to Commander, Air Force Finance Center, 3800 York Street, Denver 5, Colorado, Attn: Settlements Division, for payments out of lapsed appropriations.

(d) *Cover page for supplemental agreement to fixed-price contract for supplies/services/research and development.*

Supplemental Agreement No. ------
to Contract No. ----------
Purchase Order No. ----------
Classification ----------
Docket No. ----------

SUPPLEMENTAL AGREEMENT TO FIXED PRICE CONTRACT FOR SUPPLIES/SERVICES/RESEARCH AND DEVELOPMENT

(United States Air Force)

Contractor:
Agreement for: Partial
Complete termination settlement of contract
Settlement negotiated by:

1. Gross termination settlement			--------
Less: 2. Gross disposal credits			--------
3. Net settlement cost:			
Less: 4. Advance payments outstanding	--------		
5. Interest on advance payments (to miscellaneous receipts)	--------		
6. Partial payments outstanding	--------		
7. Previous partial settlements (Contractor and subcontractor)	--------	--------	
8. Termination amount payable:			
9. Total contract price (prior to the agreement): or contract price of item/units terminated			--------
10. Payments to date	--------		
11. Termination amount payable	--------		
Less: 12. Final contract price			--------
Less: 13. Excess funds released letter dated	--------		
14. Reduction (balance) in contract price (Credit)			--------

The Accounting and Finance Officer concerned is: Accounting and Finance Officer, USAF.

The Accounting and Finance Officer will make payment out of any available balance of funds heretofore obligated on the original contract (or purchase order) as amended to date. The Accounting and Finance Officer will follow the established practice of making payment from the various accounts on the basis of items involved.

NO PR ISSUED

This cover sheet is for administrative purposes only and not a part of the agreement.

Strike out inapplicable items

§ 1008.864–3 Explanation of items on cover sheet for final cost settlement of complete termination of CPFF contract or partial termination settlement after completion of contract.

(a) The numbered items below correspond with those numbered items on the specimen cover sheet for the above type agreement as found at the end of this section.

(1) *Gross termination settlement.* This item is the sum of:

(i) Net reimbursement on Standard Form 1034 cost vouchers, which includes paid reclaim vouchers but excludes costs represented by progress payments (i.e., on unsettled overhead). Such net reimbursement is computed by deducting from the total of Standard Form 1034 cost vouchers the sum of: (*a*) Uncleared GAO exceptions, and (*b*) GAO exceptions which were cleared by refund.

(ii) Costs represented by reclaim vouchers which have not been paid but payment of which has been authorized by the GAO.

(iii) Amout allowed in payment for unreimbursed costs, including costs such as unsettled overhead on account of which progress payments have been made and costs on account of which partial payments and partial settlement payments have been made.

(iv) Amounts allowed for settlements with subcontractors, including settlements and expenses on account of which partial payments and partial settlement payments were made.

(v) Amounts paid on partial or final settlements with subcontractors.

(vi) Amount allowed as total adjusted fixed fee for entire contract.

(vii) Where authority to include them has been received from the Under Secretary of the Air Force, amounts allowed for previously reimbursed costs which were the subject of GAO exceptions, whether such exceptions were cleared by deduction or refund or remain uncleared.

(2) *Gross disposal credits.* This item is the sum of prices agreed upon for retention and the proceeds of sale of contractor inventory retained or sold by the contractor.

(3) *Miscellaneous charges under contract.* This item is the sum of credits or claims, if any, of the Government against the contractor arising from or under the contract which have not been taken into account in the negotiation of the "Gross Termination Settlement" amount, but are to be deducted from the settlement. This item may include such charges as the contractor's liability for loss, destruction or damage to Government property and for defective articles or parts. This item should be distinguished from, and should not include, offsets not arising under the contract such as claims for delinquent renegotiation payments for loss, damage or destruction of Government property held under other contracts, for unliquidated advance payments under other contracts and other claims under other contracts and transactions. Such offsets, to the extent known to the termination contracting officer, will be noted on, or on an attachment to, the voucher presented to the paying finance officer so that he may make such deductions on the voucher against the amount shown to be payable under the settlement agreement.

(4) *Net settlement cost.* This item is "Gross Termination Settlement" less the sum of "Gross Disposal Credits" and "Miscellaneous Charges Against The Contractor Under Contract," and represents the cost to the Government of the terminated contract, subject, however, to increase on account of claims excluded from the settlement.

(5) *Advance payments outstanding.* This item is the sum of advance payments made under the contract which have not been previously recouped and are to be recouped by deduction from the final settlement payment. The amount of outstanding advance payments to be recouped on the termination settlement will be ascertained from the paying accounting and finance officer and checked with the contracting officer administering advance payments under the contract, and, where necessary with the appropriate accounting and finance division or divisions of AMC.

(6) *Interest on advance payments.* This item is the amount of interest remaining due to advance payments under the contract and to be recouped on the settlement. The amount of "Interest on Advance Payments" will be ascertained in the same manner as "Advance Payments Outstanding," described in the preceding subparagraph. This item is separately stated because recouped interest on advance payments must be credited to Miscellaneous Receipts. Interest on advance payments ceases to accrue as of the date of termination.

(7) *Other payments made.* This item is the sum of all payments, other than unliquidated advance payments, made under the contract previous to the execution of the final settlement agreement. For the purpose of the cover sheet, vouchers approved or authorized for payment but not paid by the finance officer at the time of execution of the final settlement agreement (i.e., reclaim vouchers authorized by the GAO for payment but not yet paid) are treated as payments previously made and included in this item. Care should be taken, however, to preserve the contractor's right to receive payment on such approved reclaim vouchers by appropriate exception thereof from the release provisions of the final settlement agreement. Payments included in this item, the amounts of which may be ascertained from or verified with the paying accounting and finance officer, are:

(i) Payments made in reimbursement of costs, including reimbursements subject to uncleared GAO exceptions but excluding reimbursements subject to GAO exceptions which have been cleared by deduction or refunds and reimbursements which were included in previous final settlements of severable partial terminations, if any. Cost reimbursements herein referred to will be computed before deduction of advance payments, interest on advance payments, progress payments, and partial payments which were liquidated by such cost reimbursements.

(ii) Net settlement cost of previous final settlements of severable partial terminations, if any, i.e., before deducting advance payments, interest on the advance payments, and other payments made.

(iii) Partial and progress payments made prior to termination, to the extent not liquidated by cost reimbursement (i.e., progress payments on unsettled overhead) or by previous final settlement of severable partial terminations, if any.

(iv) Partial payments made after termination, before deduction for advance payments and interest therein if liquidated by such partial payments. This item includes partial payments made directly to or for the benefit of subcontractors.

(v) Partial settlement payments to prime contractor.

(vi) Fixed-fee payments.

(vii) Payments made on authorized reclaim vouchers.

(viii) Reclaim vouchers authorized by GAO for payment and not yet paid by the disbursing officer.

(ix) Payments made on partial and final direct settlements with subcontractors.

(8) *Termination amount payable.* This item is the amount of money actually to be paid by the Government to the contractor upon the execution of the settlement agreement. It is "Net Settlement Cost" less the sum of "Advance Payments Outstanding," "Interest on Advance Payments," and "Other Payments Made."

(9) *Estimated cost - plus - fixed - fee (prior to this agreement).* This item is the same as the total amount of funds which have been obligated on the contract up to the time the settlement agreement is written and may be ascertained from the contract file. (If the total amount of funds obligated or the contract is in fact different from the total estimated cost and fixed fee shown in the contract, the designation of this item should be changed to "Total Funds Obligated (Prior to this Agreement)".) However, if any interim release of funds has been made by unilateral administrative action (REF's), such release will be disregarded in computing the amount of the "Estimated Cost-Plus-Fixed Fee." In case of doubt as to the adequacy of the file on an AMC contract, this amount may be obtained by an electrically transmitted message request to Settlement Branch (MCPRT), Readjustment Division, Hq AMC, or by communication with

the paying accounting and finance officer, whichever is more convenient.

(10) *Net settlement cost.* This item is the same as item (4).

(11) *Estimated reserve for excluded claims.* This item is the sum of claims which have been excepted from the termination settlement, to the extent that they can reasonably be estimated at the time of execution of the settlement agreement. It will not include any allowance for claims or possible claims the amount of which cannot be reasonably estimated, such as claims based upon the responsibility of the contractor to third parties and involving costs reimbursable under the contract but not known to the contractor and claims for additional premiums under retrospective rated insurance policies. It will include the stated or estimated amounts of undisputed and disputed claims shown as excluded from the settlement and the stated maximum or estimated amounts of excluded subcontractors' claims.

(12) *Final contract price.* This item represents the entire cost of the contract to the Government paid and to be paid out of the funds obligated on the contract. It is computed by adding the amount of "Net Settlement Cost" to the amount of "Estimated Reserve for Excluded Claims". The matter in parentheses under "Final Contract Price" is intended to show, for the convenience of the accounting officer, the breakdown of "Final Contract Price" between that portion which may be deemed attributable to costs and that attributable to fee.

(13) *Excess funds released.* This item will be used to designate any funds released by letter as provided in § 1008.205–51. Each release letter will be listed showing the date thereof and the amount of funds released.

(14) *Reduction in contract price (credit).* This item is the amount of obligated funds to be released because of the cancellation effected by the termination. It is the difference between the "Estimated Cost-Plus-Fixed-Fee" immediately before the agreement and the "Final Contract Price" as determined by the agreement and less any funds released as reported in item (13). If item (9) is changed to "Total Funds Obligated (Prior to this Agreement)", this item (14) should also be changed to read "Reduction in Funds Obligated (Credit)."

(b) *Directions to paying accounting and finance officer.* Each cover sheet will contain a direction to the applicable accounting and finance officer to make payment out of available balance of funds obligated on the original contract (purchase order) as amended. The cover sheet will also direct the accounting and finance officer to follow the established practice of making payment from the various accounts on the basis of items involved.

(c) *Variations*—(1) *Increase in contract price.* When the amount of payments made and to be made under the contract and settlement thereof is more than the amount of funds theretofore obligated on the contract, and when the "Final Contract Price" exceeds "Estimated Cost-Plus-Fixed-Fee (Prior to this Agreement)", the following changes will be made in the specimen cover sheet: Item (14) will read "Increase in Contract Price (Debit)". Add to the legend directing the accounting and finance officer to make payment the words:

and out of Procurement Authority ------, which is available to the additional extent of $------ for increase in contract price authorized and effected by this Agreement.

On the cover sheet the legend "No Purchase Request Issued" will be deleted and there will be substituted "Purchase Request No. -------."

(2) *Severable partial termination.* In the case of a supplemental agreement for final settlement of a partial termination where the contracting officer has determined that the terminated portion is severable from the balance of the contract (§ 8.406 of this title), the cover sheet form may be used with the following modifications:

(i) All of the items appearing in the cover sheet form will be shown except item (5), which will be changed to read "Advance Payments to be Recouped," and item (6), "Interest on Advance Payments," which will be omitted. The items listed will be made up of the elements explained in paragraphs (a) and (b) of this section, but will be limited to the respective amounts determined by the contracting officer to be applicable to the severable portion of the contract. Statements with respect to recoupment of advance payments and liquidation of partial payments in the case of settlement of partial termination of a fixed-price contract are applicable here.

(ii) If there is an interest bearing advance payment account outstanding, the paying accounting and finance officer's attention will be called to the necessity for collecting such interest from the settlement amount by making an additional footnote reference to "Termination Amount Payable" as follows: "Subject to deduction for interest on advance payments. Credit to Miscellaneous Receipts—Account No. ------."

(d) *Cover page for supplemental agreement to CPFF contract for supplies/services/research and development.*

Supplemental Agreement No. ------
to Contract No. ----------
Purchase Order No. ----------
Classification ----------
Docket No. ----------

SUPPLEMENTAL AGREEMENT TO COST-PLUS-FIXED-FEE CONTRACT FOR SUPPLIES/SERVICES/RESEARCH AND DEVELOPMENT

(United States Air Force)

Contractor:
Agreement for: Final Settlement of Terminated Contract
Supplement negotiated by:

1. Gross termination settlement			-------
Less: 2. Gross disposal credits	-------		
3. Miscellaneous charges against contractor under contract	-------		
4. Net settlement cost			-------
Less: 5. Advance payments outstanding	-------		
6. Interest on advance payments	-------		
7. Other payments made	-------	-------	
8. Termination amount payable			-------
9. Estimated cost-plus-fixed-fee (prior to this Agreement):			
10. Net settlement cost	-------	-------	
11. Estimated reserve for excluded claims	-------		
Less: 12. Final contract price: (Consisting of $------ for reimbursement of costs and $------ for adjusted fixed fee.)			-------
Less: 13. Excess funds released letter dated	-------	-------	
14. Reduction (balance) in contract price (Credit)			-------

The Accounting Finance Officer concerned is: Accounting and Finance Officer, USAF

The Accounting Finance Officer will make payment out of any available balances of funds heretofore obligated on the original contract (purchase order) as amended to date. The Accounting and Finance Officer will follow the established practice of making payment from the various accounts on the basis of items involved.

NO PR ISSUED

This cover sheet is for administrative purposes only and not part of the agreement.

Strike out inapplicable items

§ 1008.864–4 Explanation of items on cover sheet for adjusting estimated cost and fixed fee on partial termination of a CPFF contract.

(a) The numbered items below correspond with those numbered items on the specimen cover sheet for the above type agreement as found at the end of this section.

(1) *Amount of reduction in estimated cost.* This item is the difference between the estimated cost as set forth in the contract of items or units terminated and the amount, if known, or the negotiated estimate of the expenditures and liabilities on account of preparation and work on the terminated portion and of the termination expenses attributable thereto. If there have been any direct settlements with subcontractors, the amount thereof also will be deducted from the established cost of items or units terminated to arrive at reduction in estimated cost. If there have been no costs or expenses applicable to the terminated portion, the amount of reduction will be the same as the estimated cost set forth in the contract for the items or units terminated.

(2) *Amount of reduction in fixed fee.* This item is the amount of reduction in fixed fee agreed upon by reason of the elimination of the terminated portion of the contract.

(3) *Release of excess funds.* Under this item show any amounts of excess funds released in accordance with § 1008.205–51. Each release letter should be listed showing date of letter and amount of excess funds released.

(4) *Total credit.* This is the sum of the "Amount of Reduction in Estimated Cost" and the "Amount of Reduction in Fixed Fee" and represents the amount of funds to be released as a result of the agreement less any prior releases of excess funds as reported under item (3).

(b) *Direction to accounting and finance officer.* Ordinarily there will be no necessity for any direction to the accounting and finance officer to make payment and hence the accounting and finance officer is merely identified on the cover sheet.

(c) *Cover page for supplemental agreement to CPFF contract for supplies/services/research and development.*

Supplemental Agreement No. ------
to Contract No. ----------
Purchase Order No. ----------
Classification ----------
Docket No. ----------

SUPPLEMENTAL AGREEMENT TO COST-PLUS-FIXED-FEE CONTRACT FOR SUPPLIES/SERVICES/RESEARCH AND DEVELOPMENT

(United States Air Force)

Contractor:
Agreement for: Partial settlement of terminated contract
Settlement negotiated by:
1. Amount of reduction in estimated cost---------- ------
2. Amount of reduction in fixed fee_ ------
3. Excess funds released---------- ------
Letter dated
4. Credit to contract---------- ------
Accounting and finance officer concerned is

NO PR ISSUED

This cover sheet is for administrative purposes only and not part of the agreement.

Strike out inapplicable items

§ 1008.864–5 Explanation of items on cover sheet for no-cost settlement of complete or partial termination of fixed-price contract.

(a) *Contract price of items/units terminated (credit).* This item is the value, at prices established in the contract, of the items or units terminated. The quantities may be ascertained from the termination notice and verified with the contractor, paying accounting and finance officer, resident representative, or local contracting officer, and local inspection records. The applicable prices will be ascertained from the contract file. If the independent field office file of an AMC contract is deemed inadequate, the necessary information as to contract prices will be requested by electrically transmitted message from AMC (MCPKT).

(b) *Cover page for supplemental agreement to fixed-price contract for supplies/services/research and development.*

Supplemental Agreement No. ------
to Contract No. ----------
Purchase Order No. ----------
Classification ----------
Docket No. ----------

SUPPLEMENTAL AGREEMENT TO FIXED PRICE CONTRACT FOR SUPPLIES/SERVICES/RESEARCH AND DEVELOPMENT

(United States Air Force)

Contractor:
Agreement for: Partial
Complete termination of contract at no cost
Settlement negotiated by:
Contract price of items/units terminated (credit) ----------

Accounting and Finance Officer concerned is:
Accounting and Finance Officer, USAF -----

NO PR ISSUED

This cover sheet is for administrative purposes only and not part of the agreement.

Strike out inapplicable items

§ 1008.864–6 Explanation of items on cover sheet for settling excluded portion of previous settlement.

(a) The numbered items below correspond with those numbered items on the specimen cover sheet for the above type agreement as found at the end of this section.

(1) *Gross amount this settlement.* This item is the amount allowed in settlement of so much of the contractor's claim as was excluded from a previous settlement agreement under which provision was made for reduction of contract price and release of funds. Such excluded portion may be for certain subcontractors' claims not settled in previous agreements or for other minor elements of the contractor's claim. The gross amount would include also allowance for applicable post termination expenses.

(2) *Disposal credits.* This item is the sum of prices agreed upon for retention and the proceeds of sale of termination inventory retained or sold by the contractor and not reflected in the previous settlement.

(3) *Net cost this settlement.* This item is the "Gross Amount This Settlement" less "Disposal Credits" and represents the cost of this settlement to the Government.

(4) *Amount payable.* This item is the amount of money actually payable upon the execution of the settlement agreement. It will be the same as "Net Cost This Settlement" unless there are still outstanding advance payments and interest thereon to be recouped or partial payments to be liquidated on this settlement. In such cases (as more fully explained in paragraph (b) (2) of this section) such items will be deducted from "Net Cost This Settlement" to arrive at "Amount Payable".

(5) *Reserved for this settlement (by supp. No. ------).* This item is the amount of obligated funds shown on the cover sheet of the previous settlement agreement to have been reserved for the settlement of the portion of the claim here settled. The parentheses should indicate the identification of the Supplement on the cover sheet of which the reservation was shown.

(6) *Net cost this settlement.* Item (6) is the same as item (3).

(7) *Release of excess funds.* This item represents funds released by letter as provided in § 1008.205–51. Each release letter will be listed showing the date thereof and the amount of funds released.

(8) *Reduction in contract price (credit).* This item is the excess of obligated funds "Reserved for This Settlement" over the "Net Cost This Settlement" and hence the amount of funds to be released as a result of this settlement, less any funds previously released under item (7).

(b) *Variations*—(1) *Increase in contract price.* If the amount "Reserved for This Settlement" should be less than the "Amount Payable," item (8) will be changed to "Increase in Contract Price (Debit)." The debit Purchase Request number will be shown and reference will be made to additional funds obligated in the directions to the accounting and finance officer.

(2) *Advance payments, interest on advance payment, partial payments.* If there are any outstanding advance payments or partial payments which are to be recouped on this settlement, these will be shown as deduction items under "Net Cost This Settlement," and in the case of outstanding advance payments there will be added to the directions to the finance officer a statement to charge the amount thereof to contract obligations and to credit the applicable accounting classifications under Project ------. If the basic termination was complete, interest on advance payments will also be a deduction item and there will be added in parentheses to the directions to the accounting and finance officer a statement to charge the items for "Advance Payment Interest" and "Amount Payable" to the contract obligation and to credit the interest item to "Miscellaneous Receipts, Account No. ------". If the basic termination was partial, deduction of interest on advance payments up to date of payment will be provided for by footnote reference to the "Amount Payable."

(3) *Additional deductions.* If there remain any claims of the Government arising from the contract which are to be deducted from this settlement, they will be shown as deductions from "Gross Amount This Settlement."

(c) *Cover page for supplemental agreement to fixed-price contract for supplies/services/research and development.*

Supplemental Agreement No. ------
to Contract No. ------
Purchase Order No. ------
Classifications ------
Docket No. ------

SUPPLEMENTAL AGREEMENT TO FIXED PRICE CONTRACT FOR SUPPLIES/SERVICES/RESEARCH AND DEVELOPMENT

(United States Air Force)

Contractor:
Agreement for: Settlement of excluded portion of previous settlement of—
Partial
Complete termination of contract
Supplement negotiated by:

1. Gross amount of this settlement		--------
Less: 2. Disposal credits		--------
3. Net cost this settlement		--------
4. Amount payable		--------
5. Reserved for this settlement (By Supp. No. ------)	--------	
Less: 6. Net cost this settlement (3)	--------	
Less: 7. Excess funds released letter dated	--------	
8. Reduction in contract price (credit)	--------	

The Accounting and Finance Officer concerned is: Accounting and Finance Officer, USAF

The Accounting and Finance Officer will make payment out of any available balances of funds heretofore obligated on the original contract (or purchase) as amended to date. The Accounting and Finance Officer will follow the established practice of making payment from the various accounts on the basis of items involved.

NO PR ISSUED

This cover sheet is for administrative purposes only and not part of the agreement.

Strike out inapplicable items

§ 1008.864–7 Explanation of items on cover page used for consolidated settlement of terminations of multiple contracts.

(a) If a single agreement is used for the settlement of terminations of more than one contract of a single contractor, a multiple page cover sheet will be used.

(b) The first page of the cover sheet is intended primarily to identify the contracts affected by the consolidated supplemental agreement, listing the supplement numbers assigned to each of the contracts and indicating the consolidated amounts involved in the settlement. No direction for payment will be given to the accounting and finance officer on the first page. Each of the other cover pages containing a fiscal recapitulation for each of the several contracts involved will contain a direction to the accounting and finance officer to make payment out of any available balances of funds theretofore allotted to the particular contract. Each of the succeeding pages will be prepared as if it were a separate cover sheet for the settlement of the termination of each individual contract involved and the instructions and explanations given with respect to cover sheets for supplemental agreements for final settlements of complete and partial terminations of fixed-price contracts (§ 1008.864–2) are applicable. Multiple-page cover sheets will be numbered serially with each page showing the page number and the total number of pages in the multiple cover sheet.

(c) Since allocations between the contracts of gross settlement amount, disposal credits, net amount payable may not be ascertainable with exactitude, allocations may be made by estimated apportionment to each contract involved (see § 8.209–6 of this title).

(d) *Cover page for supplemental agreement to fixed-price contract for supplies/services/research and development.*

Supplemental Agreement No.	To contract No.	Docket No.
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SUPPLEMENTAL AGREEMENT TO FIXED PRICE CONTRACTS FOR SUPPLIES/SERVICES/RESEARCH AND DEVELOPMENT

(United States Air Force)

Contractor:
Agreement for: Consolidated settlement of termination of contracts

1. Consolidated gross termination settlement	------
2. Consolidated net settlement cost	------
3. Consolidated termination amount payable	------

Recapitulation and direction to paying accounting and finance officer as to each contract are set forth in succeeding pages of this cover sheet. This cover sheet is for administrative purposes only and not part of the agreement.

(Page -- of -- Page Cover Sheet)

§ 1008.864–8 Explanation of items on cover sheet for final settlement of partial or complete termination of letter contract.

(a) For explanation of items (1) through (8) and (10) through (12) on cover sheets for letter contracts, see explanations for corresponding items for cover sheet for "Supplemental Agreement for Final Cost Settlement of Complete or Partial Terminations of Fixed-Price Contract" (§ 1008.864–2).

Item (9): *Total authorized for obligation and expenditure (prior to this agreement).* This is the amount which the letter contract establishes as a legal bona fide obligation. This amount is usually set forth in paragraph 4 of the letter contract and is not to be confused with the estimated cost of the articles set forth in paragraph 1 of the letter contract which is not authorized for obligation. For the purposes of settlement, the total amount authorized for expenditures or obligation shall be considered as the total amount obligated on the letter contract.

Item (13): *Excess funds released.* This item represents funds released by letter as provided in § 1008.205–51. Each release letter will be listed showing the date thereof and the amount of funds released.

Item (14): *Reduction in total authorized for obligation and expenditure* (credit). This item is the amount of obligated funds to be released because of the cancellation effected by the termination. It is the difference between the "Total Amount Authorized for Obligation and Expenditure" immediately before the agreement and the "Final Amount Authorized and Obligated and/or Expended."

(b) *Direction to paying accounting and finance officer.* Each cover sheet will contain a direction to the applicable accounting and finance officer to make payment out of available balance of funds obligated on the original contract (purchase order) as amended. The cover sheet will also direct the accounting and finance officer to follow the established practice of making payment from the various accounts on the basis of items involved.

(c) *Variations.* If the termination is partial and it is determined by the contracting officer that the funds obligated on the letter contract are insufficient to cover the work on the continuing portion of the contract when it is formalized, then the following statement will be entered on the cover sheet of the termination agreement in lieu of the credit amount.

The funds obligated on Letter Contract ------ will be insufficient to cover the work on the continuing portion of the contract when formalized. Therefore, no reduction in the funds obligated on the Letter Contract will be made by this termination agreement.

(d) *Cover page for amendment to letter contract.*

Amendment No. _____
to Letter Contract No. _____
Classification _____
Docket No. _____

AMENDMENT TO LETTER CONTRACT

(United States Air Force)

Contractor:
Agreement for: Settlement of partially/completely terminated letter contract
Settlement negotiated by:

1. Gross termination settlement		----
Less: 2. Disposal credits		----
3. Net settlement cost		----
Less: 4. Advance payments outstanding	----	
5. Interest on advance payments (to miscellaneous receipts)	----	
6. Partial payments outstanding	----	
7. Previous partial settlements (contractors and subcontractors)	----	
8. Termination amount payable		----
9. Total authorized for obligation and expenditure (prior to this agreement)		----
10. Payments to date	----	
11. Termination amount payable (Item 8)	----	
12. Final amount authorized and obligated and/or expended		----
Less: 13. Excess funds released letter dated		----
14. Reduction in amount authorized for obligation and expenditure (credit)		----

The Accounting and Finance Officer Concerned is _____
The Accounting and Finance Officer will make payment out of any available balances of funds heretofore obligated on the letter contract as amended to date. The Accounting and Finance Officer will follow the established practice of making payment from the various accounts on the basis of items involved.

NO PR ISSUED

This cover sheet is for administrative purposes only and not part of the agreement.

§ 1008.864–9 Explanation of items on cover sheet when a contract is written for direct settlement by the Government with excluded subcontractor.

(a) The numbered items below correspond with those numbered items on the specimen cover sheet for the above type contract as found at the end of this section.

(1) *Gross amount this settlement.* This item is the total of amounts allowed for compensation to the subcontractor for preparation for and work done on the terminated portion of his subcontract which is allowable to the terminated prime contract, reasonable profit thereon, and post-termination expenses.

(2) *Disposal credits.* This item is the sum of prices agreed upon for retention and the proceeds of sale of termination inventory retained or sold by the subcontractor.

(3) *Net cost this settlement.* This item is the "Gross Amount This Settlement" less "Disposal Credits" and represents the cost to the Government of the direct settlement.

(4) *Partial payments.* This item is the sum of outstanding partial payments, if any, made to the subcontractor after termination as interim financing, and to be recouped on the settlement. Since such partial payments can only be authorized by the termination contracting officer, he should have the information thereon ready at hand. The amount may be verified with the paying accounting and finance officer.

(5) *Amount payable.* This item is the amount of money actually to be paid to the subcontractor on the execution of the direct settlement agreement.

(b) Credit to prime contract. If the direct settlement is made after the settlement of the prime contract and a reservation of funds obligated on the prime contract was therein made for this settlement, additional items will be added to the cover sheet as follows:

6. Funds reserved for this settlement _____ (by Supp. No. _____ to contract No. _____).
Less: 7. Net cost this settlement _____.
8. Credit to prime contract No. _____.

(c) If the "Funds Reserved for This Settlement" should be insufficient to meet the "Net Cost This Settlement," item (8) would read "Debit to Prime Contract No. _____" and reference would be made to the original prime contract and to the number of the debit Purchase Request by which such funds were reserved.

(d) Subadvances to subcontractors: In the case of subadvances of advance payments made by the prime contractor to the subcontractor, care should be taken in making direct settlements of termination claims that the rights of the Government and of the prime contractor are adequately protected and that the subadvance made to the subcontractor is fully recouped prior to final payment.

(e) Cover page for fixed-price contract for supplies:

Contract No. _____
For Direct Settlement with Subcontractor Under Contract No. _____
Purchase Order No. _____
Classification _____
Docket No. _____

FIXED PRICE CONTRACT FOR SUPPLIES

(United States Air Force)

Contractor:
Agreement for: Direct settlement of termination claim as subcontractor under contract No. _____.
Settlement negotiated by:

1. Gross amount this settlement	----
Less: 2. Disposal credits	----
3. Net cost this settlement	----
Less: 4. Partial payments	----
5. Amount payable	----

The Accounting and Finance Officer concerned is: Accounting and Finance Officer, USAF _____
_____
The Accounting and Finance Officer will make payment out of any available balances of funds heretofore allotted to the original prime contract, viz:
Contract No. _____.
Purchase order No. _____, as amended to date.
Docket No. _____.

NO PR ISSUED

This cover sheet is for administrative purposes only and not part of the contract.

§ 1008.865 Preparation of inventory schedules.

§ 1008.865–1 Separate schedules.

In addition to the requirements of § 8.503–2 of this title, separate inventory schedules wil be prepared for the following classes of property.

(a) Property in condition codes N–4, E–4, O–4, R–3, and R–4. This provision as to condition code does not apply to reserved materials, precious and semiprecious metals and strategic and critical materials, which are required to be listed on separate inventory schedules regardless of condition.

(b) Government-furnished property for experimental aircraft or missiles.

(c) Classified inventories: In addition, the grade of security classification and the office initiating the classification will be furnished.

(d) Industrial reserve property when released by the holding activity.

(e) Line items having an original cost of $300 or less. (Not applicable to bailed property.)

(f) Scrap and salvage: List as a single item with a general description of the property. However, scrap and salvage will not be listed together when offered for sale.

(g) Reserved materials (atomic energy materials) and precious and semiprecious metals regardless of quantity, size of the line item or condition.

(h) Strategic and critical materials in the minimum quantities specified by the head of the procuring activity regardless of condition.

(i) Radioactive materials.

(j) Ordnance items regardless of quantity, size of the line item or condition.

(k) The following types of property regardless of quantity or cost: Typewriters, office furniture, office machines, office equipment or supplies, motor vehicles and automotive equipment, printing and binding equipment, construction equipment except hand tools, Federal supply service stock catalog items, intangible personal property (patents, drawings).

(l) Total inventories of serviceable and usable property having an original cost of $2,500 or less may be listed on a single inventory schedule provided that screening action is not contemplated. (Inapplicable to bailed property.)

§ 1008.865–2 Inventory descriptions.

(a) *Schedule A, DD Form 542.* (1) Metals in mill product form will be described by commercial nomenclature and when in existence the Government specification.

(2) Metal extrusions will be described by manufacturer's name, die number, Government specification and condition (i.e., T, S, SO, etc.).

(b) *Schedule B, DD Form 543.* (1) All fabricated assemblies or components manufactured by the prime contractor or authorized subcontractors under approved drawing numbers of the design contractor will be listed in the same order as the items appear on the manufacturing parts breakdown list for the end items being produced (e.g., list all parts together for wing assembly).

(2) Items purchased by a prime or subcontractor will include the manufacturer's name and part number, complete item description and if available, the Federal Stock Number.

(3) AF, AN, NAF, NAS, and JAN standard type items will be listed in sequence by complete descriptive nomenclature and standard number. If Federal class code or FSC number was furnished the contractor during the provisioning conference or at any other time, this information will also be listed. For a complete description of the Federal Cataloging Program see "Stock List and Related Publication System" USAF S–1.

(4) Shelf items, i.e., items designed and manufactured for general public use, will be listed by major noun, common commercial description and application.

(5) Government-furnished property will include complete item description, manufacturer's name and part number, and if available, the Federal Stock Number. This information is usually found on the shipping document delivering the GFP to the contractor, on the nameplate, or the marking data on the shipping container.

(6) Whenever MIL–D–26715 (USAF) "Descriptive Identification Data to be Furnished by Government Suppliers" is incorporated into an Air Force Contract, the contractor will list excess property by Federal Stock Numbers assigned as a result of prescreening. Items which were processed under this military specification and not stocklisted should be annotated accordingly.

(7) Industrial Production Equipment released from the industrial reserve for plant clearance action will be fully described by including the following information.

(i) Standard commercial description.

(ii) Name of Manufacturer.

(iii) Model number.

(iv) Year of manufacture.

(v) Electrical characteristics—Input power and horsepower rating (for main driving motor only).

(vi) Condition—Appropriate condition code description, based on actual physical condition, rather than age, obsolescence or other factors.

(vii) Missing, broken or damaged parts—Indicate missing, broken or damaged parts. All machines coded in "R" condition will, as far as possible, reflect estimated cost of repair by commercial rebuilders.

(viii) Acquisition cost—actual acquisition cost of basic machine with standard equipment, not to include cost of special tooling, transportation, or installation. If the actual acquisition cost is not known, a realistic cost should be estimated and so indicated.

(ix) Remarks—special features and other characteristics.

(x) Federal Supply Class.

(8) Ordnance items will be listed by part, model, and/or type number, where the items were obtained, metal composition, method of packing, number of boxes, approximate weight, cubage and applicable weapon will also be given.

(c) *Schedule C, DD Form 544.* The description of work-in-process will include weight, percentage of completion, and cost. Metals in mill end forms should be described by the range of sizes.

(d) *Schedule D, DD Form 545.* Special tooling will be identified by the parts it produces unless the special tooling constitutes a part of a Termination Claim, in which event a description of the tooling will also be furnished. If no AF number is assigned to the part produced by the tooling, the contractor's drawing number or other identification will be used.

(e) *Condition.* In classifying property as to condition the following definitions will be used:

Condition code	*Definition*
N–1	New or unused property in excellent condition. Ready for use and identical to or interchangeable with new items delivered by a manufacturer or normal source of supply.
N–2	New or unused property in good condition. Does not quite qualify for N–1 (because slightly shopworn, soiled, or similar), but condition does not impair utility.
N–3	New or unused property in fair condition. Soiled, shopworn, rusted, deteriorated, or damaged, and its utility is slightly impaired.
N–4	New or unused property badly broken, soiled, rusted, mildewed, deteriorated, or damaged, and its utility is seriously impaired.
E–1	Used property but repaired or renovated and in excellent condition.
E–2	Used property which has been repaired or renovated, and while still in good usable condition, has become worn from further use and cannot qualify for excellent condition.
E–3	Used property which has been repaired or renovated but has deteriorated since reconditioning and is only in fair condition. Further repairs or renovation required or expected to be needed in near future.
E–4	Used property which has been repaired or renovated and is in poor condition from serious deterioration such as from major wear and tear, corrosion, exposure to weather, or mildew.
O–1	Property which has been slightly or moderately used, no repairs required and still in excellent condition.
O–2	Used property, more worn than O–1 but still in good condition with considerable use left before any important repairs would be required.
O–3	Used property which is still in fair condition and usable without repairs; however, somewhat deteriorated, with some parts (or portion) worn and should be replaced.
O–4	Used property which is still usable without repairs but in poor condition and undependable or uneconomical in use.
R–1	Used property still in excellent condition, but minor repairs required (repairs would cost not more than 10 percent of acquisition cost).
R–2	Used property in good condition but considerable repairs required. Estimated cost of repairs would be from 11 to 25 percent of acquisition cost.
R–3	Used property in fair condition but extensive repairs required. Estimated repair cost would be from 26 to 40 percent of acquisition cost.
R–4	Used property in poor condition and requiring major repairs. Badly worn, and would still be in doubtful condition of dependability and uneconomical in use if repaired. Estimated repair costs between 41 and 65 percent of acquisition cost.
X	Salvage. Personal property that has some value in excess of its basic material content but which is in such condition that it has no reasonable prospect of use for any purpose as a unit (either by the holding or any other Federal agency) and its repair or rehabilitation for use as a unit (either by the holding or any other Federal agency) is clearly impracticable. Repairs or rehabilitation estimated to cost in excess of 65 percent of acquisition cost would be considered "Clearly impracticable" for purpose of this definition.

(f) *General information.* The following will be listed.

(1) Type of contract; i.e., supply, research and development, facilities, modification, etc.

(2) Termination docket number if applicable.

(3) Contract change number if applicable.

(g) *Reproduction of forms.* Substantially similar forms may be used if approved by the contracting officer. If

the format of the form is altered, the DD Form number will not be used.

(h) *Disposition of records.* One (1) copy of each inventory schedule will be retained by the plant clearance officer as a record copy and filed as a supporting document with the specific terminated contract. All other copies will be destroyed after three (3) years.

§ 1008.866 Direct sales forms.

All direct sales of property (Reference § 1008.507–2(e)) will be evidenced by written contracts through the use of Standard Forms 114, 114A, 114B, 114C, and AF Form 330 will be prepared and executed in the following manner:

(a) Standard Form 114 will be prepared as follows:

(1) Invitation for bids will be issued by the authorized plant clearance officer charged with the sale of the contractor inventory involved, and awards will be made, except that contracts will be signed only by a contracting officer. The name and address of the activity issuing the invitation will be shown on the invitation in the space provided for such entry. Likewise, the name and title of the authorized plant clearance officer concerned will be indicated in the same space, for informational purposes.

(2) Each invitation will be numbered in the space provided therefore by a number composed of: (i) The station code of the activity, followed by a dash, (ii) a lower case letter "s", followed by a dash, (iii) the last two digits of the fiscal year in which the invitation is issued, followed by a dash, and (iv) the serial number of the invitation being issued. Only one series of numbers will be used by any one activity for each fiscal year. The serial number for each fiscal year will commence with the number "1." Other letters or numbers will not be prefixed or suffixed to this number.

(3) The date of the invitation will be the date the invitation is deposited in the post office for delivery to the prospective bidder or otherwise released to the bidder and will not be construed to be the date the stencil or other reproducible medium is prepared. To the extent practicable, invitations should be dated and mailed as of the last working day of the week to take full advantage of mail transmission during non-scheduled working days and to allow the bidder the full inspection period prior to the scheduled opening date.

(4) The total number of pages will be shown on the invitation in the space provided, and each page will be consecutively numbered beginning with the number "1."

(5) Sealed bids, in original only, will be required from each prospective bidder.

(6) The place, time, and date for receiving bids will be fully identified for prospective bidders. The office concerned, room and building number, and location will be shown, if applicable. The time set for receiving bids will be shown as standard time. Military timing by the 24-hour clock will not be used. Under no circumstances will the date set for receipt of bids be less than 15 days from the date of issuance of the invitation, unless prior approval for a shorter time has been obtained from the CMR commander or his authorized representative.

(7) The number of continuation sheets will be shown on the invitation.

(8) The place, time, and date that the bids will be publicly opened will be shown in the appropriate space. The time for final receipt of bids and the time for bid opening should be the same.

(9) Items of property offered for sale will be consecutively numbered.

(10) Extreme care will be taken in describing property listed for sale on invitations for bids. (Claims have arisen in many instances because of erroneous descriptions of property.) Invitations will describe in detail the property offered for sale, to gain active competition from bidders. Where term of delivery of an item offered for sale is other than "where is" delivery, the method of delivery "f.o.b. conveyance, etc.," will be shown immediately following the description of the item offered.

(11) Definite quantities will be offered where the quantity is known or can be readily ascertained. Invitations for bids for the sale of an indefinite quantity will not be issued for a period exceeding 3 months without approval of MCPKP.

(12) Property which in the opinion of the plant clearance officer has some value in excess of its basic material content or has retained its identity as an item possessing commercial utility in its present form will be offered for sale as an item. Property which has no reasonable prospect for sale except for its basic material content will be sold by the unit of pounds, net tons, gross tons, etc., whichever is common trade practice.

(13) The hours, date, locations, and name of individual, if applicable, where the property may be inspected will be shown in the appropriate space provided.

(14) A bid deposit or Standard Form 24 "Bid Bond" equal to at least 20 percent of the total sum of the bid will be required and the requirement therefor will be shown on the invitation. Credit will not be extended either with regard to deposits or payment by the successful bidder of the balance of the purchase price.

(15) The number of working days, usually 10, within which the successful bidder must remove the property will be shown.

(b) The following additions to General Sale Terms and Conditions, as prescribed on Standard Form 114c, will be made a part, by attachment, of any invitation for bid which offers for sale definite quantities of property on a unit-price basis. Such additions will be appropriately numbered as indicated below.

No. 17. *Deposits or bonds to accompany bids.* Bids must be accompanied by bid deposits of cashier's check, certified check or postal money order made payable to the Treasurer of the United States, bonds or notes of the United States (at par value) deposited in accordance with Treasury Department Regulations or by a bid bond on the standard Government form (U.S. Standard Form 24) in an amount equal to at least 20 percent of the total sum of the bid. Bids received not accompanied by the required bid deposit or bid bond may not be considered. If the bidder does not receive an award, or if a bid deposit exceeds the total sum bid on the items accepted by the Government, such bid deposit or excess thereof will be promptly returned to the bidder or purchaser. In other cases, the bid deposit will be retained as a guaranty for faithful performance of the contract: *Provided, however,* That if a bid bond is submitted, it must be replaced immediately upon the acceptance of the bid by a performance bond on the Standard Government form (U.S. Standard Form 25) in an amount equal to at least 20 percent of the total sum of the items awarded or the bidder may deposit cashier's check, certified check, or postal money order made payable to the Treasurer of the United States or bonds or notes of the United States (at par value) deposited in accordance with Treasury Department Regulations but such performance bonds or deposit shall not in any event exceed 100 percent of the award: *And provided further,* That if the deposit consists of cashier's check, certified check, postal money order, or United States bonds or notes and the contract by its terms cannot be performed in less than 30 days, the purchaser shall have the option of substituting a performance bond on U.S. Standard Form 25 in an amount equal to 20 percent of the total sum of the items awarded.

No. 18. *Cash payment.* Notwithstanding the provisions of the clause entitled "Payment," payment in cash will not be accepted under this contract.

No. 19. *Damage to property of a Government contractor.* The purchaser shall reimburse the Government for any damage to the property of a Government contractor or subcontractor caused by the removal operations of the purchaser.

No. 20. *Liability for damage.* The Government accepts no liability for damages to the purchaser's equipment, to its employees or to anything or person whatsoever.

No. 21. *Nondiscrimination in employment.* Insert the clause set forth in § 12.802 of this title, substituting the word "purchaser" for "contractor" wherever found in this clause.

No. 22. *Warranty against multiplicity of bids.* If an individual or partner, the bidder warrants that he has no property interest in any other bidder, who, to his knowledge, has submitted a bid in response to the same item number(s) in this invitation as bid herein; if a corporation, the bidder warrants that it is not affiliated by stock ownership or community or financial interest with any other corporation which, to the knowledge of the corporate signatory, has submitted a bid in response to the same item number or numbers of the invitation as bid herein. If it should be determined that the bidder has such an interest, then his bid, together with such other bid or bids, may be rejected.

No. 23. *Scrap warranty.* With respect to all scrap covered by this contract the Purchaser upon request, will execute a scrap warrant to the Government, as provided in § 8.504–2 of this title and § 1008.504–2.

No. 24. *Interest warranty.* The Purchaser warrants that he is not an officer or enlisted member of the Armed Forces of the United States, or a member of the immediate household of such officer or enlisted member, and further that he is not an officer or employee of the United States, nor an agent for any of the above mentioned persons.

(c) When property is sold on an indefinite quantity unit-price basis, General Sale Terms and Conditions 18, as indicated in paragraph (b) of this section and 19 will read as follows:

No. 18. *Contract period, termination, and payment.*

(1) *Contract period.* This contract will extend from _____ or from date of Gov-

ernment's acceptance, if subsequent thereto, through ----------, both dates inclusive, unless sooner terminated under the provisions of this contract.

(ii) *Termination.* This contract shall remain effective until date of expiration provided that it may be earlier terminated at the convenience of the Government upon 10 days' notice in writing given by the Contracting Officer to the Purchaser.

(iii) *Payment.* Notwithstanding the provisions of the clause entitled "Payment," payment in cash will not be accepted under this contract. The Contracting Officer or Plant Clearance Officer will issue invoices to the Purchaser as deemed advisable to the best interest of the Government and the Purchaser will submit payment as invoiced within five days from date of receipt of such invoice.

No. 19. *Adjustment and variation in 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. Any variation between the quantity or weight for such item tendered and delivered to the Purchaser will be adjusted on the basis of the unit price quoted for such items but no adjustment for such variation will be made where an award is made on a "price for the lot" basis.

(d) *Instructions to bidders.* Instructions to bidders, in addition to those set forth in Standard Form 114c, may be used as required to afford responsive bidding by all prospective bidders.

(e) *Special provisions.* As many special provisions will be incorporated in the invitation as are required to effect sale of the property offered. Special provisions used in the invitation will in no way alter or conflict with the General Sale Terms and Conditions as set forth. Only those special provisions applicable to the type of property being offered will be incorporated in the invitation.

(f) *General.* All invitations will be circulated to a sufficient number of prospective bidders to insure wide competition. The plant clearance officer will maintain a list of prospective bidders for this purpose. Whenever practicable, the manufacturer will be invited to bid on articles bearing his identification. In addition to solicitation as prescribed in § 8.507–2 of this title, in appropriate cases copies of invitations will be posted in post offices of nearby cities and towns and may, if the original acquisition cost of serviceable material is under $25,000, be made available to newspapers for information purposes. Where this cost is exceeded, § 8.507–2(b) of this title requires that the sale be advertised in a newspaper of general circulation.

(g) *Changes.* Prior to opening of bids, changes required in any invitation will be made by means of an addendum or other form prescribed by the CMR commander. Changes will bear the same indentification as the invitation that is being modified and will be numbered consecutively beginning with the number "1." If the invitation is modified by an addendum, the date set for the receipt of the bids will be extended to allow a reasonable length of time from the date of the addendum for the bidders to reply.

§ 1008.867 Service education activities.

See § 1008.508(d).

Activity	National headquarters
Civil Air Patrol, Inc.	Commander, Civil Air Patrol, United States Air Force, Washington 25, D.C.
Boys' Clubs of America	National Headquarters, Boys' Clubs of America, 381 Fourth Avenue, New York 16, N.Y.
Boy Scouts of America and their affiliated organizations including Air Explorers Division and Sea Scouts.	National Headquarters, Boy Scouts of America, New Brunswick, N.J.
Girl Scouts of the U.S.A.	National Headquarters, Girl Scouts of the U.S.A., 155 East 44th Street, New York 17, N.Y.
Camp Fire Girls, Inc.	Camp Fire Girls, Inc., 16 East 48th Street, New York 17, N.Y.
Admiral Farragut Academy, Pine Beach, N.J.	Admiral Farragut Academy, Pine Beach, N.J.
Admiral Farragut Academy, St. Petersburg, Fla.	Admiral Farragut Academy, St. Petersburg, Fla.
Allen Military Academy, Bryan, Tex.	Allen Military Academy, Bryan, Tex.
Army and Navy Academy, Carlsbad, Calif.	Army and Navy Academy, Carlsbad, Calif.
Augusta Military Academy, Fort Defiance, Va.	Augusta Military Academy, Fort Defiance, Va.
Bolles School, Jacksonville, Fla.	Bolles School, Jacksonville, Fla.
Bordentown Military Institute, Bordentown, N.J.	Bordentown Military Institute, Bordentown, N.J.
Brown Military Academy, San Diego, Calif.	Brown Military Academy, San Diego, Calif.
California Maritime Academy, Vallejo, Calif.	California Maritime Academy, Vallejo, Calif.
Castle Heights Military Academy, Lebanon, Tenn.	Castle Heights Military Academy, Lebanon, Tenn.
Columbia Military Academy, Columbia, Tenn.	Columbia Military Academy, Columbia, Tenn.
Culver Military Academy, Culver, Ind.	Culver Military Academy, Culver, Ind.
Fishburne Military School, Waynesboro, Va.	Fishburne Military School, Waynesboro, Va.
Fork Union Military Academy, Fork Union, Va.	Fork Union Military Academy, Fork Union, Va.
Georgia Military Academy, College Park, Ga.	Georgia Military Academy, College Park, Ga.
Georgia Military College, Milledgeville, Ga.	Georgia Military College, Milledgeville, Ga.
Gordon Military College, Barnesville, Ga.	Gordon Military College, Barnesville, Ga.
Greenbrier Military School, Lewisburg, W. Va.	Greenbrier Military School, Lewisburg, W. Va.
Howe Military School, Howe, Ind.	Howe, Ind.
Kamehameha School for Boys, Honolulu, Hawaii.	Kamehameha School for Boys, Honolulu, Hawaii.
Kemper Military School, Boonville, Mo.	Kemper Military School, Boonville, Mo.
Kentucky Military Institute, Lyndon, Ky.	Kentucky Military Institute, Lyndon, Ky.
LaSalle Military Academy, Oakdale, Long Island, N.Y.	LaSalle Military Academy, Oakdale, Long Island, N.Y.
Maine Maritime Academy, Castine, Maine.	Maine Maritime Academy, Castine, Maine.
Marion Institute, Marion, Ala.	Marion Institute, Marion, Ala.
Marmion Military Academy, Aurora, Ill.	Marmion Military Academy, Aurora, Ill.
Massachusetts Maritime Academy, State Pier, Buzzard's Bay, Mass.	Massachusetts Maritime Academy, State Pier, Buzzard's Bay, Mass.
Massanutten Military Academy, Woodstock, Va.	Massanutten Military Academy, Woodstock, Va.
Missouri Military Academy, Mexico, Mo.	Missouri Military Academy, Mexico, Mo.
New Mexico Military Institute, Roswell, N. Mex.	New Mexico Military Institute, Roswell, N. Mex.
New York Military Academy, Cornwall-on-Hudson, N.Y.	New York Military Academy, Cornwall-on-Hudson, N.Y.
New York State Maritime Academy, Fort Schuyler, Bronx, N.Y., N.Y.	New York State Maritime Academy, Fort Schuyler, Bronx, N.Y., N.Y.
Northwestern Military and Naval Academy, Walworth, Wis.	Northwestern Military and Naval Academy, Walworth, Wis.
Oak Ridge Military Institute, Oak Ridge, N.C.	Oak Ridge Military Institute, Oak Ridge, N.C.
Oklahoma Military Academy, Claremore, Okla.	Oklahoma Military Academy, Claremore, Okla.
Porter Military Academy, Charleston, S.C.	Porter Military Academy, Charleston, S.C.
Riverside Military Academy, Gainesville, Ga.	Riverside Military Academy, Gainesville, Ga.
Sewanee Military Academy, Sewanee, Tenn.	Sewanee Military Academy, Sewanee, Tenn.
Shattuck School, Faribault, Minn.	Shattuck School, Faribault, Minn.
St. John's Military Academy, Delafield, Wis.	St. John's Military Academy, Delafield, Wis.
St. Joseph's College and Military Academy, Hays, Kans.	St. Joseph's College and Military Academy, Hays, Kans.
St. Thomas Military Academy, St. Paul, Minn.	St. Thomas Military Academy, St. Paul, Minn.
Tabor Academy, Marion, Mass.	Tabor Academy, Marion, Mass.
Tennessee Military Institute, Sweetwater, Tenn.	Tennessee Military Institute, Sweetwater, Tenn.
Texas Military Institute, San Antonio, Tex.	Texas Military Institute, San Antonio, Tex.
The Manlius School, Manlius, N.Y.	The Manlius School, Manlius, N.Y.
Valley Forge Military Academy, Wayne, Pa.	Valley Forge Military Academy, Wayne, Pa.
Wentworth Military Academy, Lexington, Mo.	Wentworth Military Academy, Lexington, Mo.
Western Military Academy, Alton, Ill.	Western Military Academy, Alton, Ill.

§ 1008.758(a) [Amendment]

12. The introductory paragraph and paragraph (a) of § 1008.758 is redesignated § 1008.868 and is amended as follows:

§ 1008.868 Storage agreement.

* * * * *

Location of property:

Payments to be made by Air Force Accounting and Finance Officer, at ----------

* * * * *

[1] This contract has been negotiated pursuant to the provisions of Section 2304 (a)(10) of Title 10 U.S.C. Any required determinations and findings have been made.

* * * * *

NOTE: See corporate secretary's certificate in § 1008.712–50 (the word "Contract" should be inserted in lieu of "Supplemental Settlement Agreement"). See also § 1053.407.

§ 1008.758 [Amendment]

13. Section 1008.758(b) is redesignated § 1008.868–1 and is amended as follows:

§ 1008.868–1 No-cost storage.

The following changes will be made to the Storage Agreement Form provided in § 1008.868(a) to facilitate its use in the execution of a No-Cost Storage Agreement.

* * * * *

(16) Clause 37 [Deletion]

Add: (16) Clause 38. *Approval of contract*—Delete in its entirety.

(17) *Optional clause.* To be included as a clause within the storage contract whenever conditions outlined in § 1008.511–50(d) exist.

* * * * *

(18) All other clauses will be as set forth in § 1008.868.

14. Add §§ 1008.869 to 1008.869–4, and § 1008.871, as follows:

§ 1008.869 Preparation of plant clearance memorandum.

(Reference: § 1008.512.)

§ 1008.869–1 General.

Each request for property disposal review board action (Reference: § 1008.512–2) will be supported by a

memorandum, signed by the plant clearance officer. No forms will be used. The original of the memorandum and sufficient copies to permit distribution to all board members will be furnished.

§ 1008.869–2 Exhibits.

(a) Exhibits will either be originals or certified true copies. To extent practicable, copies of exhibits will be attached to all copies of the memorandum. At least one copy of inventory schedules listing the subject property will be attached.

(b) When applicable, the following exhibits should be attached.

(1) Where the question concerns the classification of property as scrap or non-reparable property, a written statement (if obtainable) of the contractor that no need for the property as serviceable property exists at his facility, and originals and certified true copies of correspondence relating to the classification of the property with photographs of the property in appropriate cases.

(2) The originals or certified true copies of the three highest bids.

(3) In the case of subcontractor inventories referred from another AMA (see § 1008.513–50) a copy of the delegation of authority or other evidence of authority from the contracting officer in the initiating AMA to handle the inventory of the subcontractor.

§ 1008.869–3 Content.

The following will be included whenever applicable:

(a) *Contractor.* (1) Name and address of the contractor.

(2) Number of the contract or purchase order involved.

(3) Type of contract (CPFF, fixed price, or letter).

(4) Prime or subcontract.

(5) If subcontract, the prime contractor's name and address, and the number of the prime contract.

(6) If subcontract, number of the purchase order assigned by the prime contractor or the next higher tier subcontractor.

(7) Basis of presenting the case to the Board, including a citation of the applicable regulations and directives.

(b) *Termination.* (1) Termination docket number.

(2) If the case is not the result of a termination, a description of the situation including the engineering change order number or other appropriate identification.

(c) *Property.* (1) Description and location of the property.

(2) Condition of the property.

(3) Owner of the property.

(4) Cost of the property to be sold.

(5) Number of offers or bids solicited, number received, from whom received, and the amount offered by each bidder.

(6) Statement as to whether clearance or screening is necessary, and if so, a statement of identification of the clearance obtained.

(7) Information to show that the market has been tested, and that the sale should be made at the price and quantity stated, or that the recommended disposition is proper and in the best interests of the Government.

(d) *Recommendation for specific Board action.*

§ 1008.869–4 Destruction of classified inventory.

Plant Clearance memorandum recommending the destruction of classified inventory according to applicable security regulations, will be limited to the following information.

(a) Identification of the contractor (or subcontractor) and contract.

(b) General description and total cost of the inventory.

(c) Statement that the property has been determined excess to AF requirements.

(d) Statement that the classified nature of the inventory requires destruction according to applicable security regulations.

(e) Statement that salvageable and nonclassified components will be removed prior to destruction.

§ 1008.871 Delinquency notices.

(See Subpart F, Part 1008 of this chapter.)

(All Notices should be sent Registered Mail—Return Receipt or Western Union Telegram—Written Report of Delivery Requested.)

(a) *Cure notice.* (Use only when the delivery schedule has not expired.)

You are notified that the Government considers your (specify the Contractor's failure or failures) a condition that is endangering performance of the contract in accordance with its terms. Therefore, unless such condition is cured within ten (10) days after receipt hereof (or such longer time as the Contracting Officer may deem reasonably necessary) the Government may terminate subject contract for default under General Provision No. ------ (Default).

NOTE: The "cure" notice is required by the terms of the default clause in the contract and derives its authority therefrom. Before using this notice it must be ascertained that an amount of time equal to or greater than the period of "cure" remains in the contractually established delivery schedule or any extension thereof; if the time remaining in the contract delivery schedule is not sufficient to permit a realistic "cure" period of ten (10) days or more, the "cure" notice should not be issued and the "show cause" notice may be used, if desired, immediately upon the expiration of the delivery period.

(b) *Combination show cause and cure notice.* (Use when contract contains a delivery schedule broken down into monthly or intermediate increments and the contractor is delinquent in whole or in part on one or more of such increments.)

You are hereby notified that since you have failed to perform Contract No. ------ by not making required deliveries in accordance with the contract schedule for the period ---------- to ----------, the Government is considering terminating that portion of the contract pursuant to General Provision No. ------ (Default).

It is requested that you submit to the undersigned Contracting Officer within ten (10) days from the date of receipt hereof any facts or circumstances which you believe excuse your failure to perform. You are further notified that the Government considers your failure to make progress toward completion a condition that is endangering performance of the remainder of the contract in accordance with its terms. Therefore, unless such condition is cured within ten (10) days after receipt hereof (or such longer time as the Contracting Officer may deem reasonably necessary) the Government may terminate subject contract in its entirety for default under General Provision No. ------ (Default). Your attention is invited to the respective rights of the Contractor and the Government under General Provision No. ------ (Default) and the liabilities that may be invoked in the event a decision is made to terminate for default of the contractor.

(c) *Notice of withholding of default action.* (Not to be used after expiration of the final increment of the delivery schedule.)

You are hereby notified that the Government will withhold default action under General Provision No. ------ of subject contract until ---------- to allow you to (complete performance) (delivery item number) (or upon whatever basis the Contractor is delinquent or endangering performance) so long as you continue to make progress toward its completion by that date. In the event you fail to deliver within this time, termination action may be initiated without further notice. Moreover, the Government reserves all rights under General Provision No. ------ (Default) and at law.

NOTE: The above notice is to be used only as a follow-up action as a result of a contractor response to a "cure" notice. Example: The Government in its "cure" letter to the Contractor allows thirty (30) days to cure the condition endangering performance. The contractor responds that the "cure" will take ninety (90) days -- which is still within the contractual delivery schedule -- and his explanation is considered to be justified and the time required to be realistic; accordingly, this notice is intended to defer action for the ninety (90) day period.

Caution: Do not allow the "withhold" period to go beyond the contractually established final completion or delivery date.

(d) *Show cause notice.* (Delivery schedule in part or in whole has expired.)

You are hereby notified that since you have failed to (perform Contract No. ------ within the time required by the terms thereof), (cure the conditions endangering performance under Contract No. ------ as described to you in the Government's letter of ----------,) the Government is considering terminating said contract pursuant to General Provision No. ------ (Default). Pending a final decision in this matter, it will be necessary to determine whether your failure to perform arose out of causes beyond your control and without fault or negligence on your part. Accordingly, you are hereby afforded the opportunity to present, in writing, any facts bearing on the question to Commander (insert complete address, including symbol, of activity where Procuring Contracting Officer is located) with copy thereof to the undersigned for information within ten (10) days after receipt of this notice. Failure of the Contractor to present any excuses within this time may be considered as an admission that none exist. Your attention is invited to the respective rights of the Contractor and the Government under General Provision No. ------ (Default) and the liabilities that may be invoked in the event a decision is made to terminate for default of the Contractor.

Any assistance rendered to the Contractor on this contract or acceptance by the Government of delinquent goods or services hereunder, will be solely for the purpose of mitigating damages, and is not to be construed as an intention on the part of the Government to condone any delinquency, or

as a waiver of any rights the Government may have under subject contract.

(Pending decision you are instructed to stop all work immediately and to make no further commitments under subject contract. Advise all subcontractors and suppliers to do likewise.)[1]

CARROLL W. KELLEY,
Lieutenant Colonel, U.S. Air Force, Chief, Special Activities Group, Office of The Judge Advocate General.

[F.R. Doc. 61-4828; Filed, May 26, 1961; 8:45 a.m.]

Title 39—POSTAL SERVICE

Chapter I—Post Office Department

PART 53—C.O.D.

PART 61—MONEY ORDERS

PART 168—DIRECTORY OF INTERNATIONAL MAIL

Miscellaneous Amendments

The regulations of the Post Office Department are amended as follows:

I. In Part 53—COD, make the following changes:

A. In § 53.1 *Description*, paragraph (c) is amended to show that COD mail service is not available for articles having an APO or FPO designation as part of the address. As so amended, paragraph (c) reads as follows:

§ 53.1 Description.

* * * * *

(c) *Restrictions on COD Service to Military Installations.* COD service is not available for articles having an APO or FPO designation as part of the address. This restriction applies also to official shipments and shipments to Armed Forces agencies.

NOTE: The corresponding Postal Manual section is 163.13.

B. In § 53.3 *Mailing*, subparagraph (2) of paragraph (d) is amended by deleting the requirement that mailers of books must show the post office and date of mailing on a COD tag. As so amended, subparagraph (2) reads as follows:

§ 53.3 Mailing.

* * * * *

(d) *Firm mailing books, COD tags and address labels.* * * *

(2) A COD tag must be securely fixed by the sender to each COD article showing article number, names and addresses of sender and addressee, amount due sender, and amount of money order fee necessary to make remittance. The necessary particulars must be filled in by sender. Stock tags are furnished by the post office without charge. There are three types of tags eyeletted for tying to parcels, and one uneyeletted type for attaching by gummed tape. Specially printed COD tags approved by the Postal Service are also used. The eyeletted tag, Form 3816, composed of delivery office portion, delivering employee's coupon, mailing office record and sender's receipt, is intended for use by patrons mailing less than three articles at one time.

NOTE: The corresponding Postal Manual section is 163.34b.

c. In § 53.4 *Special Services*, paragraph (b) is amended to show that Form 3818 must be used by mailers to request attention or cancellation of COD charges. As so amended, paragraph (b) reads as follows:

§ 53.4 Special services.

* * * * *

(b) *Alteration or cancellation of COD charges or delivery.* Alteration or cancellation of COD charges or delivery to another addressee may be directed by the sender on payment of the prescribed additional fee. The request must be made at office of mailing on Form 3818, authorization to cancel or change charges on a COD article. Such change may be directed by telegram, the telegram being authorized and paid for by the sender but sent in the name of the postmaster.

NOTE: The corresponding Postal Manual section is 163.42.

(R.S. 161, as amended, secs. 501, 5007, 5012, 74 Stat. 580, 679, 680 (Pub. Law 86-682); 5 U.S.C. 22, 39 U.S.C. 501, 5007-5012)

§ 61.2 [Amendment]

II. In § 61.2 *Issuance of international money orders*, make the following changes:

A. In paragraph (f), under the New York Exchange Office, insert "Netherlands Antilles (Ariba, Bonaire, Curacao, Saba, St. Eustatius, and southern part of St. Martin) in proper alphabetical order. Money Order service is now available on a direct exchange basis to Netherlands Antilles.

B. In paragraph (g) delete the following from the list of countries or localities therein:

Ariba (Netherlands Antilles).
Bonaire (Netherlands Antilles).
Curacao (Netherlands Antilles).
Netherlands Antilles (or Netherlands West Indies)—Ariba, Bonaire, Curacao, Saba, St. Eustatius, and St. Martin (southern part of island).
Saba (Netherlands Antilles).
St. Martin (Netherlands Antilles).

NOTE: The corresponding Postal Manual section is 171.26 and 7.

(R.S. 161, as amended, secs. 501, 506, 5101-5105, 74 Stat. 580, 581, 680, 681 (Pub. Law 86-682); 5 U.S.C. 22, 39 U.S.C. 501, 506, 5101-5105)

§ 168.5 [Amendment]

III. In § 168.5 *Individual country regulations* make the following changes:

A. In country "Colombia", as amended by 26 F.R. 1929, under Parcel Post, the item *Observations* is amended as a result of the modification of commercial and consular invoice requirements. As so amended, the item, reads as follows:

Observations. Senders are required to indicate as a part of the addresses of all parcels the name of the department (State) in which the office of destination is located.

In view of the extensive variety of articles prohibited to Colombia (see the item *Prohibitions*), persons desiring to mail parcels should be advised to consult the addressees in advance of mailing to ascertain whether their articles will be admitted, or to consult the nearest Colombian consulate, stating specifically what articles they desire to send. Parcels will be accepted for mailing to Colombia only with the understanding that the mailer has satisfied himself that the contents will be admitted.

Each parcel or group of parcels valued at $20 or less requires two copies of the sender's commercial invoice, one of which must be enclosed in the parcel and the other sent under separate cover to the addressee. Consular legalization is not needed, but the invoice must include a declaration of origin of the merchandise, in Spanish, reading as follows:

Certificamos bajo juramento que los precios de esta factura son los mismos que cargamos al cliente y que la mercancia a que se refiere esta misma factura es originaria de _____ (Country of origin) En fe de lo expuesto firmamos la presente declaracion en _____ (City, State), _____ (Day) de _____ (Month) de _____ (Year)

_____
(Signature of shipper)

(Translation: We certify under oath that the prices in this invoice are the same that we charge our customers, and that the merchandise in this same invoice comes from _____ (Country of origin). In faith of which we sign the present declaration at _____ (City, State), on _____ (Date).)

Commercial shipments of books or periodicals must be accompanied by commercial invoices as prescribed for such shipments in the postal union mails. See "Observations" under "Postal Union Mails."

For each parcel or group of parcels valued over $20, the sender must have a copy of his commercial invoice legalized by a Colombian Consulate, and must prepare four copies of a consular invoice, one of which must be sent direct to the addressee with the legalized commercial invoice.

Consular invoice forms must be obtained and commercial invoices legalized at Colombian Consulates, which are located in the following cities:

Baltimore, Md.	Boston, Mass.
Chicago, Ill.	Galveston, Tex.
Houston, Tex.	Los Angeles, Calif.
Mayaguez, P.R.	Miami, Fla.
New Orleans, La.	New York, N.Y.
Philadelphia, Pa.	Ponce, P.R.
Pullman, Wash.	Rochester, Minn.
San Francisco, Calif.	San Juan, P.R.
Tampa, Fla.	Washington, D.C.

The addressees in Colombia are required in most cases to obtain import licenses in order to secure delivery of parcels. For a parcel exceeding $20 in value the addressee is required to send a copy of the import license to the sender, who must submit it to the Colombian Consul when obtaining the consular invoice. If a sender receives a copy

[1] Use stop work instructions only in the event there are no further requirements for the items or services or if the contract contains a specific provision permitting work stoppage.

of a Colombian import license for a parcel whose value does not exceed $20, he must return it to the addressee in Colombia.

Parcels mailed simultaneously by the same sender to the same addressee at one address and not mailed as a "group shipment" must, nevertheless, be marked in the following manner, in order that customs officials in Colombia may more readily ascertain the combined value of the parcels contained in a single mailing.

Each parcel comprised in a single mailing must bear a fractional number, the numerator of which indicates the number of the parcel and the denominator of the number of parcels comprised in the mailing. For example, if a single mailing were composed of 15 parcels they would be numbered 1/15, 2/15, 3/15, etc. Each such parcel would be required to bear two customs declarations and one dispatch note.

Parcels may be addressed to banks or other organizations for ultimate delivery to second addressees. The latter however may not take delivery without written authority from the first addressee, unless the sender arranges for change of address as provided in Part 137 of this chapter.

B. In country "Uruguay," as amended by 26 F.R. 1930, under Parcel Post, the item *Observations* is amended as a result of consular documents no longer being required for parcel post shipments. As so amended, the item reads as follows:

Observations. A commercial invoice must be enclosed in each parcel, and a copy sent by air direct to the addressee.

For gift parcels, the commercial invoice may consist of a simple statement showing the names of the sender and addressee with an indication that the parcel contains a gift with no charge involved.

Parcels may be addressed to banks or other organizations for ultimate delivery to second addressees. The latter however may not take delivery without written authority from the first adressee, unless the sender arranges for change of address as provided in Part 137 of this chapter.

(R.S. 161, as amended, secs. 501, 505, 74 Stat. 580, 581, Pub. Law 86-682; 5 U.S.C. 22, 39 U.S.C. 501, 505)

LOUIS J. DOYLE,
General Counsel.

[F.R. Doc. 61-4944; Filed, May 26, 1961; 8:46 a.m.]

PART 96—AIR TRANSPORTATION

Adjusting Air Carriers' Compensation When Accidents Occur

The regulations of the Post Office Department in Part 96—Air Transportation, as published in 26 F.R. 2299-2310, are amended by inserting "accidents" in the heading of § 96.6, and by adding a new paragraph (d) thereunder to state the Department's policy for adjusting air carriers' compensation when accidents occur. As so amended, the new section heading and paragraph (d) read as follows:

§ 96.6 Irregularities, deductions, fines, and accidents.

* * * * *

(d) *Accidents.* When an aircraft accident occurs, there is no legal obligation on the part of the postal service to pay the air carriers' transportation charges for mail that is destroyed. Air transportation charges shall only be paid for recovered mail from the city where emplaned on that carrier's system to the airport nearest the point of accident. Therefore, since the regional controller in the region originating the mail will pay the air transportation charges. Form 2734, Airmail Exception Record, must be prepared to recover the payment for that portion of the incompleted service.

(R.S. 161, as amended, sec. 405, 72 Stat. 760, secs. 501, 4302, 6303, 74 Stat. 580, 664, 693 (Pub. Law 86-682); 5 U.S.C. 22, 39 U.S.C. 501, 4302, 6303, 49 U.S.C. 1375)

LOUIS J. DOYLE,
General Counsel.

[F.R. Doc. 61-4967; Filed, May 26, 1961; 8:49 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 2392]

[Anchorage 017450]

[Anchorage 050966]

ALASKA

Revoking Executive Order No. 1919½ of April 21, 1914, and No. 2242 of August 31, 1915 in Part, and Public Land Order No. 1081 of March 4, 1955 Entirely

By virtue of the authority vested in the President by section 1 of the act of March 12, 1914 (38 Stat. 305; 48 U.S.C. 303) and otherwise, and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

1. Executive Orders No. 1919½ of April 21, 1914, and No. 2242 of August 31, 1915, so far as they reserved the following-described lands for townsite purposes, and Public Land Order No. 1081 of March 4, 1955, which reserved the lands for use of the Territorial Police as a headquarters site, are hereby revoked:

ANCHORAGE TOWNSITE

Lot 7, Block 28 E., East Addition, per plat accepted May 6, 1953.

Containing 42,000 square feet.

2. Until 10:00 a.m., on November 20, 1961, the State of Alaska shall have a preferred right to select the lands in accordance with and subject to the limitations and requirements of the act of July 28, 1956 (70 Stat. 709; 48 U.S.C. 46-3b), section 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339), and the regulations in 43 CFR 76.1-76.18. Thereafter the lands will not be subject to disposition under the public land laws unless and until it is so provided by order of an authorized officer of the Bureau of Land Management.

Inquiries concerning the lands should be directed to the Manager, Land Office, Bureau of Land Management, Anchorage, Alaska.

STEWART L. UDALL,
Secretary of the Interior.

MAY 20, 1961.

[F.R. Doc. 61-4943; Filed, May 26, 1961; 8:46 a.m.]

Title 49—TRANSPORTATION

Chapter I—Interstate Commerce Commission

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Rev. S.O. No. 562; Amdt. 13]

PART 97—ROUTING OF TRAFFIC

Rerouting of Traffic; Appointment of Agent

At a Session of the Interstate Commerce Commission, Safety and Service Board No. 1, held in Washington, D.C., on the 22d day of May A.D. 1961.

Upon further consideration of the provisions of Revised Service Order No. 562 (14 F.R. 2697), as amended (15 F.R. 3105; 8651; 16 F.R. 4551; 17 F.R. 4675; 18 F.R. 3048; 19 F.R. 2966; 20 F.R. 3685; 21 F.R. 3650; 22 F.R. 3653; 23 F.R. 3641; 24 F.R. 4215; 25 F.R. 4647), and good cause appearing therefor:

It is ordered, That:

Section 97.562 *Rerouting of traffic—appointment of agent,* of Revised Service Order No. 562 be, and it is hereby, further amended by substituting the following paragraphs (a) and (d) hereof for paragraphs (a) and (d) thereof:

(a) Charles W. Taylor, Director, Bureau of Safety and Service, Interstate Commerce Commission, Washington 25, D.C., is hereby designated and appointed an Agent of the Interstate Commerce Commission and vested with authority to authorize diversion and rerouting of loaded and empty freight cars from and to any point in the United States whenever in his opinion an emergency exists whereby any railroad is unable to move traffic currently over its lines.

(d) Expiration date: This order shall expire at 11:59 p.m., May 31, 1962, unless otherwise modified, changed, suspended, or annulled by order of this Commission.

(Sec. 1, 12, 15, 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15. Interprets or applies sec. 1(10-17), 15(4), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10-17), 15(4))

It is further ordered, That this amendment shall become effective at 11:59 p.m., May 25, 1961; that a copy of this order and direction be served upon the State railroad regulatory bodies of each State, upon all common carriers by rail-

roads subject to the Interstate Commerce Act, and 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 that notice of this order 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, Office of the Federal Register.

By the Commission, Safety and Service Board No. 1.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F.R. Doc. 61-4960; Filed, May 26, 1961; 8:48 a.m.]

SUBCHAPTER B—CARRIERS BY MOTOR VEHICLE

PART 193—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

[Ex Parte No. MC-40]

Qualifications and Maximum Hours of Service of Employees of Motor Carriers and Safety of Operation and Equipment

FUEL SYSTEMS

At a session of the Interstate Commerce Commission, Motor Carrier Board No. 2, held at its office in Washington, D.C., on the 15th day of May A.D. 1961.

The matter of parts and accessories necessary for safe operation under the Motor Carrier Safety Regulations prescribed by order of April 14, 1952, as amended, being under consideration; and

It appearing that amendment of paragraph (f)(4) of § 193.65 of the Code of Federal Regulations (49 CFR 193.65(f)(4)) relating to threads on all fittings used in liquid fuel tank construction is warranted, and good cause appearing therefor;

It further appearing that a petition has been filed by Chrysler Corporation, filed on May 16, 1960, requesting that § 193.65(f)(4) of the Code of Federal Regulations be amended;

It further appearing that this amendment which will permit straight (nontapered) threads to be used on fitttings having integral flanges and using gaskets for sealing, is a relaxation of presently prescribed requirements, and therefore, pursuant to section 4(a) of the Administrative Procedure Act (60 Stat. 237, 5 U.S.C. 1003) for good cause it is found that notice of proposed rule making is unnecessary;

Upon consideration of the record, and of the said petition, and good cause appearing therefor;

It is ordered, That paragraph (f)(4) of § 193.65 of the Code of Federal Regulations (49 CFR 193.65(f)(4)), be, and it is hereby, amended to read as follows:

§ 193.65 Fuel systems.

* * * * *

(f) * * *

(4) *Threads.* Threads on all fittings shall be American (National) Standard Taper Pipe Thread or SAE Standard Short Dryseal Taper Pipe Thread except that straight (nontapered) threads may be used on fittings having integral flanges and using gaskets for sealing. There shall not be less than four full threads in engagement in any fitting.

(Sec. 204, 49 Stat. 546, as amended, 49 U.S.C. 304)

It is further ordered, That this order shall become effective July 1, 1961, and shall continue in effect until further order of the Commission;

It is further ordered, That compliance with the herein prescribed and amended regulations is hereby authorized on and after the date of service of this order;

It is further ordered, That except to the extent that § 193.65(f)(4) of the Code of Federal Regulations is modified by this order, the above mentioned petition is hereby denied.

And it is further ordered, That notice of this order shall be given to the general public by depositing a copy thereof in the office of the Secretary of the Interstate Commerce Commission, Washington, D.C., and by filing a copy thereof with the Director, Office of the Federal Register.

By the Commission, Motor Carrier Board No. 2.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F.R. Doc. 61-4961; Filed, May 26, 1961; 8:48 a.m.]

Proposed Rule Making

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 121]

FOOD ADDITIVES

Notice of Amendment of Petition

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348 (b)(5)), notice is given that a petition (FAP 233) was filed by Adhesives Manufacturers Association of America, 441 Lexington Avenue, New York 17, New York, proposing the issuance of a regulation to provide for the safe use of certain substances as components of adhesives for containers to be used for packaging dry food (January 20, 1961; 26 F.R. 621). The petitioner has filed an amendment to this petition proposing the additional use of these substances as components of adhesives for containers to be used for packaging fatty and aqueous foods.

Dated: May 19, 1961.

[SEAL] J. K. KIRK,
Assistant Commissioner of Food and Drugs.

[F.R. Doc. 61-4952; Filed, May 26, 1961; 8:47 a.m.]

DEPARTMENT OF AGRICULTURE

Commodity Stabilization Service

[7 CFR Part 913]

[Docket No. AO-23-A21]

MILK IN GREATER KANSAS CITY MARKETING AREA

Notice of Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of a public hearing to be held at the Bellerive Hotel, Armour and Warwick Boulevards, Kansas City, Missouri, beginning at 9:30 a.m., local time, on June 2, 1961, with respect to proposed amendments to the tentative marketing agreement and to the order, regulating the handling of milk in the Greater Kansas City marketing area.

The public hearing is for the purpose of receiving evidence with respect to the economic and emergency marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

The proposed amendments, set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by the Pure Milk Producers Association of Greater Kansas City, Inc.:

Proposal No. 1. Limit the effect of the supply-demand adjustment factor of the Class I price formula by:

1. Making § 913.51(a)(3)(iii) inoperative for a 12-month period;

2. In § 913.51(a)(3)(i) and (ii) change "one-cent" to "one-half cent"; and

3. For the next 12 months limit the supply-demand adjustment to a maximum of what it was for the same month of the preceding year.

Proposed by the Milk Marketing Orders Division, Commodity Stabilization Service:

Proposal No. 2. Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator, U. Grant Grayson, 220 Plaza Esplanade Building, 424 Nichols Road, Kansas City 12, Missouri, or from the Hearing Clerk, Room 112, Administration Building, United States Department of Agriculture, Washington 25, D.C., or may be there inspected.

Issued at Washington, D.C., May 24, 1961.

ROBERT G. LEWIS,
Deputy Administrator, Price Support, Commodity Stabilization Service.

[F.R. Doc. 61-4974; Filed, May 26, 1961; 8:50 a.m.]

[7 CFR Part 967]

[Docket No. AO-170-A12]

MILK IN SOUTH BEND-LA PORTE-ELKHART, INDIANA, MARKETING AREA

Notice of Correction of Final Decision

The tentative order attached to the "Decision on proposed amendments to tentative marketing agreement and order" which was issued by the Secretary of Agriculture on May 8, 1961, and published in the FEDERAL REGISTER of May 12, 1961 (26 F.R. 4112; F.R. Doc. 61-4384), is hereby corrected as follows:

In § 967.51(a) insert after "Carnation Co., Richland Center, Wis." the following: "Carnation Co., Sparta, Mich."

Issued at Washington, D.C., May 24, 1961.

ORVILLE L. FREEMAN,
Secretary.

[F.R. Doc. 61-4999; Filed, May 26, 1961; 8:52 a.m.]

FEDERAL AVIATION AGENCY

[14 CFR Parts 601, 608]

[Airspace Docket No. 60-LA-87]

CONTROLLED AIRSPACE AND SPECIAL USE AIRSPACE

Designation and Alteration of Control Zones, Designation of Transition Areas, Revocation of Control Area Extensions and Alteration of Restricted Areas

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering amendments to Part 601 and §§ 601.2285, 601.7101 and 608.25 of the Regulations of the Administrator, the substance of which is stated below.

The Instrument Flight Rules procedures, including arrival, departure, holding and radar vectoring at NAF China Lake, Calif., Edwards Air Force Base, Calif., George Air Force Base, Calif., and Palmdale Air Force Plant No. 42, Calif., are conducted partly outside of controlled airspace. Much of the area within which these procedures are executed falls within the California Complex Restricted Areas. To provide protection for Instrument Flight Rules air traffic executing these procedures and to facilitate the movement of aircraft through the California Complex Restricted Areas when these areas are not being used for their designated purpose, the Federal Aviation Agency is considering the following actions:

1. Designate the Federal Aviation Agency, Los Angeles ARTC Center, as the "Controlling agency" for the China Lake Restricted Area (R-2505) and the China Lake South Restricted Area (R-2506).

2. Alter § 601.7101, *Designation of the Continental Control Area,* to include the following restricted areas:

(a) Camp Irwin, Calif., Restricted Area (R-2502);

(b) China Lake, Calif., Restricted Area (R-2505);

(c) California Complex Restricted Area (R-2508);

(d) Cuddeback Dry Lake, Calif., Restricted Area (R-2509);

(e) Muroc Lake, Calif., Restricted Area (R-2515);

(f) Trona, Calif., Restricted Area (R-2524).

3. Designate the Palmdale, Calif., Transition Area as follows:

The area extending upward from 1,200 feet above the surface bounded by a line extending from latitude 35°34'30" N., longitude 116°23'30" W.; thence to latitude 35°28'35" N., longitude 116°18'45" W.; thence south along longitude 116°18'45" W. to the northwest boundary of low altitude VOR Federal airway No. 8 North; thence along the northwest boundary of low altitude VOR Federal airway No. 8 North; the north boundary of

low altitude VOR Federal airway No. 12; the north boundary of low altitude VOR Federal airway No. 137, and the east boundary of low altitude VOR Federal airway No. 23 and low altitude VOR Federal airway No. 23 East to latitude 35°36'00" N., longitude 119°01'30" W.; thence to latitude 35°37'30" N., longitude 117°47'30" W.; thence to latitude 35°40'30" N., longitude 117°47'00" W.; thence to latitude 36°05'25" N., longitude 117°52'00" W.; thence to latitude 36°06'45" N., longitude 117°41'30" W.; thence to latitude 35°42'00" N., longitude 117°35'45" W.; thence to latitude 35°36'00" N., longitude 117°26'00" W.; thence to latitude 35°25'00" N., longitude 117°26'00" W.; thence to latitude 35°25'00" N., longitude 117°16'52" W.; thence to latitude 35°15'56" N., longitude 117°16'52" W.; thence to latitude 35°15'56" N., longitude 117°06'30" W.; thence to latitude 35°34'30" N., longitude 116°29'40" W.; thence to point of beginning.

The portions of this transition area that coincide with Restricted Areas R–2502, R–2505, R–2506, R–2509, R–2515, and R–2524 would be used only after obtaining prior approval from the appropriate authority.

4. Designate the Victorville, Calif., transition area as follows: The area extending upward from 1200 feet above the surface bounded on the north by low altitude VOR Federal airway No. 12, on the southeast by low altitude VOR Federal airway No. 8 and on the southwest by a line 5 miles southwest of and parallel to the 124° True radial of the Palmdale VOR. The portion of this transition area that coincides with the Victorville (George AFB) Restricted Area/Military Climb Corridor (R–2526) would be used only after obtaining prior approval from the appropriate authority.

5. Revoke the Edwards AFB control area extension (§ 601.1085) and the Daggett, Calif., control area extension (§ 601.1189) since they would be almost entirely within the proposed Palmdale transition area.

6. Revoke the Victorville control area extension (§ 601.1030) since it would be almost entirely within the proposed Victorville and Palmdale transition areas.

7. Designate the NAF China Lake control zone within a 5-mile radius of NAF China Lake (latitude 35°41'15" N., longitude 117°41'35" W.), within a one mile radius of Ridgecrest-Davis, Calif., Airport (latitude 35°36'40" N., longitude 117°40'25" W.) and within 2 miles either side of the 350° and 148° True radials of the NAF China Lake TACAN (latitude 35°41'17" N., longitude 117°41'17" W.) extending from the 5-mile radius zone to 3 miles north and southeast. Inclusion of the Ridgecrest-Davis Airport within the NAF China Lake control zone would provide protection for aircraft operating at both airports during Instrument Flight Rules weather conditions.

8. Designate the Edwards AFB control zone within a 5-mile radius of Edwards AFB (latitude 34°54'20" N., longitude 117°52'55" W.), within a 3-mile radius of Edwards Air Force Auxiliary North Base (latitude 34°59'11" N., longitude 117°51'41" W.) and within 2 miles either side of the Edwards AFB VOR 239° True radial extending from the 5-mile radius zone to the VOR and within 2 miles either side of the Edwards VOR 239° True radial extending from the 5-mile radius zone to 3 miles southwest. Inclusion of the North Base within Edwards AFB control zone would provide protection for aircraft operating at both airports during Instrument Flight Rules weather conditions.

9. The Victorville control zone is designated within a 5-mile radius of George AFB and within 2 miles either side of a track bearing 360° True from George AFB extending from the 5-mile radius zone to 15 miles north of the airbase. It is proposed to redesignate this control zone within a 5-mile radius of George AFB (latitude 34°35'50" N., longitude 117°22'35" W.) and within 2 miles either side of the George AFB VOR 355° and 005° True radials extending from the 5-mile zone to 11 miles north of the VOR. This would provide protection for aircraft executing the revised instrument approach procedures at George AFB.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Field Division, Federal Aviation Agency, 5651 West Manchester Avenue, P.O. Box 90007, Airport Station, Los Angeles 45, Calif. All communications received within thirty days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Field Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B–316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Field Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on May 23, 1961.

J. R. BAILEY,
Assistant Chief,
Airspace Utilization Division.

[F.R. Doc. 61–4938; Filed, May 26, 1961; 8:45 a.m.]

Notices

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[W–043373]

WYOMING

Notice of Partial Termination of and Correction of Proposed Withdrawal and Reservation of Lands

MAY 22, 1961.

Notice of an application of the Forest Service, Department of Agriculture, Serial Number Wyoming 043373, for withdrawal and reservation of lands was published as FEDERAL REGISTER Document No. 56–7775, on page 7460 of the issue of September 28, 1956. The applicant agency has cancelled its application insofar as it involves the lands described below. Therefore, pursuant to the regulations contained 43 CFR, Part 295, such lands will be at 10:00 a.m., on June 26, 1961, relieved of the segregated effect of the above mentioned application.

The lands involved in this notice of termination are:

SIXTH PRINCIPAL MERIDIAN, WYOMING

BRIDGER NATIONAL FOREST

Middle Piney Pasture Administrative Site

T. 30 N., R. 115 W.,
Sec. 3, E½SW¼NW¼, W½SE¼NW¼.

Elk Creek Ranger Station Administrative Site

T. 26 N., R. 117 W.,
Sec. 16, E½SW¼NE¼, W½SE¼NE¼.

Greys River Fork Administrative Site

T. 37 N., R. 117 W.,
Sec. 27, NW¼SW¼.

The above areas aggregate 120 acres.

The published notice described in the first paragraph hereof is corrected as to the legal description of the following lands: Kelly Administrative Site, T. 26 N., R. 117½ W., Section 1 is deleted and replaced with Section 2, and Section 12 is deleted and replaced by Section 11. Green River Lakes Recreational Area, T. 39 N., R. 108 W., Section 31, the NW¼SE¼ is deleted and replaced by the NW¼NE¼. The other descriptions remain as originally published.

DAVID B. MORGAN,
Acting Land Office Manager.

[F.R. Doc. 61–4942; Filed, May 26, 1961; 8:45 a.m.]

DEPARTMENT OF COMMERCE

Federal Maritime Board

H. L. ZIEGLER, INC., AND CASTELAZO AND ASSOCIATES

Agreement Filed for Approval

Notice is hereby given that the following described agreement has been filed with the Board for approval pursuant to section 15 of the Shipping Act 1916 (39 Stat. 733, 46 U.S.C. 814):

Agreement No. 8666 between H. L. Ziegler, Inc., Houston, Texas, and Castelazo & Associates, Los Angeles, California.

The agreement is a cooperative working arrangement between the parties who are both freight forwarders registered with the Federal Maritime Board pursuant to General Order 72. Each party will perform freight forwarding services for the other at its respective port, the party performing the services to retain the entire forwarding fee. Brokerage obtained in connection with these shipments is to be divided equally.

Interested parties may inspect this agreement and obtain copies thereof at the Office of Regulations, Federal Maritime Board, Washington, D.C., and may submit, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to it, and their position as to approval, disapproval, or modification thereof, together with request for hearing should such hearing be desired.

Dated: May 24, 1961.

By order of the Federal Maritime Board.

THOMAS LISI,
Secretary.

[F.R. Doc. 61–4956; Filed, May 26, 1961; 8:48 a.m.]

LYKES BROS. STEAMSHIP CO., INC., AND AHLMANN-TRANSPORT K.G.

Notice of Agreement Filed With the Board for Approval

Notice is hereby given that the following described agreement has been filed with the Board for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733, 46 U.S.C. 814):

Agreement No. 8634, between Lykes Bros. Steamship Co., Inc., and Ahlmann-Transport K.G., covers a through billing arrangement in the trade from Danish ports to U.S. Gulf ports, with transhipment at Hamburg.

Interested parties may inspect this agreement and obtain copies thereof at the Office of Regulations, Federal Maritime Board, Washington, D.C., and may submit, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to this agreement and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: May 24, 1961.

By order of the Federal Maritime Board.

THOMAS LISI,
Secretary.

[F.R. Doc. 61–4954; Filed, May 26, 1961; 8:47 a.m.]

T. A. PROVENCE AND CO. AND MAJOR FORWARDING CO., INC.

Agreement Filed for Approval

Notice is hereby given that the following described agreement has been filed with the Board for approval pursuant to section 15 of the Shipping Act 1916 (39 Stat. 733, 46 U.S.C. 814):

Agreement No. 8667 between T. A. Provence & Co., Mobile, Alabama, and Major Forwarding Company, Inc., New York, New York.

Both parties are freight forwarders registered with the Federal Maritime Board pursuant to General Order 72. Under the agreement the Mobile forwarder will perform certain freight forwarding services for the New York forwarder in connection with shipments of paper, paper products and woodpulp for one-third of the brokerage received on such shipments. For services rendered in connection with shipments of other commodities, the forwarder at Mobile is to be compensated according to a scale of fees plus one-third of the brokerage.

Interested parties may inspect this agreement and obtain copies thereof at the Office of Regulations, Federal Maritime Board, Washington, D.C., and may submit, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to it, and their position as to approval, disapproval, or modification thereof, together with request for hearing should such hearing be desired.

Dated: May 24, 1961.

By order of the Federal Maritime Board.

THOMAS LISI,
Secretary.

[F.R. Doc. 61–4955; Filed, May 26, 1961; 8:47 a.m.]

UNITED STEAMSHIP CO. LTD. AND A. H. BULL STEAMSHIP CO.

Notice of Agreement Filed With the Board for Approval

Notice is hereby given that the following described agreement has been filed with the Board for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733, 46 U.S.C. 814):

Agreement No. 8662, between The United Steamship Company Limited and A. H. Bull Steamship Co., covers a through billing arrangement in the trade from Norway, Sweden, Finland, Denmark, and Poland to Puerto Rico, with transshipment at New York, Baltimore or Philadelphia. Agreement No. 8662, upon approval, will supersede and cancel approved Agreement No. 7828, between The United Steamship Company Limited and Bull Insular Line, Inc., in the same trade.

Interested parties may inspect this agreement and obtain copies thereof at

the Office of Regulations, Federal Maritime Board, Washington, D.C., and may submit, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to this agreement and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: May 24, 1961.

By order of the Federal Maritime Board.

THOMAS LISI,
Secretary.

[F.R. Doc. 61-4957; Filed, May 26, 1961; 8:48 a.m.]

CIVIL AERONAUTICS BOARD

[Docket 11610 etc.]

RESORT AIRLINES, INC., CERTIFICATE TRANSFER

Notice of Oral Argument

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that oral argument in the above-entitled matter has been assigned for June 21, 1961, at 10:00 a.m., e.d.s.t. in Room 1027, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before the Board.

Dated at Washington, D.C., May 24, 1961.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 61-4964; Filed, May 26, 1961; 8:49 a.m.]

FEDERAL POWER COMMISSION

[Docket Nos. 10784 etc.]

CALIFORNIA CO. ET AL.

Order Redesignating Proceedings and Accepting Modification of Corporate Undertakings

MAY 22, 1961.

The California Company, a Division of California Oil Company, (formerly The California Company), Docket Nos. G-10784, G-14313, G-15836, G-15837, G-16682, G-19535, G-20346.

On February 13, 1961, The California Company, a Division of California Oil Company, filed a motion to be substituted for The California Company, as respondent in the above-named dockets,[1] which, except Docket No. G-10784, pertain to rate proceedings instituted under section 4(e) of the Natural Gas Act. Included with said motion was an adoption and ratification of the corporate undertakings which have heretofore been accepted for filing in all the subject dockets except Docket No. G-10784, which said Docket pertains to a rate proceeding instituted under section 5 of the Natural Gas Act.

In support of its motion The California Company, a Division of California Oil Company states that several corporations merged into one corporation, the surviving corporation being The California Company under the new name of California Oil Company. Further it states that after December 31, 1960, the effective date of the Agreement of Merger, all exploration and production operations and related activities of California Oil Company in the southeastern portion of the United States will be conducted by The California Company, a Division of California Oil Company. By letter dated April 12, 1961, the Commission redesignated the filed rate schedules of the Company to reflect the change in the corporate name.

The Commission finds:

(1) The above-proceedings should be redesignated The California Company, a Division of California Oil Company.

(2) The adoption and ratification should be accepted merely as a modification of each to reflect the change in corporate name.

The Commission orders:

(A) The motion to redesignate proceedings is granted and the aforelisted proceedings are redesignated The California Company, a Division of California Oil Company.

(B) The adoption and ratification of the aforementioned corporate undertakings by The California Company, a Division of California Oil Company is accepted as a modification of each undertaking to reflect the change in corporate name.

By the Commission.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 61-4939; Filed, May 26, 1961; 8:45 a.m.]

[Docket Nos. G-13376, etc.]

CITIES SERVICE PETROLEUM CO.

Order Redesignating Respondent

MAY 22, 1961.

Cities Service Petroleum Company (formerly Cities Service Oil Company), Docket Nos. G-13376,[1] G-13715,[1] G-14723,[1] G-14724,[1] G-15210,[1] G-15564, G-16123,[1] G-16652, G-17313, G-19322, G-19636, G-19637, G-20274, G-20393, G-20394, G-20395, G-20558, RI60-143, RI60-168, RI60-244, RI61-82, RI61-165, RI61-166.

On January 12, 1961, in the above designated proceedings, Cities Service Oil Company and Cities Service Petroleum Company, filed a petition requesting the name of the Respondent, Cities Service Oil Company, be changed to Cities Service Petroleum Company.

In support of their petition, Cities Service Oil Company and Cities Service Petroleum Company state that, Cities Service Oil Company changed its name to Cities Service Petroleum Company, effective December 27, 1960.

The Commission finds: Good cause has been shown to redesignate the Respondent in the above designated proceedings.

The Commission orders: The above designated proceedings will hereafter be designated as Cities Service Petroleum Company.

By the Commission.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 61-4940; Filed, May 26, 1961; 8:45 a.m.]

[Project No. 2130]

PACIFIC GAS AND ELECTRIC CO.

California; Notice of Modification of Land Withdrawal

MAY 23, 1961.

On September 22, 1926, this Commission gave notice to the General Land Office (now the Bureau of Land Management) of the reservation of 860 acres of lands of the United States pursuant to the filing of an application for license by the Sierra and San Francisco Power Company for Project No. 708. Commission letters of May 28 and July 1, 1938, as superseded and modified by letters of April 28 and August 2, 1941, gave notice to that office of the reservation of approximately 1,397 acres of United States lands pursuant to the filing of an original and an amendatory application by the Sierra and San Francisco Power Company for Project No. 1318. In addition, by withdrawal notice of October 15, 1956, this Commission gave notice that the Pacific Gas and Electric Company, the successor in interest to the Sierra and San Francisco Power Company as licensee for Projects No. 708 and 1318, had filed an application for major license on April 16, 1953, as supplemented by an application of January 4, 1955, to include the two above-mentioned constructed projects under a single license as Project No. 2130. An additional 20.5 acres of United States lands were reserved by this notice (The license for Project No. 2130, issued effective January 1, 1955, effected this merger and maps showing the project area were redesignated as F.P.C. Nos. 2130-13 through 2130-15 and 2130-17 through 2130-25). By withdrawal notice of July 15, 1959, based on an application for amendment to the license for Project No. 2130, approximately 109 acres of United States lands were reserved to provide for a new Stanislaus power plant and related facilities, upon retirement of the existing facilities, as noted on map Exhibit K-10-D (FPC No. 2130-37). All but 3 acres of this 109 acres had been previously included in the project area, so the total area of United States lands withdrawn for Project No. 2130, after promulgation of the notice of July 15, 1959, was approximately 2,280.5 acres.

On February 28, 1961, the Pacific Gas and Electric Company filed an application for amendment of their license to provide for the relocation of the Stanislaus afterbay, as delimited on Revised Exhibit K-10-D (FPC No. 2130-40).

[1] For the reasons indicated below the motion is being considered as a motion to redesignate proceedings.

[1] These dockets have been consolidated with the proceedings in Cities Service Production Company (Operator) et al., Docket Nos. G-9510, et al.

Therefore, in accordance with section 24 of the Federal Power Act of June 10, 1920, notice is hereby given that the lands hereinafter described, insofar as title thereto remains in the United States, are included in power Project No. 2130 for which completed amendatory application for license was filed February 28, 1961. Under said section 24 these lands are from date of filing reserved from all forms of disposal under the laws of the United States until otherwise directed by the Commission or by Congress.

MOUNT DIABLO MERIDIAN

All portions of the following subdivisions lying within the project boundary as delimited on map designated as K–10–D, Revised February 21, 1961 (FPC No. 2130–40), entitled "Plan of Stanislaus Forebay, Conduits, Powerhouse, and Afterbay, Pacific Gas and Electric Co.," filed in the Federal Power Commission February 28, 1961, superseding Exhibit K–10–D (FPC No. 2130–37):

T. 3 N., R. 14 E.,
Sec. 12: NE¼ of Lot 4.
T. 3 N., R. 15 E.,
Sec. 6: SE¼ Lot 9, unpatented portion Lot 10, NW¼SE¼, NW¼SW¼SE¼, NE¼ and S½ Lot 2;
Sec. 7: N½ Lot 1.

This notice modifies and supersedes that given April 28, 1941, in connection with Project No. 1318 (redesignated October 15, 1956, as Project No. 2130), insofar as it refers to the location of the Stanislaus Tunnel and Powerhouse located in portions of the above-noted subdivisions, and supersedes in its entirety that given on July 15, 1959, in connection with Project No. 2130.

The area reserved under this notice is approximately 113.38 acres of United States lands, all of which have been heretofore reserved for power purposes under Project No. 2130, Power Site Reserve No. 86, or Power Site Classification No. 220. The lands in T. 3 N., R. 15 E., noted above, are within the Stanislaus National Forest.

Copies of the amendatory project map Exhibit K–10–D (FPC No. 2130–40) have been transmitted to the Bureau of Land Management, Geological Survey, and Forest Service.

By direction of the Commission:

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 61–4941; Filed, May 26, 1961; 8:45 a.m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

MAY 24, 1961.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 37151: *Joint rail—Motor rates from and to southern territory.* Filed by Southern Motor Carriers Rate Conference, Agent (No. 63), for interested carriers. Rates on various commodities, moving on class or commodity rates, loaded in highway trailers of the motor carriers over the highways, thence transported on railroad flat cars of rail carriers, between points in southern territory, on the one hand, and points in New England, middle Atlantic, middlewest and southwestern territories, on the other.

Grounds for relief: Rail-truck competion.

By the Commission.

[SEAL] HAROLD D. MCCOY,
Secretary.

[F.R. Doc. 61–4958; Filed, May 26, 1961; 8:48 a.m.]

[Notice 500]

MOTOR CARRIER TRANSFER PROCEEDINGS

MAY 24, 1961.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC–FC 63538. By order of May 19, 1961, the Transfer Board approved the transfer to Anthony Balio, doing business as B & R Trucking Company, Frankfort, N.Y., of Certificates Nos. MC 78039, MC 78039 Sub 5, and MC 78039 Sub 8, issued May 24, 1943, June 26, 1950, and May 22, 1952, respectively, to Anthony Balio, Louis Balio, and Philip Ruggiero, a partnership, doing business as B & R Trucking Company, Frankfort, N.Y., authorizing the transportation of general commodities, excluding household goods, over irregular routes, from points in New Jersey and Pennsylvania, to Utica, N.Y., and points within 20 miles of Utica; soft drinks and malt beverages, from Utica, N.Y., to points in New Jersey and Pennsylvania; boilers, radiators, and heating equipment and parts thereof, from Utica and Whitesboro, N.Y., to points in 9 specified New Jersey Counties and to 24 specified Pennsylvania Counties; granite and monuments, from Barre, Vt., to Frankfort, N.Y.; metal products, electrical equipment and machinery, materials, equipment, and supplies used in the manufacture and distribution of such commodities, from Utica, N.Y., and points within 20 miles thereof, to New York, N.Y., all points in New Jersey, and to points in Pennsylvania on and east of U.S. Highway 15; and general commodities, excluding household goods and commodities in bulk, between Utica, N.Y., and Watertown, N.Y., all intermediate points, and the off-route points of Beaver Falls, Croghan Port Leyden, Castorland, and Glenfield, N.Y. John J. Brady, Jr., 75 State Street, Albany, N.Y., attorney for applicants.

No. MC–FC 63994. By order of May 19, 1961, the Transfer Board approved the transfer to John G. Riedesel, doing business as Riedesel Truck Line, Box 11, Kirk, Colo., of Certificates Nos. MC 103331 and MC 103331 Sub 1, issued October 20, 1950, and July 26, 1955, to John G. Riedesel and E. L. Riedesel, doing business as Riedesel Truck Line, Box 11, Kirk, Colo., authorizing the transportation of: Livestock and grain, from points in Yuma, and Kit Carson Counties, Colo., to St. Francis, Kans.; general commodities, excluding household goods, and other specified commodities, between Denver, Colo., on the one hand, and, on the other, Kirk, Colo., and points within 15 miles of Kirk, except Cope and Idalia, Colo., and between points in Yuma, Kit Carson, and Washington Counties, Colo., on the one hand, and, on the other, rail heads in Yuma, Kit Carson, and Washington Counties, Colo.; and livestock, agricultural commodities, feed, fertilizer, farm machinery and implements and parts therefor, and emigrant movables, between points in Colorado as specified, and between Colorado points as specified on the one hand, and on the other points in Nebraska and Kansas as specified.

No. MC–FC 64130. By order of May 18, 1961, the Transfer Board approved the transfer to John Nalence, Lambertville, N.J., of Certificate No. MC 42556, issued November 29, 1960, to Donald M. Klockner and John Nalence, a partnership, doing business as Klockner & Nalence, authorizing the transportation over irregular routes, of sand and gravel, crushed stone, fertilizer, millboard, scrap brass, potatoes, clay, and damaged and rejected shipments of clay, from and to specified points varying with the commodities transported, in Pennsylvania, New Jersey, New York, and Maryland. Robert Watkins, 170 South Broad Street, Trenton, N.J., attorney for applicants.

No. MC–FC 64142. By order of May 18, 1961, the Transfer Board approved the transfer to Francis Joseph Toomey of Certificate No. MC 73011 issued January 29, 1958, to Frank Luchini, Pittsburgh, Pa., authorizing the transportation of glass products, rubber products, toys, iron and steel products, and furniture, over regular routes, between Jeannette, Pa., and Pittsburgh, Pa., serving the off-route points of Grapeville, Pa., from Jeannette over Pa. Highway 993 to junction U.S. Highway 22, thence over U.S. Highway 22 to Pittsburgh, and return over the same route; and from Jeannette over unnumbered highway to junction U.S. Highway 30, thence over U.S. Highway 30 to Pittsburgh, and return over the same route. John B. Conly, 416 Frick Building, Pittsburgh 19, Pa., attorney for transferee and Frank

Luchini, 932 Jones Law Building, Pittsburgh 19, Pa., attorney for transferor.

No. MC–FC 64147. By order of May 19, 1961, the Transfer Board approved the transfer to H & W Motor Express Company, a corporation, 3000 Elm Street, Dubuque, Iowa, of Corrected Certificate in No. MC 69224 and Certificate No. MC 69224 Sub 28, issued August 28, 1957, and April 5, 1961, respectively to Urban J. Haas and Cyril H. Wissel, a partnership, doing business as H & W Motor Express Company, 3000 Elm Street, Dubuque, Iowa, authorizing the transportation of: General commodities, serving points in Dubuque and Peru Townships, Dubuque, Iowa, Davenport, Iowa-Rock Island and Moline, Ill., Commercial Zone; general commodities, excluding household goods, commodities in bulk and other specified commodities, serving the Savanna Ordnance Plant, near Savanna, Ill., in connection with operations over Illinois Highway 80, restricted to shipments moving from or to points in the Minneapolis-St. Paul, Minn., Commercial Zone, serving the Joliet Arsenal, near Joliet, Ill., in connection with operations from and to Chicago, Ill., with restrictions; general commodities, between points in Iowa, Illinois, and Minnesota; general commodities, except those of unusual value, between St. Paul, Minn., and East Moline, Ill., serving intermediate and offroute points in Iowa, Illinois, and Minnesota; between Minneapolis, Minn., and Farmington, Minn., and points in Iowa, Ill., and points in Minnesota; between Rockford, Ill., and points in Iowa, Ill., and Minnesota; between Warren, Ill., and points in Iowa, Illinois, and Minnesota; between Clinton, Iowa, and various points in Iowa; general commodities, excluding household goods, commodities in bulk, and other specified commodities between points in Illinois and Iowa; general commodities, excluding household goods, commodities in bulk, and other specified commodities, between points in Iowa; between points in Minnesota; general commodities, except commodities of unusual value, between points in Iowa, serving points in the Minneapolis-St. Paul, Minn. Commercial Zone, serving within 12 miles of Central Post Office, Des Moines, Iowa, with exceptions; general commodities, over irregular routes, excluding household goods, commodities in bulk, and other specified commodities, between Clinton, Iowa, and points in Iowa within two miles of Clinton; vinegar, from Freeport, Ill., to points in Iowa; petroleum products, in containers, and anti-freeze compounds, from points in Iowa, to points in Illinois; malt beverages, from Mankato, Minn., to Dubuque, Iowa, and East Dubuque, Ill.; and empty malt-beverage containers from East Dubuque, Ill., and Dubuque, Iowa, to Mankato, Minn.; packinghouse products, from Dubuque, Iowa, to points in Illinois; building supplies and materials, sheet metal products, culverts, builders' hardware, and construction materials, from Dubuque, Iowa, to points in Illinois, and Minnesota; metal and woodworking machinery, and automatic-sprinkler systems, in truckload lots, including pipe, fittings, equipment and tools necessary for installation thereof, from Rockford, Ill., to points in Iowa and Minnesota; iron and steel tanks, from Dubuque, Iowa, to points in Illinois; agricultural implements and agricultural implement parts from Rock Island, and other points in Illinois to points in Iowa; automobile tires and tubes, in truckload lots, from Dubuque, Iowa, to points in Illinois; butter, poultry, and eggs, from points in Iowa, to points in Illinois; grains, milled grains, milled feeds, and seeds, from points in Minnesota to points in Iowa, and Illinois; bakery products, from Dubuque and Davenport, Iowa, to Duluth, Minn.; arms, ammunition, and military ordnance, including light and heavy field pieces and automatic firearms, from Rock Island Arsenal, Ill., to points in Illinois, Minnesota, and Iowa; cheese, sandwich spread, and related articles, from Freeport, Ill., to Marshalltown, and other points in Iowa; electric powerline construction materials and equipment, between points in Iowa, on the one hand, and, on the other, points in Minnesota within 75 miles of Dubuque, Iowa; dairy products and dairy and creamery supplies, between Dubuque, Iowa, on the one hand, and, on the other, points in Minnesota; and general commodities, except Classes A and B, explosives, and commodities of unusual value, serving the plant site of J. I. Case Company, one mile north of Junction of Minnesota Highways 55 and 49.

No. MC–FC 64154. By order of May 18, 1961, the Transfer Board approved the transfer to R. R. Scheibler, doing business as Wessel Truck Line, Bennington, Kans., of Certificate No. MC 50849 issued May 8, 1951, to Ralph Wessel and R. R. Scheibler, a partnership, doing business as Wessel Truck Line, Bennington, Kans., authorizing the transportation over regular and irregular routes, of livestock, from points in Kansas, to Kansas City, Kans., and Kansas City and St. Joseph, Mo.; furniture, hardware, farm machinery and farm implements, from Kansas City, Mo., to Lincoln, Kans., thence to Barnard, Milo, and Ada, Kans., and points within 15 miles of Bennington, Kans.; livestock, over regular routes, from Hunter, Kans., to Kansas City, Mo.; and between Bennington, Kans., and Kansas City, Mo.; farm machinery, over regular routes, from Kansas City to Bennington; general commodities, excluding household goods and commodities in bulk, from Kansas City, Mo., to Bennington and Salina, Kans.; oil and grease, in containers, and feed, from Kansas City, Mo., to Beloit, Kans.; underground storage tanks, from Kansas City, Mo., to Vesper, Kans.; agricultural implements and machinery, pipe, hardware and feed, between Kansas City, Mo., and Hunter, Kans.; feed, between Kansas City, Mo., and Sylvan Grove, Kans.; grain, over irregular routes, from points in that part of Nebraska on and east of U.S. Highway 183 from the Nebr.-Kans. State line to junction with U.S. 30, and on and south of U.S. 30 to Ohio-Nebr. State line, to points in Salina and Ottawa Counties, Kans.; processed feeds, from Crete, Nebr., to Salina, Kans., groceries from Kansas City, Mo., and Kansas City, Kans., to Salina, Kans.; such merchandise as dealt in by retail, and chain grocery and food business houses, and in connection therewith, equipment, materials, and supplies, used in the conduct of such business, from Kansas City, Mo., to Abilene, Ada, Cawker City, Ellsworth, Glen Elder, Junction City, Leonardville, Lucas, Manhattan, Miltonvale, Riley, St. Marys, Wamego, and Wilson, Kans.; petroleum products in containers, from Kansas City, Mo., to Abilene and Junction City, Kans., feed, from St. Joseph, Mo., to Bennington, Kans., and points within 15 miles thereof; livestock, eggs, grain, and hay, from Gypsum, Kans., and points within 20 miles of Gypsum, to Kansas City, Kans., and Kansas City, Mo.; livestock, feed, seeds, building materials, fencing materials, farm machinery and parts, agricultural implements and parts, petroleum, products in containers, and service station equipment and supplies, from Kansas City, Mo., and Kansas City, Kans., to Gypsum, Kans., and points within 20 miles of Gypsum; livestock, between Bennington, Kans., and specified portions of Kansas and Missouri; and agricultural implements, between Kansas City, and North Kansas City, Mo., and Kansas City, Kans., on the one hand, and, on the other, points in Lincoln County, Kans.

No. MC–FC 64165. By order of May 18, 1961, the Transfer Board approved the transfer to Clifton Arnott, Sussex, N.J., of Certificate No. MC 116447, issued April 10, 1958, to David B. Simmons, Sussex, N.J., authorizing the transportation of coal, over irregular routes, from points in Lackawanna County, Pa., and points in Luzerne County, Pa. (except Hazleton, Pa., and points within 8 miles thereof), to Andover, Branchville, Franklin, Ogdensburg, and Sussex, N.J. Bert Collins, 140 Cedar Street, New York, N.Y., representative for applicants.

No. MC–FC 64166. By order of May 19, 1961, the Transfer Board approved the transfer to United Motor Freight, Inc., Lansing, Mich., of Certificates in Nos. MC 112590 Sub 1 and MC 112590 Sub 2, issued April 2, 1959, and April 29, 1960, respectively, to Robert J. Parker, doing business as United Motor Freight, Lansing, Mich., authorizing the transportation of: General commodities, excluding household goods, commodities in bulk, and other specified commodities, between Lansing and Flint, Mich., on the one hand, and, on the other, the Willow Run Airport and the Wayne Major Airport, located near Detroit, Mich., and between Jackson, Mich., and the Willow Run Airport and the Wayne Major Airport, near Detroit, Mich., serving no intermediate points. Ronald R. Pentecost, 1400 Michigan National Tower, Lansing, Mich., attorney for applicants.

No. MC–FC 64172. By order of May 19, 1961, the Transfer Board approved the transfer to Bondy Cartage Limited, a corporation, Windsor, Ontario, Canada, of Certificate in No. MC 105625 Sub 1, issued July 30, 1948, to H. Bondy, doing business as Bondy Cartage, Windsor, Ontario, Canada, authorizing the transportation of: General commodities, excluding household goods, commodities in

bulk, and other specified commodities between points in the Detroit, Mich., Commercial Zone, on the one hand, and, on the other, the boundary of the United States and Canada at Detroit, Mich. Rex Eames, 1800 Buhl Building, Detroit 26, Mich., attorney for applicants.

No. MC–FC 64174. By order of May 18, 1961, the Transfer Board approved the transfer to Ray L. Brandt, York, Pa., of Certificates Nos. MC 11107 Sub 5 and MC 11107 Sub 7, issued December 4, 1950, and November 27, 1956, to Orville K. McCleary, Stewartstown, Pa., authorizing the transportation of ground limestone and lime, over irregular routes, from Thomasville, Pa., and points within 2 miles of Thomasville, to Baltimore, Md., and to points in Baltimore, Harford, Carroll, Cecil, and Frederick Counties; and agricultural limestone, in bulk, over irregular routes, from Thomasville, Pa., and points within 5 miles thereof, except points in West Manchester Township, Pa., to points in Maryland, Delaware, and New Jersey. Dale C. Dillon, 1825 Jefferson Place NW., Washington, D.C., attorney for applicants.

No. MC–FC 64179. By order of May 19, 1961, the Transfer Board approved the transfer to Takin Brothers Transfer and Storage Company, a corporation, 326 Sycamore Street, Waterloo, Iowa, of Certificate No. MC 52883, issued November 21, 1956, to Harold See and Melvin Kuhl, a partnership, doing business as Takin Brothers Transfer and Storage, 326 Sycamore Street, Waterloo, Iowa, authorizing the transportation, over irregular routes, of household goods, between Cedar Rapids, Independence, Waterloo, Floyd, and Mason City, Iowa, and points in a described portion of Iowa, on the one hand, and, on the other, points in that part of Illinois on and north of U.S. Highway 36, between Waterloo, Iowa, and points within 35 miles thereof, on the one hand, and, on the other, points in Illinois, Indiana, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin (except between points on U.S. Highway 20 between Waterloo and Independence, Iowa, inclusive, points on U.S. Highway 218 between Waterloo and Floyd, Iowa, and points on Iowa Highway 150 between Independence and Cedar Rapids, Iowa, which are located within 35 miles of Waterloo, Iowa, on the one hand, and, on the other, points in that part of Illinois on and north of U.S. Highway 36).

No. MC–FC 64180. By order of May 19, 1961, the Transfer Board approved the transfer to Samuel A. Brasfield, doing business as B & S Enterprises, Memphis, Tenn., of Certificate No. MC 112697, issued December 31, 1954, to Jasper's Transfer and Storage Co., Inc., Memphis, Tenn., authorizing the transportation of stone, over irregular routes, from Tate and Elberton, Ga., and points in Georgia within 10 miles of each, to points in Tennessee, west of Tennessee Highway 13, with no transportation for compensation on return except as otherwise authorized. R. Connor Wiggins, Jr., 824 Sterick Building, Memphis 3, Tenn., attorney for applicants.

No. MC–FC 64196. By order of May 18, 1961, the Transfer Board approved the transfer to Robert G. Millis, doing business as Millis Trucking, Jefferson, Iowa, of Certificate No. MC 117337, issued March 16, 1959, to Howard M. Nelson, doing business as Nelson Trucking Service, Jefferson, Iowa, authorizing the transportation, over irregular routes of livestock and poultry watering and feeding troughs, feeders, tanks, pans and tank heaters, from Jefferson, Iowa, to points in a described portion of Illinois and Missouri, Nebraska and South Dakota. William A. Landau, P.O. Box 1634, 1307 East Walnut Street, Des Moines 16, Iowa, Representative for applicants.

No. MC–FC 64212. By order of May 19, 1961, the Transfer Board approved the transfer to John M. Walker, Philadelphia, Pa., of Certificate No. MC 40252, issued May 31, 1941, to E. Lima Franklin and John W. Franklin, a partnership, doing business as J. W. Franklin Moving and Storage Co., Philadelphia, Pa., authorizing the transportation of household goods and billiard tables, over irregular routes, between Philadelphia, Pa., on the one hand, and, on the other, points in New York, New Jersey, Delaware, Maryland and the District of Columbia. Mathews E. Jaspan, 110 South Broad Street, Philadelphia 2, Pa., Attorney for applicants.

[SEAL] HAROLD D. McCOY,
Secretary.

[F.R. Doc. 61–4959; Filed, May 26, 1961; 8:48 a.m.]

SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION

Joint Tolls Advisory Board

[Notice No. 6]

BUNGE CANADIAN TRADING CO., LTD.

Application for Reclassification of Brewers Grains and Malt Sprouts

Notice is hereby given, pursuant to the Act of May 13, 1954 as amended (33 U.S.C. 981 et seq.), and the Agreement executed by the Saint Lawrence Seaway Development Corporation and the St. Lawrence Seaway Authority of Canada dated January 29, 1959, approved by the Governments of the United States and Canada on March 9, 1959, that the Joint Tolls Advisory Board, The St. Lawrence Seaway, has received an application from the Bunge Canadian Trading Company Limited, 1440 Towers Street, Montreal 25, Quebec, Canada, requesting the reclassification of shipments of brewers grains and malt sprouts from general to bulk cargo.

In accordance with the rules of procedure of the Board, interested parties have thirty days from the date of the publication of this notice in which to submit briefs or make representations to the Joint Tolls Advisory Board, Saint Lawrence Seaway Development Corporation, Seaway Circle, Massena, New York.

By order of the Board.

E. REECE HARRILL,
Vice Chairman.

[F.R. Doc. 61–4850; Filed, May 26, 1961; 8:45 a.m.]

[Notice No. 7]

ALGOMA STEEL CORP., LTD.

Application for Reclassification of Semi-Finished Steel Products (Blooms, Billets and Slabs)

Notice is hereby given, pursuant to the Act of May 13, 1954 as amended (33 U.S.C. 981 et seq.), and the Agreement executed by the Saint Lawrence Seaway Development Corporation and the St. Lawrence Seaway Authority of Canada dated January 29, 1959, approved by the Governments of the United States and Canada on March 9, 1959, that the Joint Tolls Advisory Board, The St. Lawrence Seaway, has received an application from The Algoma Steel Corporation, Limited, Sault Ste. Marie, Ontario, Canada, requesting the reclassification of semi-finished steel products (blooms, billets and slabs) from general cargo to bulk cargo.

In accordance with the rules of procedure of the Board, interested parties have thirty days from the date of the publication of this notice in which to submit briefs or make representations to the Joint Tolls Advisory Board, Saint Lawrence Seaway Development Corporation, Seaway Circle, Massena, New York.

By order of the Board.

E. REECE HARRILL,
Vice Chairman.

[F.R. Doc. 61–4851; Filed, May 26, 1961; 8:45 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–3842]

BLACK BEAR INDUSTRIES, INC.

Order Summarily Suspending Trading

MAY 23, 1961.

The common stock, par value 15 cents a share, of Black Bear Industries, Inc. (formerly Black Bear Consolidated Mining Co.) being listed and registered on the San Francisco Mining Exchange, a national securities exchange; and

The Commission being of the opinion that the public interest requires the summary suspension of trading in such security on such Exchange and that such action is necessary and appropriate for the protection of investors; and

The Commission being of the opinion further that such suspension is necessary in order to prevent fraudulent, deceptive or manipulative acts or practices, with the result that it will be unlawful under section 15(c)(2) of the Securities

Exchange Act of 1934 and the Commission's Rule 15c2–2 thereunder for any broker or dealer to make use of the mails or of any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of such security, otherwise than on a national securities exchange;

It is ordered, Pursuant to section 19 (a) (4) of the Securities Exchange Act of 1934 that trading in said security on the San Francisco Mining Exchange be summarily suspended in order to prevent fraudulent, deceptive or manipulative acts or practices, this order to be effective for a period of ten (10) days, May 24, 1961 to June 2, 1961, both dates inclusive.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 61–4945; Filed, May 26, 1961; 8:46 a.m.]

[File No. 70–3970]

MICHIGAN WISCONSIN PIPE LINE CO.

Notice of Proposed Issuance and Sale of Notes to Banks

MAY 22, 1961.

Notice is hereby given that Michigan Wisconsin Pipe Line Company Detroit, Mich. ("Michigan Wisconsin"), a nonutility subsidiary company of American Natural Gas Company, a registered holding company, has filed an application with this Commission, pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating section 6(b) of the Act and Rules 50(a) (2) and 70(b) (2) thereunder as applicable to the proposed transaction.

All interested persons are referred to the application on file at the offices of this Commission for a statement of the proposed transaction which is summarized as follows:

Michigan Wisconsin proposes to issue and sell, from time to time during the year 1961, not more than an aggregate of $20,000,000 of promissory notes ("Notes"). The banks and their respective commitments are as follows:

The First National City Bank of New York, New York, N.Y.	$7,500,000
The Hanover Bank, New York, N.Y.	3,000,000
National Bank of Detroit, Detroit, Mich.	6,000,000
Mellon National Bank and Trust Company, Pittsburgh, Pa.	2,000,000
First Wisconsin National Bank of Milwaukee, Milwaukee, Wis.	1,000,000
Marine National Exchange Bank, Milwaukee, Wis.	500,000
	20,000,000

The Notes will be unsecured and will be issued in varying amounts and at various times as funds are required by Michigan Wisconsin. The Notes will be dated as of the date of issuance and will mature September 30, 1962. The interest rate of each note will be at the prime rate of The First National City Bank of New York on the date of its issuance and the interest rate will be adjusted to the prime rate in effect at the First National City Bank of New York at the beginning of each 90-day period subsequent to the date of the first borrowing. There is no commitment fee, and the Notes may be prepaid at any time without penalty.

The proceeds from the proposed issuance and sale of the Notes, together with treasury funds, will be used to finance the 1961 construction program estimated at $22,000,000.

The application states that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transaction.

It is estimated that the fees and expenses in connection with the proposed transaction will not exceed $1,500 composed of counsel fees of Sidley, Austin, Burgess & Smith of $500 and miscellaneous expenses of $1,000.

Notice is further given that any interested person may not later than June 6, 1961, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. At any time after said date, the application, as filed or as it may be amended, may be granted as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 61–4946; Filed, May 26, 1961; 8:46 a.m.]

[File No. 812–1386]

PRUDENTIAL INSURANCE COMPANY OF AMERICA

Notice of Filing and Order for Hearing Regarding Application for Various Exemptions

MAY 23, 1961.

Notice is hereby given that the Prudential Insurance Company of America, Newark, N.J. ("Prudential"), Newark, New Jersey, a mutual insurance company, organized under the laws of the State of New Jersey, has filed an application pursuant to the Investment Company Act of 1940 (the "Act") requesting an order of the Commission (i) declaring that Prudential is the issuer of certain proposed variable annuity contracts and is excepted from the definition of an investment company, or, alternatively, (ii) exempting a proposed unincorporated fund which Prudential will establish and which may be regarded as the issuer of the variable annuity contracts, from compliance with various provisions of the Act, all as more fully set forth herein.

Part I. Prudential was organized on February 18, 1875, pursuant to the provisions of Chapter 40, New Jersey Private Laws of 1875 and is subject to regulation by the New Jersey Department of Banking and Insurance. Since its organization Prudential has been engaged in writing various forms of life and disability insurance. As of December 31, 1960, Prudential had life insurance in force in the amount of $82,000,000,000 and had assets in excess of $16,500,000,000.

Generally speaking, the variable annuity contracts which are to be issued and sold to individuals provide, in substance, that the purchaser will make monthly purchase payments to Prudential of fixed amounts over a period of years, which period is hereinafter referred to as the "pay-in" period. After certain deductions, the net proceeds of the purchase payments will be invested primarily in equity securities to be maintained by Prudential as a segregated account to be known as the Investment Fund ("Fund"). The purchaser will be credited at the end of each month with so-called "variable units" representing his pro-rata contribution to the Fund. The value of the units will vary, as described below, and since the purchaser's payments are constant in amount the number of variable units credited to the purchaser's account will depend upon their current value at the end of the month.

During the pay-in period the purchaser has the right to terminate the contract and receive therefor the value of all units credited to his account less a termination charge. The termination charge will be in an amount estimated to be equal to the contract holder's allocable share of the taxes, if any, which the Fund may incur after termination, upon realization of net unrealized capital gains occurring during the period of the contract holder's investment in the Fund. If the value of all units credited to the purchaser's account is less than $1,000, a lump sum cash payment is made; otherwise, the value of approximately 1/36th of such units will be determined and paid each month thereafter. If death occurs during the pay-in period the contract is automatically terminated and the purchaser's beneficiary receives in one lump-sum the greater of (i) the value of all units credited to the purchaser's account without the imposition of any termination charge or (ii) life insurance benefits equal to all purchase payments theretofore made.

Ordinarily, absent death or redemption, the pay-in period continues until the so-called "annuity date", which it is proposed will be no less than fifteen years from the date the contract becomes effective. On the annuity date if the value of all units is less than $1,000 the amount thereof is paid to the purchaser in one lump sum and the contract is terminated. If the value of the units exceed $1,000 at the annuity date, the purchaser surrenders the value of the units and in return therefor is entitled to receive monthly payments equal to the varying value of a fixed number of

units. The number of units is fixed in relation to (i) the total number of units surrendered, and (ii) an assumed 2½ percent annual accretion in the number of units, and (iii) the pay-out option selected which gives effect to the age and sex of the annuitant or annuitants. Monthly payments will be made in accordance with one of three options available, namely, (i) for the remaining life of the annuitant or (ii) for a minimum ten-year period plus the annuitant's remaining life or (iii) until the death of the last survivor of the annuitant and another designated person. The period subsequent to the annuity date during which payments will be made to the contract holder or his survivor is hereinafter referred to as the "pay-out" period. During this pay-out period units may not be redeemed and the contract holder is only entitled to receive the monthly payments for the particular pay-out period which he has selected.

A deduction is made from each monthly purchase payment for sales and administrative expenses and to provide the life insurance benefits. The amount of this deduction depends on the size of the purchase payment and for this purpose the purchase payments are grouped into three bands. The table below shows, for variable annuity contracts with a fifteen-year pay-in period, the percentage of such purchase payments, after the foregoing deduction, which will be invested in the Fund to provide variable units:

Band of monthly purchase payments	Percent invested				
	First year			2d through 15th year	15-year average
	Payments 1 and 2	3 through 12	Average 1 through 12		
	Percent	*Percent*	*Percent*	*Percent*	*Percent*
$25-$49.99	25	50	45.8	88	85.2
$50-$99.99	30	60	55	90	87.7
$100 and up	40	62	58.3	92	89.8

The value of the variable units will be determined at the end of each month. Such value will reflect the changes in the market value of the equities in which the Fund will be invested, realized gains and losses, and dividend or interest income. In the monthly computation there will be deducted from the Fund for certain expenses and taxes a fixed charge equal to 0.6 percent per annum of the value of the Fund assets. The value of the units will not reflect deviations from the mortality projections upon which the annuity payments are based.

The company will also establish a so-called "Other Assets" account which, in effect, will be a general account for the administration and operation of the variable annuity contracts. The account will reflect initially all amounts derived from the variable annuity contracts which are not invested in the Fund, and also will be credited with the 0.6 percent annual charge made to the Fund. The account will be charged, among other things, with the administration expense, sales commissions, certain taxes, and death benefits under the life insurance aspects of the variable annuity contracts. To the extent that the assets of the Fund are more or less than the estimated liability on variable annuity contracts the Other Assets account will be credited or charged, as the case may be. Any excess over amounts estimated to be needed for the foregoing purposes may be declared as so-called "dividends" which will provide additional variable units during the pay-in period and cash payments thereafter. Any deficiency in the account is required to be rectified out of the general assets of the company, and conversely the account may be charged to rectify any deficiency in the general assets.

In addition to individual variable annuity contracts, there will be issued and sold to employers, trustees, and certain organizations, so-called group variable annuity contracts to provide either a variable annuity or a fixed dollar annuity, or both, for the employees or members of the organization upon their retirement. The "group variable deposit administration" type of group contract will be issued to fund either pension or profit sharing plans qualified under either sections 401 or 501(c)(3) of the Internal Revenue Code, as amended. The provisions of such contracts will vary from case to case but certain basic terms will provide (i) for deductions for sales and administrative expense, such deductions varying with the amount of aggregate annual purchase payments and ranging from a maximum of 14.5 percent for annual payments of $10,000 to a minimum of 5 percent for annual payments of $125,000 or more, with the balance invested in the Fund and variable units credited therefor; and (ii) for an expense deduction in computing the value of the variable units of approximately 0.5 percent annually rather than 0.6 percent as described above in connection with individual variable annuity contracts; (iii) dividends from divisible surplus allocable to each such contract may be declared and, if so, will be treated as purchase payments without, however, the expense deduction referred to above.

"Group variable deferred annuity contracts" are also proposed to be issued and sold differing from the foregoing type of group contract essentially in that in this type contract, out of each purchase payment there is allocated a specific amount to provide a portion of a deferred variable annuity contract for each employee participating in the plan, while in the former such allocation is not made until retirement of the employee.

Part II. Prudential requests an order under sections 3(b)(2) and 38(a) of the Act declaring and finding that it will be the issuer of the proposed variable annuity contracts; that it is excepted from the definition of an investment company because it is and will be, primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities, namely, the business of an insurance company; and that it falls within the definition of an insurance company contained in section 2(a)(17) of the Act, and therefore, is excepted by section 3(c)(3) of the Act from the definition of an investment company.

Section 3(a) generally defines an investment company as an issuer of securities which is engaged or proposes to engage primarily in investing, reinvesting, owning, holding or trading in securities. Section 3(b)(2) provides an exception from this definition if the Commission finds the issuer not to be so primarily engaged. Section 38(a) provides, among other things, that the Commission shall have authority to issue such orders as are necessary or appropriate to the exercise of the powers conferred upon the Commission by the Act. An exception is also provided by section 3(c)(3) for an insurance company. Section 2(a)(17) defines such a company, among other things, as one whose primary and predominant business activity is the writing of insurance, and which is organized as an insurance company and subject to state supervision.

In the event that the Commission shall find that the unincorporated Fund is the issuer of the proposed variable annuity contracts and an investment company as defined in the Act, the application requests an order under section 6(c) exempting the Fund from the provisions of sections 7 (a) and (b).

Section 6(c) of the Act authorizes the Commission, conditionally or unconditionally to exempt by order any person, security or transaction or class thereof from any provision of the Act or from any rule or regulation thereunder, if and to the extent that the Commission finds that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Section 7(a) of the Act prohibits, generally speaking, an investment company not registered under section 8 from engaging in any transaction by use of the mails or any means or instrumentality of interstate commerce. Section 7(b) contains similar prohibitions upon the depositor or trustee of, or underwriter for any unincorporated investment company which is unregistered.

Part III. Section 6(e) of the Act provides that the Commission, in connection with any rule, regulation or order exempting any investment company from the provisions of section 7, may, if it deems it necessary or appropriate in the public interest or for the protection of investors, specify other provisions of the Act as applicable to such company and to other persons in their transactions and relations with such company, as though such company were a registered investment company.

If the requested exemption of the Fund from section 7 is granted, Prudential, on behalf of the Fund, consents to the application to the Fund and other persons,

as provided in section 6(e), of all the provisions of the Act, except those described below to the extent indicated. The provisions of the Act from which, in effect, exemption is requested are as follows:

(a) Section 8(a) provides for a notification of registration to be filed with the Commission and deems the investment company so filing to be registered. Exemption is requested because Applicant believes the Fund is not the type of investment company contemplated by the Act to be registered thereunder.

(b) Section 16(a) prohibits any person from serving as a director of a registered investment company unless elected to that office by the holders of the outstanding voting securities at an annual or special meeting. Exemption is provided from the annual election requirements to permit the board to be divided into classes with a maximum tenure of office of 5 years for each class.

Prudential's Board of Directors consists of 23 members who also will serve as directors of the Fund. Sixteen members of the board will be elected by the vote of the conventional insurance and variable annuity contract holders. Six members of the board will be appointed for consecutive six year terms by the Chief Justice of the Supreme Court of New Jersey, and the President of Prudential will be ex officio a member of its board. Exemption is requested to permit the board to be elected and appointed in the manner, and for the terms described.

(c) Section 17(f) permits a registered investment company to place and maintain its securities and investments in its own custody, in accordance with such rules as the Commission shall prescribe. Rule 17f–2 adopted thereunder, requires among other things, that the securities and investments shall be deposited in a bank for safekeeping and that access thereto shall be limited to no more than 5 persons who have been so designated by a resolution of the board of directors of the investment company. Exemption is requested to the extent necessary to permit the maintenance of the securities and other investments of the Fund in the Applicant's own vaults in which are maintained all the securities of Prudential; and because of the volume of transactions, exemption is requested to permit access to the vault by a maximum of twenty persons so designated by resolution of the Finance Committee of the board of directors which resolution will be ratified by the board of directors.

(d) Section 22(d), so far as here relevant, prohibits the public sale of a redeemable security of a registered investment company except "at a current public offering price described in the prospectus." The variable annuity contracts to be sold to individuals provide that, as the aggregate purchase payments increase from band to band, as described above, the combined sales and administrative expense is reduced, with concomitant larger investment in the Fund.

A different reducing scale of such combined expenses will apply in the case of group contracts. Exemption from section 22(d) is requested to permit such reductions in combined sales and administrative expense among the several bands of purchase payments applicable to individual contracts; and as respects the different scale applicable between group and individual contracts.

(e) Exemption from section 22(d) is requested to permit acquisition of variable units at a price other than the current value of such units, when purchase payments are made to cure a default. If a monthly purchase payment in default is paid, variable units will be credited on the basis of their value in the month when the payment was due or when actually made, whichever is higher.

(f) Section 22(e) prohibits the suspension of the right of redemption or the postponement of the date of payment of any redeemable security for more than seven days after tender for redemption, except under certain circumstances not here relevant. A redeemable security is defined in section 2(a)(31) as one "under the terms of which the holder, upon its presentation to the issuer, * * * is entitled * * * to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof."

Applicant requests that, if, notwithstanding the terms and conditions of the variable annuity contracts, they are considered to be redeemable securities, exemption from section 22(e) be granted to permit their issuance and sale upon such terms and conditions. With respect to individual variable annuity contracts presented for redemption during the pay-in period, the value of the units, if less than $1,000, will be determined and paid in one lump sum, more than 7 days after such presentation, and if $1,000 or more the value of approximately 1/36th of such units will be determined and paid each month thereafter; and the value of such contracts during the pay-out period will be paid on the life annuity basis selected by the purchaser.

With respect to the "group variable deferred annuity contracts" no provision is made for redemption during the pay-in period. With respect to the "group variable deposit administration" contract, no provision is made for redemption during the first five years, and thereafter the value of the contract may be transferred only for certain purposes and under certain conditions.

(g) Section 27(a) prohibits, so far as here relevant, the sale of a periodic payment plan certificate issued by a registered investment company if (1) the sales load exceeds 9 per centum of the total payments to be made thereon, and if (2) the sales load deducted from the first twelve monthly payments or their equivalents, are not proportionately alike, or exceed one-half of such first twelve monthly payments, and if (3) the amounts deducted for sales load from subsequent payments are not proportionately alike.

The variable annuity contracts fall within the definition of a periodic payment plan. Exemption is requested from section 27(a)(3) to permit the sales load to be deducted in amounts which differ proportionately in the 2d to 4th years from such amounts deducted in the 5th to 10th years, and which differ proportionately after the 10th year from those deducted in both of the foregoing periods.

(h) Section 27(c)(1) prohibits, among other things, the sale of a periodic payment plan by a registered investment company unless it is a redeemable security. Upon the assumption that the variable annuity contracts are not deemed to be redeemable securities, exemption from section 27(c)(1) is requested to permit their sale.

(i) Section 27(c)(2) prohibits the sale of a periodic payment plan unless the proceeds, after the deduction of sales load, are deposited with a bank trustee or custodian and held by the bank in trust under certain specified conditions. Exemption from the prohibition of section 27(c)(2) is requested to permit Prudential to hold the proceeds from the sale of the variable annuity contracts.

(j) Section 30(d) and Rule 30(d)(1) thereunder require every registered management investment company to transmit at least semi-annually a report to its stockholders containing a balance sheet, the portfolio investments and their value, a statement of income and surplus, and remuneration paid to directors, officers, and certain affiliates, and the aggregate dollar amount of the purchases and sales of investment securities.

Applicant will transmit an annual report meeting the above requirements to the variable annuity contract holders. Exemption from section 30(d) and Rule 30(d)(1) thereunder is requested to permit the transmission of a report to the variable annuity contract holders within two months after the anniversary date of each contract, rather than a semi-annual report, which report will show only the number of units credited under the contract and the value of a unit at the anniversary date.

(k) Section 32(a), in pertinent part, prohibits any registered investment company from filing with the Commission any financial statement certified by an independent public accountant unless, among other things, the selection of the accountant by the board of directors shall have been submitted for ratification or rejection by stockholders at their next succeeding annual meeting, and employment of such accountant shall have been conditioned upon the right of the company by vote of a majority of the outstanding voting securities to terminate such employment.

Exemption is requested from section 32(a) to permit an independent accountant to serve without the ratification by variable annuity contract holders, and without conditioning the employment upon the right of these contract holders to terminate the same. The provisions of New Jersey law relating to stockholders' voting rights and directors' responsibilities are described in Part IV below.

Part IV. In connection with the provisions of sections 13 and 15, which as more fully described herein, require approval of the holders of variable annuity contracts in certain matters, the application points out that under New Jersey law the right to vote in the affairs of the company is granted to the holders of

variable annuity and insurance contracts, but is limited to voting for the election of directors, amendments to the charter, and approval of a merger with another mutual insurance company. Each qualified voter is entitled to one vote irrespective of his financial interest in the company, or of the number of variable annuity or insurance contracts owned. Persons under the age of 21 or holding contracts less than one year are not qualified voters.

Section 13(a) prohibits a registered investment company from deviating from any of its stated fundamental investment policies without the prior approval of a majority of its outstanding voting securities. It is stated that in view of the foregoing provisions of New Jersey law there is no authority to seek the approval of the variable contract holders for any proposed change in the fundamental investment policies. It is further stated that such approval, if sought, would constitute an illegal delegation by the directors of their duty and responsibility under the New Jersey law to authorize investments and control the disposition of the corporate property, and would otherwise violate the company's charter provisions.

Section 15(a) prohibits any person from serving as an investment adviser to a registered investment company except pursuant to a written contract which, among other things, is initially approved by the majority of the outstanding voting securities of the company and provides that it may be renewed annually, or terminated at any time by such vote or by the board of directors. Section 15(b) prohibits persons from serving as principal underwriters for a registered investment company unless the contract and its annual renewals are approved by the vote of the majority of the outstanding voting securities or the board of directors.

For the reasons adverted to above, it is stated that there is legally no way in which matter required by section 15 to be approved or disapproved by a majority of the outstanding voting securities may be submitted to the variable annuity contract holders.

Applicant does not, in effect, request exemption from sections 13 and 15. In relation to the former, it states that after it initially has adopted its investment policies it is unlikely that any changes therein will be proposed; and in connection with the latter it does not intend to employ an investment advisor or principal underwriter. If, however, circumstances should change and a vote of variable annuity contract holders should become necessary, Applicant states it will either find some means to comply with these provisions or seek exemption therefrom.

Part V. It appearing to the Commission that it is appropriate in the public interest and in the interest of investors that a hearing be held with respect to the application:

It is ordered, Pursuant to section 40(a) of said Act, that a hearing on the aforesaid application under the applicable provisions of the Act and of the rules of the Commission thereunder be held on the 12th day of June 1961, at 10:00 a.m., in the office of the Securities and Exchange Commission, 425 Second Street NW., Washington 25, D.C. At such time the Hearing Room Clerk will advise as to the room in which such hearing will be held. Any person desiring to be heard or otherwise wishing to participate in this proceeding is directed to file with the Secretary of the Commission his application as provided by Rule 9(c) of the Commission's rules of practice, on or before the date provided in the Rule, setting forth any issues of law or facts which he desires to controvert or any additional issues which he deems raised by this Notice and Order or by such application.

It is further ordered, That Sidney L. Feiler or any officer or officers of the Commission, designated by it for that purpose, shall preside at said hearing. The officer so designated is hereby authorized to exercise all the powers granted to the Commission under sections 41 and 42(b) of the Investment Company Act of 1940 and to a hearing officer under the Commission's rules of practice.

The Division of Corporate Regulation having advised the Commission that it has made a preliminary examination of the application, and that upon the basis thereof the following questions are presented for consideration without prejudice to its specifying additional matters and questions upon further examination:

(1) Whether Prudential or the Fund, or both, will be the issuer of the proposed variable annuity contracts.

(2) Whether in light of the provisions and purposes of sections 3(c)(3) excepting an insurance company from the definition of an investment company, and the provisions and purposes of sections 3(b)(2) and 38(a) the application of Prudential for an order under sections 3(b)(2) or 38(a) excepting it from the definition of an investment company, should be granted or dismissed.

(3) Whether pursuant to the provisions of section 6(c), it is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act that the Fund, as the issuer of the variable annuity contracts and an investment company as defined in the Act, be exempted, from the provisions of section 7(a), and 7(b), and whether any such exemption should be subject to a supplemental order under section 6(c), in view of all the relevant circumstances, including, but without limitation, the following:

(a) The proposed terms and conditions of the variable annuity contracts;

(b) The proposed method of administering the variable annuity contracts;

(c) The manner of selection and appointment of the persons who may be acting as officers, directors, investment advisers and principal underwriters for the Fund;

(d) The distribution of the voting power among insurance and variable annuity contract holders, and the extent of such voting power; and

(e) The provisions of New Jersey law applicable to any of the foregoing circumstances.

(4) Whether, in connection with any order entered under section 6(c) exempting the Fund from the provisions of section 7, it is necessary or appropriate in the public interest or for the protection of investors, in light of all the circumstances, including the matters and considerations set forth in paragraph (3) above, there shall, pursuant to section 6(e), be applied to the Fund and to other persons and their transactions in relation with such Fund, as though such Fund were a registered investment company, any or any part of the provisions of the Act set forth in paragraphs (a) to (k) of Part IV of this notice and order, in addition to those provisions of the Act set forth in said application.

It is further ordered, That at the aforesaid hearing attention be given to the foregoing matters and questions.

It is further ordered, That the Secretary of the Commission shall give notice of the aforesaid hearing by mailing a copy of this notice and order by registered mail to The Prudential Insurance Company of America and the New Jersey Department of Banking and Insurance, and that notice to all other persons shall be given by publication of this notice and order in the FEDERAL REGISTER; and that a general release of this Commission in respect of this notice and order be distributed to the press and mailed to the mailing list for releases.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 61-4947; Filed, May 26, 1961; 8:46 a.m.]

[File No. 1-4336]

TELECTRO INDUSTRIES CORP.

Order Summarily Suspending Trading

MAY 23, 1961.

The common stock, 10 cents par value, of Telectro Industries Corp., being listed and registered on the American Stock Exchange, a national securities exchange; and

The Commission being of the opinion that the public interest requires the summary suspension of trading in such security on such Exchange and that such action is necessary and appropriate for the protection of investors; and

The Commission being of the opinion further that such suspension is necessary in order to prevent fraudulent, deceptive or manipulative acts or practices, with the result that it will be unlawful under section 15(c)(2) of the Securities Exchange Act of 1934 and the Commission's Rule 15c2-2 thereunder for any broker or dealer to make use of the mails or of any means or instru-

mentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of such security, otherwise than on a national securities exchange;

It is ordered, Pursuant to section 19 (a)(4) of the Securities Exchange Act of 1934 that trading in said security on the American Stock Exchange be summarily suspended in order to prevent fraudulent, deceptive or manipulative acts or practices, this order to be effective for the period May 24, 1961, to May 30, 1961, both dates inclusive.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 61-4948; Filed, May 26, 1961; 8:46 a.m.]

SMALL BUSINESS ADMINISTRATION

Office of the Administrator

[Delegation of Authority No. 10-11]

DIRECTOR, OFFICE OF FINANCIAL SERVICES

Delegation Relating to Financial Assistance

I. Pursuant to the authority delegated to the Deputy Administrator for Financial Assistance by Delegation No. 10 (Revision 4), (25 F.R. 7417), as amended May 5, 1961, there is hereby redelegated to the Director, Office of Financial Services, the following authority:

A. *Financial assistance.*

1. To determine eligibility of loan applicants, within the framework of prior determinations.

B. *Administration.*

1. To authorize and approve (a) sick and annual leave, (b) leave without pay not in excess of 30 days, and (c) overtime work for employees under his supervision.

2. To authorize and approve (a) his personal travel and (b) the travel of employees under his supervision, except travel when actual subsistence expenses are requested.

II. The authority delegated in subsections I.A. 1 and I.B. 2 may not be redelegated.

III. All authority delegated herein may be exercised by any SBA employee designated as Acting Director, Office of Financial Services.

Effective date: May 16, 1961.

C. R. LANMAN,
Deputy Administrator for Financial Assistance.

[F.D. Doc. 61-4976; Filed, May 26, 1961; 8:50 a.m.]

[Declaration of Disaster Area 335]

MAINE

Declaration of Disaster Area

Whereas, it has been reported that during the month of May 1961, because of the effects of certain disasters, damage resulted to residences and business property located in Aroostook County in the State of Maine;

Whereas, the Small Business Administration has investigated and has received other reports of investigations of conditions in the area affected;

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such area constitute a catastrophe within the purview of the Small Business Act.

Now, therefore, as Deputy Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of section 7(b) of the Small Business Act may be received and considered by the Offices below indicated from persons or firms whose property, situated in the aforesaid County and areas adjacent thereto, suffered damage or destruction resulting from flood and accompanying conditions occurring on or about May 16, 1961.

Offices:
Small Business Administration Regional Office,
Sheraton Building,
470 Atlantic Avenue,
Boston, Mass.
Small Business Administration Branch Office,
116 State Street,
Augusta, Maine.

2. Applications for disaster loans under the authority of this Declaration will not be accepted subsequent to November 30, 1961.

Dated: May 18, 1961.

C. R. LANMAN,
Deputy Administrator.

[F.R. Doc. 61-5053; Filed, May 26, 1961; 12:01 p.m.]

[Declaration of Disaster Area 337]

INDIANA

Declaration of Disaster Area

Whereas, it has been reported that during the month of May 1961, because of the effects of certain disasters, damage resulted to residences and business property located in Martin County in the State of Indiana;

Whereas, the Small Business Administration has investigated and has received other reports of investigations of conditions in the area affected;

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such area constitute a catastrophe within the purview of the Small Business Act.

Now, therefore, as Deputy Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of section 7(b) of the Small Business Act may be received and considered by the Offices below indicated from persons or firms whose property, situated in the aforesaid County and areas adjacent thereto, suffered damage or destruction resulting from flood and accompanying conditions occurring on or about May 11 through 17, 1961.

Offices
Small Business Administration Regional Office,
Bankers Building, Room 439,
105 West Adams Street,
Chicago 3, Ill.
Small Business Administration Branch Office,
Farm Bureau Insurance Building, Room 721,
130 East Washington Street,
Indianapolis 4, Ind.

2. Applications for disaster loans under the authority of this Declaration will not be accepted subsequent to November 30, 1961.

Dated: May 18, 1961.

C. R. LANMAN,
Deputy Administrator.

[F.R. Doc. 61-5054; Filed, May 26, 1961; 12:01 p.m.]

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